

## **Comments on World Bank Draft Guidance Note for ESS 5**

### ***Land Acquisition, Restrictions on Land Use and Involuntary Resettlement***

**from**

**The International Network on Displacement and Resettlement [www.displacement.net](http://www.displacement.net) <sup>1</sup>**

The Guidance Note explains the requirements of Environmental and Social Standard No. 5 (ESS5) but it inadequately achieves the overall objectives of the ESF for five reasons:

- It omits or fails to provide guidance regarding certain core elements of the ESS5 that are key to achieving borrower compliance with the requirements and, therefore, satisfactory involuntary resettlement.
- Guidance that is provided in several instances does not reflect accurately many lessons learned over several decades of international experience with involuntary resettlement.
- Key technical, social and economic analyses essential for sound project design are missing from the Guidance Note including asymmetrical power relationships that vitiate mandated consultations with affected people.
- Operational guidance on classifying, managing, monitoring and evaluation for involuntary resettlement risks and outcomes specifically could be strengthened significantly to address the priorities highlighted in the ESF overall.
- In contrast to previous Bank policies, resettlement expertise, experience, and specialization is excluded from project preparation, appraisal, and implementation in contrast to the previous Bank policy on resettlement.

These comments are intended to strengthen the Guidance Note (GN for ESS5) by incorporating lessons learned from practical experience and decades of research by social scientists specialized in involuntary resettlement.

Based on this review, INDR - as a professional association - does endorse neither the ESS5 nor its GN. Both fall short assisting the Bank and its clients in avoiding increasing the risk of creating new

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<sup>1</sup> The International Network on Displacement and Resettlement (INDR) is chartered as a non-profit, international professional association, founded in 2000. Its professionals work in all aspects of development-induced displacement and resettlement (DIDR) ranging from on-the-ground managers of displacement projects to socio-economic project designers, evaluators, policy developers, lawmakers focusing on takings, and more. Our primary concern is for people who are “in the way” of development and desire to prevent, avoid or mitigate the predictable but preventable negative outcomes. [www.displacement.net](http://www.displacement.net)

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poverty and irrefutable socio-cultural and, unfortunately, even sustained economic damage to project affected peoples.

### **Country Legal and Regulatory Frameworks**

ESS5 GN 12.1 and 12.2, ESS5 Annex 1, and in the ESS1 (Assessment and Management of Environmental and Social Risks) (para 21 and 22) assert that the Borrower's existing legal and regulatory frameworks for environmental and social assessment and management (ES) may be used provided that any "gaps" with the provisions of ESS5 and ESS1 are "addressed."

This country-system position might be valid were such legal and regulatory frameworks addressing the issues in the policy actually exist. But in the vast majority of countries this is not the case. Cornerstone element of Bank policies, which prioritise development, people's livelihoods, living standard and resettlement are not part of most country property and expropriation law. Elements of Bank policy are not found in country laws, including requirements that those acquiring land and other benefits through land acquisition and transfer provide assistance, over and above mere compensation, including livelihood, benefits and successful resettlement. As a result, defining and filling such "gaps", particularly under pressing project-deadlines, becomes risks creating ambiguity and uncertainty on all sides - particularly among the displaced.<sup>2</sup> What appears a convenient fix actually creates larger problems. Guidance is not made if the country lacks a substantive, comparable regulatory framework, as is many times the case.

The GN do not resolve this long standing disjuncture between the Bank's and country-level legal and regulatory standards. In 2000, the World Bank's Vice President and General Counsel, Ibrahim Shihata noted, in the majority of countries legal frameworks for land acquisition are "entirely silent on resettlement and re-establishment of people displaced by expropriation of properties upon which they depend."<sup>3</sup> Legal agreements signed with the Bank by Borrowers are "governed by public international law and consequently the member concerned is under obligation to adapt its domestic law to the agreement with the Bank."<sup>4</sup> Therefore when gaps exist between a country's domestic legal framework and the international policy on involuntary resettlement agreed with the Bank, the former must be brought into alignment with the latter. This alignment holds ONLY for the Bank financed project, NOT the country as a whole. The Bank has no legal standing or capacity to demand changes in domestic law or policy.

