

**CAPACITY BUILDING FOR RESETTLEMENT  
IN RELATION TO TRANSPORT PROJECTS  
IN THE WESTERN BALKANS**



**LEGAL ANALYSES AND CAPACITY BUILDING PROGRAMME**



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## ABBREVIATIONS AND ACRONYMS

ADF	Albanian Development Fund
ASR	Agency for State Roads
BD BiH	Brčko District Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
CSW	Centre for Social Welfare
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EIA	Environmental Impact Assessment
FBiH	Federation of Bosnia and Herzegovina
FCC	Federal Constitutional Court
FRY	Federal Republic of Yugoslavia
GRD	General Roads Directorate
IDP	Internally Displaced Person
IFI	International Financial Institution
IPRS	Immovable Property Registration System
LRF	Livelihood Restoration Framework
NGO	Non governmental organisation
PAP	Project Affected Person
PIT	Project Implementation Team
PIU	Project Implementation Unit
PR	Policy Requirement
RAP	Resettlement Action Plan
RME	Republic of Montenegro
RS	Republic of Serbia
SEE	South Eastern Europe
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
WB	World Bank

## 1. INTRODUCTION

The European Bank for Reconstruction and Development is actively involved in the development of transport infrastructure in its countries of operation in the Western Balkans, which often requires land acquisition and may entail physical or economic displacement. If not managed properly, displacement can produce long term hardship for the affected population and can result in violation of their basic human rights. Furthermore, it can lead to delays in the development of the infrastructure and associated increased costs.

In line with international standards and the EBRD 2008 Environmental and Social Policy (Policy Requirement 5 – Land Acquisition, Involuntary Resettlement and Economic Displacement), impacts arising from displacement must be mitigated. This process requires the development of appropriate plans, i.e. resettlement action plans or livelihood restoration frameworks.

Countries around the world typically deal with involuntary resettlement and livelihood restoration under a legal framework for expropriation, with the basic notion that owners of properties are to be compensated for their losses, most often in monetary terms. With compensation, they are expected to be able to acquire new properties and resettle and/or re-establish their businesses in other locations. However, this is often not a straightforward process and people generally need additional assistance to be able to restore their standards of living and further improve them. This becomes even more evident when the affected population includes vulnerable groups. The most difficult cases involve those who do not possess legal title to the land they occupy and who are therefore typically not entitled to any compensation according to expropriation laws.

To ensure that all displaced people are properly assisted in line with international resettlement standards, it is essential to view resettlement / livelihood restoration planning as a process which precedes expropriation. If plans are developed and implemented properly, expropriation as a legal process can be completely avoided.

The countries included in this assignment are: Albania, Bosnia and Herzegovina<sup>1</sup>, FYR Macedonia, Montenegro and Serbia. Resettlement and livelihood restoration in these countries is greatly complicated by issues related to land tenure and registration of properties; informal construction, both in urban and rural settings; the existence of Roma slum settlements, the circumstances of refugees and IDPs, the operation of informal businesses, etc.

The development and implementation of resettlement / livelihood restoration plans which satisfy international requirements is challenging for governments, implementing agencies and service providers<sup>2</sup>, primarily because legal frameworks are not always consistent with IFI requirements and as a result of lack of experience in dealing with such issues. This sometimes causes delays in financing transport projects, which are essential for the development of these countries. In addition, affected people can suffer as a result of inappropriate resettlement / restoration measures, which poses a significant risk to the reputations of everyone involved, including the project lenders.

The aim of this assignment is to assist with the development of the capacity of government agencies involved in the design and construction of transport infrastructure (national and local) to develop and implement land acquisition, compensation and resettlement activities in accordance with IFI (and specifically EBRD's) requirements. The assignment consists of two main activities:

- legal analyses and assessment of existing capacity (including the identification of main gaps between national legislation in each country and the EBRD's PR 5); and
- the development and implementation of a capacity building training programme.

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<sup>1</sup> Both entities: Federation of Bosnia and Herzegovina and Republika Srpska, as well as the Brčko District BiH.

<sup>2</sup> The term 'service providers' is used to describe various agencies and organisations (government and non-government) which provide services to the project affected population, i.e. social, educational, health, employment, legal services, access to information, documentation, etc.

The assignment is being led by a team of resettlement experts with international and regional experience who have not only planned and monitored, but have also successfully implemented resettlement programmes. The team includes: Branko Radovanović and Jelena Oplanić from Link011 (Belgrade, Serbia), Chris Johnstone from rePlan (Toronto, Canada) and Mike Steyn from Intersocial Consulting (Toronto, Canada).

This report provides an overview of the team's findings in all of the countries covered by the assignment, with individual detailed country reports contained in **Annex 2**. Based on the legal analyses and assessment of existing capacity, the team has developed an outline of the envisaged training programme, which is set out in the report. The team will develop the detailed training programme in coming months, for implementation in Spring 2011.

## 1.1 Methodology for the Assignment

The team performed desktop research, visited all 5 countries of the assignment (including separate visits to both BiH entities) and undertook the following activities:

- Review of key laws
- Review of key institutions
- Development of a gap analysis between domestic legislation in each country/entity and EBRD's PR 5
- Capacity building needs assessment
- Review of options for addressing the needs of vulnerable groups
- Development of an outline capacity building program

In each country the team met with the following stakeholders:

- Responsible ministries
- Municipalities
- Implementing agencies
- EBRD offices
- Other organisations, agencies, service providers, individuals, etc.

A list of meetings in each country is provided as **Annex 3**.

In October 2010, the team presented their findings and the proposed training outline to the project Steering Committee, consisting of key EBRD staff, in a two day meeting. Comments received from members of the Steering Committee were taken into account in the development of this report and the outline of the training programme.

## 2. LEGAL AND INSTITUTIONAL FRAMEWORK FOR EXPROPRIATION AND RESETTLEMENT

### 2.1 Key Laws

The key laws analysed during the assignment were grouped into three broad categories; those addressing i) expropriation, ii) land tenure and property rights and iii) those that could contribute to addressing resettlement assistance, as defined by the EBRD's PR 5. It is important to note that laws in all of the countries of the assignment are constantly updated and new laws are being passed as the countries are in a process of harmonising their legislation with that of the EU.

## **Expropriation**

All countries covered by the assignment have their own expropriation laws. While the laws in BiH, FYR Macedonia, Montenegro and Serbia are very similar, having once been a part of the same country, the Albanian legislation differs slightly.

The main provisions and principles of reviewed expropriation laws are:

### ***Public interest and expropriation***

- in all countries covered by the assignment expropriation can only be done for reasons of public interest, listed in the expropriation law (i.e. for the construction of transport or other infrastructure);
- in Montenegro, Serbia and in Republika Srpska, as a first step to initiating expropriation, the expropriation beneficiary submits an application for the proclamation of public interest to the national / entity government; in FBiH the expropriation beneficiary submits an application for the proclamation of public interest to different levels of government (entity, canton or municipality) depending on the project affected territory; as a second step to expropriation, if public interest has been determined in these countries, the expropriation beneficiary submits a request for expropriation to the municipal property administration;
- in FYR Macedonia and Albania a legal justification of why the project is believed to be in the public interest is submitted together with the request for expropriation (as part of the same process), by the expropriation beneficiary to the offices for legal and property affairs (FYR Macedonia) / Council of Ministers (Albania);
- the expropriation beneficiary in all countries is any level of government or a public institution or enterprise (unless otherwise established by a separate law); the Albanian law also explicitly states that private (local or foreign) juridical persons can be expropriation beneficiaries;

### ***Compensation***

- expropriation in all countries is subject to compensation which cannot be lower than the market value of affected properties and it is assessed against recent market transactions in neighbouring areas;
- in all countries except Albania, all laws state that compensation can be provided in replacement property or in cash<sup>3</sup>; in Albania there are no provisions addressing this issue, although it could be concluded from some of the articles that compensation is to be provided in cash;
- the laws of FYR Macedonia, FBiH, Republika Srpska and Montenegro allow for compensation of lost profit/income for affected businesses, if incurred as a result of expropriation; the Serbian and Albanian laws do not foresee such compensation measures.

### ***Title over properties***

- all laws recognise affected people who have formal legal rights, those without legal title are not entitled to compensation;
- courts decide disagreements over title or compensation amounts in all countries; this does not postpone expropriation.

### ***Disclosure of information***

- those who have formal legal rights are notified about the expropriation process, in some countries after the decision on public interest has been passed (individually or through a public announcement) and in others after the request for expropriation has been submitted (individually).

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<sup>3</sup> Experience in all the countries covered by the assignment is that the number of people who opt for replacement properties is always very small, while the vast majority prefers cash compensation.

### **Appeals to courts**

- affected owners have a right to appeal at several stages in the process (against the decision on public interest, the decision on expropriation, the level of compensation), except in Albania where they can appeal only against the level of compensation offered to them.

### **Land tenure and property rights**

All countries covered by the assignment are transition economies, and have been implementing reforms in the area of land tenure and property rights for the past twenty years. They are faced with challenges related to registration of property rights in land books, cadastres and similar registry systems, restitution of property rights confiscated by the state and, most of all, informal construction. In BiH, Serbia and Montenegro, land tenure and property rights are also to some extent affected by post war issues.

Registration of property rights is regulated by specific laws in all the countries. In BiH, FYR Macedonia, Montenegro and Serbia, property rights are registered in land books and cadastres and the main goal of all reforms has been either the consolidation of these registries into a unique registration system or reconciliation of all information contained in them. In Albania, a unique registry system has been developed (Immovable Property Registration System), however the process of first registration of properties is still not completed.

One of the challenges with regard to the registration process is the fact that transfers of property rights (i.e. upon the conclusion of sale purchase agreements or probate proceedings) are sometimes not registered. This could be explained by factors such as high registration fees and taxes or complicated administrative procedures. In all countries, the process of determining who has legal title over properties has to be resolved prior to expropriation and the provision of compensation. All disputes are referred to the courts to make the final decision.

In terms of denationalisation and restitution, the situation varies in the countries of the assignment. Neither Serbia nor BiH (both entities) have passed laws on denationalisation or restitution of properties to citizens. FYR Macedonia, Montenegro and Albania have passed such laws, however it seems that only Montenegro has initiated actual compensation payments in cases where property cannot be returned to its owners. These issues are not expected to have direct impacts on resettlement programmes or expropriation processes. Even after completion of expropriation, owners entitled to compensation in accordance with denationalisation / restitution legislation, as determined by relevant courts, will also be compensated.

With respect to resettlement, the greatest challenge faced by all the countries is informal construction, particularly in urban settings. All countries recognise the need to formalise as much informal construction as possible through a process of voluntary legalisation. All the countries, except for BiH, have signed the Vienna Declaration on Informal Settlements in South Eastern Europe from 2004. The aim of the Declaration is to commonly agree on actions that a) will legalise and improve informal settlements in a sustainable way and will b) prevent future illegal settlements. The signatory countries have agreed 'to aim at the complete regional resolution of informal settlements by the year 2015'<sup>4</sup>.

With the aim of formalising informal construction, all countries, except for FYR Macedonia and Montenegro, have already adopted appropriate laws for the legalisation of properties. These two countries are expected to pass such laws in the forthcoming year. However, the process of legalisation is not easy and straightforward. It involves the retroactive issuing of building permits, which in some cases involves additional construction works to bring the structure in line with appropriate technical standards and is associated with additional costs for owners. The procedure itself is also administratively challenging for owners who are expected to compile significant documentation and involves registration fees and taxes. Experience to date shows that institutions implementing resettlement connected to IFI loans have been assisting affected

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<sup>4</sup> see Vienna Declaration, section two, point II.



owners (without formal legal title) to legalise their properties (usually through an accelerated and/or free procedure) prior to expropriation, after which they become entitled to resettlement / expropriation compensation.

BiH, Serbia and Montenegro are also faced with the issue of refugees and IDPs<sup>5</sup> living on properties that are not theirs, as a result of being forcibly displaced from their homes during wars and conflicts. Besides these three countries a number of refugees in the region come from Croatia. International conventions and bilateral agreements stipulate that these categories of the population must be assisted to regain access to their properties or receive adequate compensation for them. The countries in question have passed laws and adopted strategies for providing assistance to these vulnerable groups, however, progress in implementing them, (e.g. return programmes), has been limited. In cases when resettlement programmes include refugees and IDPs, these issues must be taken into consideration and addressed appropriately, including compensation for absentee owners of affected properties (inhabited by IDPs or refugees), whose whereabouts, in some cases, are not easily identified and possibly even the involvement of authorities from countries from which refugees have fled.

### **Resettlement assistance to vulnerable people**

All the countries have a legal framework in place for assisting vulnerable groups in the process of resettlement. This includes laws with respect to access to social assistance, health services, education, employment, documentation, legal aid, etc.

Some countries have passed social housing laws (Albania and Serbia), or are about to (Montenegro), which will provide a legal basis for the allocation of social housing to vulnerable groups. FBiH currently has no law on social housing, however some municipalities and/or cantons have social housing policies and some limited social housing stock.

Both Serbia and Republika Srpska have housing laws adopted with the aim of implementing measures for the creation of favourable conditions for building apartments and for addressing accommodation needs of socially vulnerable persons (e.g. rent or purchasing municipality / state owned apartments, under favourable conditions for a price considerably lower than market prices and with long repayment periods).

In FYR Macedonia assistance to persons who are beneficiaries of social welfare and without accommodation, is provided in the form of cash payments for rent or reconstruction of houses / apartments or placement in social housing, under the Law on Social Welfare.

As mentioned earlier, BiH, Serbia and Montenegro have strategies and measures in place for assisting refugees and IDPs. While such measures mainly focus on assisting these groups to regain their property rights, which is the key issue influencing their vulnerability status, they also focus on ensuring that refugees and IDPs have equal access to social, medical, educational and other services. On the other hand, in some cases refugees or IDPs may not be eligible for certain types of programmes provided by state institutions because of their specific status (e.g. access to social housing). It is important to fully investigate these issues when developing resettlement / livelihood restoration programmes which target IDPs and/or refugees and identify solutions which are appropriate for these vulnerable groups.

## **2.2 Key Institutions and Service Providers**

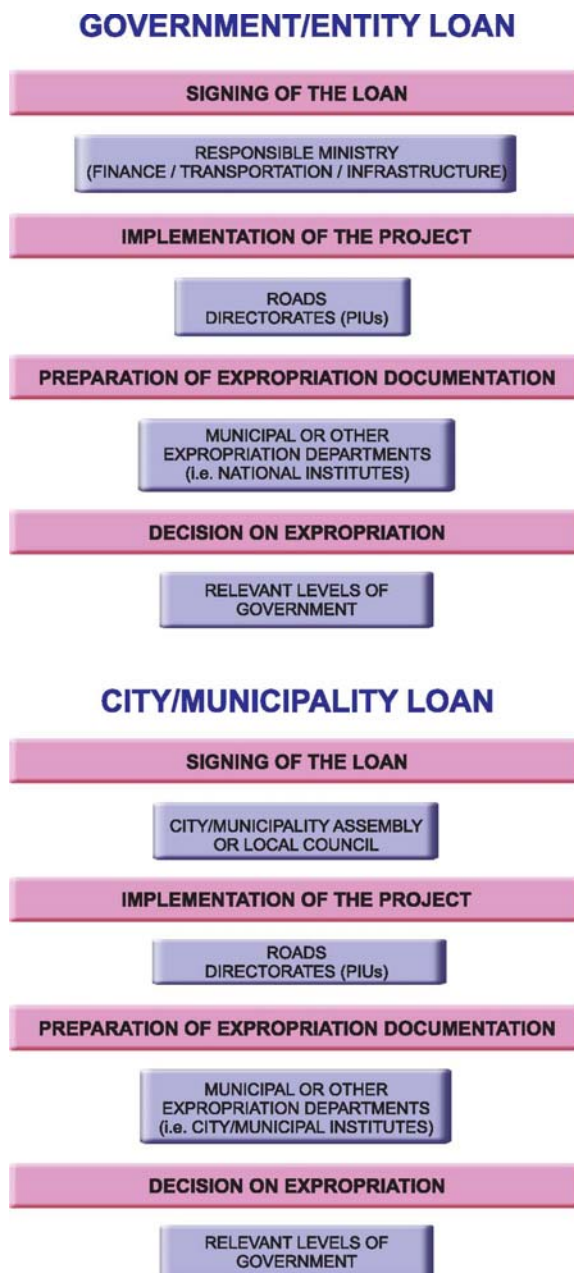
In general, the following key institutions are most often involved in the implementation of transport projects funded from IFI loans and related expropriation or resettlement. The specific institutions shown below (see **Picture 1**) are those involved in projects for construction of roads,

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<sup>5</sup> IDPs are people who were forced to relocate to other locations within the same country, while refugees were forced to relocate to other locations in a different (usually neighbouring) country, as a result of conflicts.

however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

Picture 1 – Key institutions involved in implementation of road projects and related expropriation or resettlement.



Resettlement and/or livelihood restoration plans are implemented by different organisations / institutions, varying from country to country and project to project. In most cases the agency in charge of implementing the project (i.e. construction in the area of transport) is also tasked with implementing, or coordinating the implementation of such plans. Sometimes a person within a PIU is specifically responsible for addressing issues related to resettlement / livelihood restoration.

However, in some cases, particularly when vulnerable groups are affected by resettlement, a specific body is tasked with implementation (e.g. the Belgrade City Secretariat for Social Welfare

was tasked with the resettlement of a Roma settlement for the reconstruction of the Gazela bridge in Belgrade). The situation in the field is sometimes even more complicated, when the affected community comprises of people who, as a result of certain circumstances (e.g. registered residency, citizenship) might fall within the responsibility of different institutions. In the case of the aforementioned Gazela bridge rehabilitation project, the Belgrade City Secretariat accepted responsibility only for Belgrade residents and IDPs from Kosovo. The Government of Serbia accepted responsibility for affected people who were residents of municipalities other than Belgrade city municipalities and tasked the Ministry of Labour and Social Policy of the Republic of Serbia, together with individual municipalities in south Serbia, with assisting them (implementing the RAP).

### **3. GAP ANALYSES - LEGAL FRAMEWORK FOR EXPROPRIATION AND EBRD'S PR 5**

The main gaps between local legal expropriation frameworks in all the countries and EBRD's Policy Requirement 5 are described below, together with some possible ways of overcoming them, identified through experience in both developing and implementing resettlement / livelihood restoration programmes. The last part of this section discusses ways to make a RAP/LRF enforceable and to ensure that all institutions, organisations and agencies involved in its implementation have a legal basis and responsibility for this.

#### **Engagement with stakeholders**

All the countries implement land and property acquisition under a legal framework for expropriation. This implies a legalistic approach as opposed to developing and implementing a resettlement / livelihood restoration programme through a participatory approach as contemplated under the EBRD's PR 5.

Provision of information to the affected population in the expropriation process is typically limited, particularly with regard to those who have no legal title over properties i.e. they are generally not informed about expropriation at all. Similarly, consultations are reduced to a one-on-one negotiation process only with those who have formal legal rights. Although a public consultation process with regard to expropriation is not required under local legislation, for major transport projects, local legislation (which is generally in line with the EU EIA Directive) does mandate public consultation as part of the EIA process, and some information on the project may therefore reach affected people through this channel. Experience, however, shows that meaningful consultations with directly affected people, as provided for under the EBRD Policy, can significantly improve and accelerate resettlement, as affected people know best what they will need to overcome the difficulties which they could face as a result of involuntary resettlement.

In cases when resettlement to a particular area could affect the local host population (e.g. increased number of children attending schools/ increased strain on local infrastructure), the host population is not always fully informed or consulted, as it is not required under the local legislation. The EBRD Policy requests that all stakeholders are adequately informed and meaningfully consulted, including the host population. Experience shows that a good way to engage host communities and encourage acceptance of newly resettled families is to implement small scale development projects which would benefit everyone (i.e. improve access roads, water supply, etc.)

