



Comments on Draft Guidance Note for Borrowers ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, welcomes this opportunity to submit comments on the Bank's draft Guidance Notes for Borrowers, and we focus here on ESS5. CCSI specializes in investment and sustainable development, with particular expertise on land rights. CCSI is deeply concerned that, overall, the ESS5 Guidance Note fails to provide effective guidance in critical areas and risks promoting a regression in Borrower countries from internationally agreed-upon norms of land governance that the Bank itself supports. This is deeply concerning given the negative development impacts that can arise in the context of land acquisitions and restrictions on land use.

Overarching Comments

- The Guidance Note's description of affected persons and their rights contradicts and undermines international consensus on land governance supported by the Bank.

ESS5 Para. 10 distinguishes three classifications of affected persons: (a) those with formal legal rights to land or assets, (b) those without formal legal rights but who "have a claim to land or assets that is recognized or recognizable under national law"; and (c) those with no recognizable legal right or claim to the land or assets they occupy/use. A clarifying footnote explains that claims that are recognized or recognizable under national law "could be derived from adverse possession or from customary or traditional tenure arrangements." As GN10.1 explains, these classifications will determine the types of assistance to which people are entitled.

The Guidance Note's treatment of these classifications can in no way be seen as aligning with the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* ("VGGT"), an international soft law document that resulted from multi-year, multi-stakeholder negotiations and which has been explicitly supported and endorsed by the Bank.¹ While the Guidance Note could have been used to better align ESS5 with the VGGT, its current iteration in fact undermines the consensus achieved by the VGGT.

The VGGT are premised on the need for States to recognize, respect, and protect all "legitimate tenure right holders" and their rights, including those whose rights are not formally recorded. It presumes that not all legitimate tenure rights holders have rights that are, as yet, recognized or protected under national law.² The Guidance Note's explanation of the differentiated treatment of affected persons and their rights contradicts the VGGT's, and exacerbates the discrepancies between ESS5 and the VGGT's.³

¹ Press Release, "World Bank Group: Access to Land is Critical for the Poor," April 8, 2013, <http://www.worldbank.org/en/news/press-release/2013/04/08/world-bank-group-access-to-land-is-critical-for-the-poor> ("The World Bank Group supports and endorses the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security ("the VGs"). These guidelines are a major international instrument to inform specific policy reforms, including our own procedures and guidance to clients. The World Bank Group is already working with countries to implement the VGs, with a special focus on Africa.")

² VGGT 3.1, 5.3.

³ CCSI raised similar concerns regarding the then draft ESS5's failure to align with the VGGT in its comments on Phase 2 of the Bank's Review and Update of Safeguard policies, submitted to the Bank in February 2015: <http://ccsi.columbia.edu/files/2015/03/World-Bank-Review-CCSI-Submission-Feb-2015.pdf>.

First, and most critically, there may be some people who fall into Category (c)—affected persons with no recognizable legal right or claim—who are indeed legitimate tenure rights holders whose rights are simply not recognized or protected by the State. Applying the VGGTs, Borrowers must treat such people in the same way as those who already have formal legal rights to land. Yet GN10.1 fails to explain this, and instead confuses the issue further by implying that all “seasonal resource users, such as herders, grazers, fishers or hunters” fall into Category (c) unless they are explicitly recognized by national law. Such language ignores that recognition by national law is not always a prerequisite for the existence of legitimate rights and claims requiring the protection of the State. The Guidance Note’s failure to explain this critical category of rights is highly problematic, as multiple parts of ESS5 contemplate different—and worse—treatment of people falling within Category (c).

Second, the Guidance Note should do much more to clarify that the distinctions drawn between Categories (a) and (b) are essentially irrelevant. As explained above, the VGGTs do not distinguish between States’ responsibilities regarding formal documented rights and those regarding legitimate tenure rights that have not yet been formally recognized: responsible land governance requires protection of both types of rights. ESS5’s categorization of these rights, however, risks providing an opening for Borrowers to place greater significance on formal rights than on customary ones. Such an approach would be regressive from the currently accepted international norms that the World Bank itself is working to advance. The Guidance Note could thus do much more to underscore, throughout the document and particularly in the explanation of GN10.1, that customary and traditional rights and claims (as well as other legitimate tenure rights, as discussed above) must be viewed as on equal footing, requiring the same level of protection and respect, as formal legal rights.

- The Guidance Note fails to provide any guidance on when land acquisition or restrictions on land use should be considered unavoidable, nor does it provide any significant guidance on how Borrowers can prioritize project designs that actually minimize displacement or other harms.

Despite the first two objectives of ESS5—avoiding involuntary resettlement, avoiding forced eviction, and minimizing involuntary resettlement when unavoidable—the Guidance Note fails to provide any guidance on when involuntary resettlement can or should be considered “unavoidable,” or when, for instance, the potential impacts are so high that the project as designed should instead be avoided. GN11.1 notes the need to demonstrate that land acquisitions or restrictions are limited to specific purposes and timeframes, but does not actually provide any clarity on when involuntary resettlement should be deemed “unavoidable.” This appears to leave this question open to expansive interpretations by the Borrower. For example, is involuntary resettlement unavoidable and acceptable under ESS5 because the public purpose served by the Project is so significant and important for the public interest, and no other acceptable project design is available that would avoid involuntary resettlement? Or is involuntary resettlement acceptable under ESS5 simply because the Project, as envisaged, requires involuntary resettlement, rendering it “unavoidable”? The latter clearly appears to be against the spirit of ESS5’s objectives, yet the Guidance Note does not provide any language that clearly articulates what might or might not be considered “unavoidable.”

Similarly, the Guidance Note does not provide much guidance on how Borrowers can prioritize project designs that minimize displacement or other harms. While some vague sentences are included, they do not, overall, provide a clear picture of what Borrowers are expected to do, or how they could indeed work to minimize displacement. For example, GN11.2 notes that “A meaningful analysis of possible alternatives that incorporates an estimate of the social and project costs associated with displacement helps the Borrower to identify optimal solutions” (GN11.2)). Such a comment does not provide concrete guidance on how to evaluate alternatives, nor does it even clearly note that “optimal solutions” are those that avoid involuntary resettlement altogether, or that minimize, to the greatest extent possible, the numbers of physically and economically displaced persons.

The Guidance Note's failures in this regard, combined with its much more detailed focus on compensation, runs the risk of implying to Borrowers that a "resettle and compensate" approach will be deemed acceptable in virtually all Project circumstances. A revised Guidance Note should seek to guide and incentivize Borrowers to actually minimize displacement, and to reconsider projects altogether when involuntary resettlement would occur.

- The Guidance Note fails to put rights-holders (or "affected stakeholders") at the center of solutions.

Much of the Guidance Note essentially focuses on remedies: the compensation to be provided, the grievance mechanism that must be in place, the resettlement plan to be prepared. Best practice requires that those whose rights stand to be adversely affected, or whose rights have already been adversely affected, must be involved in the design of remedies. Yet the Guidance Note fails to put affected stakeholders in this position—a particularly problematic stance given that many affected stakeholders will indeed be those with legitimate tenure rights, who thus should be integrally involved in decisions that stand to affect those rights and interests. The Guidance Note would be improved by inserting detailed guidance regarding how rights-holders can be given sufficient opportunities, at all stages, to meaningfully participate in decisions that affect them. This includes their participation in the design of grievance mechanisms, as well as their input in determining the types of compensation that they will receive. While ESS5 Para. 17 does assert that "*Decision-making processes related to resettlement and livelihood restoration will include options and alternatives from which affected persons may choose*", this language is unclear as to whether affected persons may choose amongst options/alternatives regarding resettlement and livelihood restoration, or regarding decision-making processes. While the Guidance Note could usefully clarify this, it should also clarify that affected persons should be involved in determining *which* options and alternatives they will choose from. In other words, it is not enough for them to have options, but rather they must be able to help shape the options that will be on offer.

- The Guidance Note's discussion of retroactive applicability is wholly unsatisfactory, and risks the Bank condoning actions that completely fail to meet requirements of the Safeguards.

ESS5 Para. 4 notes that it applies to displacement arising from land acquisition or use restrictions "occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project." GN4.15-17 attempt to explain how ESS5 would apply retroactively, yet the Note's discussion raises multiple concerns. To start, GN4.17's acknowledgment that "It may not be possible to retroactively satisfy certain aspects of ESS5, such as consultation and disclosure" raises a simple question, not answered in the Guidance, regarding the extent to which ESS5 could ever be deemed to apply when such critical aspects are impossible.

As explained in GN4.17, the main way in which ESS5 would apply retroactively is through the conduct of a due diligence review/audit by the Borrower. There do not appear to be any strong incentives, however, for the Borrower to undertake this in any robust way, and no oversight by the Bank or a third party to ensure the acceptability of the review. Even assuming that a proper review/audit is undertaken, the Guidance Note provides no explanation of how the Bank would treat findings that the ESS5 standards had clearly not been met. Indeed, the Guidance Note's vague language leaves open the possibility that the main application is in the review/audit, rather than in the actual implementation of measures to "close identified gaps and address complaints," as nothing in the Note states that such measures must be undertaken before the Project proceeds.

These critical gaps in guidance, and acknowledged limitations of any effort to apply ESS5 retroactively, create the impression that a Borrower could undertake a deeply problematic land acquisition prior to the project, subsequently conduct a weak audit, and then receive the Bank's blessing of its retroactive application of ESS5. This essentially circumvents the entire premise of

ESS5, creating an enormous loophole that Borrowers could exploit, and allowing for the possibility of the Bank condoning Borrower actions that completely contravene its safeguards.

- The Guidance Note could do more to explain how forced evictions will be avoided through the application of ESS5.

ESS5 has a clear objective of avoiding forced evictions. In reviewing ESS5's definition of forced eviction, it appears that the only distinction between "forced eviction" (not allowed under ESS5) and "involuntary resettlement" (allowed under ESS5)⁴ is that forced eviction occurs "without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this ESS." (Para. 31). ESS5 further clarifies that a Borrower's use of compulsory acquisition powers are not considered forced eviction so long as the action complies with national law, the provisions of ESS5, and "is conducted in a manner consistent with basic principles of due process."

The Guidance Note does not provide any more specifics on how evictions may or may not comply with the provisions of ESS5. This is a shortcoming, as it is not obvious from reading the Guidance Note how to gauge an eviction's compliance with the ESS. The Guidance Note could usefully clarify what is meant by this language.

The Guidance Note does elaborate on the procedural protections required for due process. While it lists many important requirements, the descriptions fall short when compared with the requirements set out in the *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*,⁵ guidance that is derived from States' existing legal obligations under international law. Importantly, the Guidance Note fails to list multiple important procedural requirements, such as ensuring prior to evictions that they do not render individuals homeless,⁶ or allowing neutral observers to have access upon request.⁷ Where substantive content does significantly overlap between the Guidance Note and the Basic Principles, subtle distinctions could have outsized impacts for those enduring the evictions. For example, GN31.2 notes that evictions should not "take place in particularly bad weather or at night unless the affected persons consent otherwise", while the Principles explain that "Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations."⁸ GN31.2 notes that legal aid should be provided "where possible ... to persons who are in need of it to seek redress from the courts", whereas the Basic Principles assert that "Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary."⁹

Given that these due process factors appear to be the biggest distinction, under ESS5, between whether an eviction is deemed an unacceptable forced eviction or an acceptable involuntary resettlement, one larger question must also be asked: is it possible, in Borrower countries with extremely weak rule of law, for these due process protections to ever be adequately implemented in practice? Perhaps not. The Guidance Note is unsurprisingly silent on this point. Yet, for example, the provision of legal remedies may not be meaningful when courts are corrupt or inaccessible, or when threats of violence dissuade people from seeking remedies in the first place. The Note would be strengthened by, at the very least, providing more information and guidance on how the effectiveness

⁴ Aside from the obvious semantic and practical distinction that eviction is forcing someone away from a place while resettlement involves forcing or moving someone to a place.

