

# LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT

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## 1. ABOUT THIS E&S BRIEFING NOTE

This environmental and social (E&S) Briefing Note is designed to help fund managers quickly familiarise themselves with key issues they may encounter when investing in companies intending to lease or acquire land. It includes guidance on land acquisition, involuntary resettlement and economic displacement as well as related issues such as human rights, food security, land tenure, governance and corruption aspects of land acquisition. It is not intended to be a detailed technical guidance document.

Formal specific technical guidance is provided at the end of this E&S Briefing Note and in [Downloads & Reference Materials](#), including [International Finance Corporation \(IFC\) 2012 Performance Standard 5: Land Acquisition and Involuntary Resettlement](#). Where companies may impact Indigenous Peoples, fund managers should also refer to [IFC 2012 Performance Standard 7: Indigenous Peoples](#).

This E&S Briefing Note provides an overview and general guidance. Fund managers should carefully consider each company based on its specific characteristics and circumstances including scale, location, technology, management capacity and commitment, and track record. Risks, impacts and opportunities relating to a particular company or sector can also change over time for a number of reasons (e.g. changes in the applicable laws and regulations, or changes to a company's activities or assets). Fund managers may need to engage external experts in some situations (see 'Advice for fund managers' section below).

## 2. INTRODUCTION

In recent years there has been a significant increase in the attention given to investments that acquire rights over the use of land in emerging markets. The focus of attention has been primarily on agribusiness and plantation investments, but any investment that acquires land rights at scale, or which affects the livelihoods of prior land users, needs to consider impacts on local communities and individuals whether or not they have formal title to the land.

Involuntary resettlement refers both to physical displacement (relocation and/or loss of home) and economic displacement (loss of access to resources for income generation or means of livelihood) due to land acquisition. Land acquisition involving involuntary resettlement, restrictions on land use and/or economic activity can have significant adverse impacts on communities and companies. It requires careful attention.

The guidance provided in this Briefing Note 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 legal compulsory procedures if negotiations fail). It also does not apply to impacts on livelihoods where the project is not changing the land use of the affected groups or communities. However, even in those cases in which this Guidance Note does not apply, social impacts should always be assessed and managed, even if compensation is not applicable.

### 2.1 What does involuntary resettlement and economic displacement include?

Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse displacement. This includes:

- Land rights or land use rights acquired through expropriation or other compulsory procedures in accordance with the legal system of the host country.
- Land rights or land use rights acquired through negotiated settlements with property owners or legal owners of land, where failure to reach settlement will result in expropriation or other compulsory procedures.
- Situations where involuntary restrictions on land use and access to natural resources cause a community to lose access to resources where they have traditional or recognisable rights of use.
- Certain situations requiring eviction of people occupying land without formal, traditional or recognisable usage rights.

(Note – While some people do not have ownership rights over the land they occupy, international good practice requires that non-land assets be retained, replaced, or compensated for should relocation take place, with security of tenure and livelihoods restored).

- Land or resource use restrictions including communal property and natural resources such as water resources, forest products (both timber and non-timber), medicinal plants, hunting and gathering or grazing and cropping areas.

## 3. WHY COMPANIES AND FUND MANAGERS SHOULD ADDRESS THIS TOPIC

### 3.1 Risks for the business

Unless it is well executed, involuntary resettlement can cause significant material business risks across the spectrum of E&S topics included in this Toolkit. Potential risks include:

- Lose of social licence to operate, resulting in construction or development delays and/or disruption of operations due to social unrest and tensions with local communities as well as legal claims from local communities, which can delay or even halt the granting of permits and licences.
- Fines and penalties.
- Legal claims from local communities, which can delay or even halt the granting of permits and licences.
- Implementation and construction delays resulting in increased compensation costs compared to the costs if the process had been properly managed from the onset (including project design and construction).
- Longer and more complex E&S due diligence by lenders and investors.
- Loss of access to international markets if poor or inadequate land acquisition and compensation practices are evident.
- Damage to reputation as a result of adverse media and/or NGO attention.