Few countries in the world have felt it necessary to bring domestic law into agreement with the resettlement policies agreed among the member governments of the World Bank. India, China, Brazil, Thailand, and Columbia have begun to rewrite their legal and regulatory frameworks. Others

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<sup>2</sup> Policies, including guidelines and operational directives, are part of a regulatory framework.

<sup>3</sup> Shihata, I. F. I. (2000). "Involuntary Resettlement," in *The World Bank in a Changing World: Selected Essays by I.F.I. Shihata, Vice President and General Counsel, The World Bank*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.

<sup>4</sup> Ibid.

have initiated limited reforms in their takings laws and regulations, but the changes fall short of the overall Bank policy standard.

Consequently, each Bank project must generate a new a “project specific” policy and legal framework for resettlement in compliance with Bank policy. Resettlement project planning is entirely a *sui generis* process to each project or investment - often idiosyncratically attempting compliance with international and local standards. By *sui generis*, INDR means that every element of the resettlement plan - the legal framework, the census and baseline studies, the cut-off date, the socio-economic analysis, eligibility criteria, technical design of alternative measures to reconstruct productivity and income streams, special attention to the vulnerable, grievance and appeal mechanisms, institutional responsibilities and staffing, participation of the affected people, implementation arrangements, transitional support, transportation allowances, time bound costs estimates, budgetary and financing arrangements, monitoring and evaluation outcomes - all must be generated in the absence of laws, regulations, procedures, norms, or requirements “owned” by the Borrower. This also reduces the likelihood that the Borrower or Client uses these policies in non-Bank financed endeavors. Moreover, the jurisdictional scope of the framework is spatially limited to the investment and temporally restricted to the limits set by the investment documents.

Operationally, this complex planning process must be squeezed into a tight timeframe which may not be designed to accommodate it. The highest risks occur at the initial risk identification<sup>5</sup> and subsequently in the short window after detailed technical design and before civil works contracting displaces people.<sup>6</sup> This further limits the Bank’s on-the-ground sustainable impact, increases operations inefficiency and costs, elevates risks of impoverishment of the affected people, creates long term livelihood problems, and exposes the institution to reputational risks.<sup>7</sup>

The Guidance Note for ESS5 does not adequately address this substantial challenge which is well known from the experience of other Bank project. Staff face a yawning legal and regulatory chasm rather than a gap. And the Bank staff is to assist the Borrower to come up with a resettlement legal framework, and action plan from scratch.

### **Vulnerable Affected People**

The first time “vulnerable” affected people are mentioned (ESS5 para 2, footnote 4) vulnerability should be defined and examples provided.. The Guidance Note fails to define or illustrate vulnerability in the context of resettlement. Vulnerability consists in the incapacity of those displaced to defend or assert their interests due to lack of financial resources, absence of legal support, illiteracy

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<sup>5</sup> World Bank Inspection Panel (2016). Emerging Lessons Series No. 1 Involuntary Resettlement World Bank Washington D.C.

<sup>6</sup> Asian Development Bank (2016). “Thematic Evaluation Study: Real Time Evaluation of ADB’s Safeguard Experience based on Selected Case Studies” ADB, Manila.

<sup>7</sup> Cernea, M. (1997). “The Risks and Reconstruction Model for Resettling Displaced Persons,” *World Development* 25:10:1569-1587.

or poor education, lack of marketable skills, poor health or disability, indigency or poverty, landlessness, homelessness, indigenous and/or ethnic, religious, linguistic, or gender discrimination<sup>8</sup>

The vulnerable people are quite often the majority affected by involuntary displacement and resettlement. Who is and is not vulnerable should be clearly delineated in forced displacements laws and regulations. For example, over 50% of affected people in many countries (examples include India, Turkey, Colombia) are landless. They receive no compensation because they do not own property but work for the landowners. The bulk of affected people in rural areas and urban slums in most countries are functionally illiterate with few or no marketable skills and without legal title to the lands/houses upon which they depend for survival. Social, economic, and political discrimination and exclusion of indigenous peoples and minorities and women is ubiquitous throughout the world.