⁵ *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*, UN Doc. A/HRC/4/18, http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf (hereinafter "Basic Principles").

⁶ Basic Principles, para. 43.

⁷ Basic Principles, para. 46.

⁸ Basic Principles, para. 49.

⁹ Basic Principles, para. 41.

of these procedural protections are evaluated and taken into consideration by the Bank. Failure to do so significantly undermines ESS5's objective of no forced evictions.

Specific Comments

Specific comments and suggestions are appended to this submission, as comments made directly in the Word version of the document. Lack of a specific comment does not necessarily indicate support for any specific language.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

The Guidance Notes provide guidance for the Borrower on the application of the Environmental and Social Standards (ESSs), which form part of the World Bank's 2016 Environmental and Social Framework. The Guidance Notes help to explain the requirements of the ESSs; they are not Bank policy, nor are they mandatory. The Guidance Notes do not substitute for the need to exercise sound judgment in making project decisions. In case of any inconsistency or conflict between the Guidance Notes and the ESSs, the provisions of the ESSs prevail. Each paragraph of the Standard is highlighted in a box, followed by the corresponding guidance.

Content

Introduction.....	2
Objectives.....	3
Scope of Application.....	3
Requirements.....	10
A. General.....	10
Eligibility Classification.....	10
Project Design.....	11
Compensation and Benefits for Affected Persons.....	11
Community Engagement.....	14
Grievance Mechanism.....	15
Planning and Implementation.....	16
B. Displacement.....	19
Physical Displacement.....	19
Economic Displacement.....	22
C. Collaboration with Other Responsible Agencies or Subnational Jurisdictions.....	26
D. Technical and Financial Assistance.....	26
ESS5-ANNEX 1. Involuntary Resettlement Instruments.....	27

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Introduction

1. ESS5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons. Project-related land acquisition¹ or restrictions on land use² may cause physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood)³, or both. The term “involuntary resettlement” refers to these impacts. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in

Footnote 1. “Land acquisition” refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation of property and acquisition of access rights, such as easements or rights of way. Land acquisition may also include: (a) acquisition of unoccupied or unutilized land whether or not the landholder relies upon such land for income or livelihood purposes;

(b) repossession of public land that is used or occupied by individuals or households; and (c) project impacts that result in land being submerged or otherwise rendered unusable or inaccessible. “Land” includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements, and appurtenant water

Footnote 2. “Restrictions on land use” refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly introduced and put into effect as part of the project. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, restrictions on land use within utility easements or safety zones.

Footnote 3. “Livelihood” refers to the full range of means that individuals, families and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade and bartering.

2. Experience and research indicate that physical and economic displacement, if unmitigated, may give rise to severe economic, social and environmental risks: production systems may be dismantled; people face impoverishment if their productive resources or other income sources are lost; people may be relocated to environments where their productive skills are less applicable and the competition for resources greater; community institutions and social networks may be weakened; kin groups may be dispersed; and cultural identity, traditional authority, and the potential for mutual help may be diminished or lost. For these reasons, involuntary resettlement should be avoided.⁴ Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented.

Footnote 4. Avoidance is the preferred approach in accordance with the mitigation hierarchy in ESS1. It is especially important to avoid physical or economic displacement of those socially or economically vulnerable to hardship as a result. However, avoidance may not be the preferred approach in situations where public health or safety would be adversely affected as a result. There may also be situations where resettlement can provide direct development opportunities for households or communities, including improved housing and public health conditions, strengthened security of tenure or other improvements to local living standards.

ESS5

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Objectives

- To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
- To avoid forced eviction.⁵
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost⁶ and (b) assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.⁷
- To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant.
- To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

Footnote 5. See paragraph 31.

Footnote 6. "Replacement cost" is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost must at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety. The valuation method for determining replacement cost should be documented and included in relevant resettlement planning documents. Transaction costs include administrative charges, registration or title fees, reasonable moving expenses, and any similar costs imposed on affected persons. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period of time between calculation of compensation rates and delivery of compensation is extensive.

Footnote 7. "Security of tenure" means that resettled individuals or communities are resettled to a site that they can legally occupy, where they are protected from the risk of eviction and where the tenure rights provided to them are socially and culturally appropriate. In no event will resettled persons be provided tenure rights that are in effect weaker than the rights they had to the land or assets from which they have been displaced.

Scope of Application

3. The applicability of ESS5 is established during the environmental and social assessment described in ESS1.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

4. This ESS applies to permanent or temporary physical and economic displacement resulting from the following types of land acquisition or restrictions on land use undertaken or imposed in connection with project implementation:

- (a) Land rights or land use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national law;
- (b) Land rights or land use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures;⁸
- (c) Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project;⁹
- (d) Relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project-specific cut-off date;
- (e) Displacement of people as a result of project impacts that render their land unusable or inaccessible;
- (f) Restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas;
- (g) Land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation;¹⁰ and
- (h) Land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.

Footnote 8. Notwithstanding the application of this ESS to such situations, the Borrower is encouraged to seek negotiated settlements with affected persons in a manner meeting the requirements of this ESS in order to help avoid administrative or judicial delays associated with formal expropriation, and to the extent possible to reduce the impacts on affected persons associated with formal expropriation.

Footnote 9. In such situations, affected persons frequently do not have formal ownership. This may include freshwater and marine environments. This ESS does not apply to restrictions of access to natural resources under community-based natural resource management projects, i.e., where the community using the resources collectively decides to restrict access to these resources, provided that an assessment satisfactory to the Bank establishes that the community decision-making process is adequate and reflects voluntary, informed consensus, and that appropriate measures have been agreed and put in place to mitigate adverse impacts, if any, on the vulnerable members of the community.

Footnote 10. In some circumstances, it may be proposed that part or all of the land to be used by the project is donated on a voluntary basis without payment of full compensation. Subject to prior Bank approval, this may be acceptable providing the Borrower demonstrates that: (a) the potential donor or donors have been appropriately informed and consulted about the project and the choices available to them; (b) potential donors are aware that refusal is an option, and have confirmed in writing their willingness to proceed with the donation; (c) the amount of land being donated is minor and will not reduce the donor's remaining land area below that required to maintain the donor's livelihood at current levels; (d) no household relocation is involved; (e) the donor is expected to benefit directly from the project; and (f) for community or collective land, donation can only occur with the consent of individuals using or occupying the land. The Borrower will maintain a transparent record of all consultations and agreements reached.

GN4.1. Definitions of "land acquisition" practices or "restrictions on land use," set out in Paragraph 1 and Footnotes 1 and 2 of ESS5, include important clarifications that help to determine whether ESS5 applies in a specific project. While "land acquisition" refers to any method by which land is acquired for a project, it is typically understood to mean expropriation or some form of negotiated transfer for

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

project purposes. Footnote 1 notes that actions that may not be generally understood to fall under “land acquisition” are also covered by the term. For example, when the government displaces occupants from state land for purposes of a project, even though the state is the owner, the act of repossessing the land from the occupants is considered land acquisition for purposes of ESS5.

GN4.2. Paragraph 4 spells out the various types of land acquisition and restrictions on access that are covered by ESS5. These are both wide-ranging and specific. They are discussed in detail in the following paragraphs.

GN4.3. Footnote 1 and Paragraph 4(e) refer to project impacts that cause land to be submerged or otherwise render it unusable or inaccessible. Such situations constitute “de facto” land acquisition and are covered by ESS5, even though no formal steps have been taken to acquire the land.

GN4.4. The “*restrictions on land use*” that are defined in Footnote 2 and further explained in Paragraphs 4(c) and (f) concern, for example, the creation of project-related buffer or safety zones, or an extension of a protected area that limit or prohibit use of the land for other purposes. This may also include project support for enforcement of land use restrictions that were already formally “on the books” but not fully enforced, leading to impacts on people’s livelihoods. Another common example of a restriction on land use is the creation of an easement or servitude over land for construction and stringing of transmission lines. While people may be able to continue using the land, use may be restricted by the term of easement or servitude in a way that negatively affects their livelihoods.

GN4.5. It is important to note that these “*restrictions on land use*” are only those that are “*directly introduced and put into effect as part of a project.*” This means that if a project has an impact on neighboring land that does not result from a specific prohibition or restriction imposed by the project – for example, if a dam alters downstream water flows in a way that affects the productivity of the land of some farmers – the impact is analyzed and addressed under ESS1, not ESS5 (see Paragraph 5).

GN4.6. The term “*Negotiated settlements*” refers to situations where the Borrower needs to acquire specific land or restrict its use for project purposes, but rather than doing so through an expropriation proceeding, the Borrower first tries to arrive at a mutually agreeable negotiated settlement with the land owner/user. As explained in Footnote 8, in many cases, both parties might find it advantageous to reach a negotiated settlement to avoid the delays and transaction costs associated with the full judicial or administrative process of expropriation or compulsory acquisition. In fact, many national laws require governments to first explore this more consensual approach.

GN4.7. It is important to note that “*negotiated settlement*” is not the same as the voluntary market transactions, described in Paragraph 6 of ESS5, to which ESS5 does not apply. For land acquisition to be considered a voluntary “willing buyer/willing seller” arrangement, the owners of the land must be able to refuse to sell, without the threat of compulsory acquisition. In a “*negotiated settlement,*” on the other hand, it is already known (through legal notice or other means) that the Borrower will proceed with expropriation or other compulsory mechanism if negotiations fail – in other words, the owner does not have the option to retain the land.

GN4.8. Paragraph 4(c), which concerns loss of usage rights to resources, and 4(f), which concerns loss of

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

access to communal land and resources, are inter-related. For example, project-imposed buffer zones might restrict access to fishing areas around ports, docks or shipping lanes. The creation of safety zones around mines, quarries or blasting zones or green spaces around industrial plants may also result in significant restrictions on access. Such restrictions on the use of land or freshwater/marine resources may cause physical and/or economic displacement which is indistinguishable from that associated with land acquisition transactions, which is why they are covered under ESS5.

GN4.9. The loss of access to communal property and natural resources noted in Paragraph 4(f) is an important consideration when evaluating a project's impacts on livelihoods. The types of assets to which access may be lost could include pasture, fruit trees, medicinal plants, fiber, firewood, and other non-timber forest resources, croplands, fallow lands, woodlots, and fish stocks. While these resources, being common property, are not owned by individuals or households, lack of access may result in the same type of economic displacement as noted above. An important exception to application of ESS5, as noted in Footnote 9, concerns restrictions introduced as part of a community-based natural resource management project. In such a case, a community agrees to self-impose certain restrictions to enhance the sustainability of the resources on which it depends (for example, a community forestry project).

GN4.10. Paragraph 4(d) affirms the central principle that ESS5 applies not only to those who own or have formal legal rights to the land from which they are being displaced, but also to those who – as of a cut-off date – occupy the land informally or without clear legal rights to do so. Further information regarding cut-off dates is provided in Paragraph 20.