### 3.2 Opportunities for the business

Good land acquisition management and compensation processes can have the following benefits:

- Early and proactive involvement by companies in resettlement activities (even where it is not directly or exclusively their responsibility) can lead to cost-effective, efficient and timely implementation of resettlement, and improved livelihoods for those affected by resettlement.
- Continuous and transparent engagement with local communities can help the company identify actions/measures which could both improve the livelihoods of local communities and benefit the company (e.g. larger pool of trained workers, winning local community support, creating out-grower programmes).

## 4. ADVICE FOR FUND MANAGERS

See [CDC Environmental and Social Checklist](#) as it contains questions and tips to help fund managers to assess the E&S aspects of an investment.

IFC's Performance Standards, when applied consistently, well and in a timely manner provide an effective E&S due diligence framework which should ensure effective management of E&S risks. However, particular attention should be given to circumstances where:

- Food security risks are evident and smallholder farmers will be affected by the company's operations.
- Vulnerable groups and individuals will be affected.
- Women may be affected in a different way as compared to men.
- There is evidence of systematic or generalised corruption in the acquisition of land or leases (this is not uncommon in many emerging markets and is not generally captured via the IFC Performance Standards framework).
- Long-established assets are being acquired (generally agribusiness or plantations) – see section 4.2 below.

Companies and investors should have an understanding of the risks they pose to, and their impacts on, local communities. Companies can identify risks and impacts via a formal Environmental and Social Impact Assessment (ESIA), though it is important to recognise that land-related impacts are often poorly addressed in ESIA's (a function of consultant capacity, timing and scope of ESIA's, adequacy and completeness of consultation and difficulties in the definition of social baselines, amongst other reasons).

The materiality of land acquisition issues partly depends on the scale and location of a company's activities. However land acquisition issues occur more often in some sectors given their intrinsic characteristics. These sectors include:

- Agriculture, aquaculture and forestry.
- Infrastructure.
- Power generation, transmission and distribution.
- Mining.
- Oil and gas operations (including extraction, refining and transportation).
- Large-scale construction activities.
- Large-scale manufacturing facilities.

Fund managers should ensure that at a minimum, companies operate in compliance with applicable laws and regulations. Additionally, fund managers should assess: (i) government capacity and commitment to provide fair and transparent acquisition and leasing practices in line with international good practice; (ii) companies' alignment with international standards and ability (as appropriate) to develop Action Plans to ensure that any gaps are addressed within a reasonable time frame. Where significant risks and impacts are encountered, it is likely that specialised advice will be required.

Where involuntary resettlement is likely to occur, fund managers should seek specialist professional advice as economic and physical displacement are complex issues. Fund managers should also engage experts where it is possible that past resettlement and compensation

processes may impact the business or reputation of the company or fund manager.

The guidance included below, primarily focuses on early stage land acquisition and involuntary resettlement processes. Guidance on legacy resettlement issues in a fund manager's investments is covered under 'Physical and economic displacement predating investment'.

Key aspects of involuntary resettlement include:

#### **4.1 Avoiding land acquisition and involuntary resettlement**

Unless properly managed, involuntary resettlement may result in long-term hardship and poverty for affected persons and communities, as well as environmental damage and social stress in areas to which they have been relocated. Involuntary resettlement should be avoided wherever possible and where unavoidable should be minimised through careful consideration of project design and timing and other measures. Companies should take appropriate measures to mitigate adverse impacts on displaced persons, including effective and continuing stakeholder engagement/consultation, the implementation of a grievance recourse mechanism, and fair compensation for affected parties (including host communities who receive resettled individuals/communities).