This is important because the Guidance Note for ESS5 devotes an inordinate amount of space to guidance for cash compensation paid to property owners (GN 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13 and GN 6.1, 6.2, and GN 12.1, 12.2, 13.1) but comparatively little space is devoted to the vulnerable who by definition receive no cash compensation and are more often than not the majority of affected people physically and/or economically displaced.

The policy calls for the vulnerable be provided “assistance of some sort under ESS5, the nature of that assistance may vary, as subsequent paragraphs of ESS5 make clear” to resettle and/or reestablish their socio-economic productivity (GN 10.1). “Sort of” compounds ambiguity. Nowhere do we find guidance to identify that “assistance” nor is it described in concrete technical terms. It is not clear. The GN for ESS5 needs to be much more precise in defining such “assistance” based on international practical experience. For example: grants of arable land to the landless, vulnerable,<sup>9</sup> grants of

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<sup>8</sup> Partridge, W. (in press) “Achieving International Resettlement Standards,” *Essays in Honor of Elizabeth Colson*, Oxford Refugees Studies Center.

<sup>9</sup> Euler-Hermes and Banco de Santander (2011). *Social Due Diligence Analysis of Resettlement and Downstream Impacts of the Sagamoso Dam, Bucaramanga, Colombia*. Hamburg and Madrid. World Bank (1991). *Daguangba Multipurpose Project*. Staff Appraisal Report. Washington, DC. Asia Development Bank (2008). *Completion Report. PRC: Shanxi Road Development II Project*. Manila. Partridge, W. L. (1993). “Successful Involuntary Resettlement: Lessons from the Costa Rican Arenal Hydroelectric Project,” in *Anthropological Approaches to Resettlement*, Pp. 351-369. Edited by M. M. Cernea and S. E. Guggenheim. Boulder, Colorado: Westview Press United Nations Environment Program. 2006. Independent Monitoring of the Maguga Dam Resettlement. Nairobi. Swaziland Federal Ministry for Economic Cooperation. 2008. *Dams and Development: The Komati Basin Water Authority Experience*. Mbabane..

apartments or houses close to work to those who had no title to their dwelling<sup>10</sup>, subsidies for start-up enterprises,<sup>11</sup> and job training, education, and capacity building in too many projects to mention.

Resettlement assistance to the vulnerable is enormously more complex and difficult than handing out cash compensation to the privileged property owners. It invariably requires a technical and an economic analysis by professionals to determine the nature and levels of vulnerability, whether or not the proposed assistance is viable, desired and operable by the affected people, and whether or it provides the opportunity to reconstruct and hopefully improve their livelihoods. Yet, the need for technical and economic analysis of resettlement and re-establishment alternatives is nowhere mentioned in the Guidance Note for ESS5. In so doing, the Bank is abrogating its responsibilities and self-proclaimed expertise and experience with social and economic analysis, none of which is reflected here.<sup>12</sup>

### **Customary or Traditional Rights**

The forceful acquisition of land for a project is not a willing-buyer/willing acquisition of real estate. It is a radical restructure of a specific land tenure. Land tenure governs not only the traditional or legal rights individuals or groups have to land, but also labor organization, social relationships, and the often the institutional frameworks for local economies.<sup>13</sup> While land tenure systems are immutable, abrupt restructurings such as forced takings, pose extreme risks to dismantling viable economic, social and cultural, political arrangements, cooperative ties, ethnic relations, and institutional systems. Arguments that oversimplify or ignore these nexus border are unacceptable in 2018.

Like previous Bank involuntary resettlement policies, the GN 10.1 continues to oversimplify, if not overturn, decades of research and experience, naively creating three eligibility categories of “affected persons” based on the government’s recognition of the affected people’s rights to the land being acquired overlooks a tsunami of risks to those being? being displaced, including multiple impoverishment risks, long term patterned socio-cultural changes, and losses of identity. The GN

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<sup>10</sup> World Bank (2002). *India: Mumbai Urban Transport Project*. Staff Appraisal Document. Washington, DC Partridge, W. L. (1993). “Successful Involuntary Resettlement: Lessons from the Costa Rican Arenal Hydroelectric Project,” in *Anthropological Approaches to Resettlement*, Pp. 351-369. Edited by M. M. Cernea and S. E. Guggenheim. Boulder, Colorado: Westview Press. Millennium Challenge Corporation (2015). *Logistical Infrastructure Project: Strategic Resettlement Action Plan*, FOMILENIO-Ministry of Public Works, San Salvador. World Bank (2008). *People’s Republic of China: Hubei Shiyang-Manchuangan Expressway (Shiman) Project*. Project Information Document. Washington, DC.