GN4.11. Voluntary land donation, as referred to in footnote 10, is defined as the ceding of a property by an owner who is: a) appropriately informed; and b) can exercise free will, i.e., can refuse to donate. There are situations in which people are willing to donate a portion of their land for project purposes for no compensation or reduced compensation. Voluntary land donations may involve some monetary or non-monetary benefits or incentives provided to the land donor by the project or by community members benefiting from a project. Both can be broadly classified as a “voluntary land donation,” because the transfer of assets takes place without payment of compensation at replacement value. “Appropriately informed” means that the owner has all available information regarding the proposed activity and its impacts, its land requirements and its alternate activity sites, as well as his or her rights to compensation. The owner has also been provided with sufficient time to consider his or her disposition of the property, and has knowingly rejected the right to renege on his or her decision. “Free will” means that the owner can reject the proposal to give up his or her land, because, for example, there are viable alternatives available to the project (such as rerouting a water main if an owner refuses access to his or her property), or where no viable alternatives are available, the donation is to the benefit of the owner (such as a community-based investment project that benefits the owner of land to be donated). (See GN 6.1-6.2 for distinction between “voluntary donation” and “voluntary purchase.”)

GN4.12. In some cases, however, donations may be induced through informal pressure or in extreme cases coercion. In other cases, people may agree to donate land because they are not aware that they are entitled to compensation and they have not been given sufficient information to make an informed choice. To address these risks, it is important to conduct due diligence, as described in Footnote 10. In this regard, it is also important to confirm that donated land is free of occupancy or use by people other than the donor.

Author

Comment [1]: Do not think it is necessary to point out that these are not owned by individuals/households; it could be rephrased to simply say “Loss of access to these communal resources results in economic displacement.”

Author

Comment [2]: This risks minimizing the tenure rights claims of those without legal rights, and should be revised to align more closely with the VGGT.

Author

Comment [3]: While the owner might benefit, it is not clear how this is a definition of the exercise of free will.

Author

Comment [4]: Placing the Borrower as the one required to conduct due diligence does not make sense when it would likely be agents of the Borrower that would seek to pressure such donations in the first place.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

GN4.13. Voluntary land donations are documented. This calls for (a) written notification indicating the location and amount of land that is sought and its intended use; and (ii) a formal statement of donation, establishing informed consent, confirming that there is no disputed ownership and that there are no claims by renters, users, squatters or encroachers, and signed by each owner or user involved. Any taxes or fees owed for processing or registration of the land transfer, if applicable, are paid in full by the Borrower, who maintains the records of donations, including documentation. Documentation is made available for review in any grievance that may arise.

GN4.14. As with any other activity involving project affected people, a grievance mechanism is in place to allow consideration of, and timely response to, grievances raised by land donors (and other persons affected by the transfer of land). In terms of vulnerable people or communities, women users of land to be donated, or in the case of collective or community lands to be donated, users of those lands may be at risk of being passed over in the decision-making process, unless they are consulted.

GN4.15. Resettlement for project purposes under ESS5 may begin before a project is approved for Bank financing and the loan agreement is finalized. If the resettlement takes place before approval of a loan but after project identification, ESS5 applies retroactively to the resettlement.

GN4.16. The ESS5 may also apply even to displacement that took place prior to project identification, as noted in Paragraph 4(h), if the land acquisition or restriction on land use was directly linked to the eventual project and was done in anticipation of or in preparation for the project. (See also ESS1, Paragraphs 10-12 and related GN that sets out the scope of application of the Bank's ESSs.) This does not mean that all prior displacement that may have occurred at the site of a Bank-supported project is covered; the intention is to cover prior displacement that took place reasonably close in time to development of the Bank-financed project. Retroactive application of ESS5 would likely not be practical or appropriate for activities that preceded Bank engagement by a significant period of time. For example, a Borrower may have had long-standing but unrealized plans to develop an area, well before discussions with the Bank about the project, and may have engaged in land acquisition sporadically over the span of many years to assemble the needed land. In such cases, it may no longer be possible to identify all affected people, or the extent and value of their rights to the acquired land; land values and livelihoods may have changed significantly; and national legal processes may have long been completed. Determining whether Paragraph 4(h) applies to a specific situation thus calls for case-by-case analysis and discussions between the Borrower and the Bank.

GN4.17. When Paragraph 4(h) applies, a due diligence review (sometimes referred to as an audit) (as appropriate) is undertaken by the Borrower to: (i) document and assess the adequacy of prior mitigation measures to address the environmental and social impacts of the past resettlement; (ii) assess compliance with national legislation; (iii) identify gaps in meeting the requirements of ESS5; (iv) identify any complaints, grievances or other outstanding issues; and (v) determine measures to close identified gaps and address complaints. This due diligence is undertaken within an agreed timeframe that takes into account the context of the project and significance of the prior resettlement. It may not be possible to retroactively satisfy certain aspects of ESS5, such as consultation and disclosure. The due diligence may include review of relevant documents, field visits, interviews and consultations held with affected persons and other key stakeholders. If activities resulting in displacement are ongoing at the time of project identification, they would normally need to stop until the due diligence review has been undertaken, and/or the requirements of ESS5 are being followed.

Author

Comment [5]: Change "consent" to "free, prior, and informed consent," in line with international best practices. This is important to avoid any undue pressure or influence being placed on the donor, and that the donor is adequately informed regarding the likely effects of the donation and the subsequent project.

Author

Comment [6]: 1.Should reference paragraphs that explain how it applies retroactively (e.g., GN4.17).
2.More generally, entire section must be strengthened, per general comments from CCSSI.

Author

Comment [7]: May? Or does, in particular circumstances? May is unhelpfully ambiguous.

Author

Comment [8]: Vague

Author

Comment [9]: Vague

Author

Comment [10]: Not particularly clear, and leaves a lot of room for manipulation.

Author

Comment [11]: Why this caveat? When is it appropriate/not appropriate? If not appropriate, then how exactly would Paragraph 4(h) ever apply, as it this DD review appears to be the main requirement for applying retroactively.

Author

Comment [12]: Don't Borrowers have clear incentives to not find problems? How would that be addressed?

Author

Comment [13]: Given that national legislation may be weak, further specific guidance on assessing compliance with ESS5, including with para 31 on forced evictions and due process standards, would be useful.

Author

Comment [14]: This raises important question of whether ESS5 can ever be satisfactorily complied with retroactively, and should be further addressed/clarified.

Author

Comment [15]: See next comment on p. 8

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

5. This ESS does not apply to impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project. Such impacts will be addressed in accordance with ESS

6. This ESS does not apply to voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to retain the land and to refuse to sell it, and is fully informed about available choices and their implications. However, where such voluntary land transactions may result in the displacement of persons, other than the seller, who occupy, use or claim rights to the land in question, this ESS will apply.¹¹

Footnote 11. This may include situations where a project supports voluntary transactions between communities, governments and investors involving significant areas of land (for example where a project involves support to commercial investment in agricultural land). In such cases, in applying the relevant provisions of this ESS, special care must be taken to ensure: (a) that all tenure rights and claims (including those of customary and informal users) affecting the land in question are systematically and impartially identified; (b) that potentially affected individuals, groups or communities are meaningfully consulted, informed of their rights, and provided reliable information concerning environmental, economic, social and food security impacts of the proposed investment; (c) that community stakeholders are enabled to negotiate fair value and appropriate conditions for the transfer; (d) that appropriate compensation, benefit-sharing and grievance redress mechanisms are put in place; (e) that terms and conditions of the transfer are transparent, and (f) mechanisms are put in place for monitoring compliance with those terms and conditions.

GN6.1. Voluntary, legally recorded transactions are distinct from voluntary donations, which are covered under GN4.11-4.13. The former term refers to “willing buyer/willing seller” market transactions. Due diligence is conducted to confirm that a voluntary purchase is voluntary. The due diligence confirms: (a) land markets exist; (b) the transaction has taken place with the owner’s informed consent; (c) the owner was aware that he or she could refuse to sell, and would not be subject to compulsory acquisition; and (d) the owner was paid a fair price based on prevailing market values. These conditions also apply where third parties, for example, land consolidators, aggregators, land developers or other agents, are acting on behalf of a Borrower.

GN6.2. There can be situations in which ESS5 applies to a “voluntary purchase,” as Paragraph 6 and footnote 11 describe. If a purchase, lease or other type of land transfer includes land on which people other than the owner live or have use, whether formally or as customary or informal occupants at the time of the purchase, ESS5 applies. For example, a traditional authority in some countries may be able legally to sell land belonging to a community, but the land may be inhabited by people who have customary rights to farm or otherwise use it. In this case, ESS5 applies, because notwithstanding the “voluntary” nature of the transaction entered into by the traditional authority, people may be involuntarily displaced by the transaction, and require assistance in accordance with ESS5.

7. Where a project supports land titling or other activities intended to confirm, regularize or determine land rights, a social, legal and institutional assessment will be required under ESS 1.¹² The assessment aims to identify potential risks and impacts, as well as appropriate design measures to minimize and mitigate adverse economic and social impacts, especially those that affect poor and vulnerable groups.¹³ This ESS does not apply to disputes between private parties in land titling or related contexts. However, where persons are required to vacate land as a direct result of a project-supported determination that the land in question is state land, this ESS will apply (in addition to the relevant provisions of ESS 1 mentioned above).

Footnote 12. ESS 1, para. 28(b).

Footnote 13. See ESS 1, Footnote 28.

Author

Comment [16]: Comment for final sentence on previous page:

This fails to explain what happens after DD/audit. Is there any requirement to actually implement measures identified in (v)? What is role of the Bank in supporting identification of gaps or implementation of measures? When serious problems found, what steps will Bank take?

Author

Comment [17]: These could usefully be unpacked more in the Guidance text – eg, what does it mean for them to be “enabled to negotiate”? That is not explained anywhere.

Author

Comment [18]: By whom? The Borrower? If so, clear concerns again about incentives to conduct robust due diligence.

Author

Comment [19]: Free and prior also important here, as informed consent that is not free, for example, cannot be considered voluntary. This is somewhat but not fully addressed by following point.

Author

Deleted: b

Author

Comment [20]: There are many reasons why this might need to be more than “prevailing market values” – e.g., if the existing market is not very functional, or if prevailing market values are simply too low to adequately recover lost livelihoods

Author

Comment [21]: “purchase, lease, or transfer”

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

GN7.1. Projects that involve land titling and land regularization seek to clarify, confirm, document and/or register legal rights over land. The activities they cover can take a variety of forms, including, among others, systematic field surveying, adjudication, documentation and registration of land parcels. Some such projects cover large regions and involve hundreds of thousands or even millions of parcels. Other projects include, among others, small pilot exercises, designed to test procedures and technology; technology or capacity building activities, such as computerizing and scanning land records, producing orthophotos or maps, designing registration software, or restructuring institutions; formalization of informal settlements in urban slums; and delimitation and formalization of community land rights, including indigenous territories. The objectives of such projects are to help the Borrower implement its own law and to strengthen overall tenure security. For all such projects, the potential social risks of such projects are considered in the environmental and social assessment of ESS1.

GN7.2. Paragraph 7 distinguishes between two scenarios. First, it excludes from its coverage “private-private” disputes arising in titling contexts. Where two private parties claim the same land and the land is granted to one party, the other party is not entitled to protection under ESS5. The second scenario concerns the displacement of people from land that has been determined under the project to belong to the state, in which case ESS5 is applicable.

