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TS12B Diversity and Collaboration - How Experts can work together to improve transparency

22 May 2024- Commission 9

Implementation of International Safeguard Standards in Involuntary Resettlement Schemes- Experience from Tanzania (12578)

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PRESENTATION OUTLINE

Background Information- Involuntary Resettlement
The Land Compensation Problem- Perceptions
Case Studies – Dar es Salaam
Methodology
Emerging Issues
Harmonizing national and international standards
Conclusions

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WHY INVOLUNTARY RESETTLEMENT?

General Reasons Eminent Domain Principle	Specific occasions in African Region (TANZANIA)
<p>Public Interest to cater for:</p> <ul style="list-style-type: none"> • Infrastructure such as road, rail, aerodromes, irrigation schemes etc • Educational and health facilities • Urbanization processes (esp housing) • Exploitation and distribution of natural resources like mining, oil, gas, water, electricity etc • Conservation and promotion of tourism (flora and fauna) 	<ol style="list-style-type: none"> (1) Re-planning (regularization): <ul style="list-style-type: none"> • failing planning/zoning in urban areas • Squatter upgrading schemes • Emergency instances in response to Climate Change e.g Floods in the City of Dar es Salaam (2) Provision of land for large-scale land- based investment (mostly for foreign investments)- bio-fuel, agriculture etc (3) Alienation for Carbon credits trading to investors (recent and increasingly attractive to foreign investors- forests)

Note: Most of these projects in developing countries are funded by International/Foreign Donors who are obliged to comply with either WB ESS5 or IFC-PS5





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Types of Involuntary Resettlement

Two key types

As a result of land acquisition, households may be

- (1) Physically displaced – need to be relocated due to loss of shelter BUT also suffer economic losses
 - Could be property owners
 - Can also be tenant occupiers
- (2) Economically displaced- households lose assets or access to assets which make affect their livelihood

Impacts of Involuntary Resettlement

- 1) Human cost- disruption from community coherence
- 2) Change/Loss of livelihood patterns and ways of life

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Compensation in involuntary resettlement instances

Two Critical Considerations

- 1) Entitlement by the different affected households
- 2) Compensation assessment

Legal Institutional Provisions on Entitlements

- a. Most national constitutions around the world uphold the right to compensation for land compulsorily acquired for public interest.
- b. The African Charter on Human and Peoples' Right, 1986 Article 14 as well as the Universal Declaration of Human Rights (Article 17) both of which provide:

“...everyone has the right to own property, and no-one shall be arbitrarily deprived of his property, except upon payment of just compensation, for reasons of public utility or social interest and in the cases and according to the forms established by law...”

HOWEVER- the extent to which these entitlements are interpreted by national and international organisations vary a great deal

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Compensation Assessment

- The basis of valuation for compensation is 'market value' in most jurisdictions
- The output is however **NOT 'MARKET VALUE'**, instead qualified:
 - Replacement Cost
 - Just Compensation
 - Fair Compensation
- **Why this presentation?**
 - to explain the increase in land dispute and conflicts related to involuntary resettlement in countries such as Tanzania
 - To examine the requisite valuation methodology for assessing compensation in land acquisition projects under national (local) standards in contrast to the IFC PS or World Bank ESS5 standards.
 - To determine a common basis of valuation and therefore suggest ways of reducing the gaps between the national and international compensation assessment standards.

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Dilemmas in the implementation of involuntary resettlement schemes

Two scenarios:

- 1) Nationally funded projects that have to conform to national legislation and local practices
- 2) Foreign funded projects either through World Bank credit or Multi-lateral credit.
 - World Bank funding – Environmental and Social Standards compliance (ESS) and in particular ESS5 – Land Acquisition, Restrictions on Land Use and Involuntary Resettlement.
 - Multi-lateral/Bi-lateral funding- lenders - the IFC Performance Standards in particular IFC-PS5- Land Acquisition and Resettlement

