

EBRD Performance Requirement 5

Land Acquisition, Involuntary Resettlement and Economic Displacement

Introduction

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or resources, and/or loss of access to assets or resources that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition¹ and/or restrictions on land use.²
2. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition, or restrictions on land use, that result in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain;³ and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.
3. Application of this Performance Requirement (PR) supports and is consistent with the universal respect for, and observance of, human rights and freedoms and specifically the right to adequate housing and the continuous improvement of living conditions.⁴ In cases where there has already been displacement as a result of conflict, this PR is guided by the Guiding Principles on Internal Displacement.⁵
4. Unless properly managed, involuntary resettlement may result in long-term hardship

and impoverishment for affected persons and communities, as well as environmental damage, and adverse socio-economic impacts in areas to which they have been displaced. Under some circumstances, poorly executed involuntary resettlement may leave the client exposed to legal action. For these reasons, involuntary resettlement should be avoided. However, where it is unavoidable, resettlement should be minimised and appropriate measures to mitigate adverse impacts on displaced persons and host communities⁶ should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities and an assessment at the earliest stage possible in the project design, can result in cost-effective, efficient and timely implementation of those activities, as well as promote innovative approaches to improving the livelihoods and standards of living of those affected by resettlement.

Objectives

5. The objectives of this PR are to:
 - avoid or, when unavoidable, minimise, involuntary resettlement by exploring alternative project designs
 - mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of and access to assets and land by: (i) providing compensation for loss of assets at replacement cost;⁷ and (ii) ensuring that

¹ Land acquisition includes both outright purchases of property and purchases of access rights, such as easements or rights of way.

² Examples include loss of access to state-owned sub-surface mineral rights by artisanal miners; loss of access to marine fishing grounds due to project activities; restriction of access to resources located within state-determined exclusion zones not acquired by the client; and demonstrated decreases in agricultural, livestock, forest, hunting and fishing yields resulting from project-related disturbance and/or pollution.

³ Such restrictions may include restrictions of access to legally protected and internationally recognised areas of biodiversity importance.

⁴ Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

⁵ Office of the High Commissioner for Human Rights: Guiding Principles on Internal Displacement.

⁶ A host community is any community receiving displaced persons.

⁷ This is usually calculated as the market value of the assets plus the transaction costs related to restoring such assets. The calculation of replacement costs is complex due to the potential variety of land, land use claimants, and the differing levels of land market development across member countries. For this reason clients should identify and consult with all persons and communities that shall be displaced by land acquisition as well as host communities who shall receive those who are to be resettled, so as to obtain adequate information about land titles, claims and use. The valuation method for determining replacement cost should be documented in respective Resettlement and/or Livelihood Restoration plans. Where land markets are still in a formative stage, clients should seek valuation by external independent professional valuation experts (or if there are no professional valuation experts, other professionals with relevant expertise acceptable to the EBRD and the client). See also notes 12 and 14 below.

resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected

- restore or, where possible, improve the livelihoods and standards of living of displaced persons⁸ to pre-displacement levels
- improve living conditions among physically displaced persons through the provision of adequate housing,⁹ including security of tenure at resettlement sites.¹⁰

or other compulsory procedures if negotiations fail) and where such a transaction affects only those with legal rights.

9. The applicability of this PR will be determined during the environmental and social assessment process according to the criteria set out in paragraphs 6 to 8 above. Where involuntary resettlement has already occurred, the assessment will identify: (i) any gaps; and (ii) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.

Scope of application

6. This PR applies to physical or economic displacement, that can be full, partial, permanent, or temporary, resulting from the following types of transactions:
 - land rights or land use rights for a project acquired through expropriation or other compulsory procedures
 - land rights for a project acquired through negotiated resettlements with property owners or those with legal rights to land, including customary or traditional rights recognised or recognisable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation
 - imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase, or by means of government regulation.
7. Requirements and responsibilities towards displaced persons with no recognisable legal right or claim to the land they occupy are contained in paragraphs 18, 32 and 37 below.
8. This PR does not apply to resettlement resulting from voluntary land transactions (market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation

Requirements

10. Clients are encouraged to acquire land rights through negotiated settlements even if they have the legal means to gain access to the land without the consent of the seller. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power.