8. *This ESS does not apply to land use planning or the regulation of natural resources to promote their sustainability on a regional, national or subnational level (including watershed management, groundwater management, fisheries management, and coastal zone management). Where a project supports such activities, the Borrower will be required to conduct a social, legal and institutional assessment under ESS 1, in order to identify potential economic and social risks and impacts of the planning or regulation, and appropriate measures to minimize and mitigate them, in particular those that affect poor and vulnerable groups.*

GN8.1. Paragraph 8 refers to situations in which the Bank is providing support to a process by which a Borrower develops better plans, typically covering large areas, which is viewed as a type of technical assistance, as described in Footnote 5 of ESS1. If the project also finances implementation of output from the technical assistance that results in involuntary resettlement, then ESS5 applies. Finally, Paragraph 8 does not exempt project support for plans developed for the creation or extension of projected areas or parks, for which a “process framework” or similar instrument may be required under Paragraph 21.

9. *This ESS does not apply to management of refugees from, or persons internally displaced by, natural disasters, conflict, crime or violence.*

GN9.1. The purpose of Paragraph 9 is to distinguish between project-induced displacement, for which resettlement planning is possible and necessary under ESS5, and displacement resulting from emergencies that are not caused by the project and therefore, not covered by ESS5.

GN9.2. While ESS5 does not apply to forced displacements resulting from natural disasters, conflict, crime or violence, it is applicable when project activities cause displacement of already settled refugees or internally displaced persons. ESS5 also applies to state-imposed relocation of people or businesses as a subsequent response to a natural disaster or conflict – for example, where project activities involve the involuntary relocation of people from an affected area because of concern that the disaster, or other event, could reoccur.

ESS5

Author

Comment [22]: Ambiguous phrasing

Author

Comment [23]: Though in some cases, crime/violence associated with a project could lead to displacement, in which case ESS5 should apply.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5
Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Requirements

A. General

Eligibility Classification

10. Affected persons may be classified as persons:
- (a) Who have formal legal rights to land or assets;
 - (b) Who do not have formal legal rights to land or assets, but have a claim to land or assets that is recognized or recognizable under national law;¹⁴ or
 - (c) Who have no recognizable legal right or claim to the land or assets they occupy or use. The census described in paragraph 20 will establish the status of the affected persons.

Footnote 14. Such claims could be derived from adverse possession or from customary or traditional tenure arrangements.

GN10.1. Paragraph 10 defines three categories of affected persons who are eligible for coverage under ESS5. While people in all three categories are entitled to assistance of some sort under ESS5, the nature of that assistance may vary, as subsequent paragraphs of ESS5 make clear.

Category (a): Affected persons who have formal legal rights to land or assets are those who have formal documentation under national law to prove their rights, or are specifically recognized in national law as not requiring documentation. In the simplest case, an area is registered in the name of individuals or communities. In other cases, persons may have a lease on the land and therefore have legal rights.

Category (b): Affected persons who do not have formal rights to land or assets, but who have a recognized or recognizable claim under national law can fall into a number of groups. They may have been using the land for generations without formal documentation under customary or traditional tenure arrangements that are accepted by the community and recognized by national law. In other cases, they may have never been provided formal title or their documents may be incomplete or lost. They may have a claim for adverse possession if they have occupied land for a certain period of time as defined by national law, without the formal owner contesting the occupation. In such cases, national law often has legal procedures by which such claims can become recognized.

Category (c): Affected persons who have no recognizable legal right or claim to the land or assets they occupy or use are eligible for assistance under ESS5. These can be seasonal resource users, such as herders, grazers, fishers or hunters (although if the rights of such users are recognized by national law, they may fall into category (a) or (b)). They can also be persons occupying land in violation of applicable laws. Affected persons in these groups are not eligible for compensation for land, but are eligible for resettlement and livelihood assistance and compensation for assets.

Author

Comment [24]: As noted in general comments in CCSI submission, these people would be considered legitimate tenure right holders (LTRH). The distinctions here between them and those with legal rights (category a) are not particularly helpful, as states should be treating them the same way. Guidance could do much more to clarify this and to better align with the VGGT.

Author

Comment [25]: As noted in general comments in CCSI submission, there are other LTRH who have legitimate tenure rights that are not necessarily a recognizable claim—yet—under national law. These go beyond seasonal users and those occupying land in violation of applicable laws. LTRH, even those falling under Category c, should be eligible for compensation for land. This treatment is highly problematic and needs to be addressed within confines of the existing Safeguards.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5
Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Project Design

11. *The Borrower will demonstrate that involuntary land acquisition or restrictions on land use are limited to direct project requirements for clearly specified project purposes within a clearly specified period of time. The Borrower will consider feasible alternative project designs to avoid or minimize land acquisition or restrictions on land use, especially where this would result in physical or economic displacement, while balancing environmental, social, and financial costs and benefits, and paying particular attention to gender impacts and impacts on the poor and vulnerable.*

GN11.1. Demonstrating that land acquisition or restrictions are limited to specific purposes and timeframes helps to minimize excessive land acquisition (and unnecessary displacement) and discourages land speculation. For example, a road rehabilitation project should acquire land sufficient to ensure road integrity and safety and to enable the roadworks to proceed. Where displacement is unavoidable, adverse impacts on individuals and communities may be minimized through adjustments in size, routing or siting of project facilities. A meaningful analysis of possible alternatives that incorporates an estimate of the social and project costs associated with displacement helps the Borrower to identify optimal solutions. This analysis is recorded in the Resettlement Plan (see Paragraph 21 of ESS5) so that it is available for review by stakeholders.

GN11.2. Mitigation and compensation for physical and economic displacement can be significant. Therefore, potential costs are estimated early in the project design phase and integrated into project design and development. Early assessment of this cost is important to determine the relative costs and viability of alternative project designs, technologies, routes, or sites. The assessment of resettlement costs at an early stage of project development takes into account the level of uncertainty involved, and should build in contingencies, as appropriate. This is particularly the case in urban or peri-urban areas where resettlement costs are likely to significantly increase over time. Resettlement cost estimates and contingencies can then be adjusted during project design and implementation.

Compensation and Benefits for Affected Persons

12. *When land acquisition or restrictions on land use (whether permanent or temporary) cannot be avoided, the Borrower will offer affected persons compensation at replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods, subject to the provisions of paragraph 26 through 36 of this ESS.¹⁵*

Footnote 15. At the request of affected persons, it may be necessary to acquire entire land parcels if partial acquisition would render the remainder economically unviable, or make the remaining parcel unsafe or inaccessible for human use or occupancy.

GN12.1. Compensation for lost assets is calculated at replacement cost. Footnote 6 provides a detailed definition of "replacement cost." The process used for determining compensation values should be transparent and easily comprehensible to project-affected people. With regard to land and assets, the calculation of replacement costs takes into account the following:

- (a) *Agricultural (including fallow land) or pasture land:* land of equal productive use or potential, located in the vicinity of the affected land or the new housing site, plus the cost of preparation to levels similar to or better than those of the affected land, and transaction costs such as

Author

Comment [26]: The Note could usefully provide further explanation/guidance.

Author

Comment [27]: This needs to be should, so that it does not seem optional. You can then include ", for example, through adjustments in size, routing or siting ...".

Author

Comment [28]: Optimal from whom? Need to clarify in terms of the smallest number of negative social impacts/livelihood disruptions/etc. Otherwise could be read as simply optimal for the Borrower.

Author

Comment [29]: These comments completely ignore the idea that assistance could/should be provided to help improve standards of living/livelihood.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

registration and transfer taxes or customary fees.

- (b) *Land in urban areas*: the market value of land of equivalent area and use, with similar or improved infrastructure and services, preferably located in the vicinity of the affected land, plus transaction costs such as registration and transfer taxes.
- (c) *Houses and other structures* (including public structures such as schools, clinics and religious buildings): the cost of purchasing or building a replacement structure, with an area, quality and location similar to or better than those of the affected structure; or of repairing a partially affected structure, including labor and contractors' fees; and transaction costs, such as registration, transfer taxes, and moving costs.
- (d) *Loss of access to natural resources*: the market value of the natural resources, which may include, among others, wild medicinal plants, firewood, and other non-timber forest products, meat or fish. However, cash compensation is seldom an effective way of compensating for lost access to natural resources—as discussed in the guidance associated with Paragraph 16 and Paragraphs 33 through 36. The Borrower assesses means to provide, or facilitate access to, similar resources elsewhere, taking into account the impacts at the alternate location, providing cash compensation only when it can be demonstrated that no feasible alternative measures are available.

GN12.2. Many countries have legally defined rates of compensation for land and crops. In many cases, such rates are not equal to replacement cost, either because they do not reflect market values or are not updated on a regular basis. Where such rates are used as guidance for replacement value, additional measures may be necessary to ensure that the compensation paid meets the requirements of ESS5.

GN12.3. Where functioning markets do not exist or land sales are prohibited, replacement cost of land may be estimated in a number of different ways. For example, for rural land, it may be possible to determine the replacement cost by reference to the productive value of the land. Determining a fair way to estimate replacement cost depends on a number of factors, such as the scope of land acquisition and its impact on overall production, proximity to markets, remaining period of an existing lease term, and the views of land valuation experts.

13. *Compensation standards for categories of land and fixed assets will be disclosed and applied consistently. Compensation rates may be subject to upward adjustment where negotiation strategies are employed. In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.*

GN13.1. Information about compensation standards should be provided in a transparent and consistent manner. Where compensation for land or assets (including crops) is calculated according to formulas or rates set out in documents prepared by the Borrower, these are made available and explained to affected people. It is also important to ensure that rates are applied consistently.

Author

Comment [30]: 1. What happens when functioning markets do not exist? 2. Market value for resources over what period? A one-off payment that covers loss for period of 1 year, for example, is very different than what would be needed to compensate for future losses of person/community (let alone losses of future generations deprived of such access).

Author

Comment [31]: "are"

Author

Comment [32]: This is not just about production; other value derived from land as well that should be factored in (including cultural-social-religious factors, which are sometimes essentially unquantifiable, but which are a large reason why certain land has so much value for land users).

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

14. Where livelihoods of displaced persons are land-based,¹⁶ or where land is collectively owned, the Borrower will offer the displaced persons an option for replacement land in accordance with paragraph 35(a), unless it can be demonstrated to the Bank's satisfaction that equivalent replacement land is unavailable. As the nature and objectives of the project may allow, the Borrower will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project. In the case of affected persons under paragraph 10(c), resettlement assistance will be provided in lieu of compensation for land, as described in paragraphs 29 and 34(c).

Footnote 16. The term "land-based" includes livelihood activities such as rotational cropping and grazing of livestock as well as the harvesting of natural resources.

GN14.1. Land replacement strategies may include resettlement on public land or on private land purchased for resettlement. When replacement land is offered, the combined characteristics of the land, such as productive potential, advantages of location, and security of tenure, as well as the legal nature of the land title or use rights are at least equivalent to those of the original site.

GN14.2. Cash compensation or resettlement assistance in lieu of compensation for land is offered to those people who do not wish to continue their land-based livelihoods or who prefer to purchase land on their own. When payment of cash compensation is considered, the ability of the affected population to utilize cash to restore standards of living is assessed. For example, short-term consumption of cash compensation can sometimes result in hardship for subsistence-based economies or poorer households. In such cases, provision of in-kind compensation (for example, livestock or other moveable/transferable property) or vouchers earmarked for specific types of goods and services may be more appropriate.

