



Submission to the World Bank on Guidance Note to Environmental and Social Standard 5

December, 2017

Many projects currently being considered for financing by the World Bank are expected to lead to the displacement of local communities, according to the Bank's project documents. In its internal portfolio review released in two parts in 2014 and 2015, the Bank found "significant potential failures in the Bank's system for dealing with resettlement".¹ Failures of implementation of resettlement plans were high on the list of problems. This poses a serious risk to communities living in and around project-affected areas. For these problems and risks to be meaningfully addressed, it is crucial that the World Bank's new Environmental and Social Framework (ESF) be sufficiently robust and comprehensive, instructive to Borrowers, and human rights-compliant.

During the last phase of consultations on the ESF, Oxfam, IDI, and other experts identified several important ways in which the draft, if adopted, would fail to safeguard against these risks of displacement, and offered ways to strengthen Environmental and Social Standard 5 (ESS5) and other related aspects of the ESF. The final ESF adopted by the bank contained some improvements, but, unfortunately, many gaps and weaknesses remained.

Oxfam and IDI wish to take this opportunity to emphasize the importance of binding Bank procedures that correspond with ESS5. The procedures that Bank staff must follow that are currently set out in BP4.12 to support Borrowers in implementing OP4.12 are a crucial part of the operational infrastructure to ensure that the objectives regarding involuntary resettlement are met. We urge the Bank to develop these binding procedures, and release them for public comment.

The Guidance Notes provide a significant opportunity to the World Bank to put on paper the necessary safeguards to protect the millions of people who are likely to find themselves at risk of displacement by bank-financed projects over the next decade. The Guidance Notes are non-binding, but they provide important direction and explanations as to how the mandatory requirements of ESSs should be applied in practice. In recognition of this, Oxfam and IDI have prepared this submission to urge the bank to fully align the Guidance Note (GN) on ESS5 with international human rights and best practice standards on resettlement, displacement, land, and natural resource tenure.

In general, we believe that the draft GN lacks sufficient detail in parts, missing an opportunity to facilitate strong and effective implementation of ESS5 by Borrowers. In other areas, guidance provided should be more aligned with international human rights

¹ World Bank Involuntary Resettlement Portfolio Review Phase I (May 2012) and II (June 2014), <http://www.worldbank.org/en/news/press-release/2015/03/04/world-bank-shortcomings-resettlement-projects-plan-fix-problems>

standards, fully giving effect to women's and children's rights, the right to adequate housing, security of person and home, and other related rights. Moreover, the guidance should do much more to help ensure that every time involuntary resettlement is absolutely necessary for a project that promotes the general welfare, it is used as a development opportunity to support poor families to improve their livelihoods and living conditions, so that they too can benefit from World Bank support.

In particular, we urge the World Bank to incorporate the following priority additions and changes to the final GN on ESS5:

- 1. Explain the importance of assessing project benefits against displacement impacts, and determining whether the public benefits outweigh the risks, during project consideration and design.** ESS5, paragraph 2, which explains the severe socio-economic and environmental risks of displacement, should contain guidance on the need to weigh these risks against the project's expected benefits. In line with international human rights standards, Borrowers should assess whether the magnitude of displacement impacts and the risks of harm are reasonable and proportionate to the public good that will be achieved through the project. If, after consideration of the extent to which displacement impacts can feasibly be mitigated, the risks outweigh the expected benefits, the project design is not justifiable and should not proceed. Guidance should suggest ways to measure and assess benefits and risks, including, but not limited to, economic measurements of public benefits as compared to costs of displacement to households and communities (eg. aggregate economic losses) as well as the costs of mitigating the risks and impacts appropriately. The assessment should be publicly disclosed and incorporate public opinion regarding both the projected benefits of the project and the risks posed. Guidance should refer to the *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*.
- 2. Add practical guidance on developing alternative project designs to avoid and minimize displacement impacts and risks.** Much more can be said in GN 11.2 to guide borrowers on the development and assessment of alternative project designs in order to (a) avoid displacement altogether; (b) minimize the number of displaced households; and (c) reduce risks of displacement impacts to affected households. The guidance touches on an example for alternative designs for a road project, but should go much further, including referring to examples and references regarding alternatives used for different types of infrastructure and other projects that have effectively avoided and minimized displacement impacts. A mega-hydropower project with massive displacement impacts can be redesigned into a series of small dams with reduced adverse impacts. A land registration project can incorporate tenure categories other than individual private ownership that protect vulnerable households and communities. The GN should refer to the *FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land* for further guidance in this regard. In addition, the GN should make clear that Borrowers and project implementers should not acquire land that is not absolutely necessary for the project, under the pretext of needing the area as a contingency for project development.

