

## ANNEX B

### Mark up of Draft Policy and Performance Standards on Social and Environmental Sustainability

(Against April 30, 2006 Version)

**Track Changes References:**

Insertions: Underline

Deletions: ~~Strikethrough~~

Moved from: ~~Double-strikethrough~~

Moved to: Double underline

**International Finance Corporation**

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### Introduction

1. Performance Standard 5 recognizes that project-related land acquisition can have adverse impacts on persons and communities that use this land. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets<sup>1</sup> or access to assets that leads to loss of income sources or other means of livelihood<sup>2</sup>) as a result of project-related land acquisition<sup>3</sup> and/or restrictions on land use. Resettlement is considered involuntary when affected ~~individuals~~ persons or communities do not have the right to refuse land acquisition or restrictions on land use that results in physical or economic displacement. This occurs in cases of: (i) lawful expropriation or temporary or permanent restrictions<sup>4</sup> on land use ~~based on eminent domain~~<sup>5</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 the affected persons and communities, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided ~~or at least minimized.~~ However, where ~~it~~ involuntary resettlement is unavoidable, it should be reduced and appropriate measures to mitigate adverse impacts on displaced persons and host communities<sup>6</sup> should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities can result in more cost-effective, efficient, and timely implementation of those activities, as well as in the introduction of innovative approaches to improving the livelihoods of those affected by resettlement. The government often plays a central role in the land acquisition and resettlement process, including the determination of compensations, and is therefore an important third party in many situations.

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

### Objectives

- To avoid or at least ~~minimize~~ reduce involuntary resettlement displacement, wherever feasible, by exploring alternative project designs

<sup>1</sup> Including ownership and access to communal property and to natural resources. Disruption of access to mineral deposits by artisanal miners is covered by Performance Standard 1.

<sup>2</sup> The term "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, petty trade, foraging, and bartering.

<sup>3</sup> Land acquisition includes both outright purchases of property and purchases or leasing of access rights, such as rights of way.

<sup>4</sup> Such restrictions may result from the acquisition of easements or rights of way, as well as the establishment of legally designated buffer zones and nature conservation areas on land not being acquired by the client.

<sup>5</sup> ~~Such restriction may include restrictions of access to legally designated nature conservation areas.~~

<sup>6</sup> A host community is any community receiving displaced persons. Host communities are those who are receiving project-affected resettled people on their land or in their geographical area of influence.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

March 26 April 14, 2010

- To mitigate adverse social and economic impacts from land acquisition or restrictions on ~~affected persons' use of~~ land use by: (i) providing compensation for loss of assets or access to assets at replacement cost;<sup>7</sup> 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 physically displaced persons through the provision of adequate housing with security of tenure<sup>8</sup> at resettlement sites

### Scope of Application

4. ~~The applicability of this Performance Standard is established during the~~ Ssocial and Eenvironmental risks and impacts identification process. ~~Assessment process,~~ while the implementation of the actions necessary to meet the requirements of this Performance Standard ~~is~~ are managed through the client's Ssocial and Eenvironmental Mmanagement Ssystem. The assessment and management system requirements are outlined in Performance Standard 1.

~~4.~~

5. This Performance Standard applies to physical and/or economic displacement resulting from the following types of land transactions in private sector projects:

- ~~Type I: Land rights for a private sector project or land use rights~~ acquired through expropriation or other compulsory procedures in accordance with the legal system of the host country;
- ~~Type II: Land rights for a private sector project or land use rights~~ acquired through negotiated settlements with property owners or those with legal rights to the land, including customary or traditional rights recognized or recognizable under the laws of the country, if expropriation or other sanctioned compulsory process would have resulted upon the failure of negotiation procedures resulted from failed negotiations<sup>9</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. Project-related land acquisition and/or restrictions on land use may result in the physical displacement of people as well as their economic displacement. Consequently, requirements of this Performance Standard in respect of physical displacement and economic displacement may apply simultaneously.