15. The Borrower will take possession of acquired land and related assets only after compensation in accordance with this ESS has been made available and, where applicable, displaced people have been resettled and moving allowances have been provided to the displaced persons in addition to compensation. In addition, livelihood restoration and improvement programs will commence in a timely fashion in order to ensure that affected persons are sufficiently prepared to take advantage of alternative livelihood opportunities as the need

GN15.1. The emphasis of Paragraph 15 is on timely action. With regard to compensation for land and assets, or assistance in lieu of compensation, this means payment *before* taking possession. With regard to livelihood restoration and improvement measures, while some flexibility may be necessary, it is important to initiate these measures in sufficient time to ensure that people have access to alternative livelihood opportunities as soon as needed. Until such measures are in place, appropriate transitional support is provided to affected people so that they do not bear the burden of implementation delays. Planning of such transitional support should provide for contingencies to address unforeseen additional delays.

16. In certain cases there may be significant difficulties related to the payment of compensation to particular affected persons, for example, where repeated efforts to contact absentee owners have failed, where project affected persons have rejected compensation that has been offered to them in accordance with the approved plan, or where competing claims to the ownership of lands or assets are subject to lengthy legal proceedings. On an exceptional basis, with prior agreement of the Bank, and where the Borrower demonstrates that all reasonable efforts to resolve such matters have been taken, the Borrower may deposit compensation funds as required by the plan (plus a reasonable additional amount for contingencies) into an interest-bearing escrow or other deposit account and proceed with the relevant project activities. Compensation placed in escrow will be made available to eligible persons in a timely manner as issues are resolved.

Author

Comment [33]: And should strive to be better per other parts of ESS5?

Author

Comment [34]: This is confusing and should be revised.

1. Is resettlement assistance, without provision of land or cash compensation, ever an appropriate option?
2. "in lieu of the provision of replacement land"

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

GN16.1. There are occasional circumstances, such as those noted in Paragraph 16, where application of the requirements of Paragraph 15 could lead to extensive delays in project implementation. In such cases, provided the Bank and Borrower agree, an escrow account is a useful approach that allows the project to go forward, while ensuring that project-affected persons are compensated as and when they come forward or the underlying disputes are resolved. The escrow should include a contingency amount in case the amount to be paid exceeds what was set forth in the resettlement plan.

GN16.2. Escrow accounts are an exception; they are not intended to be used on a routine basis to postpone dealing with ordinary complications in the implementation of a resettlement plan. They should not be used, for example, unless the Borrower can demonstrate that it has exhausted all reasonable efforts to resolve the underlying issue.

Community Engagement

17. The Borrower will engage with affected communities, including host communities, through the process of stakeholder engagement described in ESS10. Decision-making processes related to resettlement and livelihood restoration will include options and alternatives from which affected persons may choose. Disclosure of relevant information and meaningful participation of affected communities and persons will take place during the consideration of alternative project designs referred to in paragraph 11, and thereafter throughout the planning, implementation, monitoring, and evaluation of the compensation process, livelihood restoration activities, and relocation process. Additional provisions apply to consultations with displaced Indigenous Peoples, in accordance with ESS7.

GN17.1. For the purpose of ESS5, the affected communities are economically and/or physically displaced persons and the host community. Other stakeholders may include any governmental agencies or other parties responsible for approving and/or delivering resettlement-related plans and assistance. Early initiation of meaningful community engagement enables affected households, communities and other stakeholders to fully understand the implications of resettlement for their lives and to actively participate in the associated planning processes. Detailed information on consultation and engagement is provided in ESS10 and its accompanying Guidance Note.

GN17.2. The consultation and participation process is an ongoing, organized and iterative process. It is documented in the resettlement plans (see Paragraph 21). The plans show how affected households and communities (including host communities) are involved, throughout the process of resettlement planning, implementation and monitoring.

GN17.3. It is important that affected disadvantaged or vulnerable individuals or groups have a voice in consultation and planning processes. This may involve special efforts to include those who are particularly vulnerable to hardship because of physical or economic displacement. Depending on the project context, this may be people living below the poverty line, the landless, the elderly, the disabled, or women- and children-headed households. Community engagement in this case may include dedicated focus groups, and members of disadvantaged or vulnerable groups should be included among the representatives of affected communities. Project-affected vulnerable people may also require assistance to participate in consultation events or discussion forums, for example, through provision of transportation to consultation venues, or visits to individual households for consultation purposes.

Author

Comment [35]: This essentially would allow a Borrower to steamroll ahead, and makes the idea of consent fairly laughable. Should note here at outset that this is generally not appropriate. GN16.2 somewhat clarifies this, but better language needed here too.

ESS5

Author

Comment [36]: Apart from assistance, opportunities to consult must also be accessible to different subgroups within community – for example, some times might not work for women.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Affected persons identified as disadvantaged or vulnerable may also need additional help to understand their options for resettlement and compensation.

18. *The consultation process should ensure that women's perspectives are obtained and their interests factored into all aspects of resettlement planning and implementation. Addressing livelihood impacts may require intra-household analysis in cases where women's and men's livelihoods are affected differently. Women's and men's preferences in terms of compensation mechanisms, such as replacement land or alternative access to natural resources rather than in cash, should be explored.*

GN18.1. Women frequently suffer disproportionately when resettlement is badly planned or executed, as they are often a disproportionately large number of the poor; have more limited access to resources, opportunities, and public services than men; and as a result, rely more heavily on informal support networks within their existing communities. The resettlement planning process needs to consider the situation of women and to adapt the engagement process as necessary to ensure that women have a role in decision making. A comprehensive planning process includes identification of: (i) women's means of income generation and livelihoods, including non-formal activities such as gathering natural resources, trading and bartering services and wares; (ii) women's social and economic networks, including extended family ties; and (iii) women's ownership of affected assets, including land and crops, in order to appropriately compensate them.

Grievance Mechanism

19. *The Borrower will ensure that a grievance mechanism for the project is in place, in accordance with ESS10 as early as possible in project development to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely fashion. Where possible, such grievance mechanisms will utilize existing formal or informal grievance mechanisms suitable for project purposes, supplemented as needed with project-specific arrangements designed to resolve disputes in an*

GN19.1. Grievance mechanisms are established as part of the resettlement plan (see Paragraph 21 and ESS10). Regardless of scale, involuntary resettlement may give rise to grievances among affected households and communities over issues ranging from rates of compensation and eligibility criteria to the location of resettlement sites and the quality of services at those sites.

GN19.2. The project grievance mechanism is disclosed and explained to affected communities as early as possible and on a regular basis throughout the project cycle. The grievance mechanism is available at no cost, and it is important that it be easily accessible, with special attention paid to accessibility for disadvantaged and vulnerable individuals or groups.

GN19.3. The scope of the grievance mechanism varies with the magnitude and complexity of the project and displacement involved, and may call for additional staff with specific expertise to be designated and trained to address grievances related to involuntary resettlement.

Author

Comment [37]: Or even when resettlement is not poorly planned/executed. The Note should be more honest throughout that many problems and harms can arise even when resettlement is done according to "best practices".

Author

Comment [38]: And their use of assets -- even if not technically owners

Author

Comment [39]: As noted in general comments in CCSI submission, affected persons must also be involved in helping to design grievance mechanism.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Planning and Implementation

20. Where land acquisition or restrictions on land use are unavoidable, the Borrower will, as part of the environmental and social assessment, conduct a census to identify the persons who will be affected by the project, to establish an inventory of land and assets to be affected,¹⁷ to determine who will be eligible for compensation and assistance,¹⁸ and to discourage ineligible persons, such as opportunistic settlers, from claiming benefits. The social assessment will also address the claims of communities or groups who, for valid reasons, may not be present in the project area during the time of the census, such as seasonal resource users. In conjunction with the census, the Borrower will establish a cut-off date for eligibility. Information regarding the cut-off date will be well documented and will be disseminated throughout the project area at regular intervals in written and (as appropriate) non-written forms and in relevant local languages. This will include posted warnings that persons settling in the project area after the cutoff date may be subject to removal.

Footnote 17. See Annex 1. Such inventory should include a detailed account, derived through a consultative, impartial and transparent process, of the full range of rights held or asserted by affected people, including those based on custom or practice, secondary rights such as rights of access or use for livelihoods purposes, rights held in common, etc.

Footnote 18. Documentation of ownership or occupancy and compensation payments should be issued in the names of both spouses or single heads of households as relevant, and other resettlement assistance, such as skills training, access to credit, and job opportunities, should be equally available to women and adapted to their needs. Where national law and tenure systems do not recognize the rights of women to hold or contract in property, measures should be considered to provide women as much protection as possible with the objective to achieve equity with men.

GN20.1. The census identifies affected people, and includes pertinent demographic (age, sex, family size, births, and deaths) and related social and economic information (ethnicity, health, education, occupation, income sources, livelihood patterns, productive capacity, etc.). The census helps to determine eligibility of affected people. It includes undertaking an inventory and valuation of assets and establishing, documenting and making known the rights of those affected. This may include different types of secondary rights of access and use that are valuable for people's livelihoods but that are largely undocumented, such as seasonal rights or rights held by migrant populations such as nomadic pastoralists. It is important to undertake the inventory in close consultation with affected communities and households, and if needed, the services of a social specialist with expertise in land and natural resource tenure. (See also ESS1 Paragraph 28(b) and Footnote 29, and associated Guidance Note.) The information gathered in connection with the census is the baseline which serves as a reference point against which income restoration and the results of other rehabilitation efforts can be measured.

GN20.2. The cut-off date for determining eligibility for compensation or other assistance is intended to help prevent encroachment by opportunistic settlers. It is most effective when it is well communicated, documented, and disseminated, including by providing clear demarcation of areas designated for resettlement. Individuals taking up residence in, or use of, the project area after the cut-off date are not eligible for compensation or resettlement assistance. Similarly, the loss of fixed assets (such as built structures, crops, fruit trees, and woodlots) established after the cut-off date is not compensated.

GN20.3. Diligent efforts should be made to ensure that the claims of individuals or groups who, for valid reasons, are not present at the time of the census but who have a claim to land or assets, are addressed.

GN20.4. A common complication encountered with respect to cut-off dates involves "historic" cut off

ESS5

Author

Comment [40]: This could be extremely burdensome and problematic in practice – what if gov't decides to demarcate, but then takes a long time to resettle (as alluded to in 20.4), or provides no clarity on how long it might take? Are people not allowed to plant crops, etc.? How are they meant to survive before resettlement occurs?

Author

Comment [41]: What does this entail?

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

dates, which were established when a project was ready for development but which, due to project delays, have become outdated. In such situations, natural population growth (for example, grown children from previously eligible households) may result in new households eligible for resettlement benefits and assistance that were not listed in the original survey. It is good practice for planners to make provision for population movements as well as natural population increase. If there is a significant time lag between the completion of the census and implementation of the resettlement or livelihood restoration plan (such as more than 3 years), a repeat census and inventory and evaluation of assets are undertaken and the resettlement plan updated accordingly.

GN20.5 Where legally permissible, the resettlement plan includes measures to ensure that documentation of ownership or occupancy, such as title deeds and lease agreements, and compensation (including the bank accounts established for payment of compensation), are issued in the names of both spouses or of single women heads of households, as relevant to each situation. In circumstances in which national law and local customary tenure systems do not give women equal opportunities or rights with regard to property, alternative steps are taken to ensure that access of women to security of tenure is equivalent to that of men and does not further disadvantage women.