#### **4.2 Physical and economic displacement predating investment**

Fund managers should always assess the risks and impacts associated with companies whose activities have involved or will involve economic and/or physical involuntary resettlement of local communities. In circumstances where involuntary resettlement predates the fund manager's investment, it is still necessary to assess whether the involuntary resettlement processes could have an impact on the company and/or the fund. Where 'legacy land' risks are evident, particular care needs to be taken since social baselines, prior compensation arrangements (and the adequacy of these) may be contested. For further practical and detailed guidance on how to deal with these situations, refer to CDC and DEG's ['A guidance note on managing legacy land issues in agribusiness investments'](#).

*N.B. For the purposes of this E&S Briefing Note, legacy land includes concessions (i) that are long established (a minimum of five years), (ii) where the details of acquisition/lease arrangements and baseline socioeconomic conditions are uncertain, (iii) where the ownership or lease has changed hands (so that the current owners/lessees were not involved in the original contracts), and (iv) where compensation arrangements for individuals and/or communities whose livelihoods were affected are uncertain or contested.*

Fund managers should ask the company to provide information about how resettlement and compensation processes were conducted. Where significant risks or impacts linked to past involuntary resettlement are identified, fund managers should engage specialists to assess the materiality of the risks and to assist with the development of measures to address any issues. The risks associated with legacy resettlement and compensation can be complex.

### 4.3 Social impact assessment, resettlement planning and implementation

Where involuntary resettlement is unavoidable, companies should conduct a social baseline study to identify who will be displaced and understand the likely impacts on them and the wider community. An entitlement framework should also be developed to determine who is eligible for compensation, with particular attention to vulnerable groups and women.

In some areas displaced persons may not have formal legal rights or claims to the land they occupy. Even if formal legal rights to the land are not held, they may still have a claim that is recognised or recognisable under national or customary law which would trigger the need for compensation and settlement practices in accordance with good internal practices (e.g. IFC Performance Standard 5).

It is crucial to establish a clear and unambiguous social baseline against which compensation measures can be determined. This can become complicated when a fund manager becomes involved after the compensation process has started or when legacy resettlement grievances are being addressed, particularly if the government has been involved. (See below for more information.)

### 4.4 Who is entitled to compensation?

During the environmental and social impact assessment process, companies should identify which people will be affected by the project, including those individuals who will be physically and/or economically displaced. According to international standards, there are three main types of groups entitled to compensation. The type of compensation to be provided varies across these three different groups of affected people:

<b>SUMMARY OF GROUPS ENTITLED TO COMPENSATION AND TYPE OF COMPENSATION TO BE PROVIDED</b>		
<b>Displaced group entitled to compensation</b>	<b>Compensation to be provided</b>	
	<b>Physical displacement</b>	<b>Economic displacement</b>
Persons who have formal legal rights to the land or assets they occupy or use.	<ul style="list-style-type: none"> <li>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 where appropriate. Compensation in kind should be considered in lieu of cash. Cash compensation should be sufficient to replace the lost land and other assets</li> </ul>	<ul style="list-style-type: none"> <li>Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at full replacement cost.</li> <li>In cases where land acquisition or restrictions on land use affect commercial structures, affected business owners will be compensated for the cost of re-establishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant or other equipment.</li> </ul>
Persons who do not have formal legal rights to land or assets, but have a claim to land that is recognised or recognisable under national law.		

	<p>at full replacement cost in local markets.<sup>1</sup></p> <ul style="list-style-type: none"> <li>• Provide relocation assistance to the displaced persons and take into account their preferences in terms of relocation. Existing social and cultural institutions of the displaced persons and host communities will be respected.</li> <li>• All of the above to be captured in a Resettlement Action Plan (RAP).</li> <li>• Companies are 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Replacement property (e.g., agricultural or commercial sites) of equal or greater value will be provided, or, where appropriate, cash compensation at full replacement cost.</li> <li>• In addition to compensation for lost assets, if any, economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living:             <ol style="list-style-type: none"> <li>1. 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 should be offered as a matter of priority;</li> <li>2. For persons whose livelihoods are natural resource-based and where project-related restrictions on access, implementation of measures will be made to either allow continued access to affected resources or provide access to alternative resources with equivalent livelihood-earning potential and accessibility.</li> <li>3. If circumstances prevent the company from providing land or similar resources as described above, alternative income-earning opportunities may be provided, such as credit facilities, training, cash, or employment opportunities. Cash compensation alone is frequently insufficient to restore livelihoods.</li> </ol> </li> <li>• Transitional support should be provided to economically displaced persons, based on a reasonable</li> </ul>
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<sup>1</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 Communities and persons to replace lost assets with assets of similar value.