<sup>7</sup> Replacement cost is defined as the market value of the assets plus transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. Market value is defined as the value required to allow affected persons and communities to replace lost assets with new assets of similar value. The valuation method for determining replacement cost should be documented and included in applicable Resettlement and/or Compensation plans (see paragraphs 18 and 22).

<sup>8</sup> ~~A resettlement site offers~~ Security of tenure if it protects the means that resettled individuals or communities are resettled to a site that they can legally occupy and from which they are protected from the risk of forced eviction. resettled persons from forced evictions.

<sup>9</sup> Including customary or traditional rights recognized or recognizable under the laws of the host country, and if expropriation or other compulsory processes would have resulted upon the failure of negotiation. 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.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

7. This Performance Standard also applies to certain project situations not involving land transactions, where losses may occur when a community or groups within a community have gained their livelihoods from resource use in areas where they do not have ownership, but where they have had traditional or recognizable usage rights. This may include project-related restrictions on access resulting from the creation of biodiversity offset areas or legally designated buffer zones, and restrictions on freshwater and marine environments.<sup>10</sup>

~~7.8.~~ 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 sanctioned by the legal system of the host country 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, reduced, mitigated~~ restored, or compensated for through the social and environmental risks and impacts identification process ~~the process of Social and Environmental Assessment~~ under Performance Standard 1. If these impacts become significantly adverse at any stage of the project with resulting physical and/or economic displacement, the client should consider applying the requirements of Performance Standard 5, even where no initial land acquisition or land use restriction was involved.

### Requirements

#### General Requirements

##### *Project Design*

~~8.9.~~ The client will consider feasible alternative project designs to avoid or ~~at least minimize~~ reduce physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.

##### *Compensation and Benefits for Displaced Persons*

~~9.10.~~ 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>11</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~~ applied consistently to all persons and communities affected by the displacement. Where livelihoods of displaced persons are land-based,<sup>12</sup> or where land is collectively owned, the client will, where feasible,<sup>13</sup> offer the displaced land-based compensation ~~where feasible~~. The acquisition of land and related assets may happen only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons.<sup>14</sup> The client

<sup>10</sup> Paragraph 19 and part of paragraph 22 below apply to displaced persons with no recognizable legal right or claim to the land they occupy.

<sup>11</sup> As described in paragraphs 19 and 21.

<sup>12</sup> The term “land-based” includes livelihood activities such as subsistence cropping and grazing of livestock as well as the harvesting of natural resources.

<sup>13</sup> Refer to paragraph 23 of this Performance Standard for further requirements.

<sup>14</sup> Unless government-managed resettlement is involved, and where the client has no direct influence over the timing of compensation payments. Such cases should be handled in accordance with paragraphs 24–26 of this Performance Standard. Staggered compensation payments may be made where once-off cash payments would demonstrably undermine social and/or resettlement objectives, or where there are ongoing impacts to livelihood activities.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

will also provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

### Consultation

~~10.11. Following disclosure of all relevant information, t~~he client will consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement and livelihood restoration. ~~Consultation-Disclosure of all relevant information and participation of affected persons and communities~~ will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard. Affected persons and communities will be consulted<sup>15,16</sup> on all key aspects of the process including compensation packages, eligibility requirements, resettlement assistance, the suitability of proposed resettlement sites and associated infrastructure where applicable, and the proposed timing of resettlement. Additional provisions are applicable with regards to consultations with Indigenous Peoples, in accordance with Performance Standard 7.

### Grievance Mechanism

~~11.12.~~ The client will establish a grievance mechanism consistent with Performance Standard 1 as early as possible in the project development phase. This will allow the client to receive and address specific concerns about compensation and relocation ~~that are~~ raised by displaced persons or members of host communities in a timely fashion, including a recourse mechanism designed to resolve disputes in an impartial manner.

### Resettlement and Compensation Planning and Implementation

~~12.13.~~ Where involuntary resettlement is unavoidable, the client will carry out a census ~~with to~~ collect 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,<sup>17</sup> and ~~to discourage inflow of people who are prevent~~ ineligible persons, such as opportunistic settlers, from claiming 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.