21. *To address the issues identified in the environmental and social assessment, the Borrower will prepare a plan¹⁹ proportionate to the risks and impacts associated with the project:*
- (a) For projects with minor land acquisition or restrictions on land use, as a result of which there will be no significant impact on incomes or livelihoods, the plan will establish eligibility criteria for affected persons, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;*
 - (b) For projects causing physical displacement, the plan will set out the additional measures relevant to relocation of affected persons;*
 - (c) For projects involving economic displacement with significant impacts on livelihoods or income generation, the plan will set out the additional measures relating to livelihood improvement or restoration; and*
 - (d) For projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the plan will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.*

Footnote 19. See Annex 1.

GN21.1. Resettlement plans are prepared for any project that results in economic or physical displacement. The scope and level of detail of the plan varies with the magnitude of displacement and complexity of the measures required to mitigate adverse impacts. In all cases, the plan describes the manner in which the objectives of ESS5 can be achieved. The resettlement plan may take a number of different forms, depending on the project's impacts. The different plans are described in Annex 1 to ESS5.

GN21.2. For access restrictions in relation to legally designated parks, protected areas or other common property, the resettlement plan may take the form of a "process framework" (also described in Annex 1). It is used to design project activities, determine eligibility criteria, reach agreement on access restrictions, identify measures to assist affected persons improve or restore their livelihoods, manage conflicts and grievances, and arrange for participatory implementation and monitoring.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

22. *The Borrower’s plan will establish the roles and responsibilities relating to financing and implementation, and include arrangements for contingency financing to meet unanticipated costs, as well as arrangements for timely and coordinated response to unforeseen circumstances impeding progress toward desired outcomes.²⁰ The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to resettlers (as compared to the “without-project” circumstances) are added to the benefits stream of the project.*

Footnote 20. For projects with significant resettlement impacts and complex mitigation measures, the Borrower may consider preparing a stand-alone resettlement project for Bank support.

GN22.1. A key function of the planning process is to determine as early and fully as possible the anticipated costs of resettlement, as well the arrangements for meeting those costs (including contingencies). It is important to specify in the arrangements the commitments obtained from relevant institutions within government and any other parties to meet the resettlement costs.

23. *The Borrower will establish procedures to monitor and evaluate the implementation of the plan and will take corrective action as necessary during implementation to achieve the objectives of this ESS. The extent of monitoring activities will be proportionate to the project’s risks and impacts. For all projects with significant involuntary resettlement impacts, the Borrower will retain competent resettlement professionals to monitor the implementation of resettlement plans, design corrective actions as necessary, provide advice on compliance with this ESS and produce periodic monitoring reports. Affected persons will be consulted during the monitoring process. Periodic monitoring reports will be prepared and affected persons will be informed about monitoring results in a timely manner.*

GN23.1. The monitoring and evaluation of resettlement implementation should be planned as early as possible in preparation of the resettlement plan. The resettlement census, including socio-economic baseline studies, and the inventory and evaluation of assets are conducted in a manner that enables subsequent tracking of resettlement outcomes. This is typically done through the early identification of key indicators to be tracked over time.

24. *Implementation of the Borrower’s plan will be considered completed when the adverse impacts of resettlement have been addressed in a manner that is consistent with the relevant plan as well as the objectives of this ESS. For all projects with significant involuntary resettlement impacts, the Borrower will commission an external completion audit of the plan when all mitigation measures have been substantially completed. The completion audit will be undertaken by competent resettlement professionals, will assess whether livelihoods and living standards have been improved or at least restored and, as necessary, will propose corrective actions to meet objectives not yet achieved.*

GN24.1. An external resettlement completion audit is conducted for projects with significant adverse social impacts. In determining whether an audit is required, the Bank will consider the scale of impacts, the particular vulnerability of the affected households (for example, those with a strong attachment to particular lands and/or natural resources), or other social, economic, or political factors. The key objective of a completion audit is to evaluate whether the Borrower’s efforts to restore the livelihoods and living standards of the affected population have been successful. The audit measures whether the livelihoods and living standards of the affected population meet or exceed those enjoyed prior to displacement, and if that is not the case, what additional measures, if any, are needed to help improve, or at least restore, livelihoods and living standards. The audit also verifies that all physical inputs

Author
Comment [42]: The Guidance Note should explain that this is not a simple CBA that is easily quantifiable. For example, resettled persons might be given objectively “nicer” or more expensive homes than what they had before – but they may be culturally inappropriate, or removed from their social networks, and thus constitute a net loss for resettlers.

Author
Comment [43]: Should be explained in Guidance Note text.

ESS

Author
Comment [44]: These are also examples of factors to be considered in evaluating whether resettlement (and a project) is even appropriate in the first place – something that this Note fails to explain.

Author
Comment [45]: AND IMPROVE

Author
Comment [46]: Should not have “if any”—if standards do not meet/exceed this standard, then additional measures will be needed.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

committed to in the resettlement plan have been delivered, and all agreed services have been provided.

25. *Where the likely 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 during project preparation, the Borrower will develop a framework establishing general principles and procedures compatible with this ESS. Once the individual project components are defined and the necessary information becomes available, such a framework will be expanded into one or more specific plans proportionate to potential risks and impacts. No physical and/or economic displacement will occur until plans required by this ESS have been finalized and*

GN25.1. It is not always possible to know the extent and location of resettlement during project preparation (for example, when a project has multiple subprojects that will be designed during project implementation). In such cases, a policy framework (see Annex 1 to ESS5) is used, which will be expanded into one or more specific resettlement plans in accordance with ESS5 once the relevant project subcomponents are defined. Paragraph 25 emphasizes the importance of finalizing and obtaining Bank approval of such plans before any associated displacement commences. As with any resettlement plan prepared under ESS5, no displacement commences until compensation has been paid and other relevant assistance provided, as described in Paragraph 15.

B. Displacement

Physical Displacement

26. *In the case of physical displacement, the Borrower will develop a plan that covers, at a minimum, the applicable requirements of this ESS regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement and, as warranted, to identify development opportunities. It will include a resettlement budget and implementation schedule, and establish the entitlements of all categories of affected persons (including host communities). Particular attention will be paid to gender aspects and the needs of the poor and the vulnerable. The Borrower will document all transactions to acquire land rights, provision of compensation and other assistance associated with relocation activities.*

GN26.1. When physical displacement is to occur, resettlement planning provides displaced persons with opportunities to participate in development of the resettlement plan and implementation of activities intended to improve or at least restore their standards of living. In accordance with Paragraph 20, baseline conditions are established prior to displacement by conducting a census and enumeration of households, an inventory and evaluation of their assets, and a socio-economic survey assessing living standards and social conditions. The contents of this plan are described in Annex 1 to ESS5.

27. *If people living in the project area are required to move to another location, the Borrower will: (a) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation; and (b) provide relocation assistance suited to the needs of each group of displaced persons. New resettlement sites will offer living conditions at least equivalent to those previously enjoyed, or consistent with prevailing minimum codes or standards, whichever set of standards is higher. If new resettlement sites are to be prepared, host communities will be consulted regarding planning options, and resettlement plans will ensure continued access, at least at existing levels or standards, for host communities to facilities and services. The displaced persons' preferences with respect to relocating in preexisting communities and groups will be respected wherever possible. Existing social and cultural institutions of the displaced persons and any host communities will be respected.*

Author

Comment [47]: How to ensure, then, that Bank does not end up funding something that won't comply with ESS5? If Bank does not approve, what happens -- subproject can't go forward? Further clarity is important.

ESS5

Author

Comment [48]: Provide more info on participation. What exactly does this entail?

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

GN27.1. Adequate housing options are those that allow access to employment options, markets, and other means of livelihood such as agricultural fields, as well as basic infrastructure and services, such as water, electricity, sanitation, health-care, and education, depending on the local context. Adequate sites are safe and at the least, not subject to periodic flooding or other hazards.

Author

Comment [49]: Also culturally appropriate, based on what people want

GN27.2. The resettlement plan provides for transitional relocation assistance to people who are physically displaced. Such assistance may include transportation, food, shelter, and social services that are provided to affected people during the relocation to their new site. Additional measures may be necessary for vulnerable groups during physical relocation, particularly pregnant women, children, the elderly, and the disabled. Assistance may also include cash allowances that compensate affected people for the inconvenience associated with resettlement and defray the expenses of relocating to a new location, such as moving and lost workdays.

28. In the case of physically displaced persons under paragraph 10(a) or (b), the Borrower will offer the choice of replacement property of equal or higher value, with security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at replacement cost. Compensation in kind should be considered in lieu of cash.²¹

Footnote 21. Payment of cash compensation for lost land and other assets may be appropriate where: (a) livelihoods are not land-based; (b) 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 (c) active markets for land, housing, and labor exist, displaced persons use such markets, there is sufficient supply of land and housing, and the Borrower has demonstrated to the satisfaction of the Bank that insufficient replacement land is available.

ESS5

GN28.1. Security of tenure is an important component of adequate housing, and is defined in Footnote 7. Footnote 7 also provides that where affected people are receiving land as replacement for land they have lost to the project, their tenure rights to the replacement land is no weaker in effect than their tenure rights to the relinquished land. This provision draws attention to the fact that the nature and duration of a person's rights to land are important components of the value of what he or she is losing through displacement. For example, it would normally be inappropriate to replace land that is held in full ownership with land to which an affected person only receives a short-term lease. Applying this provision may require judgment, because it is not always easy to measure the relative strengths of different tenure arrangements. Therefore, it is important to look at the combined characteristics of replacement land to ensure that in the aggregate they provide value to the affected person that is equal to or greater than what she or he is losing as a result of displacement.

Author

Comment [50]: Would suggest that their tenure rights to replacement land "should be stronger" than their rights to relinquished land.

29. In the case of physically displaced persons under paragraph 10(c), the Borrower will provide arrangements to allow them to obtain adequate housing with security of tenure. Where these displaced persons own structures, the Borrower will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at replacement cost.²² Based on consultation with such displaced persons, the Borrower will provide relocation assistance in lieu of compensation for land sufficient for them to restore their standards of living at an adequate alternative site.²³

Footnote 22. Where the Borrower demonstrates that an affected person derives substantial income from multiple illegal rental units, the compensation and other assistance that would otherwise be available to such person for non-land assets and livelihood restoration under this paragraph may be reduced with the prior agreement of the Bank, to better reflect the objectives of this ESS.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Footnote 23. Relocation of informal settlers in urban areas may involve trade-offs. For example, the relocated families may gain security of tenure, but they may lose locational advantages that may be essential to livelihoods, especially among the poor or vulnerable. Changes in location that may affect livelihood opportunities should be addressed in accordance with the relevant provisions of this ESS (see in particular paragraph 34(c)).

GN29.1. As indicated in several paragraphs of ESS5, affected people are entitled to certain types of assistance (for example, compensation for fixed assets and livelihood restoration) even if they have no legal rights to the land they are occupying. Footnote 22 refers to what is known as the “squatter landlord” phenomenon that is prevalent in many large cities in developing countries: these are persons who accumulate and derive substantial rental income from multiple buildings located on land to which they do not have legal rights. If it is demonstrated that a squatter landlord’s livelihood would not be significantly affected, the Borrower and Bank may agree on an approach that reduces the amount of compensation the landlord might otherwise be entitled to under ESS5 for fixed assets and livelihood restoration. In determining this, it is important to distinguish the situation and characteristics of “squatter landlords” from situations in which affected informal property owners depend on rental income from the structure they are losing for all or a substantial portion of their livelihoods – such affected people are not the intended focus of the Footnote.