		<p>estimate of the time required to restore their income-earning capacity, production levels, and standards of living.</p> <ul style="list-style-type: none"> <li>• In the case of projects involving economic displacement, the company will develop a Livelihood Restoration Plan capturing the compensation measures and the persons entitled to compensation.</li> </ul>
<p>Persons who have no recognisable legal right or claim to the land or assets they occupy or use.</p>	<ul style="list-style-type: none"> <li>• Offer 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.</li> <li>• Where these displaced persons own and occupy structures, the company 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 persons have been occupying the project area prior to the cut-off date for eligibility.</li> <li>• Relocation assistance to be provided.</li> <li>• All the above to be captured in a Resettlement Action Plan (RAP).</li> </ul>	<ul style="list-style-type: none"> <li>• Compensate for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at full replacement cost.</li> <li>• In addition to compensation for lost assets, if any, economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living (see box above for further details).</li> <li>• Transitional support should be provided to economically displaced persons.</li> <li>• Companies are not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date for eligibility.</li> <li>• In the case of projects involving economic displacement, the company will develop a Livelihood Restoration Plan capturing the compensation measures and the persons entitled to compensation.</li> </ul>

*N.B. The table above is a summary and does not describe in detail the compensation to be provided and does not cover every possible situation (for instance, legacy land).*

#### 4.5 Consultation and grievance mechanism

Fund managers should ensure that companies have conducted an effective and open consultation which includes all affected parties (including specifically vulnerable groups and

women), and implemented an adequate grievance mechanism to ensure that affected parties can engage with the company (and other parties) to gain fair and timely compensation and assistance. Fund managers should be aware that because economic and physical displacement are complex issues it is common for companies to receive grievance claims. It is important for fund managers to understand not only the nature and number of grievances received, but also how the company addresses them.

If the company's operations have required or will require the displacement of people and very few grievances have been received, fund managers should investigate whether grievances are appropriately documented and assess the effectiveness of the grievance mechanism.

#### **4.6 Cut-off date**

A cut-off date is the date of completion of the census and therefore the date by which assets and people affected must be registered. Persons who occupy the project area after the cut-off date will not be eligible for compensation and/or resettlement assistance. Similarly, fixed assets (such as built structures, crops, fruit trees, and woodlots) established after the date of completion of the assets inventory or an alternative mutually agreed on date will not be compensated.

In the absence of host government procedures, companies should establish a cut-off date for eligibility. Information regarding the cut-off date should be well documented and well communicated throughout the project area. Fund managers should ask companies to be clear about the cut-off date as together with a robust baseline assessment it helps to reduce risks of opportunistic settlers.

#### **4.7 Compensation and benefits framework for affected people**

When involuntary resettlement cannot be avoided, the company should provide affected persons and communities' compensation for loss of assets at full replacement cost and give other assistance to help improve or at least restore their standard of living or livelihoods. Good practice requires companies to work proactively with affected people to enhance their livelihoods after resettlement (for example, through employment, skills training or other development benefits). Importantly, compensation should be provided not only where affected parties have legal title over assets and land, but also where affected people do not have formal rights over the land (e.g. traditional rights on the use of resources).

Where losses cannot be easily valued or compensated for in monetary terms, compensation should be made in goods or resources that are of equivalent or greater value and that are culturally appropriate (i.e. in-kind compensation).