~~13. 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~~

<sup>15</sup> Targeted measures are generally required to ensure that women's perspectives are obtained and their interests factored into all aspects of resettlement planning and implementation (in particular in respect of the key aspects listed in paragraph 11). Addressing livelihood impacts may require intra-household analysis in cases where men's and women's livelihoods are affected differently. Women's and men's preferences in terms of compensation mechanisms, such as compensation in kind rather than in cash, should be explored. Examples of appropriate consultation measures include the use of female enumerators during social surveys, holding of women-only meetings, and establishment of women's focus groups during the consultation process.

<sup>16</sup> Additional provisions shall apply to consultations involving individuals belonging to vulnerable groups (refer to Performance Standard 1).

<sup>17</sup> Documentation of ownership or occupancy and compensation arrangements should be issued in the names of both spouses or head of households, 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.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

~~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.~~

~~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.~~

14. 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 ~~resettlement~~ planning, implementation, and monitoring.

15. The client will establish procedures to monitor and evaluate the implementation of Resettlement and/or Compensation Plans (see paragraphs 17 and 21) and take corrective action as necessary. ~~A resettlement will be considered complete when~~ Such plans will be considered completed when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives stated in the Resettlement or Compensation plan-Plan as well as the objectives of this Performance Standard. It may be necessary<sup>18</sup> for the client to commission an external completion audit of the Resettlement or Compensation Plan to assess whether the provisions have been met, depending on the scale and/or complexity of physical and economic displacement associated with a project. The completion audit should be undertaken once all mitigation measures have been substantially completed and once displaced persons are deemed to have been provided adequate opportunity, and assistance to sustainably restore their livelihoods.

~~15-16.~~ Where the exact nature or magnitude of the land acquisition related to a project with potential to cause physical and/or economic displacement is unknown due to the stage of project development, the client will develop a Resettlement and/or Compensation Framework outlining general principles compatible with this Performance Standard. Once the individual project components are defined and the necessary information becomes available, such a Framework must be expanded into specific Resettlement and/or Compensation Plans and procedures in accordance with paragraphs 17 and 21 below.

### Displacement

~~16-17.~~ 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

<sup>18</sup> This will be determined in consultation with project financier(s) and other key stakeholders.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

recognized or recognizable under the national laws;<sup>19</sup> or (iii) who have no recognizable legal right or claim to the land they occupy or use. The census will establish the status of the displaced persons.

~~17. 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*

~~18. In the case of physical displacement,<sup>20</sup> the client will develop a Resettlement Plan that covers, at a minimum, the applicable requirements of this Performance Standard regardless of the number of people affected. The Plan will be designed to mitigate the negative impacts of displacement; identify development opportunities; develop a resettlement budget and schedule; 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. The client will document all transactions to acquire land rights, as well as compensation measures and relocation activities.~~

~~19. If people living in the project area ~~must~~ are required to 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~~ must offer improved living conditions. The displaced persons' preferences with respect to relocating in preexisting communities and groups will be taken into consideration. Existing social and cultural institutions of the displaced persons and any host communities will be respected.~~

~~18.20.~~ In the case of physically displaced persons under paragraph 17 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at full replacement value where appropriate.<sup>21</sup>

~~19.21.~~ In the case of physically displaced persons under paragraph 17 (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

<sup>19</sup> Such claims could be derived from adverse possession or from customary or traditional law tenure arrangements.

<sup>20</sup> Where a project results in both physical and economic displacement, the requirements of paragraphs 22 and 23 (Economic Displacement) should be incorporated into the Resettlement Plan or Framework (i.e., there is no need to have a separate Resettlement Plan and Compensation Plan).

<sup>21</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.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

alternative site.<sup>22</sup> The client is not required to compensate or assist those who encroach on the project area after the cut-off date [for eligibility](#).