3. **Be explicit about the need for resettlement plans and budgets to be prepared early on along with other aspects of project design.** The GNs on paragraph 11 explain the importance of measuring the costs associated with displacement at the project design stage to “identify optimal solutions” on possible alternative designs and their financial viability. This necessarily requires resettlement plans and budgets to be prepared upfront along with other project design aspects, while a range of designs are still being assessed and considered, rather than being treated as supplementary or secondary to other aspects of project design. This should be made explicit in the GN on paragraph 11, as well as the GN on ESS1. Relatedly, the GN should also **explain the importance of early public disclosure and consultations of draft resettlement plans and budgets to ensure effective and inclusive planning**, which in turn is more likely to lead to successful implementation that meets the objectives of ESS5.
4. **Explicitly recognize that forced evictions constitute a gross violation of human rights that require effective remedy, and bring the World Bank’s definition fully in line with human rights standards.** We join the groundswell of public and expert opinion that the World Bank should recognize its human rights obligations and publicly commit to respecting, protecting, and fulfilling human rights in all of its activities. We regret that the Bank continues to disappoint in this regard, and was unable to make this basic commitment in the Environmental and Social Policy, and express its expectation that its clients fully respect their international human rights obligations, especially in relation to projects receiving Bank support. Most pertinent to this submission, while some progress has been made in relation to strengthening language around forced evictions in ESS5, World Bank standards do not explicitly recognize forced evictions as a gross violation of human rights that are prohibited. At minimum, the Bank should clearly articulate this in the GN in relation to the second objective of ESS5 (“to avoid forced evictions”) and paragraph 31. The GN to paragraph 31 should contain a definition of forced evictions that is fully aligned with human rights standards and explicitly references the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. This includes the rule that evictions should only be carried out in exceptional circumstances, solely for the purpose of promoting the general welfare, after all feasible alternatives have been exhausted.² Eminent domain laws in some jurisdictions in which the Bank operates, are not consistent with human rights standards in this regard. Therefore, when referring to eminent domain, the guidance (GN31.1) should explicitly refer to the need to demonstrate the public interest value of the project and the proportionality of displacement impacts and risks (see point 1 above).
5. **Make clear that when the families and communities to be resettled are poor, the objective is to use resettlement as a development opportunity and *improve*, and not merely restore, their livelihoods and living standards.** This guidance could be included either in regards to the ESS5 objectives or paragraph 33 and 35 on economic displacement. The GN to paragraph 14 should also include guidance on how

² UN Basic Principles and Guidelines on Development-based Evictions and Displacement, para 21.

Borrowers can achieve the objective of conceiving and executing resettlement activities as sustainable development programs and providing sufficient investment resources to enable displaced persons to benefit directly from the project. Particular attention should be paid to women, children, the elderly, people with disabilities, and other vulnerable people. The GNs are obviously lacking in this regard, and should contain some key principles and ideas from World Bank publications and other sources. On this point, perhaps more than any other, the World Bank – the “Knowledge Bank”-- should be a leader and **provide expert practical guidance to borrowers on how to approach resettlement as an opportunity for promoting sustainable development through improvements to the economic and social well-being of affected people.** Borrowers would no doubt expect to find this guidance in the GNs to ESS5 and references to more extensive World Bank resources on this topic, including guidance on supporting women to achieve their development goals and aspirations in male-dominated societies, and supporting other marginalized and vulnerable groups within the larger resettled community. In addition to opportunities to improve affected people’s housing, access to basic services, employment and entrepreneurial opportunities, the GNs could explain, for example, that project benefit-sharing schemes can often be devised. For instance, schemes could be built into project design to ensure that affected households and other local communities receive electricity from a power generation or transmission project through household connections at subsidized rates, or an ongoing revenue stream to resettled households and communities from a project expected to derive revenues for the project owner. The incorporation of such examples into the GNs can help to increase the chances that Borrowers will consider these options at early stages and build them in to project design.