<sup>11</sup> Asian Development Bank. 2008. *Completion Report. PRC: Shanxi Road Development II Project*. Manila. World Bank. 2004. *Xiaolangdi Resettlement Project: Implementation Completion and Results Report*. Washington, DC. United Nations Environment Program. 2006. *Independent Monitoring of the Maguga Dam Resettlement*. Nairobi. Swaziland Federal Ministry for Economic Cooperation. 2008. *Dams and Development: The Komati Basin Water Authority Experience*. Mbabane.

<sup>12</sup> There is a glancing reference to vulnerability is made later in GN 17.3, but this is too cursory and incomplete to provide useful guidance regarding such a critical problem.

<sup>13</sup> Frithjof Kuhnen (1982), *Man and land. An introduction into the problems of agrarian structure and agrarian reform*. Deutsche Welthungerhilfe. Saarbrücken.

<http://www.professor-frithjof-kuhnen.de/publications/man-and-land/1-1-1.htm>

undercuts The World Bank's claims of being a global knowledge bank, especially in social development.

An example. The mistake is compounded asserting that “national law often has legal procedures by which such claims [to customary rights] can become recognized.” This is not true. Claims to customary communally held land may be legally registerable by a customary group but only in order to record a transfer to a single owner, so facilitating development. A recent report notes that while local communities hold upwards of 65% of the world's land area under customary tenure systems, national governments over decades and decades have legally regularized only a small fraction of this land.<sup>14</sup> In a survey of 19 Sub Saharan African countries, this study found that only 2.75% of community and indigenous lands are legally recognized as owned by local communities and indigenous peoples. In Latin America and the Caribbean, with the exception of Uruguay, most governments have failed for decades to issue ownership titles to between 50% (Colombia) and 70% (Honduras) of small peasant farmers, indigenous peoples, and Afro-descendant communities. The same is true of much of the Pacific, East Asia and South Asia Regions when it comes to the ancestral rights to the territories of indigenous minorities.

In most instances involving claims to customary or traditional land/resource rights the Bank has had to finance legal services to attempt to regularize such claims to permit the resettlement planning and implementation processes to go forward, but this is not mentioned in the Guidance Note. Rarely have Borrowers corrected this enormous legal inequity as concerns customary or traditional rights, and without legal services to correct this lacuna there can be no viable resettlement plan. The present paragraph on Category (b) eligibility will be perceived as a meaningless platitude to any professional who knows these situations on the ground.

GN 10.1 Category (c) needs to be strengthened by citing and including renters, tenants, sharecropper, employees, etc. many of whom have customary usufruct rights to resources they do not own but depend upon. For example, it is customary throughout Central and South America for workers on livestock ranches, plantations, and other estates to receive only a small salary but traditionally they are granted rights to estate land to cultivate subsistence crops, rights to build a shelter, rights to graze their own animals on the owner's pasture, in addition to a small subsidy to buy school uniforms for their offspring, rights to emergency loans in health crises, etc. Similarly, the instances of affected people being tenant farmers or sharecroppers or resident farm laborers is large all over the world. In addition, in urban areas most affected people are employees of small and large businesses who have no recognizable legal rights or claim to the shops upon which they depend for their livelihoods and will require a different kind of “assistance” than the cash compensation paid to shop owners in order to resettle. In short, Category (c) should be strengthened by including these kinds of affected people rather than just herders, grazers, fishers, etc. and by emphasizing their eligibility for resettlement assistance.

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<sup>14</sup> Rights and Resources Initiative (2015). *Who Owns the World's Land? A Global Baseline of Formally Recognized Indigenous and Community Land Rights*. Washington, DC: RRI.

In sum, ESS5 and its GN have obfuscated and further confused, rather than resolved critical economic and social development issues in an involuntary resettlement. If followed, they lead to increased impoverishment, social development and economic risks to people in the path of Bank investments. Rethinking and redrafting is warranted, at minimum to protect the Bank's reputation.

