

Annex 6: Example table for gap analyses

Gap Analyses - Legal Framework for Expropriation and the EBRD's PR5

Issue	EBRD policy requirements	Provisions of XXX law	Gap/comment	Proposed response
Involuntary resettlement, physical and economic displacement	<p>The term involuntary resettlement refers to physical or economic displacement (see paragraph 1) occurring as a result of affected individuals / communities not having the right to refuse land acquisition or restrictions on land use (see paragraph 2).</p>			
Land acquisition and restrictions on land use	<p>Involuntary resettlement occurs as a result of:</p> <ul style="list-style-type: none"> • Land acquisition leading to physical and/or economic displacement, which includes outright purchases of property or purchases of property rights (such as rights of way, easements). See paragraph 2 • Restrictions on land use that result in physical and/or economic displacement, irrespective of how such restrictions are established (such as through negotiation, compulsory purchase or by means of government regulation). See paragraph 2, paragraph 6 bullet 3. <p>Involuntary resettlement (displacement) can be full, partial, permanent or temporary. See paragraph 6.</p>			
Negotiated settlements	<p>Negotiated settlements in acquiring land are encouraged to avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. See paragraph 10.</p>			

Avoidance or minimisation of displacement	Consideration of feasible alternative project designs to avoid or at least minimise physical and/or economic displacement, while balancing environmental, social and economic costs and benefits. See paragraph 5, bullet 1.			
Information disclosure, consultation and informed participation of affected persons, including host communities	<p>Affected persons (men and women) shall be given the opportunity to participate in the eligibility requirements, negotiation of the compensation packages, resettlement assistance, suitability of proposed resettlement sites and proposed timing. See paragraph 12, bullet 1.</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement. See paragraph 12, bullet 3.</p> <p>The client should consult with affected people and summarize the information contained in the RAP/LRP for public disclosure to ensure that they understand the compensation procedures and know what to expect at the various stages of the project paragraphs 29 and 38.</p>			
Vulnerable groups	<p>The client will specifically take into account any individuals or groups that may be disadvantaged or vulnerable and undertake the necessary actions to ensure they are not disadvantaged in the resettlement process, are fully informed and aware of their rights and able to benefit equally from the resettlement opportunities and benefits. See paragraph 13.</p> <p>Vulnerable or at-risk groups include people who, by virtue of gender identity, ethnicity, age, disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of project benefits. See footnote 11.</p>			

<p>Socio-economic assessment and census</p>	<p>Implementation of a socio-economic baseline assessment on project affected people, including impacts related to land acquisition and land use restrictions. See paragraph 14.</p> <p>Implementation of a census to identify the persons who will be displaced, determine who will be eligible for compensation and assistance and take inventory of affected land and inventory. The census should also take into account seasonal resource users who may not be present in the project area during the time of the census. See paragraph 15.</p>			
<p>Cut-off date</p>	<p>In the absence of national government procedures, the client will establish the cut-off date for eligibility for compensation and assistance. Using the date of the census or baseline assessment is often most practical. See paragraph 16.</p> <p>Persons who move into the project affected area after the cut-off date will not be eligible for compensation and other types of assistance. See paragraph 16.</p> <p>Information regarding the cut-off date will be well-documented and disseminated throughout the project area. See paragraph 16.</p>			
<p>Compensation at full replacement cost</p>	<p>Compensation for loss of assets will be provided at full replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (such as registration and transfer taxes). See paragraph 17, footnote 11.</p> <p>The valuation method for determining replacement cost must be documented in RAPs/LRPs. See footnote 7.</p> <p>Where land markets are in a formative stage, clients should seek valuation by external independent professional valuation experts. See footnote 7.</p>			

Standards for compensation	Standards for compensation and assistance will be transparent and consistent within the project. See paragraph 17.			
Timing of compensation	<p>Compensation will be provided before displacement or imposition of restrictions. See paragraph 17.</p> <p>Alternative housing and/or cash compensation) has to be provided prior to relocation. See paragraph 30.</p> <p>The process of promptly compensating economically displaced persons for loss of assets or access to assets should be initiated prior to displacement. See paragraph 37, bullet 1.</p>			
Compensation in kind/cash	<p>Losses that cannot be valued easily, or compensated in cash, can be compensated in kind if appropriate. See footnote 12.</p> <p>Where livelihoods of affected persons are land-based or where land is collectively owned, land-based compensation will be offered, taking into account seasonal and agricultural timing requirements. See paragraph 17.</p> <p>Payment of cash compensation for lost assets may be appropriate where:</p> <ul style="list-style-type: none"> • livelihoods are not land-based • 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 • active markets for land, housing and labour exist, displaced persons use such markets, and there is sufficient supply of land and housing. See footnote 14. 			