Key Challenges

- Scenario 1: (i) No consideration for post-compensation status of affected persons and (ii) strict to **Principle of Equivalence Approach** ('not better nor worse off')
- Scenario 2: (i) consideration for livelihood restoration and improvement (**Sustainable Livelihood Approach**)

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Risks Associated with Implementation of Involuntary Resettlement

Several, most serious ones:

- Slowed down of project implementation e.g Expansion of JK Nyerere International Airport
- Stalled projects e.g the Swedish Company Bio-Fuel projects in Bagamoyo, Tanzania
- Escalated land-based conflicts such as in the case of afforestation and conservation projects in the Northern and western parts of Tanzania, leasing of agriculture (tea and sugar plantations)
- Protracted dispute between landowners (villagers) and investors- several cases in Gold Mining Areas (Northern West of Tanzania);
- Growing social risks for investors especially ‘foreign investors’
 - Sustained rise in populism and national sentiment
 - The energy transition from fossil fuels to clean energy
 - Accommodation/containment of small- scale miners

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Compensation Assessment

Governing Principles in Tanzania

1. Compensation should be *fair, full and promptly paid*.
2. Valuation to be carried out by **registered Valuer** (Government/Private valuers)
3. Compensation assessment provided under 3 major legislation (i) Land Acts No. 4 Village Act No 5, of 1999, (ii) The Valuation and Valuers (Registration) Act of 2016 and its regulations of 2018 and (iii) the Land Acquisition Act No. 47 of 1967 which is the main law on expropriation.
4. **Fair compensation:** Actual Market Value of land & unexhausted improvement thereon that leave Claimant in the similar situation as was before acquisition – “*not be better of or worse of*”. Fair to Claimant and Compensating authority.
5. **Full compensation:** Considering market value of Land, Crops & other development permanently attached to the land.
6. **Prompt compensation:** Payment to be effected within six (6) months from the date of valuation.



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Legislative Instruments for Land Acquisition & Compensation



Power of Eminent Domain – state powers to expropriate private property for public interest



Land Acquisition Act No. 47 of 1967 S. 12 – adequate compensation based on market value



Land Act No. 4 and Village Land Act No. 5 of 1999...pay full, fair and prompt compensation upon acquisition...



Investment Act No. 3 of 2007 – compensate displacees as per provisions of the Land Act 1999



Export Processing Zone Act No. 11 of 2009 – pay just and prompt compensation in a freely convertible currency...



Valuation and Valuers (General) Regulations, 2018:
Replaced the Land (Assessment of the Value of Land for Compensation) Regulations (L.N. No. 78 of 2001), narrowing the gap between TZ and ESS5





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Nagging Question in Compensation

- Controversy in valuation methodology
- Irreconcilable difference in treatment of PAPs under donor-funded and locally-funded projects
- An increasing number of grievances especially in mining areas

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The Nagging question

- In the traditional set up of land/property market, the transacted sum (the price) is market value, and it is a summation of several components.
- In compulsory purchase, the asset owner is the unwilling party, and the objective is to recompense him/her to the extent possible that he considers himself or herself to have been willing a party
- Does it therefore follow that market value assessment should be towards 'reinstating him/her but in an alternate premise?
- On the basis of what the laws provide and what is done in practice, the compensation sum is much more than the market value.
 - **Market value + Disturbance + others OR Reinstatement Cost**

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Is the Compensation Sum a Market Value?

1. **Market Value:** lost assets; Agricultural land –value of land of equal productive use in the vicinity plus cost of preparing the land to similar level or better
2. **Transaction costs** – registration and transfer taxes
3. **Structures:** Market cost of materials, transport, fees, registration and/or Transfer; or repairing a partially affected structure, including labor and contractors' fees and any registration and transfer taxes

Replacement Cost

1. Market Value
2. Special Value
3. Disturbance
4. Severance
5. Solatium(Additional but restricted to residence only)

**Compensation Value
/Reinstatement Cost**

1. Market Value (Land, structures, crops, **trees**,)
2. Disturbance Allowance
3. Transport Allowance
4. Accommodation Allowance
5. Loss of Profit (Business only
6. Any other loss incurred to develop land
7. Replacement land (not always, rare)

Market Value



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Why do landowners object compensation assessment?