6. **Make clear that for economic displacement impacts that fall outside the scope of ESS5 and are instead covered by ESS1, mitigation measures should nonetheless aim to improve and, at minimum, restore people’s livelihoods and living standards to pre-displacement levels, and not merely compensate them where “financially feasible”.** While we regret that the scope of ESS5 was not expanded to cover economic displacement impacts caused by project activities other than land acquisition or restrictions, at minimum, the guidance to ESS1 and to ESS5 (paragraph 5) should explain that the borrower should conduct baseline assessments and aim to improve or at least restore all incomes and livelihoods that are adversely affected by the project. Bank experience, documented in bank publications and scholarly research, demonstrates that compensation alone does not prevent impoverishment in such cases. The risk of impoverishment is no different whether the economic displacement is caused by land acquisition or another type of activity. The GN should guide Borrowers to look to the provisions of ESS5 regarding economic displacement (paragraphs 33 to 36) for measures to restore livelihoods and incomes affected by the project in all cases, whether or not ESS5 mandatorily applies.
7. **Explain that in order for a “negotiated settlement” to be consistent with ESS5, the Borrower should ensure that all members of the affected households, including women, are informed about the entitlements and protections contained**

in ESS5, and that these are used as a baseline for negotiations. Negotiated settlements should favor affected households so that they receive a package of compensation and benefits that, in their view, *exceed* those contained in ESS5. However, there is a risk that Borrowers will instead abuse the notion of a negotiated settlement as a way to avoid the full application of the requirements of ESS5. To mitigate this risk, the GN to paragraph 4.6 should explain that Borrowers need to ensure -- and to demonstrate-- that all members of the households, including women, were fully aware of the entitlements and protections that they were entitled to under ESS5 prior to entering into the settlement agreement. Informed consent should be sought from women members of the household where the household head is male.

- 8. Explain that in order for a “voluntary land donation” to be consistent with ESS5, the Borrower should ensure that all affected people, including women, are informed about the entitlements and protections contained in ESS5.** Similarly to negotiated settlements, there is a risk that Borrowers will claim that people have voluntarily relinquished rights to their land, when in fact there was a degree of direct or indirect coercion. This risk is recognized in GN4.12, and GN4.11 explains that the owner must be informed about his or her rights to compensation. However, the GNs should provide further detail on safeguarding against the risks of abuse, including ensuring that owners are fully informed about the rights and entitlements (including but not limited to compensation) that they would receive should ESS5 be applied. **In addition, the Borrower should first conduct due diligence as to the prevalence of violence, intimidation, and threats by security forces made in the context of securing land for projects, and the degree of risk of this occurring in the case at hand.** Importantly, GN4.12 should state that **in cases in which any degree of pressure or coercion contributed to the land donation, the land must be returned without delay, or if not feasible, the full compensation and entitlements under ESS5 must be provided, in addition to compensation for associated losses and any non-pecuniary harms caused by the coercive acts.** Moreover, GN4.12 and GN4.14 should state that **in cases in which land is donated by the owner, other occupiers or users of the land who will be physically or economically displaced as a result of the donation should be meaningfully consulted and are entitled to the full range of protections in ESS5.** Particular attention should be paid to women, since it is often male heads of household alone who are recorded or considered as “owner” and consulted on issues affecting the household..
- 9. Explain that in cases of projects seeking to acquire land through voluntary land transactions, in some situations it will first be necessary for ownership rights to be determined or clarified.** ESS5 does not apply to voluntary legally recorded market transactions, though it does apply to the displacement of persons other than the seller in such cases (i.e. those who occupy, use, or claim rights to the land other than the seller). Footnote 11 (paragraph 6) sets out safeguards to help to protect the rights of affected people, especially in cases in which a project supports voluntary transactions involving significant areas of land. The GNs to this paragraph should recognize that in some situations there may be a dispute or lack of clarity regarding ownership rights over the tract of land in question, including where ownership rights

are recognizable under national laws, but have not yet been adjudicated and registered. For example, the state may claim ownership rights, including the right to sell or lease, but this claim may be legitimately contested by households in long-term possession of the land, or by communities with customary rights over the land. In such cases, adjudication of rights should occur prior to initiating transactions in order to ensure that the project acquires land from the rightful owners.