Another key issue is the involvement of external agencies in the development and implementation of plans, which is not required under local legislation. Experience shows however, that this is particularly important with regard to provision of assistance to vulnerable people. So far, in the countries in question, resettlement assistance has been organised / provided by PIUs within institutions implementing the transport projects. Cooperation with the social sector, particularly social workers or other service providers, i.e. health, education, employment, etc. is not always defined by resettlement / livelihood restoration plans; it happens on an *ad hoc* basis during implementation. By agreeing and defining responsibilities of all

sectors up front, once the plans are officially agreed and/or adopted by relevant institutions, resettlement / livelihood restoration becomes "everyone's business" and it also gives the involved stakeholders a legal basis to participate in the implementation.

Service provision in future resettlement action plans has to be strengthened. PIUs may coordinate the process, however involvement of social workers (and other relevant stakeholders) would significantly improve the quality of resettlement programmes and accelerate their implementation.

### ***Grievance management***

Another issue related to stakeholder engagement concerns EBRD's requirement for establishing a culturally appropriate and transparent grievance mechanism to promptly and effectively receive and address specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities.

In countries covered by the assignment, there are no specific legislative requirements for establishing an independent grievance mechanism as described above. However, expropriation laws and administrative codes do foresee rights of affected citizens (those with formal legal rights) to appeal to courts on various occasions during the expropriation procedure. Experience so far also shows that affected people usually communicate with the expropriation beneficiary (a designated person or department, i.e. PR manager / PR department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts. In some cases these existing procedures could be built on, to develop appropriate grievance mechanisms, as required by EBRD. It is important to ensure that affected people are informed about: i) how and where to submit grievances, ii) when and where to expect a response, iii) if they are unsatisfied with the response what is the next available channel for submitting a grievance. In most cases, questions and grievances can be answered by staff involved in projects, however in larger scale resettlement / livelihood restoration programmes, it is also necessary to develop a second level of grievance resolution, which would involve the participation of impartial persons. Experience shows that the most effective way of organising such a mechanism is to form a committee which would include representatives of various stakeholders, including project affected people and independent agencies / organisations, e.g. NGOs, ombudsman offices. Grievance mechanisms must not impede access to existing judicial and administrative remedies.

### **Identification of baseline conditions**

The legal frameworks in all the countries foresee the development of expropriation 'studies', which are in fact inventories of affected properties and basic information about registered owners of those properties (i.e. names, addresses, ID numbers), so that they can be identified and compensated. There are no provisions for conducting an inventory of all affected properties (i.e. including those that are not formally registered), or a survey describing the socio economic conditions of affected owners or residents, as required by the EBRD's PR 5.

During the field visits by the consultants, it became apparent that some of the interlocutors seemed to believe that expropriation studies would be sufficient to fulfil EBRD's requirements in terms of conducting a census and survey. However, conducting a census and survey in line with PR 5 requirements helps ensure easier and quicker resettlements / livelihood restorations in previous projects and the benefits can be summarised as follows:

- identification of exact numbers of people / properties existing in the project affected area, which will be either physically or economically displaced (regardless of whether their properties are formally registered or not);
- setting a cut-off date, so that opportunistic squatters who have moved to the project area after this date, are not entitled to compensation;
- this can enable initial consultations with affected people about their needs and preferences (initiating thinking on possible mitigation measures);

- collection of data to be used as a starting point during monitoring, whereby the change in conditions in relation to baseline information shows whether or not resettlement / livelihood restoration has been successful in enabling people to restore and improve their socio-economic status;
- easier and more precise scheduling and budgeting.

### **Entitlements of informal residents / occupants**

One of the most difficult issues encountered on resettlement projects in these countries has been the requirement to compensate and/or assist *bona fide* informal residents / occupants of properties. None of the expropriation laws in the countries foresee compensation or assistance for this category. The right to adequate housing and improvement of living conditions is specifically required under PR 5 of the EBRD Environmental and Social Policy, which is consistent with the principles of the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966).

All of the countries are faced with informal construction which has blossomed in the past 20 years. As described in the previous section listing key laws, all countries apart from FYR Macedonia and Montenegro have already adopted laws allowing for subsequent legalisation of informal structures. These two countries are also on their way to adopting such laws.

In the countries which have these laws in place, informal structures affected by expropriation are being legalised under accelerated procedures and then compensated. In cases when structures cannot be legalised (i.e. they were built in non residential areas or they do not fulfil the technical requirements needed for legalisation, and without prospect of fulfilling them), local legislation demands that families living in them are evicted and the structures torn down. If the affected people are evicted without any assistance or relocation solutions, their fundamental right to housing, as defined by the UN Declaration of Human Rights will be violated. For that reason, in such instances, as contemplated under the EBRD's PR 5, it is necessary to provide alternative solutions for the accommodation of affected people living in them. It is important to note that this does not imply the need to provide affected people with ownership of apartments or houses, which is sometimes the way it is interpreted. It is rather to provide them with adequate accommodation, with security of tenure so that they are safe from future evictions.

The EBRD's PR 5 stipulates that adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility, and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, health-care, and education. The most appropriate and effective way of defining what adequate housing means is to consult project affected people.

Affected families living in informal structures often belong to vulnerable groups and are in need of some kind of social housing. These issues, including possible solutions, are discussed below under the section "Needs of vulnerable groups".

### **Livelihoods restoration**

Another difficult issue concerns the EBRD policy requirement to compensate and/or assist people who suffer economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition or restriction of access to natural resources.

All of the countries are undergoing a difficult transition to market economies, accompanied by high unemployment rates and active grey economies. Provision of compensation and assistance as per EBRD requirements, in those circumstances, is challenging.

According to local legislation in all countries, those who have formal legal rights over properties are entitled to compensation at their full replacement cost; this includes land, structures and any other immovable assets. The expropriation laws of FYR Macedonia, FBiH, Republika Srpska

and Montenegro also allow for compensation for lost profit / income of affected formal economic activities resulting from displacement; the Serbian and Albanian laws do not contemplate such compensation measures.

In all countries, those who have no formal legal rights over properties and those who undertake informal economic activities are not entitled to any compensation. In addition, the expropriation laws do not foresee any livelihood restoration assistance, i.e. transitional support, access to credit facilities, training, or job opportunities, for people affected by expropriation, even if their livelihoods or income levels are adversely affected.

According to the EBRD policy, people who do not have formal legal rights to land and/or structures which they use for their economic activities, have to be compensated for their structures and/or any improvements they made to the land (i.e. crops). One way to enable them to re-establish their income or livelihood is to provide access to other land and/or structures under lease, where they can continue their economic activities.

In creating possible solutions for mitigating the effects of economic displacement, which will most probably vary from project to project, it is necessary to understand the particular livelihood issues of the affected population, to consult them and involve as many stakeholders in the process as possible, and to identify employment or livelihood opportunities. Cooperation with employment services and business training facilities (or access to institutions providing business / agriculture loans), which exist in all of the countries, is a possible option.

Experience shows that provision of compensation for lost net income for formal and informal economic activities, as required by the EBRD policy, can be minimised if the affected people are provided with appropriate commercial structures to where they could relocate their activities or access to land, in a timely manner. This reaffirms the importance of proper and timely livelihood restoration planning.

### **Needs of vulnerable groups**

The most challenging issue related to addressing the needs of vulnerable groups is the provision of adequate accommodation, i.e. for those who are unable to legalise their houses. Most of the countries included in this study have passed social housing laws<sup>6</sup>, are about to pass them<sup>7</sup>, or provide accommodation to vulnerable groups under social welfare laws or policies and programmes<sup>8</sup>, which should contribute to resolving this issue. However, even when such laws exist, countries lack adequate resources for making social housing available (i.e. constructing social apartments). At the same time all of the countries are faced with increasing poverty levels, where many citizens are in need of this type of accommodation and therefore governments find it difficult to justify favouring citizens affected by resettlement in the process of allocating such housing.

Apart from constructing social apartments, other options for providing social housing to affected vulnerable groups might include the construction of low cost housing (i.e. prefabricated housing), provision of land and construction materials to affected people to construct their own housing, purchasing abandoned houses in rural areas or rehabilitation of unused facilities / structures, etc.

In the context of provision of housing, it is necessary to ensure that all affected people have security of tenure. Thus, for example, if social housing is to be provided, contracts should be signed for a certain period of time (e.g. five years with a possibility of renewal), so that families are protected from future forced evictions. It is also necessary to list all affected family members in the contracts to ensure that every individual's rights are protected.

Particularly difficult issues are encountered during resettlement of informal Roma settlements, present in all countries in the region, where the level of poverty of affected people is very high, as are the levels of social exclusion. Significant resources, therefore, often have to be invested

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<sup>6</sup> Albania and Serbia.

<sup>7</sup> Montenegro.

<sup>8</sup> FYR Macedonia, BiH.

to assist them during resettlement. This primarily pertains to housing and livelihoods, however it also includes access to documentation, education, health, legal aid, etc. Resettlement programmes targeting informal Roma settlements should plan for strong linkages between various institutions and service providers, which can be ensured through the adoption of resettlement / livelihood restoration plans by relevant levels of government (followed by the allocation of necessary funds) and proper coordination of resettlement activities.

Another issue concerning vulnerable groups in some of the countries in the region is the existence of internally displaced persons (IDPs) and refugees<sup>9</sup>. IDPs from Kosovo are present in Serbia, while in BiH, IDPs are those who have relocated from different parts within the country. Refugees are also present in Serbia, BiH and to some extent in Montenegro. As a result of their specific status, IDPs and refugees sometimes occupy properties over which they do not have title. When such groups are affected by resettlement, relevant institutions (e.g. Commissariats for Refugees) and relevant ministries must be engaged in the provision of other accommodation and assistance to affected persons (i.e. to regain access to properties they abandoned or to receive compensation, as defined by bilateral country agreements and international conventions). At the same time, legal (absentee) owners who have fled their homes in which IDPs/refugees are now living, must be compensated for their properties. Experience has shown that it is sometimes difficult to identify the whereabouts of legal owners, particularly if they have gone to live abroad, and that a specific approach has to be identified for contacting them (e.g. through neighbours, local churches, local associations, etc.).

Other vulnerable groups, as would be encountered in carrying out resettlement in other parts of the world, include elderly or disabled people who may need targeted assistance in identifying appropriate replacement properties that they can buy from received compensation payments or to gain access to appropriate medical facilities. People who are illiterate may also be in need of specific assistance to understand their rights and to identify appropriate replacement properties, or they may be in need of free legal aid. Once vulnerable groups are identified during the census and socio economic survey, a needs assessment must be performed to be able to define the most appropriate measures for providing resettlement assistance. This varies from project to project.

Vulnerable groups, as all other affected people, must be engaged in meaningful consultations regarding resettlement options and assistance. However, consultation with vulnerable groups may require a special approach that will enable them to participate equally in the process (i.e. involvement of social workers, use of a different language, or carrying out the consultations in an accessible venue, for people with disabilities, at a particular time of day when e.g. affected single parents are available, etc.).

### **Ensuring the implementation of RAPs/LRFs**

The most important precondition for ensuring that a RAP/LRF is implementable is to identify gaps between such a RAP/LRF and local legislation, and to identify measures, which do not contradict local legislation, for addressing them, during the development phase of the document. This also includes involving various institutions, agencies and organisations in the planning process, to ensure that they understand their roles and have the capacity and legal basis to perform them.

However, even after a plan has been developed, institutions in charge of implementing them are sometimes faced with numerous challenges in this process. Experience shows that the best way to ensure that a RAP/LRF is enforceable is to arrange for its adoption by the relevant government authority which is borrowing funds from EBRD. For example, if a loan is provided to a city or municipality, the RAP/LRF is adopted by the city/municipal council or assembly or the mayor and if it is provided to the central government, the RAP/LRF is adopted by the council of ministers / government cabinet<sup>10</sup>. This approach offers many advantages.

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<sup>9</sup> See footnote 2 for the difference between IDPs and refugees.

<sup>10</sup> The adopting institution for any level of government will depend on the institutional set up in each country.

One important advantage is that by adopting the RAP/LRF, the government also recognises that funds need to be allocated for its implementation, for the amount specified in the budget. Experience also shows that the allocation of funds accompanies the adoption of the document, usually in the same government session.

Another important advantage is that all institutions / organisations and agencies which are expected to be involved in the implementation have a legal basis for completing the work that is expected from them and allocating appropriate resources for that work, e.g. appropriately skilled staff. This is particularly important if certain provisions of the RAP/LRF can be perceived as contradicting local legislation.

Finally, the adoption of RAPs/LRFs by an appropriate level of government ensures that there are clear lines of responsibility and provides the implementing agency (most often roads or railways), with adequate leverage over other involved parties to ensure they fulfil their obligations. At the same time, the borrower who has adopted the RAP/LRF is more acquainted with EBRD requirements and better prepared to resolve issues that may arise during implementation, in cooperation with the EBRD.

## **4. CAPACITY BUILDING PROGRAMME**

### **4.1 Capacity Building Needs Assessment**

#### **Capacities and Available Resources**

All the countries have in place legal and institutional frameworks, as well as human resources,, which present valuable resources that could be drawn upon in the development and implementation of resettlement and livelihood restoration frameworks.

Agencies in charge of implementing projects (roads and railways) often have the following staff available:

- an environmental coordinator, usually well aware of IFI requirements, however not necessarily the social ones;
- a legal affairs department, which is usually in charge of expropriation and well acquainted with local legislation;
- a PR manager or a whole PR department in some cases.

There is also a general recognition of the importance of the basic principles outlined in EBRD's PR 5 (i.e. provision of appropriate accommodation even for individuals who lack proper title), possibly because all these countries have historical experience with provision of state assistance to citizens, particularly accommodation.

However, there are also a number of constraints in relation to the development and implementation of resettlement / livelihood restoration plans. One such constraint is that the implementing agencies, because of the nature of their work, usually do not have social / community liaison staff available for participating in the development and implementation of resettlement / livelihood restoration plans. A way to overcome this constraint is to involve staff from other municipal / state agencies or other organisations (service providers) in these processes (e.g. staff from the social welfare, education, health and other sectors). Training staff from both implementing agencies and service providers on EBRD requirements and international best practice in resettlement and livelihood restoration will provide them with the initial tools they need for this work.

Another constraint is the lack of financial resources available, sometimes even for expropriation, but particularly for resettlement, which includes provision of accommodation, resettlement assistance and livelihood restoration. Experience shows that through the proper development of resettlement plans and involvement of various stakeholders, funds can be identified from a



number of different sources. This is of particular relevance for IFIs such as the EBRD where the costs of resettlement cannot be included as a component of the loan. Sometimes there are existing donor programmes or even programmes funded through state or local budgets that target specific vulnerable groups e.g. Roma and IDPs, which could be tapped into for the provision of social housing or certain resettlement assistance activities, including access to employment. As with the implementation of any other plan or programme a prerequisite for fundraising or identifying funding opportunities, is the development of sound, properly budgeted plans.

Another constraint is the lack of experience with resettlement planning and implementation in the region. National and local government staff, including local service providers, have yet to fully grasp the reasoning behind IFIs requirements in terms of resettlement and livelihood restoration, or to fully identify ways of fulfilling them which are acceptable and adapted to the local context. At present, because there has not been much resettlement experience in the region, there is also a lack of local consultants who could play an important role in 'translating' EBRD requirements into concrete and realistic activities that are easily understood by all involved stakeholders and are adapted to the specific country contexts.

### **Categorisation of Capacity Gaps**

With the aim of developing a training programme for representatives of institutions and service providers involved in resettlement planning and implementation, all capacity gaps identified during field work were categorised as follows:

**Theory gaps** – institutions / service providers need increased understanding of:

- Basic terminology
- Relevant legislation
- EBRD Performance Requirements, particularly PR 5
- The tangible benefits of good resettlement practice

**Experience gaps** – institutions / service providers need exposure to examples from elsewhere:

- What has worked / not worked elsewhere
- Regional and international examples
- Examples that show practical application of theory

**'How to' gaps** – institutions / service providers need a framework for how to plan and implement resettlement:

- Basic project management skills and tools e.g. how to schedule and budget
- How to strategise / problem solve – think out of the box
- Internal and external communication skills – including how to obtain sufficient alignment on objectives

**Resource gaps** – institutions / service providers need resources:

- Human resources – staff acquainted with EBRD and other IFI requirements available to participate in resettlement planning and the development / implementation of RAPs/LRFs
- Adequate equipment and other technical resources
- Sufficient funds to deal with all aspects of resettlement

## **4.2 Outline Of The Capacity Building Training Programme**

The preliminary outline of the capacity building training programme, subject to further adjustments, is presented in **Annex 4**.

## ANNEXES

### ANNEX 1 – EBRD’S PR 5 TERMINOLOGY

PR 5 uses a number of terms in a ‘technical’ sense that can give rise to confusion or misunderstanding when compared to their common usage. These misunderstandings can be compounded when the terms are translated into other languages. When working through interpreters, or in translating resettlement documents into languages other than English, particular care must be taken to ensure that the terms and concepts of PR 5 are accurately communicated.

As an example, ‘resettlement’ in common English usage implies a physical move. Within the framework of PR 5, ‘resettlement’ is often used to refer to not only physical displacement of people, but also to economic displacement (with or without physical displacement), and sometimes to encompass the entire process of compensating, physically relocating and restoring incomes of project displaced people.

‘Compensation’ is another term that can give rise to confusion. In common usage, it is often understood as referring only to cash compensation. Within the framework of PR 5, compensation refers to both ‘cash’ and ‘in-kind’ compensation. Part of displaced household’s compensation might consist of replacement land or a replacement house, for example.

Some key terms related to PR 5 are defined below.

Involuntary resettlement	Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition <sup>1</sup> or restriction of access to natural resources. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain; and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.
Land acquisition	Land acquisition includes both outright purchases of property and purchases of access rights, such as rights-of way.
Physical displacement	Loss of dwelling or shelter as a result of project-related land acquisition which requires the affected person(s) to move to another location.
Economic displacement	Loss of assets (including land) or access to assets that leads to loss of income sources or means of livelihood as a result of project-related land acquisition or restriction of access to natural resources. People or enterprises may be economically displaced with or without experiencing physical displacement.
Displaced person	Person or enterprise experiencing either physical or economic displacement.
Compensation	Payment in cash or in kind for loss of an asset or a resource that is acquired or affected by the project.
Replacement Value	This is usually calculated as the market value of the asset plus transaction costs (e.g. taxes, stamp duties, legal and notarization

fees, registration fees, travel costs and any other such costs such as may be incurred as a result of the transaction or transfer of property). In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms, in-kind compensation may be appropriate. However, this compensation should be made in goods or resources that are of equivalent or greater value and that are culturally appropriate. With regard to land and structures, replacement costs are defined as follows:

*Agricultural land*—the market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, and transaction costs such as registration and transfer taxes.

*Land in urban areas*—the market value of land of equivalent area and use, with similar or improved infrastructure and services preferably located in the vicinity of the affected land, plus transaction costs such as registration and transfer taxes.

*Houses and other structures*—the cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labour and contractors' fees and transaction costs such as registration and transfer taxes.

Vulnerable groups

Vulnerable or “at-risk” groups includes people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Vulnerable groups in the context of displacement also include people living below the poverty line, the landless, the elderly, women- and children-headed households, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national land compensation or land titling legislation. These groups should be identified through the process of environmental and social appraisal (see PR 1).

Adequate housing

Adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility, and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, health-care, and education. PR 5 affords adequate housing and security of tenure to displaced persons at resettlement sites.

Security of tenure

A resettlement site offers security of tenure if it protects, to the greatest extent possible, the resettled persons from forced evictions.

