

## Performance Standard 5 Land Acquisition and Involuntary Resettlement

April 30, 2006

### Introduction

1. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition.<sup>1</sup> Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain;<sup>2</sup> and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided or at least minimized. However, where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities<sup>3</sup> should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities can result in cost-effective, efficient, and timely implementation of those activities, as well as innovative approaches to improving the livelihoods of those affected by resettlement.

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

### Objectives

- To avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected
- To improve or at least restore the livelihoods and standards of living of displaced persons
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure<sup>4</sup> at resettlement sites

### Scope of Application

4. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the

<sup>1</sup> Land acquisition includes both outright purchases of property and purchases of access rights, such as rights-of-way.

<sup>2</sup> Such restriction may include restrictions of access to legally designated nature conservation areas.

<sup>3</sup> A host community is any community receiving displaced persons.

<sup>4</sup> A resettlement site offers security of tenure if it protects the resettled persons from forced evictions.

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requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

5. This Performance Standard applies to physical or economic displacement resulting from the following types of land transactions:

- Type I: Land rights for a private sector project acquired through expropriation or other compulsory procedures
- Type II: Land rights for a private sector project acquired through negotiated settlements with property owners or those with legal rights to land, including customary or traditional rights recognized or recognizable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation<sup>5</sup>

Paragraph 18 and part of paragraph 20 below apply to displaced persons with no recognizable legal right or claim to the land they occupy.

6. This Performance Standard does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail). In the event of adverse economic, social, or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), such impacts will be avoided, minimized, mitigated or compensated for through the process of Social and Environmental Assessment under Performance Standard 1. If these impacts become significantly adverse at any stage of the project, the client should consider applying the requirements of Performance Standard 5, even where no initial land acquisition was involved.

### Requirements

#### General Requirements

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##### Project Design

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

##### Compensation and Benefits for Displaced Persons

8. When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance<sup>6</sup> to help them improve or at least restore their standards of living or livelihoods, as provided in this Performance Standard. Standards for compensation will be transparent and consistent within the project. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer land-based compensation, where feasible.<sup>7</sup> The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

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<sup>5</sup> These negotiations can be carried out by the private sector company acquiring the land or by an agent of the company. In the case of private sector projects in which land rights are acquired by the government, the negotiations may be carried out by the government or by the private company as an agent of the government.

<sup>6</sup> As described in paragraphs 18 and 20.

<sup>7</sup> See also footnote 9.

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#### Consultation

9. Following disclosure of all relevant information, the client will consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement. Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard.

#### Grievance Mechanism

10. The client will establish a grievance mechanism consistent with Performance Standard 1 to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.

#### Resettlement Planning and Implementation

11. Where involuntary resettlement is unavoidable, the client will carry out a census with appropriate socio-economic baseline data to identify the persons who will be displaced by the project, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits. In the absence of host government procedures, the client will establish a cut-off date for eligibility. Information regarding the cut-off date will be well documented and disseminated throughout the project area.

12. In the case of Type I transactions (acquisition of land rights through the exercise of eminent domain) or Type II transactions (negotiated settlements) that involve the physical displacement of people, the client will develop a resettlement action plan or a resettlement framework based on a Social and Environmental Assessment that covers, at a minimum, the applicable requirements of this Performance Standard regardless of the number of people affected. The plan or framework will be designed to mitigate the negative impacts of displacement, identify development opportunities, and establish the entitlements of all categories of affected persons (including host communities), with particular attention paid to the needs of the poor and the vulnerable (see Performance Standard 1, paragraph 12). The client will document all transactions to acquire land rights, as well as compensation measures and relocation activities. The client will also establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary. A resettlement will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives stated in the resettlement plan or framework as well as the objectives of this Performance Standard.

13. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement of people, the client will develop procedures to offer to the affected persons and communities compensation and other assistance that meet the objectives of this Performance Standard. The procedures will establish the entitlements of affected persons or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. The implementation of the procedures will be considered complete when affected persons or communities have received compensation and other assistance according to the requirements of this Performance Standard. In cases where affected persons reject compensation offers that meet the requirements of this Performance Standard and, as a result, expropriation or other legal procedures are initiated, the client will explore opportunities to collaborate with the responsible government agency, and if permitted by the agency, play an active role in the resettlement planning, implementation, and monitoring.

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### Displacement

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14. Displaced persons may be classified as persons: (i) who have formal legal rights to the land they occupy; (ii) who do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national laws<sup>8</sup>; or (iii) who have no recognizable legal right or claim to the land they occupy.<sup>9</sup> The census will establish the status of the displaced persons.

15. Land acquisition for the project may result in the physical displacement of people as well as their economic displacement. As a result, requirements for both physical displacement and economic displacement may apply.

#### *Physical Displacement*

16. If people living in the project area must move to another location, the client will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.

17. In the case of physically displaced persons under paragraph 14 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, equivalent or better characteristics and advantages of location, or cash compensation at full replacement value where appropriate.<sup>10</sup>

18. In the case of physically displaced persons under paragraph 14 (iii), the client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction. Where these displaced persons own and occupy structures, the client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these people occupy the project area prior to the cut-off date for eligibility. Compensation in kind will be offered in lieu of cash compensation where feasible. Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.<sup>11</sup> The client is not required to compensate or assist those who encroach on the project area after the cut-off date.

19. Where communities of Indigenous Peoples are to be physically displaced from their communally held traditional or customary lands under use, the client will meet the applicable requirements of this Performance Standard, as well as those of Performance Standard 7 (in particular paragraph 14).

#### *Economic Displacement*

20. If land acquisition for the project causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the client will meet the following requirements:

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<sup>8</sup> Such claims could be derived from adverse possession or from customary or traditional law.

<sup>9</sup> Such as opportunistic squatters and recently arrived economic migrants who occupy land prior to the cut-off date.

<sup>10</sup> Payment of cash compensation for lost 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, and there is sufficient supply of land and housing. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

<sup>11</sup> Relocation of informal settlers in urban areas often has trade-offs. For example, the relocated families may gain security of tenure, but they may lose advantages of location.

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- Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost
- In cases where land acquisition affects commercial structures, compensate the affected business owner for the cost of reestablishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment
- Provide replacement property (e.g., agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognized or recognizable under the national laws (see paragraph 14 (i) and (ii))
- Compensate economically displaced persons who are without legally recognizable claims to land (see paragraph 14 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost. The client is not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date
- Provide additional targeted assistance (e.g., credit facilities, training, or job opportunities) and opportunities to improve or at least restore their income-earning capacity, production levels, and standards of living to economically displaced persons whose livelihoods or income levels are adversely affected
- Provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living

21. Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of project-related land acquisition, the client will meet the applicable requirements of this Performance Standard, as well as those of Performance Standard 7 (in particular paragraphs 12 and 13).

#### **Private Sector Responsibilities under Government-Managed Resettlement**

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22. Where land acquisition and resettlement are the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring, as described below in paragraphs 23 through 25.

23. In the case of Type I transactions (acquisition of land rights through expropriation or other legal procedures) involving physical or economic displacement, and Type II transactions (negotiated settlements) involving physical displacement, the client will prepare a plan (or a framework) that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 13, and requirements for Physical Displacement and Economic Displacement above). The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this Performance Standard; and (iii) the financial and implementation responsibilities of the government agency and/or the client.

24. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement, the client will identify and describe the procedures that the responsible government



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agency plans to use to compensate affected persons and communities. If these procedures do not meet the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 12, and requirements for Economic Displacement above), the client will develop its own procedures to supplement government action.

25. If permitted by the responsible government agency, the client will, in collaboration with such agency: (i) implement its plan or procedures established in accordance with paragraph 23 or 24 above; and (ii) monitor resettlement activity that is undertaken by the government agency until such activity has been completed.