Avoid or minimise displacement

11. The client will consider feasible alternative project designs to avoid or at least minimise physical and/or economic displacement, while balancing environmental, social, and economic costs and benefits.

Consultation

12. From the earliest stages and through all resettlement activities the client will involve affected men and women, including host communities. This will facilitate their early and informed participation in decision-making processes related to resettlement, and in PR 10:

⁸ These may include those who have legally recognisable rights or claims to the land, those with customary claims to the land, those with no legally recognisable rights or claims to the land, seasonal resource users such as herders/fishing families, hunter and gatherers who may have interdependent economic relations with communities located within the project area.

⁹ Adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, health care and education. Clients should include these aspects of adequate housing in order to offer improved living conditions at the resettlement site, particularly to those without recognisable legal right or claim to the land they occupy.

¹⁰ A resettlement site offers security of tenure if it protects, to the greatest extent possible, the resettled persons from forced evictions.

- affected persons shall be given the opportunity to participate in the eligibility requirements, negotiation of the compensation packages, resettlement assistance, suitability of proposed resettlement sites and proposed timing
- additional requirements apply to consultations which involve Indigenous Peoples (as provided in PR 7) as well as individuals belonging to vulnerable groups¹¹
- consultation will continue during the implementation, monitoring and evaluation of compensation payment and resettlement so as to achieve outcomes that are consistent with the objectives of this PR.

13. The client will take into account any individuals or groups that may be disadvantaged or vulnerable. In particular, the client will take necessary actions to ensure that vulnerable groups are not disadvantaged in the resettlement process, are fully informed and aware of their rights, and are able to benefit equally from the resettlement opportunities and benefits. These groups should be identified through the process of environmental and social assessment (as outlined in PR 1).

Socio-economic assessment and census

14. The client will carry out a socio-economic baseline assessment on people affected by the project, including impacts related to land acquisition and restrictions on land use. The assessment will identify impacts within a project's social context and the needs and rights of the affected people and develop appropriate actions to minimise and mitigate resettlement impacts.
15. The client will carry out a detailed census to: (i) identify persons who will be displaced by the project; (ii) determine who will be eligible for compensation and assistance; and (iii) take

inventory of affected land and property. The census should take into account the needs of seasonal resource users who may not be present in the project area during the time of the census.

16. In the absence of specific national government procedures, the client will establish the cut-off date for eligibility as foreseen in the applicable legislation and project timeline as appropriate. Often the most practicable cut-off date is during the baseline assessment or census. Information regarding the cut-off date will be well documented and communicated throughout the project area. Setting a cut-off date will provide clarity as to eligibility for compensation and assistance. Persons moving into the project location after the cut-off date are not entitled to compensation or other assistance.

Compensation for displaced persons

17. The client will offer all displaced persons and communities compensation for loss of assets at full replacement cost¹² and other assistance. This is intended to restore, and potentially improve, their standards of living and/or livelihoods¹³ of displaced persons to pre-displacement levels. The measures can be based on land, resources, wages and/or business activities. Standards for compensation will be transparent and consistent within the project. Compensation will be provided before displacement or imposition of access restrictions. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer, where feasible, land-based compensation, taking into account seasonal and agricultural timing requirements. The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.
18. Displaced persons may be classified as persons: (i) who have formal legal rights to the

¹¹ For the purpose of this Policy, vulnerable groups refers to people who, by virtue of gender identity, ethnicity, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others and who may be limited in their ability to claim or take advantage of project benefits. Vulnerable individuals and/or groups may also include people living below the poverty line, the landless, the elderly, women and children headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected by national and/or international law.

¹² The rate of compensation for lost assets should be calculated at full replacement cost including transaction costs. For losses that cannot easily be valued or compensated for in monetary terms, in-kind compensation may be appropriate. However, this compensation should be made in goods or resources that are of equivalent or greater value and that are culturally appropriate. See notes 7 and 14.