## **Replacement Land**

In ESS5 paragraph 14, paragraph 35, and in GN 12.1(d) and GN 14.1 reference is made to providing cash compensation to affected people traditionally dependent on land “only when it can be demonstrated that no feasible alternative measures are available.” Yet the Guidance Note does not explain how a Borrower is supposed to “demonstrate” to the Bank that no land is available. No guidance is provided regarding the empirical criteria to be used to assess whether or not land of sufficient quality and size can be made available.

The following may help to formulate the missing criteria:

- Has the Borrower examined irrigating host community land and thereby doubling its carrying capacity to absorb the displaced?
- Has the Borrower investigated the feasibility of reclaiming barren slopes through terracing, topsoil rescue, and/or green manuring?
- Is the Borrower aware that in many urban areas government may be the largest landowner with significant amounts of government land that remain unused or underutilized?
- Did the Borrower study the possibility of restricting land sales in newly irrigated common areas to displaced people, taking advantage of the fact that current owners always sell about one-third in order to finance land leveling, installation of sluice gates, and opening water channels on formerly dry lands?
- Has the borrower proved empirically that there is no land market operating through which it would be possible to buy replacement land for the affected people?
- Has the Borrower exhausted the possibilities of re-apportioning land among hosts and the displaced and investing in intensifying and diversifying production to support both?

It is implied in GN 12.1 and GN 35.2 and inter alia throughout the ESS5 Guidance Note that cash compensation in lieu of providing technically and economically viable alternatives for rebuilding livelihoods is to be avoided. But it is not explained why. Nor is this true for all displaced people.

The ESS5 Guidance Note does not differentiate between such relatively privileged affected people and those who cannot survive without resettlement assistance, but it should to present an analysis that reflects lessons learned over the last 40 years. Cash compensation is usually preferred by wealthier affected people, large landowners, owners of businesses, those operating corporate franchises, etc. who have the resources, political influence, lawyers, and education to resettle themselves. Most such privileged displaced people prefer cash and self-resettlement to an organized resettlement operation executed by a government, an NGO, or a private sector entity.

Alignment of the GN with experience and scientific knowledge requires the GN to state that cash compensation is generally not acceptable for rebuilding the livelihoods of those who are vulnerable and those who are not wealthy and require resettlement assistance in order to re-establish their livelihoods. This is because cash compensation does not prevent development-induced impoverishment when land and labour markets and safety nets are undeveloped and where compensation funds risk diversion. Cash compensation is quickly stripped by moneylenders, shopkeepers, and landlords to whom small farmers, small business persons, and employees are invariably indebted.<sup>15</sup> Further, assessment of compensation is usually based on sales records over a period of several years, but sales records do not reflect replacement values because buyers and sellers usually collude to report smaller amounts to reduce taxes.<sup>16</sup> Cash compensation is paid only to those with legal ownership rights, which leaves landless displaced people without resources to pay the expenses of resettling themselves in the absence of assistance.<sup>17</sup> Cash compensation is not paid for common property resources expropriated (forests, grasslands, rangelands, fisheries, etc.) that may provide as much as 80% of the income of the poor derived from livestock, non-timber forest products, hunting, and fishing.<sup>18</sup>

### Overlooked Social and Economic Impacts

ESS5 and the GN arbitrarily and incorrectly narrow the Bank and its Client's responsibilities primarily to a land transaction, ignoring social and economic harms to the displaced that leave them significantly worse off than before the project's actions. Decades of scientific research and the Bank's own experience have identified social and economic harms that, if unaddressed, downgrade the futures of the displaced.<sup>19</sup> The GN should identify these and provide guidance for avoiding, minimizing or mitigating them. These include:

- Increased levels of stress, measured at rates exceeding clinical levels<sup>20</sup>

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<sup>15</sup> Nagi Reddy, C. P. (1986). *Socioeconomic Survey of Project-Affected Persons Under the Lower Manair Dam*. Centre for Economic and Social Studies. Hyderabad, Andhra Pradesh. Nagi Reddy, C. P. (1986). *Rehabilitation of Srisaillam Project-Affected Persons*. Centre for Economic and Social Studies. Hyderabad, Andhra Pradesh. Mahapatra, L. K. (1986). *Resettlement and Rehabilitation Policy and Performance in Orissa II Irrigation Project*. Utkal University, Bhubaneswar, Orissa. 12. Bose, S. (1990) *India Land Acquisition and Resettlement: Processes and Procedures in Four States*. Asia Technical Department. World Bank, Washington, DC.