Companies should develop and follow a transparent compensation framework that:

- Identifies all affected people.
- Provides an inventory of affected assets.
- Describes the methods used to value land and affected assets (at full replacement cost).
- Indicates the rates of compensation to be paid.
- Outlines a schedule of land take and compensation payments.
- Describes the process whereby affected people can appeal property valuations they deem to be inadequate.

#### **4.8 Physical displacement**

Where affected people will be physically relocated, fund managers should ensure that companies (or their consultants) design and implement a resettlement action plan (RAP). The RAP should be designed to mitigate the negative impacts of displacement. It should include the procedures the company will follow and outline the actions that it will take to mitigate adverse effects, compensate losses and provide development benefits to affected persons and communities.

Fund managers should ensure that companies:

- Offer displaced persons a choice of feasible resettlement options, which includes adequate replacement housing or (if this is not available) cash compensation.
- Provide compensation at full replacement cost.
- Provide relocation assistance suited to the needs of each group of displaced persons. Particular attention should be paid to the needs of poor and vulnerable people. New resettlement sites built for displaced persons should offer improved living conditions.

The RAP should be consistent with the above.

#### **4.9 Economic displacement**

Where affected people lose income or assets (but do not have to relocate), companies should provide compensation. For example, compensation should be paid to affected communities for the loss of crops, the cost of re-establishing commercial activities elsewhere and for lost net income during the period of transition.

In the case of activities/projects involving economic displacement only, companies should develop a livelihood restoration plan (LRP) to compensate affected persons and/or communities and offer other assistance in accordance with good international practice. The LRP should establish the entitlements of affected persons and/or communities and ensure these are provided in a transparent, consistent, and equitable manner. The mitigation of economic displacement is considered complete when all affected persons or communities have received compensation and other assistance and deemed to have been provided with adequate opportunity to re-establish their livelihoods.

#### **4.10 Government-managed resettlement**

Where land acquisition and resettlement is the responsibility of the government, companies should collaborate with the responsible government agency to the extent permitted to ensure outcomes consistent with good international practice (e.g. IFC Performance Standard 5). This includes addressing any compensation gaps between government payment and international standard compensation definitions. This is will be more complex for legacy resettlement and in these cases the fund manager should engage specialists.

#### **4.11 Support for local facilities and infrastructure**

In some cases, companies may be asked to support community development or provide public services (e.g. construction or running of schools, clinics or other local services). This should not be done as a trade off for impacts that could have been avoided, reduced or

mitigated. It is important to follow the mitigation hierarchy (avoid, reduce, mitigate and fully compensate). Ultimately the goal is to ensure that community impacts are addressed in the first instance and to deliver additional mutually beneficial support thereafter.

#### **4.12 Food security**

It is generally the responsibility of governments to plan and manage food security at a national/regional level, but where an investment can reasonably be predicted to impact local food security it is imperative that this impact is specifically addressed in the E&S due diligence process and that there is effective and ongoing consultation with affected parties. More broadly, there is a growing expectation for companies to address food security risks (particularly in the case of agribusiness firms), even though this may formally be the responsibility of government.

#### **4.13 Corruption**

In many emerging markets the acquisition of land is tainted with a variety of corrupt and illegal practices. These are not typically captured within the IFC Performance Standards framework (or as part of a typical E&S due diligence), though this risk should be captured elsewhere in broader due diligence.

## 5. FURTHER RESOURCES

### 5.1 Further information and guidance

- [2012 Performance Standard 5: Land Acquisition and Involuntary Resettlement.](#)
- [2012 Guidance Note 5: Land Acquisition and Involuntary Resettlement.](#)
- [2014 Principles for Responsible Investment in Agriculture and Food Systems.](#)
- [2016 A guidance note on legacy land issues in agribusiness investments.](#)
- [2012 Voluntary Guidelines on the Governance of Tenure.](#)
- [2015 Analytical Framework for Land-Based Investments in African Agriculture.](#)
- [2015 Respecting Land and Forest Rights: A Guide for Companies.](#)