¹³ Livelihoods may consist of wage-based incomes, and/or incomes derived by individuals, families and/or communities from resource utilisation.

land (including customary and traditional rights recognised under national laws); (ii) who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under national laws; or (iii) who have no recognisable legal right or claim to the land they occupy.

19. The documentation for ownership or occupancy, such as title deeds and lease agreements (including the bank accounts established for payment of compensation), should be issued in the names of both spouses or single head of households, as relevant. Other resettlement assistance, such as skills training, access to credit and job opportunities should be made equally available to men and women and adapted to their needs.
20. The client should consider offering alternative methods and/or modalities for compensation especially in countries and regions where women are less likely to have access to formal financial institutions and/or have bank accounts. Under circumstances in which national law and tenure systems do not recognise the rights of women to hold or exchange property, provision should be made to ensure, to the extent possible, that women are enabled to have access to security of tenure.

Grievance mechanism

21. The client will establish an effective grievance mechanism as early as possible in the process. It will be consistent with this PR and with the objectives and principles of PR 10 in order to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities. It will include a recourse mechanism designed to resolve disputes in an impartial manner.

Resettlement and/or Livelihood Restoration Framework

22. A Resettlement and/or Livelihood Restoration Framework will be developed where the exact nature or magnitude of the land acquisition or restrictions on land use related to a project with potential to cause physical and/or economic displacement is unknown due to the project development stage. This

framework will outline the general principles, procedures and entitlement framework consistent with this PR. Once the individual project components are defined and the required information becomes available, the framework will serve as a basis for the development of a detailed Resettlement Action Plan (RAP) or Livelihood Restoration Plan (LRP) in accordance with paragraphs 26 to 39 below.

Monitoring

23. Monitoring of the resettlement and livelihood restoration process will be carried out in accordance with PR 1 and should involve the participation of key stakeholders such as affected communities.
24. Depending on the scale of a project's resettlement, it may be appropriate for the client to commission an external completion report of the RAP/LRP to determine that the provisions have been met. The completion report should be undertaken after all inputs in the process, including any developmental initiatives, have been completed. The report may identify further actions to be completed by the client. In the majority of cases, the completion of corrective actions identified by the completion report should bring the client's obligations for resettlement, compensation, livelihood restoration and development benefits to a close.

Displacement

25. Project-related land acquisition and/or restrictions on land use often leads to both physical displacement of people as well as their economic displacement. Thus, the requirements of this PR in respect of physical displacement and economic displacement may apply simultaneously. In such case, the specific requirements concerning economic displacement established in paragraphs 36 through 39 should be incorporated into the Resettlement Action Plans or Frameworks respectively.

Physical displacement

26. In the case of transactions as described in paragraph 6 that involve the physical displacement of people, the client will develop a RAP that covers, at a minimum, the applicable requirements set forth in this PR, regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement, identify potential benefits and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the vulnerable. The plan will document all procedures to acquire land rights, as well as compensation measures and relocation activities. It will establish procedures to monitor and evaluate the implementation of resettlement activities and take corrective action as necessary.
27. The scope and level of detail of the RAP will vary with the magnitude of displacement and the complexity of the measures required to mitigate adverse impacts. In all cases, it will describe the ways and means by which the objectives of this PR will be achieved.
28. The RAP should incorporate measures to provide displaced people with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.
29. The client shall consult with the affected persons in preparing the RAP and shall summarise the information contained in the RAP for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).
30. If people living in the project area must move to another location, the client will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer, at a minimum, pre-displacement living conditions and where achievable, sustainable and cost-effective opportunities to improve the standard of living.
31. In the case of physically displaced persons under paragraph 18 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, or cash compensation at full replacement value where appropriate.¹⁴
32. In the case of physically displaced persons under paragraph 18 (iii), the client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction.
- Compensation in kind will be offered in lieu of cash compensation where feasible, unless the conditions described in footnote 14 can be demonstrated to exist. This applies to those who have customary and traditional rights recognised under the laws of the country; to claimants who, prior to the cut-off date, do not have formal legal rights to land, but who have a claim to such land or assets, for example, through adverse possession;¹⁵ and, subject to the qualifications noted in paragraph 18, to those who have no recognisable legal right or claim to the land they occupy.
 - Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore, and where possible improve, their standards of living at an adequate alternative site.¹⁶
33. In cases where affected persons reject

¹⁴ Payment of cash compensation for lost assets may be appropriate where: (i) livelihoods are not land-based; (ii) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (iii) active markets for land, housing and labour exist, displaced persons use such markets, and there is sufficient supply of land and housing. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets. See also notes 7 and 12.