<sup>16</sup> Bose, S. (1990). *India Land Acquisition and Resettlement: Processes and Procedures in Four States*. Asia Technical Department. World Bank. Washington, DC

<sup>17</sup> Ibid. Bose 1990.

<sup>18</sup> Jodha, N. S. (1986) "Common Property Resources and the Rural Poor in Dry Regions of India," *Economic and Political Weekly*. July 5.

<sup>19</sup> Cernea, M. (1997). "The Risks and Reconstruction Model for Resettling Displaced Persons," *World Development* 25:10:1569-1587.

<sup>20</sup> Scudder, T. (1985) "A Sociological Framework for the Analysis of New Lands Settlement," In M. Cernea (ed). *Putting People First*. Pp. 121-153. New York: Oxford University Press. De Wet, C. J. (1993) "A Spatial Analysis of Involuntary Community Relocation: A South African Case Study," In *Anthropological Approaches to Resettlement*, M. Cernea and S. Guggenheim (eds) Pp. 321-350. Boulder: Westview Press. Xi, Juan (2016). "Types of Integration and Depressive Symptoms: A Latent Class Analysis on the Resettled Population for the



- Irreversible socio-cultural losses, including those that underlie a group and individual's definition of answers to primary human questions - where do I/we fit in the social and economic order?<sup>21</sup>
- Threats to civil rights held by their non-displaced and/or host population peers, particularly their right to negotiate their future.<sup>22</sup>
- Loss of economic and social values derived from informal use of common natural and spatially shared resources, such as cooperation, reciprocity, and respect for community norms governing usufruct rights<sup>23</sup>
- Breakdown of authority structure and rising social conflict, factionalism, protest and distrust of community leaders, project officials, and government.<sup>24</sup>
- Disruption of established social networks that provide child care, support for the elderly, emergency loans, and security of person and property.<sup>25</sup>
- Potential violation of the human rights of the displaced, particularly from failure to timely and clearly disclose information critical to their future.<sup>26</sup>

Monetary compensation for land transactions emphasized by the GN does not address these harms nor the actions, measures, or instruments to minimize or mitigate them - including allowance of time,

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Three Gorges Dam Project, China.” *Social Science & Medicine*. 157:78-86. Cao, Yue, Sean-Shong Hwang, and Juan Xi. 2012. “Project-Induced Displacement, Secondary Stressors, and Health.” *Social Science and Medicine* 72:1130-38.

<sup>21</sup> Downing, Theodore E and Carmen Garcia-Downing (2009). “Routine and Dissonant Culture: A theory about the psycho-socio-cultural disruptions of involuntary displacement and ways to mitigate them without inflicting even more damage.” In Anthony Oliver-Smith. In *Development and Dispossession: The Anthropology of Displacement and Resettlement*. Anthony Oliver-Smith (ed). Santa Fe: School for Advanced Research Press.

<sup>22</sup> Aronsson, Inga-Lill. The Paradox of Local Participation in Forced Displacement and Resettlement Caused by the Development Process. (2009) *Revista Română de Sociologie*, serie nouă, anul XX, nr. 1-2, p. 37-59, București, 2009

<sup>23</sup> Ibid Downing and Garcia-Downing 2009

<sup>24</sup> Colson, E. F. (1971) *The Social Consequences of Resettlement*. Manchester: Manchester University Press.

Partridge, W. L. (1989) “Involuntary Resettlement in Development Projects.” *Journal of Refugee Studies* 2:3:373-384. Guggenheim, S. E. (1993) “Peasants, Planners and Participation: Resettlement in Mexico,” In *Anthropological Approaches to Resettlement*, M. Cernea and S. Guggenheim (eds) Pp. 201-228. Boulder: Westview Press.