## ANNEX 2 – COUNTRY REPORTS

### Annex 2.1 - Albania

The Republic of Albania is located in South Eastern Europe. It has a population of 2,986,952<sup>11</sup>.

Map 1: Albania



Albania is a **republic** and has a council of ministers and an assembly. Albania is divided into counties, further divided into **municipalities** and **communes**; municipalities in urban areas and communes in rural areas. Each municipality / commune is headed by a mayor and has its own local council. The municipality of Tirana, also the capital of Albania, is divided into smaller municipal units, each headed by a mayor and local council.

#### Legal and Institutional Framework for Expropriation and Resettlement

##### Key laws

##### Expropriation

- Law no. 8561 on Expropriation and Temporary Takings of Private Property for a Public Interest (1999)

The law on expropriation focuses on properties (land and structures) which may be expropriated or temporarily occupied, in the public interest. The law only recognises those who have formal legal rights over properties. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the law. Certain areas related to the expropriation procedure are further regulated through individual Decisions of the Council of Ministers, i.e. the documentation that is to accompany the application for expropriation, the setting up and functioning of the Expropriation Commission in the relevant ministry, the methodology for the valuation of properties and determining compensation, the procedure for notifying affected owners, etc.

##### Expropriation process

In the transport sector, expropriation is initiated by the General Roads Directorate Expropriation Department (republic) / Municipality of Tirana Directorate for Expropriation (municipality), who submits an application for expropriation to the Ministry of Public Works and Transportation (relevant ministry).

The application is prepared with information about ownership and other rights recorded in the Immovable Property Registration System. In areas where first registration has not been completed, the GRD Expropriation Department / Municipality of Tirana Directorate for

<sup>11</sup> estimate from July 2010, CIA The World Factbook

Expropriation works with local authorities to collect ownership data from other sources at the local level (e.g. local property owners, village elders, notaries) and in cooperation with the IPRS seeks to complete first registration of properties.

If the documentation is in order, the Ministry accepts the application for expropriation and forms a Land Expropriation Committee consisting of at least 5 employees or independent experts (legal, economic and engineering field). At this moment, property owners and affected third parties are notified that an expropriation process has been initiated (information is also published).

The Land Expropriation Committee performs final valuations of properties. The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed. If not, the affected owner and/or affected third party have the right to appeal (only with regard to the amount of compensation offered to them).

The Ministry prepares and submits an expropriation proposal to the Council of Ministers, which passes a decision on expropriation if documentation is in order. The GRD Expropriation Department / Municipality of Tirana Directorate for Expropriation proceeds with compensating property owners / affected third parties.

### **Land tenure and property rights**

- Law no. 7843 on Registration of Immovable Property
- Law no. 9482 on Legalisation, Urban Planning and Integration of Unauthorised Buildings

The Republic of Albania has been undergoing a land and property reform since 1991. The main elements of these reforms include the transfer of rights in ownership of land, housing and other properties to citizens and juridical persons, creation of an Immovable Property Registry System and legalisation of informal construction.

In 1994 an Immovable Property Registration System was created and according to the law all immovable property in Albania must be registered in this registry. The process of first registration is still not completed and some challenges remain. Difficulties include a complicated administrative procedure and high costs of legalisation and a backlog of property disputes in the court system.

Albania is also faced with a significant amount of informal construction, resulting from a massive influx of people from rural to urban areas in the last 20 years. Approximately two thirds of buildings in urban areas in Albania are informal developments. In attempt to formalise these buildings, Albania adopted a law on legalisation, urban planning and integration of unauthorised buildings. The aim of this law is to formalise as much of the informal construction as possible and further develop these areas with appropriate infrastructure. The legalisation process is progressing slower than expected, although the government has made an attempt to simplify the legalisation procedure.

### **Resettlement assistance to vulnerable people**

- Law no. 9355 on Social Assistance and Services
- Law no. 9232 on Social Programmes for the Housing of Inhabitants of Urban Zones

According to Law no. 9355 on Social Assistance and Services, citizens of Albania are entitled to various forms of social welfare payments or a range of community based services (public and private). Community based services are still in the development stage and financial payments to beneficiaries largely prevail.

In the area of housing, the Law No. 9232 on Social Programmes for the Housing of Inhabitants of Urban Zones establishes the legal framework for development of social housing programmes in Albanian municipalities. The law defines the administrative regulations and procedures that will ensure the planning, management and distribution of social housing to vulnerable people, in

line with their income and the level of state support. The Council of Europe Development Bank is engaged with the Albanian government in the development of a social housing programme.

Albania has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, gender equality, free legal aid etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

***Key Institutions and service providers***

In the Republic of Albania, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the republic level and the municipality level.

The specific institutions shown below (see Picture 2) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

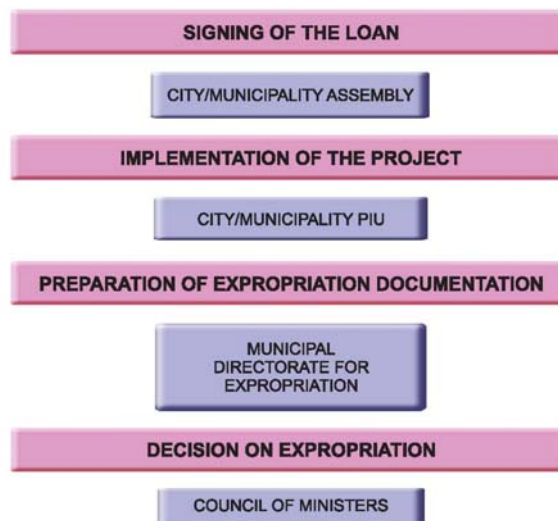
Picture 2 – Key institutions in Albania involved in implementation of road projects and related expropriation or resettlement.

## ALBANIA

### GOVERNMENT LOAN



### CITY/MUNICIPALITY LOAN



A specific project for the improvement of secondary / local roads, co-financed by the WB and other donors, is being implemented by the Albanian Development Fund (ADF), a national level agency, as it has been determined that individual municipalities lack the necessary capacity for implementation, including the preparation and implementation of resettlement and livelihood restoration plans. The ADF is playing a capacity building role.

## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	Albanian legislation in general, including the Expropriation Law of the Republic of Albania, does not recognize the term involuntary resettlement.  Issues related to land acquisition in the public interest are regulated by Law No. 8561 on Expropriation.	The law focuses on properties and assets which may be expropriated or temporarily occupied, in the public interest. The law recognizes affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	Involuntary resettlement occurs as a result of:  1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> 2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.	The law regulates the right of the state to expropriate properties of natural or juridical persons in the public interest, (Article 1), against fair compensation (Article 2).  In addition, compensation is to be provided for the devaluation of properties which are not the object of expropriation (Article 4).  The law regulates temporary occupation of land in Articles 27 and 28 (e.g. for construction works, setting up construction sites, etc.), for up to 2 years (Article 33), against set compensation (Article 30).	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by Albanian legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.		There are no legal requirements in Albanian legislation for avoiding or at least minimizing physical and / or economic displacement. However, in practice, resettlement and expropriation are avoided or minimised during project design, in the context of	Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.  Whenever possible, integrate the consideration of resettlement issues in the EIA process.



Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
<p>Planning process</p>	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.</p> <p>Special provisions should be made for consultations with vulnerable groups.</p>	<p>According to the Expropriation Law, the application for expropriation in the public interest, submitted by the expropriation beneficiary to the competent ministry, has to include a detailed list of properties to be expropriated and which are affected by devaluation, their location, information about individuals who have formal legal rights on these properties, including owners and third persons (Article 10).</p> <p>Ownership or other formal legal rights on land and structures are recorded in the Immovable Property Registration Office (Law on Registration of Immovable property -7843), through the Albanian Immovable Property Registration System. All issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation, which has been deposited into a special account (Article 16).</p> <p>Those with formal legal rights are informed about the expropriation process through direct notification and publication of the application of expropriation (Articles 14 and 15). Third persons can submit their claims on affected properties, within a period of 15 days from the last day of the publication (Article 15).</p>	<p>minimising costs</p> <p>Albanian legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>All affected persons are informed about the upcoming expropriation through the publication of the application for expropriation. However, there are no requirements for consultations with any affected persons or making special provisions for informing / consulting vulnerable groups.</p>	<p>The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary.</p> <p>This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the consultation process.</p>

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>Persons who have formal legal rights on land and structures, as registered by the Immovable Property Registration System, are entitled to compensation<sup>12</sup>.</p> <p>Preliminary valuations (inventory) of properties / assets, take place before the application for expropriation is submitted to the relevant Ministry (Article 10). Final valuations are performed by the Ministry commission (Article 17) and submitted with the proposal for expropriation to the Council of Ministers.</p>	<p>All persons who do not have formal legal rights on land and structures located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.</p>	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	<p>Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.</p>	<p>Negotiated settlements are encouraged by the Expropriation Law. Article 6, states that when the owner agrees to transfer his/her property to the state, under conditions (compensation) offered by the competent ministry, expropriation is considered completed. The owner has to inform the competent ministry within 15 days from being notified (publication) whether he/she accepts the offer (Article 16).</p> <p>If an agreement is not reached, after a decision on expropriation is passed by the Council of Ministers, the affected owner has the right to appeal to the court regarding the amount of compensation (Article 24).</p>		<p>Negotiated settlements, even before the expropriation process is initiated (before the application for expropriation is made public), should be explicitly encouraged in the RAP/LRF.</p>
Compensation	<p>Compensation for lost assets will be provided</p>	<p>The Expropriation law states that</p>	<p>The law does not specifically</p>	<p>THE RAP/LRF must describe</p>

<sup>12</sup> First registration of properties in the IPRS have not been completed throughout Albania. In cases when properties to be acquired for a project have not been registered, this process has to be completed before compensation to owners can be provided.

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
at replacement cost	at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.	<p>compensation is to be provided based on a final valuation of affected properties by the Ministry Commission for Expropriation, as defined by the Decision of the Council of Ministers (Article 17 and 18). This article explicitly states that depreciation of structures and assets is to be taken into account.</p> <p>Temporary occupation of property is also possible according to the Expropriation law, against a set compensation (Article 30).</p> <p>Compensation rates are provided by the Property Restitution and Compensation Agency of the Republic of Albania, based on recent market transactions in neighbouring areas.</p>	mention compensation for the costs of any registration and transfer taxes.	<p>the valuation method in detail and specify that compensation will include the registration cost in the Immovable Property Registration System, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
Compensation in kind / cash	Compensation in kind will be offered in lieu of cash compensation where feasible.		The Expropriation law does not specify whether compensation is provided in cash or in kind. Certain provisions of the law imply that compensation is provided in cash.	Affected people should be able to receive in kind compensation whenever it is feasible and when this form of compensation is their preferred choice.
Provision of adequate housing / shelter with security of tenure	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p>	Decree no. 814/2004, adopted based on the Law on Social Programmes for the Housing of Inhabitants of Urban Zones, establishes housing norms/standards and the minimum living area per person <sup>13</sup> .	<p>The Expropriation law does not foresee compensation in kind and therefore the provision of adequate housing with security of tenure.</p> <p>The expropriation law does not include any provisions</p>	<p>During the development of the RAP, when compensation is provided in the form of replacement housing, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal</p>

<sup>13</sup>12.5 m2 per person; each additional member of the household older than 10 years is entitled to 7.5 m2, while members 10 years old or less are entitled to 3.75 m2.

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
	New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.		about resettlement sites.	legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.
Other resettlement assistance	Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.	According to Law no. 9355 on social assistance and services vulnerable citizens of Albania are entitled to various forms of social welfare payments or a range of community based services (public and private).	Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.	Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).  Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with social service departments (municipal or state). At a minimum, vulnerable groups should have access to documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement</li> </ul>	<p>The Expropriation law foresees compensation to be paid to those who have formal legal rights (Category 1) for land, buildings of every kind of a permanent nature (Article 8), against fair compensation (Article 2).</p> <p>The Law No. 9232 on Social Programmes for the Housing of</p>	Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) and those who have no recognisable legal right or claim to the land (Category 3) are not recognised by the Expropriation law.	Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. The applicable law is:

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
	<p>cost</p> <ul style="list-style-type: none"> <li>in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>Inhabitants of Urban Zones establishes the legal framework for development of social housing programmes in Albanian municipalities. The law defines the administrative regulations and procedures that will ensure the planning, management and distribution of social housing to vulnerable people, in line with their income and the level of state support.</p>	<p>The provisions of the Law No. 9232 on Social Programmes for the Housing of Inhabitants of Urban Zones should be used as a basis for ensuring that those who are adversely affected by resettlement (usually belonging to Category 3) receive appropriate accommodation. However it should be noted that the need for social apartments among the general population is great, while resources for constructing new apartments are scarce.</p>	<ul style="list-style-type: none"> <li>Law no. 9482 on legalisation, urban planning and integration of unauthorised buildings (legalisation of structures erected on untitled land, except when the land in question is for public purposes)</li> </ul> <p>In the case of legalisation of structures, the previous registered owners are entitled to compensation for land as per Law No. 9235 on Property return and compensation.</p> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided (see below).</p>
<p>Vulnerable groups</p>	<p>The RAP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic</p>	<p>Article 5 of the Law on Social Programmes for the Housing of Inhabitants of Urban Zones specifies categories of vulnerable groups that are entitled to social housing, i.e. those who have not benefitted from buying state owned apartments (privatisation); where heads of household are</p>	<p>There are no special requirements in Albanian legislation for organising consultations and relocation assistance for vulnerable groups. However, persons who are homeless are entitled to social welfare</p>	<p>During the census, it is necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult</p>

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
	disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.	divorced woman or widows; single parent families; retired elderly people who do not receive state assistance; various groups of disabled individuals; families with many children; young couples whose combined age is no greater than 55; families who relocated for employment reasons; orphans under 30 years of age.	assistance, which includes placement in shelters and access to other services available under national and local social welfare laws.	with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of Albania (social welfare, education, health care).
Joint property	Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.	Men and women have equal rights in the Republic of Albania (Article 18 of the Constitution of the Republic of Albania and the Law no. 9198 on Gender Equality in Society), including the possibility to have formal legal rights on properties. According to the Family Code of Albania, if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Articles 73-76).		Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Family Code in the silence of title documentation.  Ensure that all programmes, including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).
Legal assistance	Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.	There is no requirement for providing free legal assistance to persons affected by expropriation or resettlement, under the Expropriation law.  The Government of the Republic of Albania adopted a Law on the provision of free legal aid, which entered into force in April 2009, however not much progress has been made regarding its implementation.	Some municipalities have departments that provide free legal assistance to the most vulnerable citizens.  Apart from that, there are a number of NGOs in Albania providing legal assistance, particularly to the most vulnerable groups of population.	Affected people should be informed about and provided with access to free legal assistance, either through municipal departments or through NGOs (specified in the RAP/LRF).
Timing of	Compensation (alternative housing and/or	If an agreement on compensation has		The RAP should specify that

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
compensation	cash compensation) has to be provided prior to relocation.	been reached, the transfer of property and payment / provision of compensation is executed within 15 days from the notification of the affected owner that he/she accepts the offer (Article 16). If not, compensation is provided based on a decision on expropriation of the Council of Ministers, within a period of three months, or after the court decision (Article 23).		compensation is provided prior to relocation of affected people.
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in Albanian legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	<p>If land acquisition causes loss of income or livelihood</p> <p><b>Category 1<sup>14</sup></b> and <b>Category 2</b>, should receive:</p> <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full replacement cost</li> </ul> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> </ul>	The Expropriation law foresees compensation to be paid to those who have formal legal rights (Category 1) for land, buildings of every kind of a permanent nature (Article 8), against fair compensation (Article 2).	<p>Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance by the Expropriation law.</p> <p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, lost net income, transitional support, transport of equipment or other targeted assistance.</p> <p>Assistance to off-set any loss of a community's</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. The applicable law is:</p> <ul style="list-style-type: none"> <li>• Law no. 9482 on legalisation, urban planning and integration of unauthorised buildings (legalisation of structures erected on untitled land, except when the land in question is for public purposes)</li> </ul>

<sup>14</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
	<ul style="list-style-type: none"> <li>• compensation for lost net income during the period of transition</li> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>		<p>commonly held resource is also not specifically regulated by Albanian legislation.</p>	<p>In the case of legalisation of structures, the previous registered owners are entitled to compensation for land as per Law No. 9235 on Property return and compensation.</p> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they lose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the Albanian National Employment Service.</p>
Grievance	The grievance mechanism will be set up as	There is no specific requirement for	In practice, those with formal	Define a project specific



Issue	EBRD policy requirements	Provisions of Albanian law	Gap / Comment	Proposed response
procedure	<p>early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>establishing an independent grievance mechanism, according to the Expropriation Law or other Albanian legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal to courts against the decision on expropriation passed by the Council of Ministers, however only with regard to level of compensation they are entitled to (Article 24).</p>	<p>legal rights become aware that expropriation is to take place, during the phase of field work and collection of ownership documentation, in preparation of the application for expropriation.</p>	<p>grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	<p>According to Article 14 of the Expropriation law, those who have formal legal rights are directly notified about the acceptance of the application for expropriation by the competent Ministry (within 10 days) and invited to negotiate the compensation package.</p> <p>According to Article 15, the application is also published in the Official Journal, in a newspaper with national circulation and in a local newspaper for a period of one week.</p>	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are consulted through a one on one negotiation process.</p>	<p>Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.</p>
Monitoring	<p>Monitoring of the RAP / LRF will be carried out in accordance with PR 1.</p>		<p>There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration process, under Albanian legislation.</p>	<p>Define indicators and monitoring mechanisms in the RAP / LRF.</p>

## Annex 2.2 – Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) is located in South Eastern Europe. It has a population of 4,621,598<sup>15</sup>.

Map 2: Bosnia and Herzegovina



Bosnia and Herzegovina is a **federal democratic republic**, divided into three self governing administrative units, of which two are entities: the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and the third is a special administrative unit, Brčko District, which is formally a part of both entities. At the level of BiH, there is a Council of Ministers and a Parliament. Both entities have a government consisting of individual ministers and a parliament.

The two entities are presented in separate chapters (below), as they each have their own legislation relevant for this assignment. Brčko District also has its own legislation relevant for this assignment which is presented in table form (Annex 2.2.3).

### Annex 2.2.1 – Federation of BiH

The entity Federation of BiH is divided into **cantons**, each comprising **municipalities**. FBiH has a government consisting of ministers and a parliament. Each canton has a government consisting of ministers and an assembly. Each municipality is headed by a mayor and has a local council. The capital city, Sarajevo, although a part of the Sarajevo Canton, comprises 4 municipalities and has its own government – city council and mayor.

#### Legal and Institutional Framework for Expropriation and Resettlement

##### Key laws

##### Expropriation

- FBiH Expropriation Law (Official Gazette of FBiH 70/07, 36/10)

The Expropriation law, in force since 2007, focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law only recognises those who have formal legal rights over properties. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the law.

<sup>15</sup> estimate from July 2010, CIA The World Factbook

### **Expropriation process**

In the transport sector, for the implementation of projects by the Federal Directorate for Construction, Management and Maintenance of Highways / Cantonal Roads Directorate, expropriation is initiated by the entity / canton (expropriation beneficiary). The process is initiated through a request for the establishment of public interest submitted to the relevant level of government (FBiH, canton).

The request for establishing public interest is prepared by the Federal Administration for Surveying and Property Issues / Cantonal Institute for Construction, with information about ownership and other rights recorded in the Land Registry and the Cadastre, along with a number of other documents. In cases when records between the two registries differ, a process is initiated to determine who has title over the affected properties.