Other resettlement/relocation assistance	<p>Provision of relocation/resettlement assistance sufficient for affected people to restore and, where possible, improve their standards of living and/or livelihoods. See paragraph 32, bullet 2.</p> <p>Specific resettlement assistance should be provided for the poor and the vulnerable. See paragraph 30.</p>			
Restoring (improving) standards of living and livelihoods, opportunities for deriving benefits from the project	<p>The aim of compensation at full replacement cost and other resettlement assistance is to, at a minimum, restore standards of living and/or livelihoods of displaced persons to pre-displacement levels, or ideally improve them. See paragraph 17.</p> <p>The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project. See paragraph 17.</p>			
Categories of displaced persons	<ul style="list-style-type: none"> • Category 1: those who have formal legal rights to the land (including customary and traditional rights recognised under national laws). • Category 2: those who do not have formal legal rights to land at the time of the census but who have a claim to land that is recognised or recognisable under national laws. • Category 3: those who have no recognisable legal right or claim to the land they occupy, including seasonal resource users such as herders/fishing families, hunter and gatherers who may have interdependent economic relations with communities located within the project area. See paragraph 18. 			

<p>Joint property</p>	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or single head of households, whichever is relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs. See paragraph 19.</p> <p>Alternative methods and/or modalities for compensation should be considered where women are less likely to have access to formal financial institutions and/or have bank accounts. See paragraph 20.</p>			
<p>Grievance mechanism</p>	<p>The grievance mechanism will be set up as early as possible in the process to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner. See paragraph 21.</p> <p>Consistently with PR10, the grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution. See PR10, paragraph 28, bullet 1.</p>			
<p>Resettlement and/or Livelihood Restoration Frameworks and Plans</p>	<p>When the exact nature or magnitude of the land acquisition or restrictions on land use is still unknown, a Resettlement and/or Livelihood Restoration Framework will be developed. See paragraph 22.</p> <p>Once the individual project components are defined and the required information becomes available, the framework will serve as a basis for the development of a detailed Resettlement Action Plan (RAP) or Livelihood Restoration Plan (LRP). See paragraph 22.</p>			

	<p>Where involuntary resettlement has already occurred, identify gaps and corrective measures to ensure compliance with PR5 and develop an action plan. See paragraph 9.</p> <p>Where land acquisition and resettlement are the responsibility of the host government, the (private sector) client will develop and implement a plan for bridging the gaps between entitlements provided under national law and those required under PR5. See paragraph 41.</p>			
<p>Monitoring and completion report</p>	<p>Monitoring of the resettlement and livelihood restoration process will be carried out in accordance with PR1 and should involve key stakeholders such as the affected communities. See paragraph 23.</p> <p>Depending on the scale of a project's resettlement, the client may have to commission an external completion of the RAP/LRP to determine that the provisions have been met. It may identify corrective measures and after their implementation, the client's obligations are brought to a close. See paragraph 24.</p>			
<p>Improvement of living conditions through provision of adequate housing / shelter with security of tenure</p>	<p>Improve living conditions (particularly for Category 3) by providing adequate housing which is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Adequate housing should allow access to employment options, markets and basic infrastructure and services (water, electricity, sanitation, health care and education). See paragraph 5, bullet 4, footnote 9.</p> <p>New resettlement sites built for displaced persons will offer, at a minimum, pre-displacement living conditions and where achievable, sustainable and cost-effective opportunities to improve the standard of living. See paragraph 30.</p>			

	Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible. See footnote 10.			
Legal assistance	Displaced persons should be provided with legal assistance to help them complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts. See paragraph 28.			
Entitlements in case of physical displacement	<p>Category 1 and 2 should receive a choice of replacement property of equal or higher value, or cash compensation at full replacement value where appropriate. See paragraph 31.</p> <p>Category 3 should receive a choice of options for adequate housing with security of tenure. See paragraph 32.</p> <p>All categories are entitled to resettlement/ relocation assistance. See paragraph 30.</p>			
Impacts on host communities	Identify and assess potential adverse impacts of the resettlement process on host communities and include mitigation measures agreed with the host community in the RAP. See paragraph 34.			
Livelihoods	Livelihoods may consist of wage-based incomes and/or incomes derived by individuals, families and/or communities from resource utilisation. See footnote 13.			
Entitlements in case of economic displacement (temporary or permanent)	<p>Category 1 and Category 2 should receive:</p> <ul style="list-style-type: none"> • compensation for loss of assets or access to assets, at full replacement cost • replacement property of equal or greater value, or cash compensation at full replacement cost. See paragraph 37, bullet 3. <p>Category 3 should receive:</p> <ul style="list-style-type: none"> • Loss of assets other than land (crops, irrigation infrastructure) at full replacement cost. See paragraph 			

	<p>37, bullet 5.</p> <p>All three categories should receive:</p> <ul style="list-style-type: none"> • compensation for the cost of re-establishing commercial activities elsewhere (paragraph 37, bullet 2) • compensation for lost net income during the period of transition (paragraph 37, bullet 2) • compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment (paragraph 37, bullet 2) • transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living (paragraph 37, bullet 7). • additional targeted assistance (credit facilities, training, or job opportunities) and opportunities. Owners of businesses and employees losing pay or employment are eligible (paragraph 37, bullet 6). <p>Assistance to offset any loss of a community's commonly held resource (such as rangeland and pasture, non-timber forest resources, water resources for agriculture, recreation or fishing) should be provided. See paragraph 37, bullet 4.</p>			
Loss of public amenities	To mitigate loss of public amenities, undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible. See paragraph 40.			