<sup>25</sup> Partridge, W. L. (1983) *Comparative Analysis of BID Experience With Resettlement Based on Evaluations of the Arenal and Chixoy Projects*. Office of Operations Evaluation, Inter-American Development Bank, Washington, DC. UN Habitat (2011) *Losing Your Home: Assessing the Impact of Eviction*. Nairobi: UN Habitat and United Nations Office of the High Commissioner for Human Rights.

<sup>26</sup> Johnston, Barbara and Carmen Garcia-Downing (2004) “The Pehuenche: Human Rights, the Environment, and Hydro-development on the Biobio River, Chile” by Barbara Rose Johnston and Carmen Garcia-Downing in *Indigenous Peoples, Development and Environment* edited by Harvey Feit and Mario Blaser (Zed Books). 2004:211-231.

mutual respect, and genuine participatory negotiation of the design of resettlement alternatives, in lieu of simply “consultation,” all of which have been shown to help avoid pitfalls.<sup>27</sup>

### **Power Asymmetries Ignored**

The ESS5 and GN fail to address adequately the heavily lopsided hierarchical relationship between a powerful Borrower and powerless displaced people, which sets up a flawed interaction that reduces the probability of a successful outcome for the later. Simple “consultations” do not obviate the top-down nature of that asymmetrical interaction. Instead, the GN should provide guidance to include displaced people in determining what is and is not to be negotiated and who is and who is not eligible for compensation and/or resettlement assistance. The GN should also provide for measures to address directly both the informational and power asymmetries, for example through appointment of independent monitors to any negotiations between developers and people affected; through renegotiation of unjust arrangements that fall short of the policy standard; and provide legal representation amongst those affected to meet the policy standard.<sup>28</sup> The ESS5 and GN project-centric focus on land acquisition not only conceals complex social and economic processes, risks, and harms that must be addressed. The land acquisition and displacement process dismantles generations of preexisting negotiated arrangements and forces the renegotiations of people’s relationship to one another, their environment and fundamental values.<sup>29</sup> The restoration and/or development of new livelihoods requires the renegotiation of the sociocultural arrangements that are obliterated by the project.<sup>30</sup> Research has found that negotiating new economic and social arrangements is part of the successful recovery of a displaced peoples. Yet, the GN assumes that the Client can identify and define not only the value of lost arrangements but then compensate and rebuild new arrangements - a task that experience has shown exceeds the competence of agencies with no resettlement legal and policy framework nor professional staff nor practical expertise.

### **Displacement and Resettlement Specialists**

ESS5 and the GN stipulate that “competent resettlement professionals” should be retained to carry out monitoring of the implementation of agreed resettlement plans and to conduct an external completion audit of resettlement outcomes (Para. 23 and 24). It is incomprehensible why the World Bank restricts professional input to documenting resettlement to failures or the boundaries and dimensions that were

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<sup>27</sup> Mejia, M.C. (2000) “La Experiencia Colombiana en Reasentamiento,” In *Reasentamiento en Colombia*, W. Partridge (ed) Pp. 13-34. Bogotá: World Bank, UN High Commissioner for Refugees, Office of President of Colombia, Antioquia Presente.

<sup>28</sup> Price, S (2016). “A no-displacement option? Rights, risks and negotiated settlement in development Displacement” in *Development in Practice*, Volume 23 Issue 5 pp 673-685.

<sup>29</sup> Aronsson, Inga-Lill. (2002) *Negotiating Involuntary Resettlement: A study of local bargaining during the Construction of the Zimapan Dam*. Uppsala: Department of Cultural Anthropology and Ethnology, Uppsala University.

<sup>30</sup> Downing, Theodore E and Carmen Garcia-Downing(2009). Routine and Dissonant Culture: A theory about the psycho-socio-cultural disruptions of involuntary displacement and ways to mitigate them without inflicting even more damage. In Anthony Oliver-Smith. In *Development and Dispossession: The Anthropology of Displacement and Resettlement*. Anthony Oliver-Smith (ed). Santa Fe: School for Advanced Research Press.

thought to be important to a resettlement when the RP was drafted. In project after project, involuntary resettlements were found to be complex, with new dimensions appearing during implementation that were not anticipated in planning. Handcuffing social terms of reference limits learning, correction of unanticipated harms, or recognition of discoveries of successes outcomes not included in the resettlement plan. It would seem smarter to apply professional expertise and experience to the design of resettlement operations that enhance the possibilities of success and examination of the full spectrum of the resettlement in order to put people first. To do otherwise, is akin to clamping restrictions on science.