If the submitted request is in order, the relevant level of government (FBiH, canton) passes a decree for the establishment of public interest. At this moment, property owners and affected third parties are notified (through a public announcement) that the expropriation process has been initiated and they are invited to negotiate an amicable sale-purchase agreement. Valuations of properties are performed beforehand and serve as a basis for negotiations.

The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed. They can reach an agreement on compensation any time before the decision on expropriation is passed.

Upon the establishment of public interest, an expropriation proposal is submitted to the relevant municipal property administration together with a set of accompanying documents. Owners of affected properties are individually notified about the submission of the expropriation proposal. If the documentation is in order a decision on expropriation is passed. A hearing must be held by the municipal property administration to discuss and determine the level of compensation for each affected owner. In case an agreement on the level of compensation is not reached, the case is referred to the courts to decide. The expropriation beneficiary proceeds with the payment of compensation or provision of replacement properties.

### **Land tenure and property rights**

- FBiH Law on Land Registries (Official Gazette of FBiH 19/03, 54/04)
- FBiH Law on Construction Land (Official Gazette of FBiH 25/03, 16/04, 67/05)
- FBiH Law on Spatial Planning and Land Use (Official Gazette of FBiH 2/06, 72/07, 32/08)
- FBiH Law on Property Relations (Official Gazette of FBiH 6/98)

Land tenure and property rights in BiH, including the FBiH are influenced by two main factors – i) transition from socialism to capitalism and ii) the war during the 1990s, as a result of which many people became refugees or IDPs.

Property rights, which people have been deprived of in the course of the war, had to be restored or compensated for in cases where they could not be restored. The EC Enlargement Strategy Progress Report for 2010 for BiH states that the vast majority of cases of property repossession requests have been resolved.

The same report also states that property registers (land books and the Cadastre) remain largely unreliable. BiH is implementing reforms for the alignment of information on property rights recorded in land books and the Cadastre, however the progress is still slow. In some cases this also slows down expropriation procedures, as all outstanding issues regarding property registration have to be resolved before expropriation can be executed. Currently in both entities properties are registered under laws on land registries. FBiH is expected to pass a new law on land surveying and cadastre, while the RS has already done so.

As with other countries in the region BiH, including the FBiH is struggling with informal construction. The Law on Construction Land of FBiH enables legalisation of structures informally constructed on state owned land, for which construction permits can be issued retroactively by the municipal council, in line with the Law on Spatial Planning. The legalisation process is further regulated by cantonal decrees. The Law on Property Relations enables acquiring property rights over land and/or structures erected on someone else's land.

#### **Resettlement assistance to vulnerable people**

- FBiH Law on Social Protection, Protection of Civilian War Casualties and Protection of Families with Children (36/99, 54/04, 39/06)

According to the Law on Social Protection, Protection of Civilian War Casualties and Protection of Families with Children, vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need. One of these situations is listed as "forced migration". Citizens of FBiH are entitled to various forms of social welfare payments and some social welfare services, which are still largely underdeveloped.

FBiH currently has no law on social housing, however certain pilot projects are being implemented with donor assistance.

FBiH has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

#### ***Key Institutions and service providers***

In FBiH, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the entity level and the canton level.

The specific institutions shown below (see Picture 3) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

Picture 3 – Key institutions in FBiH involved in implementation of road projects and related expropriation or resettlement.

## **FBiH**

### **ENTITY LOAN**



### **CANTONAL LOAN**



## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	<p>FBiH legislation in general, including the Expropriation Law of the FBiH, does not recognize the term involuntary resettlement.</p> <p>Issues related to land acquisition in the public interest are regulated by the Expropriation Law of the FBiH.</p>	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but only for affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <ol style="list-style-type: none"> <li>1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> </li> <li>2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.</li> </ol>	<p>Outright purchases of immovable property (land, residential and other structures) are defined by the Expropriation Law as "complete" expropriation (Article 7).</p> <p>"Incomplete" expropriation includes the instigation of an easement over the immovable property or a lease of land for a defined period of time (Article 8). Temporary occupation of land (up to 1 year) is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 9).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the</p>	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by FBiH legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
		property will also be expropriated, at his request (Article 11).		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	According to the Law on Spatial Planning and Land use of FBiH, various social issues are to be considered in the development of all planning documents such as spatial plans, urban plans, regulation plans, projects, etc. The Decree on a Unique Methodology for the Development of Planning Documents provides a more detailed overview of issues which are to be considered in developing each of these plans, e.g. rural / urban development, growth of population, social infrastructure, social characteristics of the population, etc. without specifically mentioning resettlement / expropriation.	The FBiH laws do not specifically require the consideration of feasible alternative project designs to avoid or minimise displacement. In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.  Whenever possible, integrate the consideration of resettlement issues in the EIA process..
Planning process	Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.  Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.  During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.	According to the Expropriation Law, the request for determining public interest and subsequently the proposal for expropriation, have to include an expropriation study (a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties and valuation reports). The proposal for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Article 22, 24).  Ownership or other formal legal rights	FBiH legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.  All affected people are informed about the proclamation of public interest and have the right to appeal. However, only those with formal legal rights are informed about the submission of the request for	The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the consultation process.

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
	Special provisions should be made for consultations with vulnerable groups.	on land and structures are recorded in the Cadastre and Land registries <sup>16</sup> . All issues regarding property rights have to be resolved before the decision on expropriation is passed (Article 27); in case of disputes, the affected parties turn to the court to decide who will receive compensation.	expropriation, have the right to appeal against it and are invited to negotiate compensation packages. All other categories of affected people are not involved in the expropriation process. In addition, there are no requirements for making special provisions for informing / consulting vulnerable groups.	
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered by the Cadastre and/or Land registries, are entitled to compensation.</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted (so that this request can include a bank guarantee for the amount needed for compensation – Article 24).</p>	All persons who do not have formal legal rights on land and structures located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.	Negotiated settlements are explicitly encouraged by the Expropriation Law (Article 23). Proof that the beneficiary of expropriation attempted to reach a settlement with the affected owner has to be submitted with the request for expropriation (Article 24). The last instance in which settlements can be concluded is within two months after the final decision on expropriation has been issued. During this period, the		Negotiated settlements should be explicitly encouraged in the RAP/LRF, for all affected categories of population.

<sup>16</sup> The Cadastre focuses on information about technical characteristics of the land and structures and the Land Registry records rights on properties (land and structures).



Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
		<p>municipal authorities are obliged to facilitate negotiations and to encourage the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 60 to 64).</p>		
<p>Compensation at replacement cost</p>	<p>Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.</p>	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price after taking into account the value of land (agricultural or land in urban areas), cost of structures (residential and business) &amp; installations, orchards and vineyards, crops, forest land, pastures and timber (Article 49 to 53).</p> <p>Compensation is also provided for instigation of an easement, a lease and for temporary occupation of land (Article 56 to 58).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law also does not mention depreciation of structures and assets, these are typically taken into account during valuations.</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
<p>Compensation in kind / cash</p>	<p>Compensation in kind will be offered in lieu of cash compensation where feasible.</p>	<p>According to the Expropriation law, compensation to those who have formal legal rights is provided in the form of replacement property (Article 45). However, compensation can be provided in cash, on request of the</p>		

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
		person who has formal legal rights and if a suitable property cannot be identified (Article 46).		
Provision of adequate housing / shelter with security of tenure	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	For persons with formal legal rights, compensation for residential or business structures, provided in kind has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc. - Article 45). Property rights on the new property are formally transferred based on the final decision on expropriation and proof that compensation has been provided/paid, providing security of tenure (Article 68).	<p>The law does not recognise persons who do not have formal legal title and therefore does not foresee the provision of adequate housing with security of tenure for this category of affected people.</p> <p>The expropriation law does not include any provisions about resettlement sites. However FBiH has a developed system of rules / regulations / standards for construction of residential and other permanent structures, as well as standards pertaining to resettlement sites (access to infrastructure).</p>	<p>During the development of the RAP, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.</p>
Other resettlement assistance	Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.	According to the Law on Social Protection, Protection of Civilian War Casualties and Protection of Families with Children, vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 28). One of these situations is listed as "forced migration" (Article 18). This payment is approved and administered through responsible municipal institutions (local self government and CSW).	Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with municipal social service departments. At a minimum, vulnerable groups should have access to</p>

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
				documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>The owner of illegally constructed structures (Category 3), is not entitled to compensation. The owner can tear down the structure and salvage the materials, if not, he/she will bear the costs of clearing the affected land (Article 45).</p>	<p>Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) are also not recognised by the Expropriation law. Those who have no recognisable legal right or claim to the land (Category 3) are explicitly not entitled to compensation.</p> <p>At present there are no laws regulating social housing in FBiH, only a few pilot projects financed by international donor organisations.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:</p> <ul style="list-style-type: none"> <li>• Law on Construction Land of FBiH – Cantonal Decrees (legalisation of structures erected by the owner of the land or on state owned land)</li> <li>• Law on Property Relations (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided</p>

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
				(see below).
Vulnerable groups	<p>The RAP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>Compensation could exceed the assessed market value of properties, if specific personal or family circumstances of the project affected person deem it necessary to ensure that his/her livelihood is protected, especially if expropriation affects agricultural land or business space in which the owner performed a legal business activity. (Article 47).</p>	<p>There are no special requirements in FBiH legislation for organising consultations and relocation assistance for vulnerable groups. However, persons who are homeless are entitled to social welfare assistance, which includes placement in shelters and access to other services available under the FBiH social welfare law.</p>	<p>During the census, it is necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of FBiH (social welfare, education, health care).</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.</p>	<p>All people (men and women) have equal rights in the FBiH (Section II, Article 2 of the FBiH Constitution), including the possibility to have formal legal rights on properties. According to the Family Law, if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 251, 252).</p>		<p>Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Family Law in the silence of title documentation.</p> <p>Ensure that all programmes, including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).</p>
Legal assistance	<p>Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.</p>	<p>There is no requirement for providing free legal assistance to persons affected by expropriation or resettlement, under the Expropriation law. However, each court or administrative decision must contain</p>	<p>Some municipalities have departments that provide free legal assistance to the most vulnerable citizens. This includes provision of legal advice but also court</p>	<p>Affected people should be informed about and provided with access to free legal assistance, either through municipal or other relevant departments or through NGOs</p>

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
		<p>instructions on available legal remedies.</p> <p>The Law on Free Legal Assistance is currently in the parliamentary procedure in BiH. The draft law foresees the provision of free legal assistance to citizens who are unable to secure these services by themselves.</p>	<p>representation.</p> <p>Apart from that, there are a number of NGOs in FBiH providing legal assistance, particularly to the most vulnerable groups of population.</p>	(specified in the RAP/LRF).
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is the existence of a bank guarantee, in the assessed total sum for payment or proof of the existence of replacement properties (Article 24). The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided (Article 26).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in FBiH legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	<p>If land acquisition causes loss of income or livelihood</p> <p><b>Category 1</b><sup>17</sup> and <b>Category 2</b>, should receive:</p> <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full</li> </ul>	The Expropriation law foresees cash or in kind compensation for land (including agricultural land, orchards and vineyards, crops, pastures, forest land and timber) and business structures / physical assets, for those who have formal legal rights (Category 1).	Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance, including lost net income, by the Expropriation law.	Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable

<sup>17</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
	<p>replacement cost</p> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> <li>• compensation for lost net income during the period of transition</li> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>	<p>Those who have formal legal rights are also entitled to compensation for lost profit from the day they loose access to the expropriated property to the day they receive replacement property or cash compensation (Article 54).</p>	<p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, transitional support, or other targeted assistance.</p> <p>There is no specific legal requirement for organising or compensating the costs of transporting equipment.</p> <p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by FBiH legislation.</p>	<p>laws are:</p> <ul style="list-style-type: none"> <li>• Law on Construction Land of FBiH – Cantonal Decrees (legalisation of structures erected by the owner of the land or on state owned land)</li> <li>• Law on Property Relations (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they loose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore</p>

Issue	EBRD policy requirements	Provisions of FBiH law	Gap / Comment	Proposed response
				their living standards. This could be done in cooperation with the FBiH Employment Agency.
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	There is no specific requirement for establishing an independent grievance mechanism, according to the Expropriation Law or other FBiH legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on public interest (Article 16), the decision on expropriation (Article 30), regarding compensation (Article 60).	In practice, affected people communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.	Define a project specific grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	Those who have formal legal rights are informed throughout the expropriation process (i.e. that a request for expropriation has been submitted (Article 25); before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation (Article 27).	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.
Monitoring	Monitoring of the RAP / LRF will be carried out in accordance with PR 1.		There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration process, under FBiH legislation.	Define indicators and monitoring mechanisms in the RAP / LRF.

## **Annex 2.2.2 – Republika Srpska**

The entity Republika Srpska is divided into **municipalities** and (two) **cities**. Republika Srpska has a government consisting of ministers and a parliament. Each municipality/city is headed by a mayor and has an assembly. The administrative capital of the entity Republika Srpska is the city Banja Luka with its own mayor and assembly. The second city Istočno Sarajevo, also with its own mayor and assembly, is divided into a number of municipalities.

### **Legal and Institutional Framework for Expropriation and Resettlement**

#### **Key laws**

#### **Expropriation**

- RS Expropriation Law (Official Gazette of the RS 112/06, 37/07, 110/08)

The Expropriation law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law only recognises those who have formal legal rights over properties. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the law.

#### **Expropriation process**

In the transport sector, for the implementation of projects by the RS Highways or Roads Directorate / Construction and Development Agency (municipality), expropriation is initiated by the entity / municipality (expropriation beneficiary). The process is initiated through a request for the establishment of public interest submitted to the RS government.

The request for establishing public interest is prepared by the Republic Administration for Surveying and Property Issues, with information about ownership and other rights recorded in the Land Registry and the Cadastre, along with a number of other documents. In cases when records between the two registries differ, a process is initiated to determine who has title over the affected properties.

If the submitted request is in order, the RS Government passes a decree for the establishment of public interest. At this moment, property owners and affected third parties are notified (through a public announcement) that the expropriation process has been initiated.

Upon the establishment of public interest, an expropriation proposal is submitted to the relevant municipal property administration together with a set of accompanying documents. Owners of affected properties are individually notified about the submission of the expropriation proposal and invited to negotiate an amicable sale-purchase agreement. Valuations of properties are performed beforehand and serve as a basis for negotiations. The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed. They can reach an agreement on compensation any time before the decision on expropriation is passed.

If the documentation is in order a decision on expropriation is passed. A hearing must to be held by the municipal property administration to discuss and determine the level of compensation for each affected owner. In case an agreement on the level of compensation is not reached, the case is referred to the courts to decide. The expropriation beneficiary proceeds with the payment of compensation or provision of replacement properties.

#### **Land tenure and property rights**

- RS Law on Land Registries (Official Gazette of the RS 67/03, 46/04, 109/05, 119/08)
- RS Law on Land Surveying and Cadastre (Official Gazette of the RS 34/06)



- RS Law on Planning and Construction (Official Gazette of the RS 55/10)
- RS Law on Property Relations (Official Gazette of the SFRY 60/80 and 36/90, Official Gazette of Republika Srpska 38/03)

Land tenure and property rights in BiH, including the RS are influenced by two main factors – i) the transition from socialism to capitalism and ii) the war during the 90-ies, as a result of which many people became refugees or IDPs.

Property rights, which people have been deprived of in the course of the war, had to be restored or compensated in cases where they could not be restored. The EC Enlargement Strategy Progress Report for 2010 for BiH states that the vast majority of cases of property repossession requests have been resolved.

The same report also states that property registers (land books and the Cadastre) remain largely unreliable. BiH is implementing reforms for the alignment of information on property rights recorded in land books and the Cadastre, however the progress is still slow. In some cases this also slows down expropriation procedures, as all outstanding issues regarding property registration have to be resolved before expropriation can be executed. Properties in the RS are registered under the Law on Land Registries and the Law on Land Surveying and Cadastre.

As with other countries in the region BiH, including the RS is struggling with informal construction. The RS Law on Planning and Construction enables legalisation of structures informally constructed on state owned land. The legalisation process is further regulated by municipal regulations. The Law on Property Relations enables acquiring property rights over land and/or structures erected on someone else's land.

#### **Resettlement assistance to vulnerable people**

- RS Law on Social Welfare (Official Gazette of the RS 5/93, 15/96, 110/03, 33/08)
- RS Housing Fund Law (Official Gazette of the RS 11/00, 56/06)

According to the Law on Social Welfare vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need. One of these situations is listed as "forced migration". Citizens of RS are entitled to various forms of social welfare payments and some social welfare services, which are still largely underdeveloped.

Republika Srpska has a Housing Fund, established by the Housing Fund Law of the RS, with the aim of implementing measures to create both favourable conditions for the building of apartments and the conditions for addressing accommodation needs of socially vulnerable persons. Through this fund people are able to rent or purchase apartments, under favourable conditions for a price considerably lower than market prices.

RS has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, free legal aid, etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

#### ***Key Institutions and service providers***

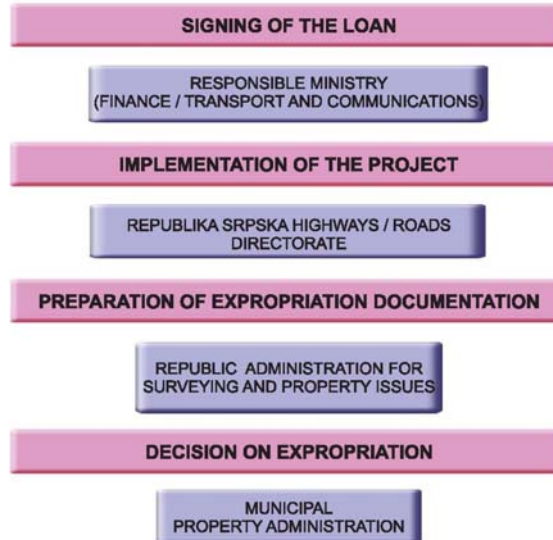
In Republika Srpska, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the entity level and the municipality/city level.

The specific institutions shown below (see Picture 4) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

Picture 4 – Key institutions in Republika Srpska involved in implementation of road projects and related expropriation or resettlement.

## REPUBLIKA SRPSKA

### ENTITY LOAN



### CITY/MUNICIPALITY LOAN



## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	<p>Republika Srpska legislation in general, including the Expropriation Law of the Republika Srpska, does not recognize the term involuntary resettlement.</p> <p>Issues related to land acquisition in the public interest are regulated by the Expropriation Law of the RS.</p>	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but only for affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <ol style="list-style-type: none"> <li>1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> </li> <li>2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.</li> </ol>	<p>Outright purchases of immovable property (land, residential and other structures) are defined by the Expropriation Law as "complete" expropriation (Article 7).</p> <p>"Incomplete" expropriation includes the instigation of an easement over the immovable property or a lease of land for a defined period of time (Article 8). Temporary occupation of land (up to 5 years) is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 9).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the</p>	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by RS legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
		property will also be expropriated, at his request (Article 11).		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	According to the Law on Planning and Construction, property ownership issues and interests of landowners are to be considered in the development of all planning documents such as spatial plans, urban plans, regulation plans, project designs, etc. (Article 17)	In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.  Whenever possible, integrate the consideration of resettlement issues in the EIA process.
Planning process	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.</p> <p>Special provisions should be made for consultations with vulnerable groups.</p>	<p>According to the Expropriation Law, before the request for public interest is submitted to the relevant authority, the expropriation beneficiary is obliged to develop an expropriation plan which includes a list of properties that need to be expropriated and which has to be disclosed to the public for comments (Article 16, 17). The request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties. The request for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Article 25). Ownership or other formal legal rights on land and structures are recorded in the Cadastre and Land registries<sup>18</sup>. All</p>	<p>RS legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>All affected people are informed about the proclamation of public interest. However, only those with formal legal rights are informed about the submission of the request for expropriation, have the right to appeal against it and are invited to negotiate compensation packages. All other categories of affected people are not involved in the expropriation process. In addition, there are no requirements for making</p>	<p>The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the consultation process.</p>

<sup>18</sup> The Cadastre focuses on information about technical characteristics of the land and structures and the Land Registry records rights on properties (land and structures).