~~20. 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*

~~22. In the case of projects involving economic displacement only, the client will develop a Compensation Plan to compensate affected persons and/or communities and offer other assistance that meet the objectives of this Performance Standard. The Compensation Plan will establish the entitlements of affected persons and/or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. The mitigation of economic displacement will be considered complete when affected persons or communities have received compensation and other assistance according to the requirements of the Compensation Plan and this Performance Standard, and are deemed to have been provided with adequate opportunity to reestablish their livelihoods.~~

~~23. If land acquisition for the project causes or restrictions on land use result in~~ loss of income or ~~other means of~~ livelihood, regardless of whether or not the affected people are physically displaced, the client will meet ~~one or more of~~ the following requirements, ~~as applicable~~:

~~21.~~

- 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 17 (i) and (ii)).
- For persons whose livelihoods are land- and/or natural resource-based, provide land-based compensation as a matter of priority where the replacement land has a combination of productive potential, locational advantages, access to natural resources,<sup>23</sup> and/or other factors at least equivalent to that being lost. If circumstances prevent the client from offering suitable replacement land to such persons, the client must provide verification that such is the case. Under such circumstances, the client will provide non land-based income-earning opportunities over and above cash compensation<sup>24</sup> to enable affected persons to restore their

<sup>22</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.

<sup>23</sup> The loss of direct use of natural resources, referred to in Performance Standard 6, cannot be easily evaluated or compensated for in monetary terms. The client will demonstrate efforts to avoid such impacts, or where avoidance is not feasible, meet the requirements of paragraph 23 of this Performance Standard. Where appropriate, benefits and compensation provided may be collective in nature rather than directly oriented towards individuals or households.

<sup>24</sup> Payment of compensation only through cash may be appropriate where (i) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; (ii) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or (iii) where livelihoods are not land-based. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

livelihoods and standards of living to levels equivalent to, or better than, those maintained at the time of displacement:

- Compensate economically displaced persons who are without legally recognizable claims to land (see paragraph 17 (iii)) for lost assets ~~(such as crops, irrigation infrastructure and other improvements made to the land)~~ other than land ~~(such as crops, irrigation infrastructure and other improvements made to the 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 for eligibility
- Provide additional targeted assistance (e.g., credit facilities, training, or job opportunities) and opportunities to improve, or at least restore, their means of income-earning capacity, production productivity 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

~~22. 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~~ Under Government-Managed Resettlement

~~23.24.~~ 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.~~

~~24.25.~~ In the case of ~~Type I transactions (acquisition of land rights or access to land through expropriation or other legal procedures) involving physical compulsory means or economic displacement, and Type II transactions (negotiated settlements)~~ involving physical displacement, the client will identify and describe<sup>25</sup> government resettlement measures. If these measures do not meet the relevant requirements of this Performance Standard, the client will prepare a Supplemental Resettlement 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 will need to include in its Supplemental Resettlement Plan, at a minimum (i) an identification of affected people and impacts; (ii) a description of regulated activities, including the entitlements of displaced persons provided under applicable national laws and regulations; (iii) the supplemental measures to achieve proposed to bridge any gaps between such entitlements and the requirements of this Performance Standard as described in paragraphs 17 through 23 in a way that is permitted by responsible agency and implementation time schedule; and (iv) the financial and implementation responsibilities of the ~~government agency and/or the client~~ in the execution of its Supplemental Resettlement Plan.

<sup>25</sup> Government documents, where available, may be used to identify such measures.

## Performance Standard 5 – Rev- 0.1 Land Acquisition and Involuntary Resettlement

~~March 26~~ April 14, 2010

~~25.26.~~ In the case of ~~Type II transactions (negotiated settlements)~~ projects involving economic ~~(but not physical)~~ displacement only, the client will identify and describe the ~~procedures~~ measures that the responsible government agency plans to use to compensate affected persons and communities. If these ~~procedures~~ measures 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~~ develop a Supplemental Compensation Plan to ~~supplement~~ complement government action.

~~26.~~ 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.~~