- 10. In all cases in which the ESS or GN calls for due diligence to be undertaken to confirm that certain conditions have been met, the guidance should stipulate that due diligence should be conducted by an independent third party, unrelated to the project proponent or the Borrower.** For example, the GNs call for due diligence to be undertaken in relation to voluntary land donations (footnote 10 and GN4.12); land acquisition and displacement that occurred prior to the Bank's approval of the project (GN4.17); and to confirm that a voluntary purchase was in fact voluntary (GN6.1). In all these cases, the Borrower has a vested interest in the outcome of the due diligence reviews and may have been involved in problems associated with the processes. The Borrower should therefore contract a credible independent third party approved by the Bank to conduct due diligence. The reviews and findings should be disclosed to and made open to comment prior to finalization.
- 11. Explain that as part of land use planning and the regulation of natural resources, it is best practice to develop resettlement frameworks whenever tenure rights or land and natural resource users will be affected.** GN8.1 clarifies that when the project finances implementation of technical assistance for land use planning or regulation that results in involuntary resettlement, ESS5 applies. In order to complement this, and to encourage the Borrower to put in place measures at early stages to protect vulnerable people and communities regardless of the source of financing for implementation, the GN should explain that it is best practice to prepare resettlement frameworks as part of the process of land use planning and regulation development. Displacement impacts and mitigation measures, as well as their costs, should be taken into account in designing land use and natural resource regulation.
- 12. For all processes of decision-making and consultation of affected people and communities, explain the importance of a specific focus on women, who may otherwise be marginalized and excluded.** This requires the use of a gender-sensitive approach and the use of gender-disaggregated data, including for baseline data and monitoring and applies to inter alia, negotiated settlements, voluntary donations, voluntary transactions, consultation on compensation formulas and rates, cash compensation or resettlement assistance choices, decisions on resettlement options and sites, and livelihood support programs. GN18.1 discusses the need to consider the situation of women and to adapt the engagement process to ensure women have a role in decision making. This should be expanded to name the various decision points and consultation processes involved in resettlement that should include women and provide clear guidance on ways to facilitate women's involvement. We refer you to Oxfam's separate submission of Proposed Gender Actions and Recommendations

(October 9 2017) for detailed recommendations on incorporating gender aspects into effective resettlement processes.

13. Clarify that resettlement options should include more than one resettlement site for affected people to choose from, and that they should have an opportunity to identify an alternative site themselves. ESS5 paragraph 27 states that the Borrower must offer displaced persons choices. Indeed, an objective of ESS5 is to ensure that resettlement activities are planned and implemented with the participation of those affected. One of the most important choices made in resettlement decision-making is the site of resettlement. Most importantly, if the site is far from economic opportunities that match the experience and skill sets of affected women and men, no level of support and intervention is likely to be effective at restoring their livelihoods (see below). Therefore, GN27.1 should guide Borrowers on the importance of identifying and offering more than one resettlement site option, with a possible exception if the site is in very close proximity to the affected household's current homes and livelihoods (ie. affected people do not have to move far and will be resettled in more or less the same neighborhood or village). In cases in which affected communities, including women, are encouraged and supported to identify a resettlement site for themselves (sometimes requiring the Borrower to acquire the land in question), the resettlement process and outcomes will be much more successful.

14. Explain that any “trade off” between increased security of tenure and locational advantages should never put people at risk of human rights violations, including forced evictions or impoverishment. ESS5 footnote 23 (paragraph 29) contains a troubling suggestion that people being involuntarily displaced by Bank-supported projects may have to accept moving to a site without economic opportunities in order to gain security of tenure. In previous submissions, we argued strongly against this footnote as worded because it suggests the acceptance of the risk of human rights violations to displaced families. Such “trade offs” between two essential elements of the right to adequate housing – tenure security and access to livelihood opportunities - should not occur. Moreover, it contradicts other sections of ESS5, in particular the “Minimum Elements of a Resettlement Plan” in Annex A, which requires the plan to describe how the site has at least equal locational advantages to the old site as well as the legal arrangements for regularizing tenure, including provision of security of tenure for those previously lacking full legal rights. We regret that the Bank decided to keep this problematic reference to “trade offs” in the final ESS, and urge it to use the opportunity of the GN to clarify that it is never acceptable to place affected people at risk of either impoverishment or tenure insecurity because of the choice of resettlement site.

Guidance should highlight that a suitable location that provides access to both economic opportunities and security of land tenure are the two most important determinative factors of successful resettlement, and both must be ensured. Households that rely on the urban economy to derive income should be resettled as near as possible to their former locations, or in an alternative location with equivalent

economic/livelihood opportunities for both women and men. For resettlers whose livelihoods are land-based, the provision of productive, cultivable and irrigated land, with suitable characteristics to allow the rapid resumption of livelihood activities, including those implemented by women, is crucial. Families with coastal or riparian-based livelihoods need to have access to the sea, river or other water resources in order to maintain their livelihoods. While livelihood and income restoration support programs are an essential element of resettlement, even with the best livelihood development initiatives, learning new skills and making new enterprises profitable takes time and is not always successful. In many resettlement cases, income restoration programs are sub-standard. The selection of the right resettlement sites, based on the choices of resettlers, and the provision of security of tenure, can overcome some of the main challenges of resettlement and exponentially reduce the risks of impoverishment.