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
		issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.	special provisions for informing / consulting vulnerable groups.	
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered by the Cadastre and/or Land registries, are entitled to compensation. In addition, owners of informal structures that could have been legalised at the time when they were constructed, are entitled to cash compensation corresponding to the construction value of the structure (Article 53).</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted so that this request can include a bank guarantee for the amount needed for compensation (Article 25).</p>	All persons who do not have formal legal rights on land and structures <sup>19</sup> located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.	Negotiated settlements are explicitly encouraged by the Expropriation Law (Article 27). Proof that the beneficiary of expropriation attempted to reach a settlement with the affected owner has to be submitted with the request for expropriation (Article 25). The last instance in which settlements can be concluded is within two months after the final decision on expropriation has been issued. During this period, the municipal authorities are obliged to facilitate negotiations and to encourage		Negotiated settlements, even before expropriation is initiated, should be explicitly encouraged in the RAP/LRF.

<sup>19</sup> with the exception of owners of informal structures that could have been legalised at the time when they were constructed.

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
		the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 68 to 70).		
Compensation at replacement cost	Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price after taking into account the value of land (agricultural or land in urban areas), cost of structures (residential and business) &amp; installations, orchards and vineyards, crops, forest land and timber (Article 53 to 60)</p> <p>Compensation is also provided for instigation of an easement, a lease and for temporary occupation of land (Article 64 to 66).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law also does not mention depreciation of structures and assets, these are typically taken into account during valuations.</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
Compensation in kind / cash	Compensation in kind will be offered in lieu of cash compensation where feasible.	According to the Expropriation law, compensation to those who have formal legal rights is provided in the form of replacement property (Article 53). However, compensation can be provided in cash, on request of the person who has formal legal rights and if a suitable property cannot be		

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
		identified (Article 54).		
Provision of adequate housing / shelter with security of tenure	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	<p>For persons with formal legal rights, compensation for residential or business structures, provided in kind has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc. - Article 53). Property rights on the new property are formally transferred based on the final decision on expropriation and proof that compensation has been provided/paid, providing security of tenure (Article 73).</p>	<p>The law does not recognise persons who do not have formal legal title and therefore does not foresee the provision of adequate housing with security of tenure for this category of affected people.</p> <p>The expropriation law does not include any provisions about resettlement sites. However Republika Srpska has a developed system of rules / regulations / standards for construction of residential and other structures, as well as standards pertaining to resettlement sites (access to infrastructure).</p>	<p>During the development of the RAP, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.</p>
Other resettlement assistance	<p>Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.</p>	<p>Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.</p> <p>According to the Law on Social Welfare vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need. One of these situations is listed as "forced migration". This payment is approved and administered through responsible municipal institutions (local self government and CSW).</p>	<p>In practice, affected people are in some cases resettled with transport organised / compensated by the beneficiary of expropriation.</p>	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with social service departments (municipal or state). At a minimum, vulnerable groups should have access to documentation, education, health and social services.</p>

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
				Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>Republika Srpska has a Housing Fund (Housing Fund Law of the RS), founded with the aim of implementing measures to create both favourable conditions for the building of apartments and the conditions for addressing accommodation needs of socially vulnerable persons (Article 7). Through this fund people are able to rent or purchase apartments, under favourable conditions for a price considerably lower than market prices.</p>	<p>Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) and those who have no recognisable legal right or claim to the land (Category 3) are not recognised by the Expropriation law.</p> <p>The existence of the Housing Fund and its programmes should be used as a basis for ensuring that those who are adversely affected by resettlement (usually belonging to Category 3) receive appropriate accommodation.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:</p> <ul style="list-style-type: none"> <li>• Law on Planning and Construction and municipal decisions (legalisation of structures erected by the owner of the land)</li> <li>• Law on Property Rights (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided (see below).</p>
Vulnerable	The RAP should specifically take into account	Compensation could exceed the	There are no special	During the census, it is



Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
groups	<p>any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>assessed market value of properties, if specific personal or family circumstances of the project affected person deem it necessary to ensure that his/her livelihood is protected, especially if expropriation affects agricultural land or business space in which the owner performed a legal business activity (Article 55).</p> <p>The RS Housing Fund Law lists vulnerable groups which should have priority in the allocation / purchasing / leasing of apartments – IDPs and refugees, returnees, beneficiaries of social welfare, young professionals, people living in inappropriate accommodation and members of other vulnerable groups.</p>	<p>requirements in RS legislation for organising consultations and relocation assistance for vulnerable groups. However, persons who are homeless are entitled to social welfare assistance, which includes placement in shelters and access to other services available under national and local social welfare laws.</p>	<p>necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of RS (Law on Social Welfare, Law on Education, Law on Health Care).</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.</p>	<p>All people (men and women) have equal rights in the RS (Article 10 of the RS Constitution), including the possibility to have formal legal rights on properties. According to the Family Law, if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 270).</p>		<p>Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Family Law in the silence of title documentation.</p> <p>Ensure that all programmes, including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).</p>
Legal assistance	<p>Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.</p>	<p>There is no requirement for providing free legal assistance to persons affected by expropriation or resettlement, under the Expropriation law. However, each court or administrative decision must contain</p>	<p>Apart from that, there are a number of NGOs in RS providing legal aid, particularly to the most vulnerable groups of population.</p>	<p>Affected people should be informed about and provided with access to free legal aid, either through the Centre for Free Legal Aid or through NGOs (specified in the RAP/LRF).</p>

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
		<p>instructions on available legal remedies.</p> <p>The Government of RS adopted a Law on the provision of free legal aid to citizens, which is provided through the Centre for Free Legal Aid. This includes provision of legal advice but also court representation.</p>		
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is the existence of a bank guarantee, in the assessed total sum for payment or proof of the existence of replacement properties (Article 25). The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided (Article 69).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in RS legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	<p>If land acquisition causes loss of income or livelihood</p> <p><b>Category 1<sup>20</sup></b> and <b>Category 2</b>, should receive:</p> <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full replacement cost</li> </ul>	The Expropriation law foresees cash or in kind compensation for land (including agricultural land, orchards and vineyards, crops, forest land and timber) and business structures / physical assets, for those who have formal legal rights (Category 1).	Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance, including lost net income, by the Expropriation law.	Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:

<sup>20</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Republika Srpska law	Gap / Comment	Proposed response
	<p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> <li>• compensation for lost net income during the period of transition</li> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>	<p>Those who have formal legal rights are also entitled to compensation for lost profit from the day they lose access to the expropriated property to the day they receive replacement property or cash compensation (Article 62).</p>	<p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, transitional support, or other targeted assistance.</p> <p>There is no specific legal requirement for organising or compensating the costs of transporting equipment.</p> <p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by RS legislation.</p>	<ul style="list-style-type: none"> <li>• Law on Planning and Construction (legalisation of structures erected by the owner of the land)</li> <li>• Law on Property Rights (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they lose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the RS Employment Bureau.</p>

<b>Issue</b>	<b>EBRD policy requirements</b>	<b>Provisions of Republika Srpska law</b>	<b>Gap / Comment</b>	<b>Proposed response</b>
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>There is no specific requirement for establishing an independent grievance mechanism, according to the Expropriation Law or other RS legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against decision on expropriation, regarding compensation)</p>	<p>In practice, affected people communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.</p>	<p>Define a project specific grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	<p>Those who have formal legal rights are informed throughout the expropriation process (i.e. at the stage of developing the expropriation plan (Article 17); passing of the decision on public interest (Article 14); that a request for expropriation has been submitted (Article 26); before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation (Article 28)).</p>	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	<p>Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.</p>
Monitoring	<p>Monitoring of the RAP / LRF will be carried out in accordance with PR 1.</p>		<p>There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration process, under RS legislation.</p>	<p>Define indicators and monitoring mechanisms in the RAP / LRF.</p>

## Annex 2.2.3 – Brčko District

### Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	BD <sup>21</sup> BiH legislation in general, including the Expropriation Law of the BD BiH (Official Gazette of BD BiH 26/04, 19/07, 02/08, 19/10), does not recognise the term involuntary resettlement.  Issues related to land acquisition in the public interest are regulated by the Expropriation Law of the BD BiH.	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but mostly for affected people who have formal legal rights (with the exception of owners of informal residential structures who are entitled to compensation – revised Article 34, Official Gazette of BD BiH 19/10).	Gaps regarding physical and economic displacement are discussed further in the table.
Land acquisition / restriction of access	Involuntary resettlement occurs as a result of:  1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> 2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.	Outright purchases of immovable property (land, residential and other structures) are defined by the Expropriation Law as “complete” expropriation (Article 3).  “Incomplete” expropriation includes the instigation of an easement over the immovable property or a lease of land for a defined period of time (Article 4). Temporary occupation of land is also	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by BD BiH legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.

<sup>21</sup> Brčko District

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
		<p>possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 5).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the property will also be expropriated, at his request (Article 7).</p>		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	According to the Law on Spatial Planning and Construction of BD BiH (Official Gazette of the BD BiH 17/08), various social issues are to be considered in the development of all planning documents such as spatial plans, urban plans, regulation plans, zoning plans, etc.	The BD BiH laws do not specifically require the consideration of feasible alternative project designs to avoid or minimise displacement. In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	<p>Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.</p> <p>Whenever possible, integrate the consideration of resettlement issues in the EIA process.</p>
Planning process	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages,</p>	According to the Expropriation Law, the request for determining public interest has to include an expropriation study (a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties and valuation reports). The proposal for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Article 11, 18,	<p>BD BiH legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>Only those with formal legal rights (including owners of informal residential structures) are informed about the submission of the</p>	The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
	<p>eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.</p> <p>Special provisions should be made for consultations with vulnerable groups.</p>	<p>19).</p> <p>Ownership or other formal legal rights on land and structures are recorded in the Cadastre and Land registries<sup>22</sup>. All issues regarding property rights have to be resolved before the decision on expropriation is passed (Article 21, 22); in case of disputes, the affected parties turn to the court to decide who will receive compensation.</p>	<p>request for expropriation, have the right to appeal against it and are invited to negotiate compensation packages. All other categories of affected people are not involved in the expropriation process. In addition, there are no requirements for making special provisions for informing / consulting vulnerable groups.</p>	<p>necessary to make special provisions to include them in the consultation process.</p>
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered by the Cadastre and/or Land registries, as well as owners of informal residential structures, are entitled to compensation.</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted (funds needed for payment of compensation have to be secured by the expropriation beneficiary, as a condition to submit an expropriation request – Article 17).</p>	<p>All persons who do not have formal legal rights on land and non-residential structures located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.</p>	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	<p>Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.</p>	<p>Negotiated settlements are explicitly encouraged by the Expropriation Law (Article 23). The last instance in which settlements can be concluded is within two months after the final decision on expropriation has been issued. During this period, the district authorities are</p>		<p>Negotiated settlements should be explicitly encouraged in the RAP/LRF, for all affected categories of population.</p>

<sup>22</sup> The Cadastre focuses on information about technical characteristics of the land and structures and the Land Registry records rights on properties (land and structures).

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
		<p>obliged to facilitate negotiations and to encourage the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 37 to 40).</p>		
<p>Compensation at replacement cost</p>	<p>Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.</p>	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price after taking into account the value of the property (land, structures, crops). (Article 34, 41). The law specifically states that compensation cannot exceed the market price (Article 33).</p> <p>Compensation is also provided for instigation of an easement, a lease and for temporary occupation of land (Article 42 to 44).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law also does not mention depreciation of structures and assets, these are typically taken into account during valuations.</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
<p>Compensation in kind / cash</p>	<p>Compensation in kind will be offered in lieu of cash compensation where feasible.</p>	<p>According to the Expropriation law, compensation is determined in cash or in the form of replacement property (Article 33).</p> <p>The expropriation beneficiary and the</p>		



Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
		<p>person who has formal legal rights can agree on other forms of compensation, which are not contrary to other BD BiH laws and the Constitution and laws of BiH (Article 36).</p>		
<p>Provision of adequate housing / shelter with security of tenure</p>	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	<p>For persons with formal legal rights (and owners of informal residential structures), compensation provided in kind has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc. - Article 33). Property rights on the new property are formally transferred based on the final decision on expropriation (Article 47).</p>	<p>The latest changes of the Expropriation law (from April 2010) removed the requirement for the expropriation beneficiary to submit proof that payment of compensation has been executed, in order to formally transfer property rights, thus jeopardising affected people's security of tenure.</p> <p>The expropriation law does not include any provisions about resettlement sites. However BD BiH has regulations / standards for construction of residential and other permanent structures, as well as standards pertaining to access to infrastructure.</p>	<p>During the development of the RAP, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.</p>
<p>Other resettlement assistance</p>	<p>Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.</p>	<p>According to the Law on Social Welfare of the BD BiH (Official Gazette of the BD BiH 01/03, 04/04, 19/07, 02/08), vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 32). This payment is approved and administered through the BD BiH Centre for Social Welfare.</p>	<p>Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.</p>	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in</p>

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
				cooperation with the BD BiH Centre for Social Welfare. At a minimum, vulnerable groups should have access to documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>Owners of <u>residential</u> structures constructed without the necessary permits (Category 2 and/or 3) are entitled to compensation according to the Expropriation Law (Article 34). For illegally constructed non-residential structures, the owner is not entitled to compensation, however he/she can tear down the structure and salvage the materials (Article 34).</p>	At present there are no laws regulating social housing in BD BiH. However there are over 300 apartments originally built for the accommodation of refugees / IDPs which, as vacated, are now being used for accommodation of other vulnerable citizens in the district.	In case of physical displacement, people belonging to Category 2 or 3 may need assistance in the form of social (low rent) housing. In case social housing is provided, calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided (see below).

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
Vulnerable groups	<p>The RAP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>		There are no special requirements in BD BiH legislation for organising consultations and relocation assistance for vulnerable groups.	During the census, it is necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of BD BiH (social welfare, education, health care).
Joint property	Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.	All people (men and women) have equal rights in the BD BiH (Article 13 of the BD BiH Statute, Official Gazette of the BD BiH 02/10), including the possibility to have formal legal rights on properties. According to the BD BiH Family Law (Official Gazette of the BD BiH 23/07), if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 228, 229).		Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Family Law in the silence of title documentation.
Legal assistance	Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.	The Law on the Office for Providing Free Legal Assistance of the BD BiH (Official Gazette of the BD BiH 19/07) foresees the provision of free legal assistance to vulnerable citizens who are unable to secure these services by		Affected people should be informed about and provided with access to free legal assistance, through the Office for Providing Free Legal Assistance (specified in the

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
		themselves.		RAP/LRF).
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is the existence of funds needed for compensation (Article 17). The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided (Article 38).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in BD BiH legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	<p>If land acquisition causes loss of income or livelihood</p> <p><b>Category 1</b><sup>23</sup> and <b>Category 2</b>, should receive:</p> <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full replacement cost</li> </ul> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> <li>• compensation for lost net income during</li> </ul>	The Expropriation law foresees cash or in kind compensation for land and business structures / physical assets, for those who have formal legal rights (Category 1).	<p>Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance.</p> <p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, lost net income, transitional support, or other targeted assistance.</p> <p>There is no specific legal requirement for organising or compensating the costs of transporting equipment.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and non-residential structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:</p> <ul style="list-style-type: none"> <li>• Law on Spatial Planning and Construction of BD BiH (Official Gazette of the BD BiH 17/08) and the Law on Legalisation of Illegally Constructed Structures (Official Gazette of the BD BiH 21/03, 03/04, 29/04, 19/07) - legalisation of structures erected by the</li> </ul>

<sup>23</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Brčko District BiH law	Gap / Comment	Proposed response
	<p>the period of transition</p> <ul style="list-style-type: none"> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>		<p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by BD BiH legislation.</p>	<p>owner of the land or on state owned land</p> <ul style="list-style-type: none"> <li>• Law on Property Rights (Official Gazette of the BD BiH 11/01, 8/03, 40/04, 19/07) - acquiring property rights over land and/or structures erected on someone else's land.</li> </ul> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they loose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the BD BiH Employment Bureau.</p>

<b>Issue</b>	<b>EBRD policy requirements</b>	<b>Provisions of Brčko District BiH law</b>	<b>Gap / Comment</b>	<b>Proposed response</b>
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>There is no specific requirement for establishing an independent grievance mechanism, according to the Expropriation Law or other BD BiH legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on expropriation (Article 26), regarding compensation (Article 40).</p>	<p>In practice, affected people communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.</p>	<p>Define a project specific grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	<p>Those who have formal legal rights are informed about the expropriation process (i.e. before the decision on expropriation is passed, the District Department for Spatial Planning and Property Issues has to invite the affected person with formal legal rights to a meeting to discuss exactly how much of the property is to be expropriated and any other related issues (Article 21)).</p>	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	<p>Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.</p>
Monitoring	<p>Monitoring of the RAP / LRF will be carried out in accordance with PR 1.</p>		<p>There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration process, under BD BiH legislation.</p>	<p>Define indicators and monitoring mechanisms in the RAP / LRF.</p>

## Annex 2.3 – FYR Macedonia

FYR Macedonia is located in South Eastern Europe. It has a population of 2,072,086<sup>24</sup>.

Map 3: FYR Macedonia



The FYR Macedonia is a **parliamentary democracy** and has a government consisting of individual ministers and a parliament. FYR Macedonia is divided into **municipalities** and (one) **city**, each having a mayor and local council. The capital of FYR Macedonia, city of Skopje, with its own mayor and city council is divided into a number of municipalities.

### Legal and Institutional Framework for Expropriation and Resettlement

#### Key laws

#### Expropriation

- Expropriation Law (Official Gazette of the Republic of Macedonia 33/95, 20/98, 40/99, 31/03, 10/08, 106/08, 76/10)

The Expropriation law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law only recognises those who have formal legal rights over properties. The law specifically states that those who have informal rights to properties (unregistered) are not entitled to compensation.

#### Expropriation process

In the transport sector, for the implementation of projects by the Agency for State Roads / PIU and Department for Space Planning (municipality), expropriation is initiated by the republic / municipality (expropriation beneficiary). Expropriation can be initiated for construction and other projects in the public interest. Public interest is defined in detail in the Expropriation Law and includes construction projects in the transport sector.

An expropriation proposal is prepared by the ASR Land Expropriation Commission / municipal Legal Advisory Department (Unit for Expropriation), with information about ownership and other rights recorded in the Property Cadastre, along with a number of other documents.

Negotiations between owners of affected properties and the expropriation beneficiary can be held and an amicable sale-purchase agreement signed, any time before the final decision on expropriation is passed. Valuations of properties performed beforehand, serve as a basis for negotiations. The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed.

<sup>24</sup> estimate from July 2010, CIA The World Factbook

The expropriation proposal is submitted to the offices for legal and property affairs. If the submitted documentation is in order a decision on expropriation is passed.

If an amicable sale purchase agreement is not reached, after the decision on expropriation has become final, a hearing is held by the municipal property administration to discuss and determine the level of compensation for each affected owner. In case an agreement on the level of compensation is not reached, the case is referred to the courts to decide. The expropriation beneficiary proceeds with the payment of compensation or provision of replacement properties.

### **Land tenure and property rights**

- Law on Property Cadastre (Official Gazette of the Republic of Macedonia 40/08)
- Law on Survey and Land Cadastre (Official Gazette of the Federal Republic of Macedonia 34/72, 13/78)
- Law on Property Rights (Official Gazette of the Republic of Macedonia 18/01)

The EC Enlargement Strategy Progress Report for 2010 for FYR Macedonia states that the land register has been established for over 97.5% of the country's territory. In addition, registration fees have been lowered, administrative procedures considerably shortened and an online registry developed. The laws regulating property registration are the Law on Property Cadastre and the Law on Survey and Land Cadastre.