- An increasing number of PAPs object to compensation assessment:
 - ~ 19% of land-related disputes in Tanzania are on compensation and often not on the acquisition but on amount of compensation.
- Is it not ironical that PAPs object compensation when they had agreed on the land acquisition in the first instance and subsequently their assets are valued at 'market value' with additional values (solatium)?
- **Is compensation assessment de facto a market value assessment?**

Should the land continue to be valued merely by reference to the use to which it is being put at the time of acquisition rather than by reference to the uses to which it is reasonably capable of being put in the future?

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Key Remarks on Market Value Assessment

FAO (2009) “.. the monetary sum provided may be a huge sum, but it may not cover non-quantifiable losses such as psychological and social implications. As experience has shown, there are high costs associated with human displacement (FAO 2009).

Lisday (2019): Across the globe, the legislation governing land acquisition and compensation is definite.

- 1) *Market value is the benchmark found in most compulsory acquisition laws when it comes to the calculation of compensation for an acquired asset*
- 2) Laws and constitutions may also refer more broadly to principles such as “just” or “fair” compensation
- 3) Yet a key consideration that emerges when one surveys the wide variety of economic, social and cultural settings in which takings occur is that there is no universally appropriate method for calculating loss
- 4) To design compensation packages that will genuinely approach the objective of ensuring that people are no worse off than they were before the taking requires careful tailoring to local realities. ..”(Lisday,2019)

Mangioni (2014) from Australia expressed concerns on principle of equivalence (POE)

“...The equivalence principle must go beyond that of the equivalence of market value and encompass physical or economic equivalences in acquisition cases..”

Ndjovu, (2016).Dissatisfactions in land acquisition programs are closely associated with the complainants’ expectations and politics of resistance in expropriation

Kironde (2023) Principle of Equivalence’- should be looked at with a clear eye of making the PAPs better off within limits... *surely, if PAPs are living in a flood prone-area, equivalence should not mean putting them in a similar situation...*”



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What should be the Just Compensation?

The concept of fair and full/adequate compensation (market value) is not realizable for several reasons:

The principle of equivalence (POE) which is implied in our laws is misunderstood.

The POE requires that a **balance is established between public need for land** on one side, and the assurance of land tenure security and **protection of private land ownership rights on the other**.

Fair compensation is desirable but can only be in terms of **reimbursing the value of land/property as perceived to the owner** rather than the general value of land or of the acquiring agency (Vaughan & Smith 2014)

Due to non-functioning asset market, valuing by sales or income approaches is not possible, as a result valuing by cost is inevitable. The computation of **'surrogate market value' through cost method will never be adequate** to enable the physically displaced person to acquire equivalent property/house.

Compensation is never achieved where money does not replace the losses that cannot be replaced by monetary value, such as a livelihood depended on the land, or rights to an ancestral land (Alias and Daud, 2006)

Conclusively, traditional valuation for compensation purposes from a Cost Approach perspective is to blame for the burgeoning grievances in projects with land acquisition component

Just compensation is more likely to require a different strategy that brings out the true intent of equivalent compensation

“...Compensation is basically a redemption of capital spent by a losing party, whether in monetary terms, labor or any recognizable efforts towards growth or development of an asset...” Adam (2023!)