¹⁵ A method of acquisition of title to real property by possession for a statutory period under certain conditions.

¹⁶ Relocation of informal settlers in urban areas often has trade-offs. For example, the relocated families may gain security of tenure, but they may lose advantages of location.

compensation offers that meet the requirements of this PR and, as a result, expropriation or other legal procedures are initiated, the client will explore opportunities to cooperate with the responsible government authority, and if permitted by the authority, play an active role in the resettlement planning, implementation and monitoring.

34. The client will identify and assess potential adverse impacts on host communities that could be affected by the resettlement process. Any mitigation measures agreed with the host community should be included in the RAP.
35. Where communities of Indigenous Peoples are to be physically displaced from their communally held traditional or customary lands under use, the client will meet the applicable requirements of this PR as well as those of PR 7.

Economic displacement

36. In the case of transactions described in paragraph 6, involving economic displacement only, the client will develop and implement an LRP. The LRP will establish the entitlements of affected persons and communities and will ensure that these are provided in a transparent, consistent and equitable manner.
37. If a transaction of the types described in paragraph 6 causes temporary or permanent loss of income or livelihood through, for example, interruption or elimination of a person's access to his/her employment or productive assets, regardless of whether the affected people are physically displaced, the client will:

- promptly compensate economically displaced persons for loss of assets or access to assets. This process should be initiated prior to displacement. Where compensation is to be paid by a responsible government agency, the client should collaborate with the agency to help accelerate the payments.
- compensate, in cases where land acquisition affects commercial structures, the affected business owner for: (i) the cost of re-

establishing commercial activities elsewhere; (ii) lost net income during the period of transition; and (iii) the costs of the transfer and reinstallation of the plant, machinery or other equipment, as applicable.

- provide replacement property (for example, agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognised or recognisable under the national laws (as provided for in paragraph 18 (i) and (ii)).
 - provide assistance that will offset any loss of a community's commonly held resources.¹⁷ This could take the form of initiatives that enhance the productivity of the remaining resources to which the community has access, in-kind or cash compensation for loss of access or provision of access to alternative sources of the lost resource.
 - compensate economically displaced persons who are without legally recognisable claims to land (see paragraph 18 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost. The client is not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date.
 - provide additional targeted assistance (for example, credit facilities, training or job opportunities) and opportunities to restore, and where possible improve, their income-earning capacity, production levels and standards of living. In the case of businesses experiencing temporary losses or having to close as a result of project-related displacement, both the owner of the business and employees losing pay or employment are eligible for such assistance.
 - provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels and standards of living.
38. The client will summarise the information contained in the LRP for public disclosure to ensure that affected people understand the

¹⁷ Examples of these include rangeland and pasture, non-timber forest resources (for example, medicinal plants, construction and handicraft materials), woodlots for timber and fuel wood; water resources for agriculture, recreation or fishing.

compensation procedures and know what to expect at the various stages of the project.

39. Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of project-related land acquisition, the client will meet the applicable principles of this PR as well as those of PR 7.

Loss of public amenities¹⁸

40. Where a project involves the loss of public amenities, the client shall undertake meaningful consultation, in accordance with PR 10, with the locally affected community to identify and, where possible, agree upon a suitable alternative.

Private sector responsibilities under government-managed resettlement

41. There may be cases where land acquisition and resettlement are the responsibility of the host government. In such cases, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this PR. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring. The client will prepare a plan (or a framework) that together with the documents prepared by the responsible government agency, will meet the requirements of this PR. The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this PR; and (iii) the financial and implementation responsibilities of the government agency and/or the client.

¹⁸ Loss of cultural heritage is covered in PR 8.