- 15. Expand on the necessary components of adequate housing and the features of resettlement sites, bringing definitions in line with human rights standards.** This is especially necessary because ESS5 paragraph 27 contains a vague reference to “prevailing minimum codes or standards”, which in many countries and regions will not exist, or if they do, will be inadequate to ensure the safety, security, and well-being of those affected, including women, children, the elderly and people with disabilities. GN27.1 begins to touch on some essential components of adequate housing, but should go much further. In particular, the GN should explain that, consistent with international human rights standards, replacement housing should, at a minimum, be of sufficient quality to protect inhabitants from weather conditions, pollution, and environmental hazards and provide for their physical safety; and housing structures should provide adequate space and privacy, taking into account the household size and the number of men, women and children. Designs should incorporate the special needs of persons with disabilities and the elderly to make housing and other facilities physically accessible. Resettlement sites and housing should be culturally appropriate to affected persons, and there should be access to appropriate places of worship. The site should provide easy access to basic services, including health-care facilities and schools, and appropriate employment or other livelihood opportunities for both women and men. Resettled persons should have access to affordable potable water, energy for household needs and sanitation. Hazards on or near the site should be identified and mitigated; for example, busy roads or railways may require a fence, a gate, and traffic signals to protect children; a deep pond nearby in which children could drown would require the construction of a fence or other barrier. Human rights documentation covers many of these important requirements and should be referred to in the GN, including *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement*.
- 16. Explain that, in order to achieve the objectives of ESS5, borrowers should provide enough compensation to ensure that poor and vulnerable affected households can improve their living conditions and relocate to adequate housing of at least a basic acceptable standard.** It is most often poor people who are forced to move in the name of development. For poor households living in sub-standard

housing prior to resettlement, replacement value compensation for their dwelling will, at best, return them to the same sub-standard conditions, or if families decide to upgrade, force them into debt. This outcome is incompatible with the objectives of ESS5 to improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing; and to conceive and execute resettlement activities as sustainable development programs. A family whose home prior to resettlement consists of a makeshift shelter that does not provide protection from the elements, privacy, or security should be provided with resources to ensure access to adequate housing of at least minimum standards post-resettlement. In cases in which compensation, rather than replacement housing, is being provided by the Borrower, sufficient funds must be provided for the purchase or construction of adequate housing (adjusted for household size) established on the basis of independent expert advice. Replacement cost should only be used as the basis for compensation of lost housing when it meets or exceeds the minimum amount necessary to purchase or construct an adequate house. While we regret that the World Bank did not make this a mandatory requirement, the achievement of the objectives of ESS5 clearly necessitates access to at least basic adequate housing, and the bank should explain this to borrowers in the GN on paragraphs 12 (GN12.1(c)), 28 and 29.

- 17. Explain that in relation to loss of access to natural resources that are continually productive or regenerative, such as wild medicinal plants, timber and non-timber forest products, compensation should be paid for lost future value, unless the resource can be fully restored.** GN12.1(d) guides Borrowers to compensate loss of access to natural resources based on the market value. While the GN also explains that compensation is seldom effective in such cases and that the Borrower should attempt to facilitate access to similar resources elsewhere, in cases in which cash compensation is provided, market value is clearly insufficient, unless the compensation can be used to replant or otherwise restore the natural resource in a new location. Rather, a formula that takes into account the future productivity and use of the resource should be developed in consultation with the affected community.
- 18. Explain that compensation formulas and rates should be subject to consultation and input by affected people and communities, including women and marginalized members of the community.** GN13.1 states that Borrowers should explain compensation formulas and rates to affected people. This should be extended to a process of consultation and input from affected people, with specific attention to women, and marginalized groups, to ensure the formulas are fair and legitimate and the rates are assessed accurately so as to ensure compensation for full replacement value.
- 19. Explain that transitional support, which must be sufficient to meet basic needs, must be provided to affected people until their incomes/ livelihoods are restored.** GN15.1 states that the “appropriate transitional support” should be provided until livelihood restoration and improvement measures are in place. However, it will usually take a period of time *after* such measures are in place to restore incomes to previous levels. For example, measures to cultivate new farming land or commence

small businesses in a new location will take time to begin generating revenue. To avoid indebtedness, transitional support should continue for a reasonable time until resettled households begin to receive income at a level commensurate with pre-resettlement income. The amount of transitional support should be provided to both women and men and should be sufficient to, at minimum, meet basic household needs until incomes are restored.

- 20. Clarify that when there are lengthy project and resettlement delays, new structures built by affected households should be included in updated inventories of losses and compensated for.** There can be lengthy periods, sometimes years, between the cut-off date and actual resettlement of households to a new location. In such cases, it may be necessary and legitimate for an affected household to build new structures (e.g. repairing or expanding their house or shop). GN20.2 and GN20.4 should clearly state that replacement value compensation for these assets should be provided in such circumstances.