In FYR Macedonia, the Law on Property Rights defines the acquisition of property rights over land and/or structures erected on someone else's land.

FYR Macedonia is one of the signatories to the 2004 Vienna Declaration on Informal Settlements in South Eastern Europe. With the aim of enabling legalisation of informal construction on state owned land, the government is planning to adopt a Law for the Treatment of Illegally Constructed Objects.

### **Resettlement assistance to vulnerable people**

- Law on Social Welfare and Child Protection (Official Gazette of the Republic of Macedonia 50/97, 16/00, 17/03)

According to the Law on Social Welfare, all vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need, administered through local Centres for Social Welfare or local self governments. Vulnerable citizens receive social welfare in the form of financial assistance or social services.

Rules and Regulations for Accommodation of Socially Vulnerable Individuals, adopted based on the Law on Social Welfare, regulate the provision of assistance to persons who are beneficiaries of social welfare and without accommodation, in the form of cash payments for rent or reconstruction of houses / apartments or placement in social housing.

FYR Macedonia has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, free legal aid etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

### ***Key Institutions and service providers***

In the FYR Macedonia, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the republic level and the municipality/city level.

The specific institutions shown below (see Picture 5) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.



Picture 5 – Key institutions in FYR Macedonia involved in implementation of road projects and related expropriation or resettlement.

## MACEDONIA

### GOVERNMENT LOAN



### CITY/MUNICIPALITY LOAN



## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	<p>Macedonian legislation in general, including the Expropriation Law of the Republic of Macedonia, does not recognize the term involuntary resettlement.</p> <p>Issues related to land acquisition in the public interest are regulated by the Expropriation Law of the Republic of Macedonia.</p>	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but only for affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <ol style="list-style-type: none"> <li>1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> </li> <li>2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.</li> </ol>	<p>Outright purchases of immovable property (land, residential and other structures - Article 1) are defined by the Expropriation Law as "complete" expropriation (Article 4).</p> <p>"Incomplete" expropriation includes the instigation of an easement over the immovable property or a lease of land for a defined period of time (Article 4). Temporary occupation of land (up to 3 years) is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 7).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the</p>	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by Macedonian legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
		property will also be expropriated, at his request (Article 12).		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	There are no legal requirements in Macedonian legislation for avoiding or at least minimizing physical and/or economic displacement. However, the Law on Spatial and Urban Planning states that the aim of such planning is to improve living and working conditions for citizens (Article 4).	In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.  Whenever possible, integrate the consideration of resettlement issues in the EIA process.
Planning process	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.</p> <p>Special provisions should be made for consultations with vulnerable groups.</p>	<p>According to the Expropriation Law, the request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties. The proposal for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Articles 14, 15).</p> <p>Ownership or other formal legal rights on land and structures are recorded in the Real Estate Cadastre. All issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.</p>	<p>Macedonian legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>Only those with formal legal rights are informed about the expropriation process and have the right to appeal, while all other categories of affected people are not informed or consulted. In addition, there are no requirements for making special provisions for informing / consulting vulnerable groups.</p>	The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the consultation process.
Cut off date	In the absence of national government procedures, the date of completion of the census and assets inventory represents the	According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered	All persons who do not have formal legal rights on land and structures located in the	The date when the census is carried out should be agreed with the implementing agency

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
	<p><b><i>cut-off date for eligibility.</i></b></p> <p>Individuals who move into the project affected area <b><i>after the cut-off date will not be eligible</i></b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b><i>well-documented and disseminated</i></b> throughout the project area.</p>	<p>by the Cadastre and/or Land registries, are entitled to compensation.</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted (so that this request can include a bank guarantee for the amount needed for compensation – Article 15).</p>	<p>project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.</p>	<p>and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	<p>Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.</p>	<p>Negotiated settlements are explicitly encouraged by the Expropriation Law (Article 17) and the last instance in which they can be concluded is within 8 days after the final decision on expropriation has been issued. During this period, the municipal authorities are obliged to facilitate negotiations and to encourage the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 38).</p>		<p>Negotiated settlements, even before expropriation is initiated, should be explicitly encouraged in the RAP/LRF.</p>
Compensation at replacement cost	<p>Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.</p>	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price (Article 10) after taking into account the value of land (agricultural or land in urban areas), cost of structures (residential and business) &amp; installations, crops, forest land and timber (Article 24 to 27 and 32).</p> <p>Compensation is also provided for instigation of an easement, a lease and for temporary occupation of land (Article 33 to 35).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
			<p>compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law only mentions taking into account depreciation of structures whose market value can not be determined (walls, fences, etc.) (Article32), depreciation is also typically taken into account during valuations of all affected properties and assets.</p>	
Compensation in kind / cash	Compensation in kind will be offered in lieu of cash compensation where feasible.	According to the Expropriation law, compensation to those who have formal legal rights is provided in kind or in cash for agricultural land or for residential and business structures, on request of the person who has formal legal rights and if a suitable property can not be identified (Articles 23, 24).		
Provision of adequate housing / shelter with security of tenure	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	For persons with formal legal rights, compensation for residential or business structures, provided in kind has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc. – Articles 24 and 27). Property rights on the new property are formally transferred based on the final decision on expropriation and the final decision / agreement on compensation, providing security of tenure (Article 42).	<p>The law does not recognise persons who do not have formal legal title and therefore does not foresee the provision of adequate housing with security of tenure for this category of affected people.</p> <p>The expropriation law does not include any provisions about resettlement sites. However FYR Macedonia has a developed system of rules / regulations /</p>	<p>During the development of the RAP, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced</p>

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
			standards for construction of residential and other structures, as well as standards pertaining to resettlement sites (access to infrastructure).	evictions.
Other resettlement assistance	Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.	<p>Provision of compensation for transport costs (moving allowance) is foreseen by the Expropriation law for those who have formal legal rights (Article 36).</p> <p>Specific resettlement assistance for vulnerable groups is not foreseen by the Expropriation law. However, according to the Law on Social Welfare, all vulnerable citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 34). This need is assessed based on existing circumstances and administered through local self governments and CSWs.</p>	Relocation costs / transport is not organised or compensated by the beneficiary of expropriation for those who do not have formal legal title.	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets, for all categories of affected people (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with social service departments (municipal or state). At a minimum, vulnerable groups should have access to documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.</p>
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement,</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>The owner of illegally constructed structures (Category 3) is not entitled to compensation (explicitly stated in the law). The owner can tear down the</p>	<p>Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) and those who have no recognisable legal right or claim to the land (Category 3) are not recognised by the Expropriation law.</p> <p>FYR Macedonia is about to</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. At present the only applicable law is:</p> <ul style="list-style-type: none"> <li>• Law on Property Rights (acquiring property rights</li> </ul>

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
	<p>replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</p> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>structure and salvage the materials, if not, he/she will bear the costs of clearing the affected land (Article 45).</p> <p>In line with the Rules and Regulations for Accommodation of Socially Vulnerable Individuals, adopted based on the Law on Social Welfare, assistance is to be provided to persons who are beneficiaries of social welfare and without accommodation (Article 2), in the form of cash payments for rent or reconstruction of houses / apartments or placement in social housing (Article 9).</p>	<p>adopt the Law for the Treatment of Illegally Constructed Objects, which will specify terms and conditions for legalisation of objects constructed without building permits, as part of the commitments made through the signing of the Vienna Declaration on Informal Settlements in SEE.</p> <p>The provisions of the Rules and Regulations for Accommodation of Socially Vulnerable Individuals, adopted based on the Law on Social Welfare, should be used as a basis for ensuring that those who are adversely affected by resettlement (usually belonging to Category 3) receive appropriate accommodation.</p> <p>The Ministry of Transport and Communication is implementing a nation wide programme of building and allocating social apartments, beneficiaries are: children without parental care, single parents and families with many children, single headed households, persons with disability, Roma and members of other vulnerable groups.</p>	<p>over land and/or structures erected on someone else's land)</p> <p>Once the Law for the Treatment of Illegally Constructed Objects is adopted, it should be used as a basis for the legalisation of structures erected by the owner of the land.</p> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided (see below).</p>
Vulnerable	The RAP should specifically take into account	Rules and Regulations for	There are no special	During the census, it is

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
groups	<p>any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>Accommodation of Socially Vulnerable Individuals, adopted based on the Law on Social Welfare, specify that beneficiaries of social welfare, without accommodation are entitled to social housing assistance.</p>	<p>requirements in Macedonian legislation for organising consultations and relocation assistance for vulnerable groups.</p> <p>However, persons who are homeless are entitled to social welfare assistance, which includes placement in shelters and access to other services available under national and local social welfare laws.</p>	<p>necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under Macedonian laws (Law on Social Welfare, Law on Education, Law on Health Care).</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.</p>	<p>Men and women have equal rights in the FYR Macedonia (Article 9 of the Constitution of the Republic of Macedonia), including the possibility to have formal legal rights on properties. According to the Family Law, if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 203-206).</p>		<p>Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Family Law in the silence of title documentation.</p> <p>Ensure that all programmes, including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).</p>
Legal assistance	<p>Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.</p>	<p>There is no requirement for providing free legal assistance to persons affected by expropriation or resettlement, under the Expropriation law. However, each court or administrative decision must contain instructions on available legal</p>		<p>Affected people should be informed about and provided with access to free legal aid, either through municipal departments or through associations / NGOs (specified in the RAP/LRF).</p>



Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
		remedies.  The Government of the FYR Macedonia adopted a Law on the provision of free legal aid to citizens, through municipal offices and certified associations. Services include provision of legal advice but also court representation.		
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is a bank guarantee with a commercial bank (or, in the case of government authorities, proof of funds allocated in the budget), in the assessed total sum for payment. Compensation has to be paid / provided within 15 days from the day when a compensation agreement has been signed or the decision on compensation has become final (Article 40).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in Macedonian legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	If land acquisition causes loss of income or livelihood  <b>Category 1</b> <sup>25</sup> and <b>Category 2</b> , should receive: <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full</li> </ul>	The Expropriation law foresees cash or in kind compensation for land (including agricultural land, orchards and vineyards, crops, forest land and timber) and business structures / physical assets, for those who have formal legal rights (Category 1).	Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance, including lost net income and moving allowance (transfer of equipment) by	Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. At present the

<sup>25</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
	<p>replacement cost</p> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>compensation for the cost of re-establishing commercial activities elsewhere</li> <li>compensation for lost net income during the period of transition</li> <li>compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>	<p>The owner of illegally constructed structures (Category 3) is not entitled to compensation (explicitly stated in the law). The owner can tear down the structure and salvage the materials, if not, he/she will bear the costs of clearing the affected land (Article 45).</p> <p>According to Article 31 of the Expropriation Law, those who have formal legal rights (Category 1) are also entitled to compensation for any damages (i.e. lost income) incurred until they were able to re-establish their economic activity. The rate of compensation is to be determined separately in each case.</p> <p>Provision of compensation for transport costs (moving allowance) is foreseen by the Expropriation law for those who have formal legal rights (Article 36).</p> <p>The FYR Macedonia is about to adopt the Law for the Treatment of Illegally Constructed Objects, which will specify terms and conditions for legalisation of objects constructed without building permits</p>	<p>the Expropriation law.</p> <p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, transitional support, or other targeted assistance.</p> <p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by Macedonian legislation.</p>	<p>only applicable law is:</p> <ul style="list-style-type: none"> <li>Law on Property Rights (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>Once the Law for the Treatment of Illegally Constructed Objects is adopted, it should be used as a basis for the legalisation of structures erected by the owner of the land.</p> <p>In case of economic displacement, provide those belonging to Categories 2 and 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they lose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets for all categories of affected people.</p> <p>Facilitate access to existing services which could assist the</p>

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
				affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the Macedonian Employment Service Agency.
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	There is no specific requirement for establishing an independent grievance mechanism, according to the Expropriation Law or other Macedonian legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure to relevant administrative authorities and courts.	In practice, affected people communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.	Define a project specific grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	Those who have formal legal rights are informed throughout the expropriation process (i.e. that a request for expropriation has been submitted (Article 16); before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation (Article 17)).	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.
Monitoring	Monitoring of the RAP / LRF will be carried out in accordance with PR 1.		There are no requirements for monitoring the	Define indicators and monitoring mechanisms in the RAP / LRF.

Issue	EBRD policy requirements	Provisions of Macedonian law	Gap / Comment	Proposed response
			expropriation / resettlement / livelihoods restoration process, under Macedonian legislation.	

## Annex 2.4 - Montenegro

The Republic of Montenegro (RME) is located in South Eastern Europe. It has a population of 666,730<sup>26</sup>.

Map 4: Montenegro



Montenegro is a **republic** and has a government consisting of individual ministers and a parliament. Montenegro is divided into **municipalities** headed by a mayor and local assemblies. The capital city of Montenegro is Podgorica (the municipality of Podgorica), divided into two sub-municipalities.

### Legal and Institutional Framework for Expropriation and Resettlement

#### Key laws

#### Expropriation

- RME Expropriation Law (055/00-1, 012/02-9, 028/06-37, Official Gazette of the RME 021/08-11)

The Expropriation law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law only recognises those who have formal legal rights over properties. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the law.

#### Expropriation process

In the transport sector, for the implementation of projects by the RME Transport Directorate / Construction and Development Agency (municipality), expropriation is initiated by the republic / municipality (expropriation beneficiary). The process is initiated through a request for the establishment of public interest submitted to the RME government.

The request for establishing public interest is prepared by the RME Property Administration Agency, with information about ownership and other rights recorded in the Land Registry and the Cadastre, along with a number of other documents. In cases when records between the two registries differ, a process is initiated to determine who has title over the affected properties.

If the submitted request is in order, the RME Government passes a decree for the establishment of public interest. Although the law does not specify whether affected owners are informed about the decree, since the request has to include a list of affected owners and properties, and since valuations are performed before the request is submitted, it is expected that property owners

<sup>26</sup> estimate from July 2010, CIA The World Factbook

and affected third parties are in that way notified that the expropriation process has been initiated.

Upon the establishment of public interest, an expropriation proposal is submitted to the relevant municipal property administration together with a set of accompanying documents. If the documentation is in order a decision on expropriation is passed.

Negotiations between owners of affected properties and the expropriation beneficiary can be held and an amicable sale-purchase agreement signed, any time before the decision on expropriation is passed. Valuations of properties performed beforehand, serve as a basis for negotiations. The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed.

If such an agreement is not reached, after the decision on expropriation has been passed, a hearing must to be held by the municipal property administration to discuss and determine the level of compensation for each affected owner. In case an agreement on the level of compensation is not reached, the case is referred to the courts to decide. The expropriation beneficiary proceeds with the payment of compensation or provision of replacement properties.

### **Land tenure and property rights**

- RME Law on State Surveying and Cadastre (029/07-1)
- RME Law on Property Relations (019/09-1)

According to the EC Enlargement Strategy Progress Report for 2010 for Montenegro, the land register system needs strengthening, in particular at municipal level. The law regulating this process is the Law on State Surveying and Cadastre. An online registry administered by the RME Property Administration Agency, has been developed and is in the process of being updated.

A Law on Property Relations was adopted during 2009 in Montenegro, which defines the acquisition of property rights over land and/or structures erected on someone else's land.

Montenegro is faced with resolving a significant amount of informal construction and therefore is one of the signatories to the 2004 Vienna Declaration on Informal Settlements in South Eastern Europe. The government is planning to adopt changes to the current Law on Construction to enable legalisation of structures informally constructed on state owned land. The authorities are also developing a programme of support for owners of such structures where the state would provide them with loans under favourable conditions so that they could improve their structures and bring them to the technical standard required for legalisation.

### **Resettlement assistance to vulnerable people**

- RME Law on Social Welfare and Child Protection (078/05-1)

According to the Law on Social Welfare and Child Protection, all citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 42). This need is assessed based on existing circumstances and administered through local self governments and CSWs. Citizens are also entitled to various forms of social welfare payments and some social welfare services, which are still largely underdeveloped.

At present the Republic of Montenegro has an adopted Action Plan on the Housing Policy aimed at creating more housing opportunities for the citizens of Montenegro. Based on this plan the City of Podgorica adopted a Programme for Social Housing Policy for the period 2007-2010. A housing Law is in procedure and expected to be adopted shortly.

RME has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

**Key Institutions and service providers**

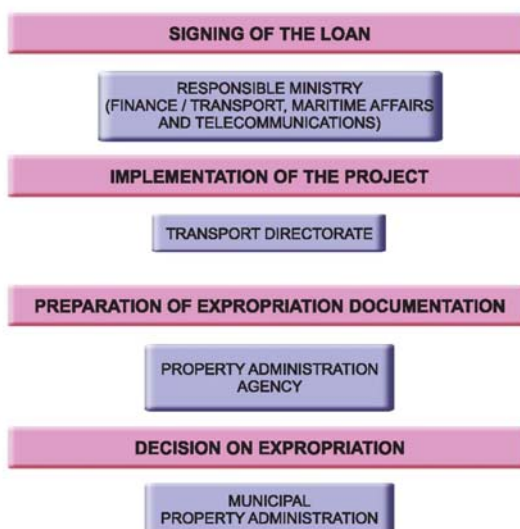
In the Republic of Montenegro, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the republic level and the municipality/city level.

The specific institutions shown below (see Picture 6) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

Picture 6 – Key institutions in Montenegro involved in implementation of road projects and related expropriation or resettlement.

**MONTENEGRO**

**GOVERNMENT LOAN**



**CITY/MUNICIPALITY LOAN**



## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	<p>The Montenegrin legislation in general, including the RME Expropriation Law, does not recognize the term involuntary resettlement.</p> <p>Issues related to land acquisition in the public interest are regulated by the RME Expropriation Law.</p>	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but only for affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <ol style="list-style-type: none"> <li>1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> </li> <li>2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.</li> </ol>	<p>Outright purchases of immovable property (land, residential and other structures) are defined by the Expropriation Law as "complete" expropriation (Article 2).</p> <p>"Incomplete" expropriation includes the instigation of an easement over the immovable property or a lease of land for up to 3 years (Article 4). Temporary occupation of land is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 5).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the property will also be expropriated, at</p>	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by Montenegrin legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.



Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
		his request (Article 8).		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	<p>According to the Law on Construction, during the development of feasibility studies for specific projects, various issues of importance for the construction and use of structures are to be assessed and considered in the document. Regulation for the development of feasibility studies (Official Gazette of the RME, No. 54/01) explicitly requires that resettlement and expropriation are considered in the feasibility study.</p> <p>According to the Law on Spatial Planning of RME, various social issues are to be considered in the development of all planning documents such as spatial plans, urban plans, regulation plans, projects, etc.</p>	In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	<p>Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.</p> <p>Whenever possible, integrate the consideration of resettlement issues in the EIA process.</p>
Planning process	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.</p> <p>Special provisions should be made for</p>	<p>According to the Expropriation Law, the request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties (Article 14 and 20). The proposal for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Article 21).</p> <p>Ownership or other formal legal rights on land and structures are recorded in the Real Property Cadastre. All issues</p>	<p>Montenegrin legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>All affected people are informed about the proclamation of public interest and have the right to appeal. However, only those with formal legal rights are informed about the submission of the request for expropriation, have the right to appeal against it and are</p>	<p>The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the consultation process.</p>

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
	consultations with vulnerable groups.	regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.	invited to negotiate compensation packages. All other categories of affected people are not involved in the expropriation process. In addition, there are no requirements for making special provisions for informing / consulting vulnerable groups.	
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered by the Cadastre, are entitled to compensation.</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted (so that this request can include a bank guarantee for the amount needed for compensation – Article 22).</p>	All persons who do not have formal legal rights on land and structures located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.	Negotiated settlements are not explicitly encouraged by the Expropriation Law, however they are recognised by the law and the last instance in which they can be concluded is within two months after the final decision on expropriation has been issued. During this period, the municipal authorities are obliged to facilitate negotiations and to encourage the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 53 to 56).		Negotiated settlements, even before expropriation is initiated, should be explicitly encouraged in the RAP/LRF.