30. The Borrower is not required to compensate or assist those who encroach on the project area after the cut-off date for eligibility, provided the cut-off date has been clearly established and made public.

31. The Borrower will not resort to forced evictions of affected persons. “Forced eviction” is defined as the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this ESS. The exercise of eminent domain, compulsory acquisition or similar powers by a Borrower will not be considered to be forced eviction providing it complies with the requirements of national law and the provisions of this ESS, and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).

GN31.1. The prohibition against “forced eviction” does not prevent action by a government to remove a person who continues to occupy land upon completion of the legal process of eminent domain or compulsory acquisition. Eviction is not considered to be forced eviction if it conforms to national law (including compliance with, and completion of, all relevant legal and administrative procedures, including appeals processes), complies with all the relevant requirements of ESS5, and is carried out in a way that respects basic principles of due process.

GN31.2. Due process is understood to include the following types of procedural protections: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Author
Comment [51]: As noted above, many of these people are legitimate tenure right holders. This needs to be clarified. Moreover, lumping in with a description of squatter landlords does them a huge disservice.

ESS5

Author
Comment [52]: Entire section must be strengthened per general comments in accompanying submission

Author
Deleted: –

Author
Deleted: !

Author
Deleted: –

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

32. *As an alternative to displacement, the Borrower may consider negotiating in situ land development arrangements by which those to be affected may elect to accept a partial loss of land or localized relocation in return for improvements that will increase the value of their property after development. Any person not wishing to participate will be allowed to opt instead for full compensation and other assistance as required in this ESS.*

GN32.1. Where feasible, in situ resettlement may be a way of enabling physically and/or economically displaced persons to remain in or close to the location where they live and work. It can provide a way for affected people to more directly benefit from the project and to share in the incremental enhancement of property values that a project brings about. Paragraph 32 therefore confirms that in situ arrangements may be used under ESS5, where people receive smaller but more valuable replacement land or housing that has been developed by the project itself. Examples include irrigation projects where affected farmers relinquish rainfed land for a smaller portion of irrigated and more productive land, or land readjustment schemes where rural land is relinquished in exchange for smaller, high-value urban plots that benefit from project-financed infrastructure. Care is taken in all such cases to demonstrate and document that the calculation of the value of the improvements is robust and that the expectation of enhanced value within a reasonable period is realistic. When there is a transition period between the relinquishing of land and the provision of replacement land in an in-situ location, transitional assistance is provided.

Economic Displacement

33. *In the case of projects affecting livelihoods or income generation, the Borrower's plan will include measures to allow affected persons to improve, or at least restore, their incomes or livelihoods. The plan will establish the entitlements of affected persons and/or communities, paying particular attention to gender aspects and the needs of vulnerable segments of communities, and will ensure that these are provided in a transparent, consistent, and equitable manner. The plan will incorporate arrangements to monitor the effectiveness of livelihood measures during implementation, as well as evaluation once implementation is completed. The mitigation of economic displacement will be considered complete when the completion audit concludes that affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to reestablish their livelihoods.*

ESS5

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

34. Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at replacement cost:

- (a) In cases where land acquisition or restrictions on land use affect commercial enterprises,²⁴ affected business owners will be compensated for the cost of identifying a viable alternative location; for lost net income during the period of transition; for the cost of the transfer and reinstallation of the plant, machinery, or other equipment; and for reestablishing commercial activities. Affected employees will receive assistance for temporary loss of wages and, if necessary, assistance in identifying alternative employment opportunities;
- (b) In cases affecting persons with legal rights or claims to land that are recognized or recognizable under national law (see paragraph 10 (a) and (b)), replacement property (e.g., agricultural or commercial sites) of equal or greater value will be provided, or, where appropriate, cash compensation at replacement cost; and
- (c) Economically displaced persons who are without legally recognizable claims to land (see paragraph 10(c)) will be compensated for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at replacement cost. Additionally, the Borrower will provide assistance in lieu of land compensation sufficient to provide such persons with an opportunity to reestablish livelihoods elsewhere. The Borrower is not required to compensate or assist persons who encroach on the project area after the cut-off date for

Footnote 24. This includes shops, restaurants, services, manufacturing facilities and other enterprises, regardless of size and whether licensed or unlicensed.

Author

Comment [53]: Same problems as above in terms of how legitimate tenure right holders are treated; Note needs to clarify in order to align with the VGGT

GN34.1. Where possible, local communities and Indigenous Peoples should be allowed to exercise pre-existing access or usage rights to Borrower-controlled land. For example, nomadic peoples may claim legal or customary rights to access or pass through Borrower-controlled land periodically or seasonally, for subsistence and traditional activities. Their claims may be linked to certain natural resources such as an oasis or water spring, herds of migratory animals or plants that grow naturally, that can be harvested only at a particular time of the year, or are pollinators for other plants, trees, or crops. The exercise of such rights, however, is subject to reasonable measures by the Borrower to maintain a safe and healthy working environment for workers under ESS2, safeguards for community health, safety and security under ESS4, and the Borrower's reasonable operating requirements. If it is deemed necessary to curtail pre-existing access or usage rights for such reasons, the affected people are provided with other assistance measures, consistent with the objectives of ESS5, and with the objectives of ESS7, if it concerns Indigenous Peoples.

Author

Comment [54]: Who determines this?

Author

Comment [55]: Like what? This is ambiguous.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

35. *Economically displaced persons will be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living:*
- (a) *For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost will be offered where feasible.;*
 - (b) *For persons whose livelihoods are natural resource-based and where project-related restrictions on access envisaged in paragraph 4 apply, measures will be implemented to either allow continued access to affected resources or to provide access to alternative resources with equivalent livelihood-earning potential and accessibility. Where common property resources are affected, benefits and compensation associated with restrictions on natural resource usage may be collective in nature; and*
 - (c) *If it is demonstrated that replacement land or resources are unavailable, the Borrower will offer economically displaced persons options for alternative income earning opportunities, such as credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance additional to compensation for assets. Cash assistance alone, however, frequently fails to provide affected persons with the productive means or skills to restore livelihoods.*

GN35.1. Compensation alone is not sufficient to restore or improve the livelihoods and social welfare of displaced households and communities. Challenges associated with rural resettlement include restoring livelihoods based on land or natural resource use and the need to avoid compromising the cohesion of affected communities, including the host communities to which the displaced population may be resettled. A challenge associated with urban resettlement is the restoration of wage-based or enterprise-based livelihoods that are often tied to location (such as proximity to jobs, customers and markets).

GN35.2. The following are examples for the design of measures to improve or restore livelihoods that are land-based, wage-based and enterprise-based:

- (a) *Land-based livelihoods:* Depending on the type of economic displacement and/or the site to which project-affected people are relocated, they may benefit from: (i) assistance in acquiring or accessing replacement land, including access to grazing land, fallow land, forest, fuel and water resources; (ii) physical preparation of farm land (for example, clearing, leveling, access routes and soil stabilization or enrichment); (iii) fencing for pasture or cropland; (iv) agricultural inputs (such as seeds, seedlings, fertilizer, irrigation); (v) veterinary care; (vi) small-scale credit, including seed banks, cattle banks and cash loans; (vii) access to markets (for example, through transportation means, improved access to information about market opportunities and organizational support; and (viii) training.
- (b) *Wage-based livelihoods:* Wage earners in the affected households and communities may benefit from skills training and job placement, provisions made in contracts with project contractors for temporary or longer-term employment of local workers, and small-scale credit to finance start-up enterprises. Wage earners whose income is interrupted during physical displacement receive resettlement assistance that covers these and related costs. Affected people are given equal opportunities to benefit from such provisions. The location of resettlement housing, in the case of physically displaced persons, can be a significant contributing factor toward socio-economic stability.

ESS5

Author

Comment [56]: Per above, don't they need this replacement land, and not just "assistance in acquiring" it?

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Consideration should be given to the ability of wage earners to continue to access their place(s) of work during and after resettlement; if this ability is impaired then mitigation measures are implemented to ensure continuity and avoid a net loss in welfare for affected households and communities.

- (c) *Enterprise-based livelihoods*: Established and start-up entrepreneurs and artisans may benefit from credit or training (such as business planning, marketing, inventory and quality control) to expand their businesses and generate local employment.

GN35.3. Land acquisition may result in elimination or restriction of access to commonly held natural resources such as rangeland, pasture, fallow land, and non-timber forest resources (for example, medicinal plants, construction, and handicraft materials), woodlots for timber and fuelwood, or fishing grounds. In such instances, land-based compensation in the form of suitable replacement land, or access to other areas of natural resources to address the loss of such resources is provided. Such assistance can take the form of initiatives that enhance the productivity or sustainable use of the remaining resources to which the community has access (for example, improved resource management practices or inputs to boost the productivity of the resource base), in-kind provision of resources, or as a last resort, cash compensation intended to compensate those affected for loss of access for some reasonable period of time. (See also ESS6.)

36. *Transitional support will be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and*

GN36.1. See the GN for Paragraph 15.

Author
Comment [57]: Should note that these other areas of resources should provide the same types of resources and be sufficient to effectively support livelihood strategies at same or greater level than before.

Author
Comment [58]: This should say “Additional assistance ...” as the replacement land/access to resources is a prerequisite

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

C. Collaboration with Other Responsible Agencies or Subnational Jurisdictions

37. *The Borrower will establish means of collaboration between the agency or entity responsible for project implementation and any other governmental agencies, subnational jurisdictions or entities that are responsible for any aspects of land acquisition, resettlement planning, or provision of necessary assistance. In addition, where the capacity of other responsible agencies is limited, the Borrower will actively support resettlement planning, implementation, and monitoring. If the procedures or standards of other responsible agencies do not meet the relevant requirements of this ESS, the Borrower will prepare supplemental arrangements or provisions for inclusion in the resettlement plan to address identified shortcomings. The plan will also specify financial responsibilities for each of the agencies involved, appropriate timing and sequencing for implementation steps, and coordination arrangements for addressing financial contingencies or responding to unforeseen*

GN37.1. There may be cases where the project implementing agency of a project lacks the legal authority or organizational capacity to undertake land acquisition and provide resettlement assistance directly. Instead, that responsibility may be within the mandate of another agency that is not directly involved in project implementation. In such instances, it is recommended that the Borrower take early and proactive steps in establishing ways to collaborate between all relevant agencies.

D. Technical and Financial Assistance

38. *The Borrower may request technical assistance from the Bank to strengthen Borrower capacity, or the capacity of other responsible agencies, for resettlement planning, implementation and monitoring. Such forms of assistance may include staff training, assistance in formulating new regulations or policies relating to land acquisition or other aspects of resettlement, financing for assessments or other investment costs associated with physical or economic displacement, or other purposes.*

39. *The Borrower may request the Bank to finance either a component of the main investment causing displacement and requiring resettlement, or a free-standing resettlement project with appropriate cross-conditionality, processed and implemented in parallel with the investment that causes the displacement. The Borrower may also request the Bank to finance resettlement even though it is not financing the main investment that makes resettlement necessary.*

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

ESS5-ANNEX 1. Involuntary Resettlement Instruments

1. This Annex describes the elements of the plans addressing physical and/or economic displacement described in paragraph 21 of ESS 5. For purposes of this Annex, these plans shall be referred to as “resettlement plans”. Resettlement plans include measures to address physical and/or economic displacement, depending on the nature of the impacts expected from a project. Projects may use alternative nomenclature, depending on the scope of the resettlement plan – for example, where a project involves only economic displacement, the resettlement plan may be called a “livelihood plan” or where restrictions on access to legally designated parks and protected areas are involved, the plan may take the form of a “process framework.” This Annex also describes the framework referred to paragraph 25 of ESS 5.