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Value New for Old Compensation Concept

- 'value new for old' introduced in land acquisition projects by the World Bank and International Finance Corporation (IFC) specifically through the World Bank Environmental Social Safeguards 5(ESS5) which replaced the OP4.2.
- Compensation for lost building structures in non-functional asset markets should be at full replacement cost which is translated into 'value new for old'. This is a mandatory requirement for donor-funded projects which are governed by WB ESS or IFC Standards.
- This stance is at variance with the 'Cost Valuation Method' which requires value estimate to be an estimate of cost of an equivalent asset performing similar function to the asset under valuation at current price and allowing for wear and tear.
- The concept in Tanzania is resented because:
 - implications posed in cases of large difference in condition of affected assets amongst the affected persons (PAPs).
 - concept discriminates PAPs affected by locally funded projects

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Aligning Local Practice with ESS5/IFC-PS5- Challenges

- 1) “...Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, **whichever is higher...**”
- 2) “... **household and public 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 labor and contractors’ fees and any registration and transfer taxes
- 3) “... In determining the replacement cost, **depreciation of the asset and the value of salvage materials are not taken into account**, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset...”
- 4) RAP as an important document in which a project sponsor or other responsible entity specifies the procedures that it will follow and the actions that it will take to **mitigate adverse effects**, compensate losses, **and provide development benefits** to persons and communities affected by an investment project.

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Aligning Local Practice with ESS5/IFC-PS5- Challenges

- 5) **Resettlement assistance** as support provided to people who are physically displaced by a project. Assistance may include transportation, food, shelter, and social services that are provided to affected people during their relocation. Assistance may also include **cash allowances that compensate affected people for the inconvenience associated** with resettlement and defray the expenses of a transition to a new locale, such as moving expenses and lost work days.
- 6) **Grappling with the traditional Principle of Equivalence:** Kironde (2023) urges that it should be looked at with a clear eye of making the PAPs better off within limits.
 - “surely, if PAPs are living in a flood prone-area, equivalence should not mean putting them in a similar situation”
 - “...Given that PAPs are deriving utility from such old properties, this needs to be taken into consideration, justifying their being given a new, or the equivalent of a new house (within agreed limits)...”
 - Citing Msimbazi Bridge project by Kajima (Japanese Contractor) in 1980s where PAPS were resettled in new houses in Ubungo, ‘ there was only rejoicing not moaning, let the PAPs be put in a better position’



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Institutional Arrangement Challenges

- Existing laws in most nations (Eastern Africa in particular) are quiet on aftermaths of land acquisition
 - No consideration for implementing a resettlement strategy
 - No consideration for in-kind compensation
 - PAPs returning to their original lands when envisaged projects not implemented in time
- Implementation of the International Safeguards in involuntary resettlement is unfortunately
 - misconstrued and confined to livelihood restoration
 - land administration professionals including valuers sidelined in donor-funded projects, often engaged by a sub-consultant as level 2 contractor
 - Cconfusion on nomenclature associated with the compensation packages
 - Sustainable Livelihood Approach Vs EA Nation principle of Full, Fair, Just, Prompt Compensation (POE)

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Conclusion and recommendations

- 1) Need for developing Nations to consider review of their respective national legislation with a view of consolidation, aligning and coping with the changing business climate worldwide
- 2) Consider a suitable terminology to represent 'market value'
➤ **Compensation Value?**
- 3) Consider fate of the beneficiaries of land acquisition projects
- 4) Consider setting entry points (qualification) for actors in land acquisition and involuntary resettlement assignment as a means of protecting the rights of affected people, the community and public/state interests.
- 5) Aligning Nations Land Acquisition laws with International Standards is critical to address the global concerns on poverty alleviation and livelihood restoration of PAPs

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Conclusion and recommendations

- 6) Nations must have a harmonized set of safeguard standards amongst them. It is high time nations are perceived as considerate to their people rather than being seen as mistreating those affected by land acquisition project
- 7) a strong need of improving land administration curricula to inform on emerging skill areas.
- 8) land administration professionals are urged to assume their rightful positions by advising government and their employers with the highest level of good conduct and ethics.
- 9) Finally, nations should balance off the impacts of land acquisition schemes by adapting world bank safeguards to the extent possible that are appropriate to the local conditions.

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International Federation of Surveyors supports the Sustainable Development Goals

Commission 9

Commission's name

Serving Society for the Benefit of People and Planet



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