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
Compensation at replacement cost	Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price after taking into account the value of land (agricultural or land in urban areas), cost of structures (residential and business) &amp; installations, orchards and vineyards, crops, forest land and timber (Article 35 to 44).</p> <p>Compensation is also provided for instigation of an easement, a lease, for temporary occupation of land (Article 48 to 50).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law also does not mention depreciation of structures and assets, these are typically taken into account during valuations.</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
Compensation in kind / cash	Compensation in kind will be offered in lieu of cash compensation where feasible.	According to the Expropriation law, compensation to those who have formal legal rights is provided in cash (Article 9). However, compensation can be provided in kind for agricultural land or for residential and business structures, on request of the person who has formal legal rights and if a suitable property can be identified (Article 36, 38).		
Provision of adequate housing /	Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational	For persons with formal legal rights, compensation for residential or business structures, provided in kind	The law does not recognise persons who do not have formal legal title and	During the development of the RAP, affected people should be consulted in defining standards

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
shelter with security of tenure	<p>characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	<p>has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc.) (Article 38).</p> <p>Property rights on the new property are formally transferred based on the final decision on expropriation and proof that compensation has been provided/paid, providing security of tenure.</p>	<p>therefore does not foresee the provision of adequate housing with security of tenure for this category of affected people.</p> <p>The Republic of Montenegro is in the process of developing a project to establish a new system for legalising informal structures by providing loans to people to bring their structures to adequate housing standards required for legalisation.</p> <p>The expropriation law does not include any provisions about resettlement sites. However Montenegro has a developed system of rules / regulations / standards for construction of residential and other structures, as well as standards pertaining to resettlement sites (access to infrastructure).</p>	<p>for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.</p>
Other resettlement assistance	<p>Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.</p>	<p>According to the Law on Social Welfare and Child Protection, all citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 42). This need is assessed based on existing circumstances and administered through local self governments and CSWs.</p>	<p>Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.</p> <p>In practice, affected people are in some cases resettled with transport organised / compensated by the beneficiary of expropriation.</p>	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with social service departments (municipal or</p>

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
				state). At a minimum, vulnerable groups should have access to documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>Montenegro is planning to initiate changes to the Law on Construction, to enable the legalisation of structures erected by the owner of the land or on state owned land, as part of the commitments made through the signing of the Vienna Declaration on Informal Settlements in SEE.</p> <p>At present the Republic of Montenegro has an adopted Action Plan on the Housing Policy aimed at creating more housing opportunities for the citizens of Montenegro. Based on this plan the City of Podgorica adopted a Programme for Social Housing Policy for the period 2007-2010.</p>	<p>Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) and those who have no recognisable legal right or claim to the land (Category 3) are not recognised by the Expropriation law.</p> <p>A draft Housing Law is in procedure and it is expected that it will be adopted by the end of 2010.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. At present, the only applicable law is the Law on Property Relations (acquiring property rights over land and/or structures erected on someone else's land).</p> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement assistance must be provided (see below).</p>
Vulnerable groups	The RAP should specifically take into account any individuals or groups that may be	Compensation could exceed the assessed fair market value of	Article 46 of the Expropriation law is located	During the census, it is necessary to identify vulnerable

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
	<p>disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>properties, if specific personal or family circumstances of the project affected person deem it necessary to ensure that his/her livelihood is protected (taking into account, i.e. the number of family members, the number of family members capable to earn a living or are employed, the health status of family members, the monthly income of the household).(Article 46).</p>	<p>in a section of the law that lists compensation entitlements related to land based incomes and is therefore seen as being relevant only in such circumstances, by legal experts.</p> <p>There are no special requirements in Montenegrin legislation for organising consultations and relocation assistance for vulnerable groups. However, persons who are homeless are entitled to social welfare assistance, which includes placement in shelters and access to other services available under the national social welfare law.</p>	<p>groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of Montenegro (social and child protection, education, health care).</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their needs.</p>	<p>Men and women have equal rights in the Republic of Montenegro (Article 18 of the Constitution of the Republic of Montenegro), including the possibility to have formal legal rights on properties. According to the Law on Marriage, if formal legal rights over properties / assets have been acquired during the marriage, the law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 288).</p>		<p>Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Law on Marriage in the silence of title documentation.</p> <p>Ensure that all programmes, including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).</p>
Legal assistance	<p>Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior</p>	<p>There is no requirement for providing free legal assistance to persons affected by expropriation or</p>	<p>There are a number of NGOs in Montenegro providing legal assistance,</p>	<p>Affected people should be informed about and provided with access to free legal</p>

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
	to land acquisition and, if needed, to seek redress from the courts.	resettlement, under the Expropriation law. However, each court or administrative decision must contain instructions on available legal remedies.  The Government of Montenegro developed a draft law on free legal assistance for vulnerable citizens which should be adopted by the end of 2010.	particularly to the most vulnerable groups of population.	assistance, either through state institutions or through NGOs (specified in the RAP/LRF).
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is a bank guarantee with a commercial bank (or, in the case of government authorities, proof of funds allocated in the budget), in the assessed total sum for payment. The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided (Article 54).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in Montenegrin legislation for consulting affected communities regarding loss of public amenities.	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of	If land acquisition causes loss of income or livelihood  <b>Category 1</b> <sup>27</sup> and <b>Category 2</b> , should receive: • compensation for loss of assets or access to assets, at full replacement cost	The Expropriation law foresees cash or in kind compensation for land (including agricultural land, orchards and vineyards, crops, forest land and timber) and business structures / physical assets, for those who have	Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance or lost net income, by the	Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to

<sup>27</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
economic displacement	<ul style="list-style-type: none"> <li>• replacement property of equal or greater value, or cash compensation at full replacement cost</li> </ul> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> <li>• compensation for lost net income during the period of transition</li> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>	<p>formal legal rights (Category 1).</p> <p>According to Article 35 of the Expropriation Law, those who have formal legal rights (Category 1) are also entitled to compensation for lost net income incurred as a result of resettlement.</p> <p>Montenegro is planning to initiate changes to the Law on Construction, to enable the legalisation of structures erected by the owner of the land or on state owned land.</p>	<p>Expropriation law.</p> <p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, transitional support, or other targeted assistance.</p> <p>In practice, transport of equipment is organised / compensated by the beneficiary of expropriation, however no specific legal requirement for this.</p> <p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by Montenegrin legislation.</p>	<p>compensation as per the Expropriation law. At present, the only applicable law is the Law on Property Relations (acquiring property rights over land and/or structures erected on someone else's land).</p> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they lose access to their properties / assets), so that lost net income and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the Employment Bureau of Montenegro.</p>
Grievance	The grievance mechanism will be set up as	There is no specific requirement for	In practice, affected people	Define a project specific



Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
procedure	<p>early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>establishing an independent grievance mechanism, according to the Expropriation Law or other Montenegrin legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on public interest (Article 14), the decision on expropriation (Article 23), regarding compensation (Article 56).</p>	<p>communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.</p>	<p>grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	<p>Those who have formal legal rights are informed throughout the expropriation process, although this is not explicitly stated in the RME Expropriation law (i.e. the request for determining public interest has to include a list of affected properties and it is expected that owners are informed about the request at this stage (Article 14); valuations of properties have to be concluded before the application for expropriation is submitted (Article 22); before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation (Article 23)).</p>	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	<p>Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.</p>
Monitoring	<p>Monitoring of the RAP / LRF will be carried out in accordance with PR 1.</p>		<p>There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration</p>	<p>Define indicators and monitoring mechanisms in the RAP / LRF.</p>

Issue	EBRD policy requirements	Provisions of Montenegrin law	Gap / Comment	Proposed response
			process, under Montenegrin legislation.	

## Annex 2.5 - Serbia

The Republic of Serbia (RS) is located in South Eastern Europe. It has a population of 7,344,847<sup>28</sup>.

Map 5: Serbia (excluding Kosovo)



Serbia is a **republic** and has a government consisting of individual ministers and a parliament. Serbia is divided into **municipalities** and **cities** (some consisting of several municipalities), each having a mayor and local parliaments. The capital of Serbia, city of Belgrade, with its own mayor and city parliament has a special administrative status and is also divided into a number of municipalities.

### Legal and Institutional Framework for Expropriation and Resettlement

#### Key laws

#### Expropriation

- RS Expropriation Law (Official Gazette of the RS 53/95, 16/01 and 23/01 – FCC, 20/09)

The Expropriation law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law only recognises those who have formal legal rights over properties. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the law.

#### Expropriation process

In the transport sector, for the implementation of projects by the Corridors or Roads of Serbia / Land Development Agency (municipality), expropriation is initiated by the republic / municipality (expropriation beneficiary). The process is initiated through a request for the establishment of public interest submitted to the Government of Serbia.

The request for establishing public interest is prepared by the Corridors or Roads of Serbia / Land Development Agency Legal Department, with information about ownership and other rights recorded in the Land Registry and the Cadastre, along with a number of other documents. In cases when records between the two registries differ, a process is initiated to determine who has title over the affected properties.

If the submitted request is in order, the Government of Serbia passes a decree for the establishment of public interest, which is then published in the Official Gazette of the Republic of Serbia. Since the request has to include a list of affected owners and properties, and since

<sup>28</sup> estimate from July 2010 (excluding the population of Kosovo), CIA The World Factbook

valuations are performed before the request is submitted, it is expected that property owners and affected third parties are in that way notified that the expropriation process has been initiated.

Upon the establishment of public interest, an expropriation proposal is submitted to the relevant municipal property administration together with a set of accompanying documents. If the documentation is in order a decision on expropriation is passed.

Negotiations between owners of affected properties and the expropriation beneficiary can be held and an amicable sale-purchase agreement signed, any time before the final decision on expropriation is passed. Valuations of properties performed beforehand, serve as a basis for negotiations. The affected owners and third parties can accept the compensation offer provided to them and thereby expropriation is deemed completed.

If such an agreement is not reached, after the decision on expropriation has been passed, a hearing must to be held by the municipal property administration to discuss and determine the level of compensation for each affected owner. In case an agreement on the level of compensation is not reached, the case is referred to the courts to decide. The expropriation beneficiary proceeds with the payment of compensation or provision of replacement properties.

### **Land tenure and property rights**

- RS Law on State Surveying and Cadastre (Official Gazette of the RS 72/09, 18/10)
- RS Law on Planning and Construction (Official Gazette of the RS 72/09, 81/09, 64/10)
- RS Law on Fundamentals of Property Relations (Official Gazette of the SFRY 6/80, 36/90, FRY 29/96, RS br. 115/05 – other law)

Serbia is in the process of consolidating data from all land and property registries into a unique Real Property Cadastre. This process is expected to be completed by the end of 2011. The Law on State Surveying and Cadastre regulates registration of properties.

During the year of 2010, Serbia initiated the legalisation of informal structures as part of its obligations under the 2004 Vienna Declaration on Informal Settlements in South Eastern Europe. This process is regulated by the Law on Planning and Construction which enables legalisation of structures informally constructed on state owned land. Unfortunately the process of processing applications country wide is progressing much slower than anticipated and the government is considering measures to accelerate it.

The acquisition of property rights over land and/or structures erected on someone else's land is regulated by the Law on Fundamentals of Property Relations, adopted in 1980 and amended several times since then.

### **Resettlement assistance to vulnerable people**

- RS Law on Social Welfare and Ensuring Social Security of Citizens (Official Gazette of the RS 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01, 84/04, 115/05)
- RS Housing Law (Official Gazette of the RS 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 16/97, 46/98, 26/01)
- RS Law on Social Housing (Official Gazette of the RS 72/09)

The Law on Social Welfare and Ensuring Social Security of Citizens provides all citizens with the right to one-off financial payments if they find themselves in a situation of sudden and temporary need. This need is assessed based on existing circumstances and administered through local self governments and CSWs. Citizens are also entitled to various forms of social welfare payments and some social welfare services, which are still largely underdeveloped.

According to the Housing Law of the Republic of Serbia, the state undertakes measures to create both favourable conditions for the building of apartments and the conditions for addressing accommodation needs for socially vulnerable persons. This law also enables

government authorities to provide citizens with state/municipality owned apartments, which they can rent or purchase under favourable conditions for a price considerably lower than market prices and, in case of purchasing, with a possibility of payment over a period of 40 years.

The Social Housing Law of the Republic of Serbia regulates in more detail the provision of social housing for families which are unable to secure appropriate accommodation under market conditions, for social, economic or other reasons. Social housing is further defined by municipal regulations.

Serbia also has a set of laws under which vulnerable groups can be assisted to improve their living standards (health, education, employment, etc.) and these laws should be used as a basis for developing resettlement programmes for vulnerable groups.

***Key Institutions and service providers***

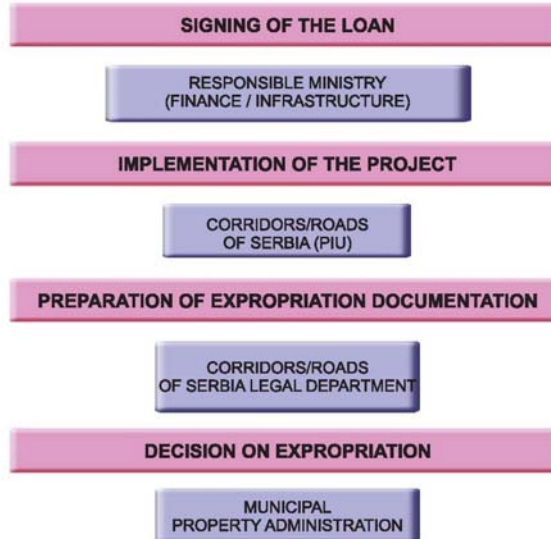
In the Republic of Serbia, there are two levels of government borrowing funds from EBRD and/or other International Financial Institutions in the transport sector – the republic level and the municipality/city level.

The specific institutions shown below (see Picture 7) are those involved in projects for construction of roads, however the same basic principle applies to other transport projects (i.e. railways) and includes other relevant institutions.

Picture 7 – Key institutions in Serbia involved in implementation of road projects and related expropriation or resettlement.

## SERBIA

### GOVERNMENT LOAN



### CITY/MUNICIPALITY LOAN



## Gap Analyses - Legal Framework for Expropriation and EBRD's PR 5

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
Involuntary resettlement	The term involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.	<p>Serbian legislation in general, including the Expropriation Law of the RS, does not recognize the term involuntary resettlement.</p> <p>Issues related to land acquisition in the public interest are regulated by the Expropriation Law of the RS.</p>	The law focuses on properties and assets which may be expropriated and restrictions which may be placed on property rights, in the public interest. The law indirectly covers physical and to a certain extent economic displacement (i.e. access to land based incomes), but only for affected people who have formal legal rights.	Gaps regarding physical and economic displacement, as well as displacement of those who do not have formal legal rights to the land and structures which they occupy are discussed further in the table.
Land acquisition / restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <ol style="list-style-type: none"> <li>1. Land acquisition, which includes: <ul style="list-style-type: none"> <li>• outright purchases of property</li> <li>• purchases of property rights (i.e. rights of way)</li> </ul> </li> <li>2. Imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources.</li> </ol>	<p>Outright purchases of immovable property (land, residential and other structures - Article 3) are defined by the Expropriation Law as "complete" expropriation (Article 4).</p> <p>"Incomplete" expropriation includes the instigation of an easement over the immovable property or a lease of land for a defined period of time (Article 5). Temporary occupation of land (up to 3 years) is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.) (Article 6).</p> <p>In addition, if it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the</p>	Restrictions that result in people experiencing loss of access to physical assets or natural resources are not covered by Serbian legislation.	Solutions for overcoming restrictions that result in loss of access to physical assets or natural resources, have to be considered and defined, on a case by case basis, for a particular project.

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
		property will also be expropriated, at his request (Article 10).		
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	<p>According to the Law on Planning and Construction (Article 114), during the development of feasibility studies for specific projects, social issues are to be assessed and considered in the document. Regulation for the development of feasibility studies (Official Gazette of the RS, No. 80/2005) explicitly requires that resettlement and expropriation are considered in the study.</p> <p>According to this law, various social issues are to be considered in the development of all planning documents such as spatial plans, urban plans, regulation plans, project designs, etc.</p>	In practice, resettlement and expropriation are avoided or minimised during project design, in the context of minimising costs.	<p>Ensure that minimisation of physical and /or economic displacement is investigated during project design and maximised to the extent practically possible.</p> <p>Whenever possible, integrate the consideration of resettlement issues in the EIA process.</p>
Planning process	<p>Implementation of a census and a socio-economic baseline assessment within a defined affected area, to identify the persons who will be displaced and determine who will be eligible for compensation and assistance.</p> <p>Preparation of the Resettlement Action Plan or Livelihood Restoration Framework.</p> <p>During the development of the RAP/LRF, affected persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement</p>	<p>According to the Expropriation Law, the request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, information about individuals who have formal legal rights on these properties. The proposal for expropriation also has to be accompanied by extracts from the Cadastre or other public documents (land registries) specifying all rights on the affected properties (Article 26, 27).</p> <p>Ownership or other formal legal rights</p>	<p>Serbian legislation does not require the development of specific resettlement / livelihood restoration plans, nor the implementation of a census / socio-economic survey.</p> <p>All affected people are informed about the proclamation of public interest and have the right to appeal. However, only those with formal legal rights are informed about the</p>	<p>The implementation of a census / survey and development of a RAP/LRF for each project which requires land acquisition (physical or economic displacement) is necessary. This process needs to ensure all categories of affected people (not only those with formal legal rights) are informed and consulted in a meaningful way. If vulnerable groups are identified during the survey, it may be necessary to make special provisions to include them in the</p>



Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
	<p>sites and the proposed timing.</p> <p>Special provisions should be made for consultations with vulnerable groups.</p>	<p>on land and structures are recorded in the Cadastre and Land registries<sup>29</sup>. All issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.</p>	<p>submission of the request for expropriation, have the right to appeal against it and are invited to negotiate compensation packages. All other categories of affected people are not involved in the expropriation process. In addition, there are no requirements for making special provisions for informing / consulting vulnerable groups.</p>	<p>consultation process.</p>
Cut off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <b>cut-off date for eligibility</b>.</p> <p>Individuals who move into the project affected area <b>after the cut-off date will not be eligible</b> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <b>well-documented and disseminated</b> throughout the project area.</p>	<p>According to the Expropriation Law all persons who have formal legal rights on land and structures, as registered by the Cadastre and/or Land registries, are entitled to compensation.</p> <p>Valuations (inventory) of properties / assets, have to take place before the request for expropriation is submitted (so that this request can include a bank guarantee for the amount needed for compensation – Article 28).</p>	<p>All persons who do not have formal legal rights on land and structures located in the project area are not eligible for compensation or resettlement assistance according to the Expropriation law and therefore there is no cut off date for eligibility.</p>	<p>The date when the census is carried out should be agreed with the implementing agency and specified in the RAP/LRF as the cut off date for eligibility for compensation and resettlement for all persons who do not have formal legal rights on land and structures located in the project area.</p> <p>Affected people must be informed about the cut off date.</p>
Negotiated settlements	<p>Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.</p>	<p>Negotiated settlements are not explicitly encouraged by the Expropriation Law, however they are recognised by the law and the last instance in which they can be concluded is within two months after the final decision on expropriation has been issued. During this period, the</p>		<p>Negotiated settlements, even before expropriation is initiated, should be explicitly encouraged in the RAP/LRF.</p>

<sup>29</sup> The Cadastre focuses on information about technical characteristics of the land and structures and the Land Registry records rights on properties (land and structures). In 1992 a law was passed to unify all registries of real properties (land and structures) and associated rights. This process is still ongoing, once it is completed, the Land Registry will cease to exist and all information will be contained in a unique Real Property Cadastre.