A. Resettlement Plan

2. The scope of requirements and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about (a) the proposed project and its potential impacts on the displaced persons and other adversely affected groups, (b) appropriate and feasible mitigation measures, and (c) the legal and institutional arrangements required for effective implementation of resettlement measures.

Minimum Elements of a Resettlement Plan

3. Description of the project. General description of the project and identification of the project area.

4. Potential impacts. Identification of:

- (a) the project components or activities that give rise to displacement, explaining why the selected land must be acquired for use within the timeframe of the project;
- (b) the zone of impact of such components or activities;
- (c) the scope and scale of land acquisition and impacts on structures and other fixed assets;
- (d) any project-imposed restrictions on use of, or access to, land or natural resources;
- (e) alternatives considered to avoid or minimize displacement and why those were rejected; and
- (f) the mechanisms established to minimize displacement, to the extent possible, during project

5. Objectives. The main objectives of the resettlement program.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

6. *Census survey and baseline socio-economic studies. The findings of a household-level census identifying and enumerating affected persons, and, with the involvement of affected persons, surveying land, structures and other fixed assets to be affected by the project. The census survey also serves other essential functions:*
- (a) *identifying characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;*
 - (b) *information on vulnerable groups or persons for whom special provisions may have to be made;*
 - (c) *identifying public or community infrastructure, property or services that may be affected;*
 - (d) *providing a basis for the design of, and budgeting for, the resettlement program;*
 - (e) *in conjunction with establishment of a cut-off date, providing a basis for excluding ineligible people from compensation and resettlement assistance; and*
 - (f) *establishing baseline conditions for monitoring and evaluation purposes.*
 - (g) *As the Bank may deem relevant, additional studies on the following subjects may be required to supplement or inform the census survey:*
 - (h) *land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;*
 - (i) *the patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project; and*
 - (j) *social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and*
7. *Legal framework. The findings of an analysis of the legal framework, covering*
- (a) *the scope of the power of compulsory acquisition and imposition of land use restriction and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment;*
 - (b) *the applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal timeframe for such procedures, and any available grievance redress mechanisms that may be relevant to the project;*
 - (c) *laws and regulations relating to the agencies responsible for implementing resettlement*
8. *Institutional Framework. The findings of an analysis of the institutional framework covering*
- (a) *the identification of agencies responsible for resettlement activities and NGOs/CSOs that may have a role in project implementation, including providing support for displaced persons;*
 - (b) *an assessment of the institutional capacity of such agencies and NGOs/CSOs; and*
 - (c) *any steps that are proposed to enhance the institutional capacity of agencies and NGOs/CSOs responsible for resettlement implementation.*
9. *Eligibility. Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.*
10. *Valuation of and compensation for losses. The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation for land, natural resources and other assets under local law and such supplementary measures as are necessary to achieve replacement cost for them.*

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

11. *Community participation. Involvement of displaced persons (including host communities, where relevant)*

- (a) *a description of the strategy for consultation with, and participation of, displaced persons in the design and implementation of the resettlement activities;*
- (b) *a summary of the views expressed and how these views were taken into account in preparing the resettlement plan;*
- (c) *a review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them; and*
- (d) *institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are*

12. *Implementation schedule. An implementation schedule providing anticipated dates for displacement, and estimated initiation and completion dates for all resettlement plan activities. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.*

13. *Costs and budget. Tables showing categorized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.*

14. *Grievance redress mechanism. The plan describes affordable and accessible procedures for third-party settlement of disputes arising from displacement or resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.*

15. *Monitoring and evaluation. Arrangements for monitoring of displacement and resettlement activities by the implementing agency, supplemented by third-party monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of results for a reasonable period after all resettlement activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.*

16. *Arrangements for adaptive management. The plan should include provisions for adapting resettlement implementation in response to unanticipated changes in project conditions, or unanticipated obstacles to achieving satisfactory resettlement outcomes.*

Additional Planning Requirements where Resettlement Involves Physical Displacement

17. *When project circumstances require the physical relocation of residents (or businesses), resettlement plans require additional information and planning elements. Additional requirements include:*

18. *Transitional assistance. The plan describes assistance to be provided for relocation of household members and their possessions (or business equipment and inventory). The plan describes any additional assistance to be provided for households choosing cash compensation and securing their own replacement housing, including construction of new housing. If planned relocation sites (for residences or businesses) are not ready for occupancy at the time of physical displacement, the plan establishes a transitional allowance sufficient to meet temporary rental expenses and other costs until occupancy is available.*

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

19. *Site selection, site preparation, and relocation. When planned relocation sites are to be prepared, the resettlement plan describes the alternative relocation sites considered and explains sites selected, covering*

- (a) *institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is better or at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;*
- (b) *identification and consideration of opportunities to improve local living standards by supplemental investment (or through establishment of project benefit-sharing arrangements) in infrastructure, facilities or services;*
- (c) *any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;*
- (d) *procedures for physical relocation under the project, including timetables for site preparation and transfer; and*
- (e) *legal arrangements for regularizing tenure and transferring titles to those resettled, including provision of security of tenure for those previously lacking full legal rights to land or structures.*

20. *Housing, infrastructure, and social services. Plans to provide (or to finance local community provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); plans to maintain or provide a comparable level of services to host populations; any necessary site development, engineering, and architectural designs for these facilities.*

21. *Environmental protection and management. A description of the boundaries of the planned relocation sites; and an assessment of the environmental impacts of the proposed resettlement and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).*

22. *Consultation on relocation arrangements. The plan describes methods of consultation with physically displaced persons on their preferences regarding relocation alternatives available to them, including, as relevant, choices related to forms of compensation and transitional assistance, to relocating as individual households families or with preexisting communities or kinship groups, to sustaining existing patterns of group organization, and for relocation of, or retaining access to, cultural property (e.g. places of worship, pilgrimage centers, cemeteries).*

23. *Integration with host populations. Measures to mitigate the impact of planned relocation sites on any host communities, including*

- (a) *consultations with host communities and local governments;*
- (b) *arrangements for prompt tendering of any payment due the hosts for land or other assets provided in support of planned relocation sites;*
- (c) *arrangements for identifying and addressing any conflict that may arise between those resettled and host communities; and*
- (d) *any measures necessary to augment services (e.g., education, water, health, and production services) in host communities to meet increased demands upon them, or to make them at least comparable to services available within planned relocation sites.*

ESS5

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Additional Planning Requirements where Resettlement Involves Economic Displacement

24. *If land acquisition or restrictions on use of, or access to, land or natural resources may cause significant economic displacement, arrangements to provide displaced persons with sufficient opportunity to improve, or at least restore, their livelihoods are also incorporated into the resettlement plan, or into a separate livelihoods improvement plan. These include:*

25. *Direct land replacement. For those with agricultural livelihoods, the resettlement plan provides for an option to receive replacement land of equivalent productive value, or demonstrates that sufficient land of equivalent value is unavailable. Where replacement land is available, the plan describes methods and timing for its allocation to displaced persons.*

26. *Loss of access to land or resources. For those whose livelihood is affected by loss of land or resource use or access, including common property resources, the resettlement plan describes means to obtain substitutes or alternative resources, or otherwise provides support for alternative livelihoods.*

27. *Support for alternative livelihoods. For all other categories of economically displaced persons, the resettlement plan describes feasible arrangements for obtaining employment or for establishing a business, including provision of relevant supplemental assistance including skills training, credit, licenses or permits, or specialized equipment. As warranted, livelihood planning provides special assistance to women, minorities or vulnerable groups who may be disadvantaged in securing alternative livelihoods.*

28. *Consideration of economic development opportunities. The resettlement plan identifies and assesses any feasible opportunities to promote improved livelihoods as a result of resettlement processes. This may include, for example, preferential project employment arrangements, support for development of specialized products or markets, preferential commercial zoning and trading arrangements, or other measures. Where relevant, the plan should also assess the feasibility of prospects for financial distributions to communities, or directly to displaced persons, through establishment of project-based benefit-sharing arrangements.*

29. *Transitional support. The resettlement plan provides transitional support to those whose livelihoods will be disrupted. This may include payment for lost crops and lost natural resources, payment of lost profits for businesses, or payment of lost wages for employees affected by business relocation. The plan provides that the transitional support continues for the duration of the transition period.*

B. Resettlement Framework

30. *The purpose of the resettlement framework is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation (see ESS5, para. 25). Once the subproject or individual project components are defined and the necessary information becomes available, such a framework will be expanded into a specific plan proportionate to potential risks and impacts. Project activities that will cause physical and/or economic displacement will not commence until such specific plans have been finalized and approved by the Bank.*

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

31. The resettlement policy framework covers the following elements:
- (a) a brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement policy framework rather than a resettlement plan is being prepared;
 - (b) principles and objectives governing resettlement preparation and implementation;
 - (c) a description of the process for preparing and approving resettlement plans;
 - (d) estimated displacement impacts and estimated numbers and categories of displaced persons, to the extent feasible;
 - (e) eligibility criteria for defining various categories of displaced persons;
 - (f) a legal framework reviewing the fit between borrower laws and regulations and Bank policy requirements and measures proposed to bridge any gaps between them;
 - (g) methods of valuing affected assets;
 - (h) organizational procedures for delivery of compensation and other resettlement assistance, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer;
 - (i) a description of the implementation process, linking resettlement implementation to civil works;
 - (j) a description of grievance redress mechanisms;
 - (k) a description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
 - (l) a description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and

C. Process Framework

32. A process framework is prepared when Bank-supported projects may cause restrictions in access to natural resources in legally designated parks and protected areas. The purpose of the process framework is to establish a process by which members of potentially affected communities participate in design of project components, determination of measures necessary to achieve the objectives of this ESS, and implementation and monitoring of relevant project activities.

DRAFT FOR PUBLIC COMMENT
Guidance Note for ESS5

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

33. Specifically, the process framework describes participatory processes by which the following activities will be accomplished
- (a) Project components will be prepared and implemented. The document should briefly describe the project and components or activities that may involve new or more stringent restrictions on natural resource use. It should also describe the process by which potentially displaced persons participate in project design.
 - (b) Criteria for eligibility of affected persons will be determined. The document should establish that potentially affected communities will be involved in identifying any adverse impacts, assessing of the significance of impacts, and establishing of the criteria for eligibility for any mitigating or compensating measures necessary.
 - (c) Measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms, to pre-displacement levels, while maintaining the sustainability of the park or protected area will be identified. The document should describe methods and procedures by which communities will identify and choose potential mitigating or compensating measures to be provided to those adversely affected, and procedures by which adversely affected community members will decide among the options available to them.
 - (d) Potential conflicts or grievances within or between affected communities will be resolved. The document should describe the process for resolving disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation.
 - (e) Additionally, the process framework should describe arrangements relating to the following
 - (f) Administrative and legal procedures. The document should review agreements reached regarding the process approach with relevant administrative jurisdictions and line ministries (including clear delineation for administrative and financial responsibilities under the project).

ESS5

DRAFT