Given the fact that, as seen above, most countries lack any legal and policy framework for handling involuntary resettlement and that resettlement planning must per force be *sui generis*, it would seem obvious that there is a pressing need for competent resettlement professionals to be involved from the outset. The Guidance Note should address this issue in its treatment of development of the resettlement policies and plans from scratch, the design of technical and economic alternatives to reconstruct livelihoods (GN 15.1), participation of the vulnerable (GN 17.3), inclusion of women (GN 18.1), carrying out of socio-economic analysis to determine vulnerability and eligibility (GN 20.1) and calculation of costs and financing arrangements (GN 22.1). The Guidance Note needs to compensate for the unacceptable lapse in ESS5 which by omission asserts that no professional expertise or experience is required to plan and carry out involuntary resettlement. Nothing could be further from the truth.

## **Monitoring and Evaluation**

GN 23.1 calls for monitoring and evaluation of resettlement outcomes but these are not defined, leaving plenty of scope for confusion<sup>31</sup>. The ESF highlights the importance of outcomes, for example in determining whether ESF objectives are met and on decision-making for country frameworks, amongst others. The GN should clearly define an approach and method for resettlement outcomes in terms of the specific achievement of each of the ESF resettlement policy objectives, so that it is clear how all of the people affected fared at the end of the resettlement, and remedial measures can be adopted where required to meet gaps. Para 15 requires that 3rd party monitors be used "when considered appropriate". By whom? The Client? The Bank? Specialists? Or those affected? Adding this caveat makes monitoring optional and is foolhardy and irresponsible to the Bank's core mission. The GN could make it appropriate for the 3rd party monitors to be used whenever there is a classification of high risk or substantial risk related to resettlement as per the classification system set out in the ESP, for example, involving vulnerable people, significant impacts, questions over the asymmetric relations between the developer and the people affected and/or other risks. The GN should give guidance on the application of the classification system to projects involving involuntary

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<sup>31</sup> World Bank 2014 *Involuntary Resettlement Portfolio Review* found that Resettlement Plans were often not updated as more detailed design work emerged, baseline surveys were not done and monitoring and evaluation activities were limited and seldom focussed on outcomes for people affected (paragraph 20), It recommended clarifying policy requirements in key areas, including the definition of outcomes.

resettlement, particularly the circumstances under which projects may be classified as “high risk” or “substantial risk” on account of involuntary resettlement.

INDR is concerned that the “appropriate” caveat is used 29 times in the ESS5/GN policy, offering the Client and Management excessive discretionary dilutions for the Client and Management to avoid compliance and undermine meaningful monitoring, evaluations and accountability.

### **Sanctions for Non-compliance**

GN (2) requires the RP to be based on (c) the legal and institutional arrangements required for effective implementation of resettlement measures. GN 7 requires laws and regulations relating to the agencies responsible for implementing resettlement activities. Resettlement Framework (31) has similar requirements. The GN does not explain how the Bank’s legal agreement with the implementing/executing agency will extend to any other agencies responsible for land acquisition eg. land agency, local government, and what sanctions might be invoked if the other agencies fall back on the country laws and compensation arrangements (which may well be the case as per World Bank 2014 Involuntary Resettlement Portfolio Review paragraph 20 )."

### **Summary**

The draft Guidance Note for ESS5 is poorly conceptualized and assembled, approximating the work of amateurs with little or no knowledge of involuntary resettlement, including the Bank’s extensive experience and rich scientific work on this challenge. At one time in the past the World Bank set the international standard for involuntary resettlement which was widely adopted by other multilateral development agencies, but the draft Guidance Note for ESS5 indicates the Bank is now in the process of abandoning its global leadership role. The document needs extensive rethinking and redrafting. As the only international professional association of involuntary displacement and resettlement specialists we are deeply disappointed.

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