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
		<p>municipal authorities are obliged to facilitate negotiations and to encourage the conclusion of a compensation agreement; if such an agreement is not reached, the case is referred to the relevant court to pass a decision on compensation (Article 56 to 62).</p>		
<p>Compensation at replacement cost</p>	<p>Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes). Depreciation of structures and assets should not be taken into account.</p>	<p>Compensation under the Expropriation law is determined in accordance with the prevailing market price after taking into account the value of land (agricultural or land in urban areas), cost of structures (residential and business) &amp; installations, orchards and vineyards, crops, forest land and timber (Article 41 to 49).</p> <p>Compensation is also provided for instigation of an easement, a lease and for temporary occupation of land (Article 53 to 55).</p>	<p>The law does not specifically mention compensation for the costs of any registration and transfer taxes. All costs associated with transfer of property rights to the beneficiary of expropriation are borne by that entity. In practice, when replacement property is provided, the beneficiary of expropriation bears these costs for registering the new property in the name of the affected person. However, when compensation is paid in cash, these costs are not included in the compensation package.</p> <p>Although the law also does not mention depreciation of structures and assets, these are typically taken into account during valuations.</p>	<p>THE RAP/LRF must describe the valuation method in detail and specify that compensation will include the registration cost in the Cadastre Office, or other relevant register, any administrative fees, and/or transfer taxes.</p> <p>Depreciation of structures and assets should not be taken into account during valuations.</p>
<p>Compensation in kind / cash</p>	<p>Compensation in kind will be offered in lieu of cash compensation where feasible.</p>	<p>According to the Expropriation law, compensation to those who have formal legal rights is provided in cash (Article 11). However, compensation can be provided in kind for agricultural land or for residential and business</p>		

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
		structures, on request of the person who has formal legal rights and if a suitable property can be identified (Article 15, 16).		
Provision of adequate housing / shelter with security of tenure	<p>Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	<p>For persons with formal legal rights, compensation for residential or business structures, provided in kind has to correspond to the value of the expropriated property (taking into account location, structure and size, quality, etc. - Article 16).</p> <p>Property rights on the new property are formally transferred based on the final decision on expropriation and the final decision / agreement on compensation, providing security of tenure (Article 64).</p>	<p>The law does not recognise persons who do not have formal legal title and therefore does not foresee the provision of adequate housing with security of tenure for this category of affected people.</p> <p>The expropriation law does not include any provisions about resettlement sites. However Serbia has a developed system of rules / regulations / standards for construction of residential and other permanent structures, as well as standards pertaining to resettlement sites (access to infrastructure).</p>	<p>During the development of the RAP, affected people should be consulted in defining standards for adequate housing.</p> <p>Those that do not have formal legal rights to properties have to be resettled to appropriate accommodation and have to have security of tenure, i.e. through signed contracts. Such contracts must include all members of the affected household, to ensure that they are all protected from forced evictions.</p>
Other resettlement assistance	Relocation costs (moving allowances). Specific resettlement assistance for vulnerable groups.	According to the Law on Social Welfare and Ensuring Social Security of Citizens, all citizens have the right to one-off financial payments if they find themselves in a situation of sudden and temporary need (Article 47b). This need is assessed based on existing circumstances and administered through local self governments and CSWs.	<p>Provision of relocation costs and specific resettlement assistance for vulnerable groups are not foreseen by the Expropriation law.</p> <p>In practice, affected people are in some cases resettled with transport organised / compensated by the beneficiary of expropriation.</p>	<p>Arrange for relocation costs to be compensated in cash or organise transport for people and all of their belongings / assets (specify in the RAP).</p> <p>Vulnerable groups should receive assistance in accordance with their specific needs. This should be done in cooperation with social service departments (municipal or state). At a minimum, vulnerable</p>

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
				groups should have access to documentation, education, health and social services. Specific assistance has to be defined on a case by case basis for a particular project.
Eligibility for compensation / resettlement and entitlements in case of physical displacement	<p><b>Category 1</b> - those who have formal legal rights to the land</p> <p><b>Category 2</b> - those who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for land at full replacement cost</li> <li>• in the case of physical displacement, replacement property of equal or higher value, with equivalent or better characteristics and advantages of location or cash compensation at full replacement value and relocation assistance.</li> </ul> <p><b>Category 3</b> - those who have no recognisable legal right or claim to the land they occupy</p> <p>should receive:</p> <ul style="list-style-type: none"> <li>• Compensation for structures that they own and occupy and for any other improvements to land at full replacement cost</li> <li>• in case of physical displacement, a choice of options for adequate housing with security of tenure and resettlement assistance</li> </ul>	<p>The Expropriation law foresees cash or in kind compensation for land, improvements to the land and structures (residential or business), for those who have formal legal rights (Category 1).</p> <p>According to the Housing Law of the Republic of Serbia, the state undertakes measures to create both favourable conditions for the building of apartments and the conditions for addressing accommodation needs for socially vulnerable persons (Article 2). This law also enables people who live in state/municipality owned apartments, to rent or purchase these apartments, under favourable conditions for a price considerably lower than market prices and, in case of purchasing, with a possibility of payment over a period of 40 years</p> <p>The Social Housing Law of the Republic of Serbia regulates in more detail the provision of social housing for families which are unable to secure appropriate accommodation under market conditions, for social, economic or other reasons (Article 2).</p>	<p>Those who have a claim to land that is recognised or recognisable under the national laws (Category 2) and those who have no recognisable legal right or claim to the land (Category 3) are not recognised by the Expropriation law.</p> <p>The provisions of the Housing Law (affordable housing) and the Social Housing Law should be used as a basis for ensuring that those who are adversely affected by resettlement (usually belonging to Category 3) receive appropriate accommodation. However it should be noted that social apartments are provided based on public calls for applications, which can take time and may not be available at the time of resettlement. At the same time the need for social apartments among the general population is great, while resources for constructing new apartments are scarce.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:</p> <ul style="list-style-type: none"> <li>• Law on Planning and Construction (legalisation of structures erected by the owner of the land or on state owned land)</li> <li>• Law on Fundamentals of Property Relations (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of physical displacement, at a minimum, provide some form of social (low rent) housing for Category 3. Calculate the construction value of their structures and reduce their rent to correspond to the value of the structure they owned or pay cash compensation. This category is typically the most vulnerable, therefore resettlement</p>

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
				assistance must be provided (see below).
Vulnerable groups	<p>The RAP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>Compensation could exceed the assessed fair market value of properties, if specific personal or family circumstances of the project affected person deem it necessary to ensure that his/her livelihood is protected (taking into account, i.e. the number of family members, the number of family members capable to earn a living or are employed, the health status of family members, the monthly income of the household).(Article 51).</p> <p>The Social Housing Law lists vulnerable groups which should have priority in the allocation of social apartments – young persons, children without parental care, single parents and families with many children, single headed households, elderly persons, persons with disability, war veterans, refugees, internally displaced people, Roma and members of other vulnerable groups. The allocation of social housing and detailed procedures and criteria are defined at state /municipal / city level depending on the sources of funding (Article 10).</p>	<p>Article 51 of the Expropriation law is located in a section of the law that lists compensation entitlements related to land based incomes and is therefore seen as being relevant only in such circumstances, by legal experts.</p> <p>There are no special requirements in Serbian legislation for organising consultations and relocation assistance for vulnerable groups. However, persons who are homeless are entitled to social welfare assistance, which includes placement in shelters and access to other services available under national and local social welfare laws.</p>	<p>During the census, it is necessary to identify vulnerable groups and assess their needs related to resettlement and relocation assistance, including access to specific services. Consultations can be held in the form of focus groups to consult with and address the needs of specific groups. Social welfare and other appropriate services should be involved in resettlement planning and implementation to ensure that vulnerable groups have access to all services available to them under the laws of Serbia (social welfare, education, health care).</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills training, access to credit and job opportunities are equally available to women and adapted to their</p>	<p>Men and women have equal rights in the Republic of Serbia (Article 15 of the Constitution of the Republic of Serbia), including the possibility to have formal legal rights on properties. According to the Law on Marriage, if formal legal rights over properties / assets have been acquired during the marriage, the</p>		<p>Specify in the RAP/LRF that compensation must be shared between spouses according to title documentation or the Law on Marriage in the silence of title documentation.</p> <p>Ensure that all programmes,</p>

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
	needs.	law assumes they are shared equally between the spouses, unless a different agreement is formally registered with the court (Article 171).		including those related to livelihoods restoration are equally accessible to both men and women (specify in the RAP/LRF).
Legal assistance	Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.	<p>There is no requirement for providing free legal assistance to persons affected by expropriation or resettlement, under the Expropriation law. However, each court or administrative decision must contain instructions on available legal remedies.</p> <p>The Government of Serbia adopted a strategy for the provision of free legal assistance to citizens and is now in the process of preparing the adequate legislation for implementing that strategy.</p>	<p>Most municipalities have departments that provide free legal assistance to the most vulnerable citizens, in all areas. This includes provision of legal advice but also court representation.</p> <p>Apart from that, there are a number of NGOs in Serbia providing legal assistance, particularly to the most vulnerable groups of population.</p>	Affected people should be informed about and provided with access to free legal assistance, either through municipal departments or through NGOs (specified in the RAP/LRF).
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to relocation.	According to the Expropriation law, a condition to start expropriation is the existence of a bank guarantee with a commercial bank (or, in the case of government authorities, proof of funds allocated in the budget), in the assessed total sum for payment. The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided (Article 57).		
Loss of public amenities	Where a project involves the loss of public amenities, the client shall undertake meaningful consultation with the locally affected community to identify and agree upon a suitable alternative where possible.		There is no specific requirement in Serbian legislation for consulting affected communities regarding loss of public	The institutions tasked with setting up and maintaining specific public amenities which are affected by land acquisition, should consult local

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
			amenities.	communities on how to replace them (specify in the RAP).
Eligibility for compensation / livelihood restoration and entitlements in case of economic displacement	<p>If land acquisition causes loss of income or livelihood</p> <p><b>Category 1</b><sup>30</sup> and <b>Category 2</b>, should receive:</p> <ul style="list-style-type: none"> <li>• compensation for loss of assets or access to assets, at full replacement cost</li> <li>• replacement property of equal or greater value, or cash compensation at full replacement cost</li> </ul> <p><b>Category 3</b>, should receive:</p> <ul style="list-style-type: none"> <li>• Loss of assets, other than land, at full replacement cost</li> </ul> <p>All three categories should receive:</p> <ul style="list-style-type: none"> <li>• compensation for the cost of re-establishing commercial activities elsewhere</li> <li>• compensation for lost net income during the period of transition</li> <li>• compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment</li> <li>• transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living</li> <li>• additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)</li> </ul>	The Expropriation law foresees cash or in kind compensation for land (including agricultural land, orchards and vineyards, crops, forest land and timber) and business structures / physical assets, for those who have formal legal rights (Category 1).	<p>Those who belong to Category 2 and Category 3 are not entitled to any compensation or livelihood restoration assistance by the Expropriation law.</p> <p>In addition, all three categories are not entitled to costs of re-establishing commercial activities, lost net income, transitional support, or other targeted assistance.</p> <p>In practice, transport of equipment is organised / compensated by the beneficiary of expropriation, however no specific legal requirement for this.</p> <p>Assistance to off-set any loss of a community's commonly held resource is also not specifically regulated by Serbian legislation.</p>	<p>Provide assistance to persons in Category 2 to acquire a formal legal status before expropriation (over land and structures), in which case they move into Category 1 and are entitled to compensation as per the Expropriation law. Applicable laws are:</p> <ul style="list-style-type: none"> <li>• Law on Planning and Construction (legalisation of structures erected by the owner of the land or on state owned land)</li> <li>• Law on Fundamentals of Property Relations (acquiring property rights over land and/or structures erected on someone else's land)</li> </ul> <p>In case of economic displacement, provide those belonging to Category 3 with access to adequate commercial space, with security of tenure, to restore their economic activities and livelihoods.</p> <p>Ensure that all categories are promptly compensated in cash or in kind (before they lose access to their properties / assets), so that lost net income</p>

<sup>30</sup> For definitions of Category 1, 2 and 3, see "Eligibility for compensation / resettlement and entitlements in case of physical displacement", earlier in the table.

Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
				<p>and the need for transitional support are minimized / avoided.</p> <p>Arrange for relocation costs to be compensated in cash or organise transport of equipment and other assets.</p> <p>Facilitate access to existing services which could assist the affected persons whose livelihoods or income levels are adversely affected to restore their living standards. This could be done in cooperation with the Serbian National Employment Agency.</p>
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>There is no specific requirement for establishing an independent grievance mechanism, according to the Expropriation Law or other Serbian legislation. The law does foresee rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on public interest (Article 20), the decision on expropriation (Article 29), regarding compensation (Article 56).</p>	<p>In practice, affected people communicate with the expropriation beneficiary (a designated person / department), in connection to their specific grievances and with the aim of reaching a compensation agreement, before filing appeals with the relevant administrative authorities or courts.</p>	<p>Define a project specific grievance mechanism in the RAP/LRF. Depending on the scale of the project or the general vulnerability status of affected families, involve any available institutions in the process, e.g. the ombudsman, human rights groups, etc.</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the RAP and/or the LRF for public disclosure to ensure that affected people understand the compensation procedures and know what to expect at the various stages of</p>	<p>Those who have formal legal rights are informed throughout the expropriation process (i.e. passing of the decision on public interest (Article 20); that a request for expropriation has been</p>	<p>The Expropriation law does not require public consultations to be held with any categories of project affected people, prior to</p>	<p>Plans for consultations with all project affected people, including host communities, should be agreed with them and incorporated in the RAP/LRF.</p>



Issue	EBRD policy requirements	Provisions of Serbian Law	Gap / Comment	Proposed response
	<p>the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p>	<p>submitted (Article 50); before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation (Article 29)).</p>	<p>expropriation.</p> <p>Once the expropriation process is initiated, only those with formal legal rights are informed and consulted through a one on one negotiation process.</p>	
Monitoring	<p>Monitoring of the RAP / LRF will be carried out in accordance with PR 1.</p>		<p>There are no requirements for monitoring the expropriation / resettlement / livelihoods restoration process, under Serbian legislation.</p>	<p>Define indicators and monitoring mechanisms in the RAP / LRF.</p>

## **ANNEX 3 – LIST OF MEETINGS**

### **Meetings/contacts in the period July - September 2010**

#### **Albania**

- EBRD office
- Albanian Development Fund
- General Roads Directorate
- Municipality of Tirana

#### **BiH (Federation of Bosnia and Herzegovina and Republika Srpska)**

- EBRD office
- Roads Directorate
- Federal Directorate for Roads Construction, Management and Maintenance
- Ministry of Communication and Transport
- Republic Agency for Geodetic and Property Issues – Republika Srpska
- Republic of Srpska Roads
- Construction Institute of the Sarajevo Canton

#### **FYR Macedonia**

- EBRD office
- Agency for State Roads of Macedonia
- Ministry of Transport and Communication
- Ministry of Finance, Department for Property Affairs
- Public Enterprise Macedonian Railways Infrastructure
- City of Skopje

#### **Montenegro**

- Traffic Directorate
- Ministry of Transport, Maritime Affairs and Telecommunications
- Ministry of Finance, Sector for Property Relations
- Ministry for Spatial Planning and Environment

- Real Estate Agency

**Serbia**

- Corridor X
- Ministry of Labour and Social Policy
- Belgrade Land Development Agency
- City of Belgrade
- NGO Urban Development Program

## **ANNEX 4 – OUTLINE CAPACITY BUILDING TRAINING PROGRAMME**

### ***KEY FEATURES OF AND TOPICS FOR EBRD RESETTLEMENT CAPACITY BUILDING TRAINING COURSE***

#### **Key Features**

- Two and a half days for each training course
- Two training courses – approximately 15 to 25 participants at each course
- Practical orientation with discussion of key challenges, common pitfalls and use of case studies to reflect on lessons learnt
- Interactive workshop approach
- Limited time to focus on practical framework and principles and tools to deal with issues and challenges
- Deal with topics like IDP's and Roma as part of each work topic/ section below

#### **Topics**

##### **A) Welcome and Introduction**

- Welcome
- Introductions
- Course Objectives
- Agenda

##### **B) Introduction to Land Acquisition & Resettlement**

- Key Concepts
- Key Issues and Challenges
- Legal Framework/ EBRD Performance Requirements/ Key Gaps
- Why Should We Apply EBRD Standards? - Why the EBRD Standards Make Practical Sense
- Key Objectives and Principles
- A Common Sense Practical Approach
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

##### **C) Assessment of Impacts**

- Rationale – Importance of Understanding What Currently Exists
- Key Objectives and Principles
- Key Issues and Challenges
- Tools To Use and Basic Elements of Process
- Key Planning and Implementation Steps
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**D) Compensation Framework**

- Key Objectives and Principles
- Key Issues and Challenges
- Classification of Displaced Persons
- Types and Level of Compensation
- Eligibility
- Designing a Compensation Framework – Key Steps
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**E) Livelihoods Restoration**

- Key Objectives and Principles
- Restoration and Improvement Rationale
- Key Issues and Challenges
- Types of Livelihoods
- Eligibility
- Developing a Livelihoods Strategy – Key Steps
- Enhancing the Development Impact of A Project
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**F) Group Case Studies – Hand Out & Explanation**

- Handout and Explanation of Case Studies that Will Be Role Played on Last Day
- Allocation of People to Different Work Groups

**G) Other Assistance**

- Other Types of Assistance
- Vulnerable Persons
- Cultural Heritage
- Key Objectives and Principles
- Key Issues and Challenges
- Eligibility
- Key Steps
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**H) Stakeholder Engagement**

- Who To Engage With - Internal and External Stakeholders – Why this is Important
- Key Objectives and Principles
- Key Elements and Key Issues and Challenges:

- Consultations
- Negotiations
- Information Disclosure
- Grievance Redress
- Designing and Implementing an Engagement Strategy – Key Steps
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**I) Key Planning and Implementation Issues**

- Importance of Early and Systematic Planning
- Integrating Resettlement Planning into Broader Project Planning
- Key Objectives and Principles
- Key Issues and Challenges
- Preparing a RAP
- Involving Affected People
- Personnel and Partners
- Work Plans and Schedules
- Budgeting
- Risk Analysis and Management
- Paying and Moving People
- Handover and Maintenance of Resettlement Sites
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**J) Review of Common/ Key Challenges with Linear Resettlement**

- Key Issues and Challenges
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**K) Monitoring, Evaluation and Reporting**

- Types of Monitoring – Internal and External
- Key Objectives and Principles
- Things to Monitor
- Key Issues and Challenges
- Working with Banks and External Monitors – What is Important to Them
- Designing and Implementing an M&E Plan – Key Indicators and Steps
- Reporting
- Key Points to Bear in Mind - Common Risks, Pitfalls and Lessons Learnt (Case Studies)

**L) Work in Group Case Studies – Preparation**

- Confirmation that People Are Clear About What is Required
- Time for Work Groups to Prepare

**M) Work in Group Case Studies – Role Playing**

**N) Closing Remarks & Hand Out of Certificates**

- Key Elements of a Good Practice Approach
- Key Points to Bear in Mind
- Handout of Certificates
- Any Other Closing Remarks