



COMPENSATION VALUE IN LAND ACQUISITION PROJECTS – WHO BENEFITS.

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SUMMARY

Eastern African region is endowed with rich natural resources and fast-growing economies which must be guided to avoid unnecessary conflicts and impoverishing of the masses. While it is important to address the land compensation problem from a local perspective, there are tested guidelines and standards by the World Bank and the International Finance Corporation that can be contextualized in Eastern Africa. The need for harmonized set of standards and guidelines is required amongst the countries given the socio-economic similarities of the Eastern Africa. The Universities have a crucial role in preparing land administration cadres with skills that will promote a sustainable approach in land acquisition and compensation to benefit the majority.

INTRODUCTION

Eastern Africa region is the fastest urbanizing region in Africa with an average of 4.5 per cent growth for the eight countries that make Eastern Africa Land Network (EALAN). Uganda tops the list with an average urban growth of 6% and the least is Djibouti with 1.8% per annum. Eastern African countries are experiencing record levels of investment in mega-infrastructure development, which is promised to catalyse further investment along transport routes and contribute to widespread socio-economic development in both urban and rural areas (Enns & Bersaglio, 2020). Apart from the urban infrastructure, the Eastern African countries have attracted substantial foreign investments in agribusiness, mining, power generations and recently carbon trade.

Compulsory land acquisition in the Eastern Africa region is vital for the region's development projects. Governments need to acquire private lands to fulfil their mandatory public obligations and facilitate private investments in key economic sectors. Each of the eight countries that form the Eastern Africa region requires land to meet the spatial growth needs for existing towns and cities, new urban areas, provision of transportation infrastructure like roads, canals, highways, railways, bridges, wharves and airports.



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The second category of land needs is for the provision of public buildings such as schools, libraries, hospitals, factories and housing. They also require land to cater for public utilities such as water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs, public parks, playgrounds, gardens, sports facilities, and cemeteries. On the other hand, governments are obliged to facilitate large scale investments by the local private sector and foreign investors.

Most of the infrastructure projects within the region are credit-funded by external sources which include the World Bank, African Development Bank, USAID, JICA etc and some from domestic sources of the respective countries. In a majority of cases, the borrowing countries have had to comply with World Bank Borrowers Framework and in few cases, international financial intermediaries Frameworks. Compliance with donor-borrowing requirements is vital.

For historical reasons, each of the EA countries has its own laws and regulations governing land ownership and use rights that characterizes the diverse natural ecosystem. Amongst the EA Nations, there is also lack of harmony as regards compensation assessment, fate of affected persons and resettlement. However, there is a

growing desire by the EAC member countries for inter-regional/cross border trade and services. National governments also cherish human rights and right to shelter amidst growing unfair treatment of landowners whose property(ies) is acquired to allow envisaged development projects.

The Global Strategic Environmental and Social Impact Assessment (SESA) as well as the World Bank Environmental and Social Safeguards Framework (ESSF) underpin land acquisition and associated involuntary resettlement for donor-funded projects in the region. There are obvious gaps between provisions of SESA or ESSF and national laws and regulations that relate to involuntary resettlement. Whereas SESA and ESSF emphasis is on 'sustainable livelihood approach', the EA national laws are overtly on 'principal of equivalence approach'.

As a result, some of the gaps include the treatment of persons whose land ownership and/or occupancy may not be recognized by national laws and regulations, the post-acquisition consideration, treatment of vulnerable persons, tenants and the required resettlement assistance. Further, mode of assessing compensation is at variance with the SESA and ESSF who align to 'New for Old Value' principle, while the EA Countries vie for 'market value for existing use'.

Methodology

The EALAN 2023 Conference was held between 27th and 29th July 2023 under the theme, "Advancing Land Administration in Eastern Africa for Sustainable Development" at the Sea Breeze Hotel, Dar es Salaam. A total of 14 papers were presented out of which 5 were on the sub-theme Land Acquisition and Conflicts from 6 universities/countries. The other sub-themes were Land Governance and Land Tenure, Climate Change and Use of Land, Land Registration and Formalization and Pro-Poor Land Management Approaches. The presentations were based on research outputs from 8 originating from research conducted under different research grants. These were followed by respective workshops for each sub-theme. The main objective of the conference was to provide a platform for sharing research outputs and experiences amongst academicians and professionals in land administration across the Eastern African countries.

RESEARCH RESULTS AND CONCLUSIONS

The key findings of the workshops affirmed the following:



1. Real estate acquisition is executed by virtue of law and takes the form of expropriation. Compensation is determined in a separate procedure, frequently at a distant time from the date of property acquisition by public law entities, and in practice it raises numerous controversies and protests. A significant problem in the process of determining compensation are imprecise regulations and undetermined legal status of real estate expropriated; subsequent aggrieved affected persons and low capacity to hand the grievances



2. Replacement cost – is the method of valuation of assets advanced by the World Bank (ESS5) which determines the amount of compensation sufficient to replace lost assets, including any necessary transaction costs. Compensation at replacement cost is defined as follows: For agricultural land, it is the pre-sub-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes. For land in urban areas, it is the pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in vicinity of the affected land, plus the cost of any registration and transfer taxes.

For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes. 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.



3. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures so as to meet the replacement cost standard. Such additional assistance is distinct from resettlement measures to be provided under other clauses in World Bank ESS5.



Policy Implications and Recommendations

Eastern African states are urged to:

- Consider review of their respective national legislation with a view of consolidating, aligning and coping with the changing business climate worldwide. The reviews should address the 'market value' terminology and as far as possible identify a more suitable definition that differentiates it with market value of non-land acquisition purposes. Possible terminology could be 'compensation value'.
- Hand in hand with the law revisions, it is important to consider the fate of beneficiaries of land acquisition projects. While affected persons are compensated at present value of their assets, those left behind tend to benefit from enhanced values attributed to the implementation of project. There should be a way of the public sector to share a portion of the betterment value.
- The revisions should also consider setting entry points 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.
- Aligning Eastern African Nations Land Acquisition laws with International Standards is critical to address the global concerns on poverty alleviation and livelihood restoration of PAPs.
- Consider investments only after conducting careful impact assessments. These should include land tenure impact assessments, community impact assessments, and environmental impact assessments. The countries are urged to use the findings of these assessments to structure investments that maximize the equitable sharing of economic and social benefits while minimizing the negative impacts
- Avoid expropriation as a tool for accessing land. One means of doing this is by prioritizing investments that work with current owners and do not require the expropriation of land rights. It also has to require investors to obtain the free, prior and informed consent of the local communities. If expropriation must be used, it should follow established procedures that include extensive consultation with "land losers", judicial review, land-for-land compensation, and full resettlement and rehabilitation packages
- Prioritize projects that work with existing smallholders. The best path to increasing agricultural production typically involves helping smallholder farmers to close this gap rather than just introducing largescale production in non-cultivated areas or moving smallholder farmers on the land altogether.
- Ensure transparency. This should involve maintaining public records of all the significant documents relating to the investment and building independent monitoring and evaluation mechanisms for the lifespan of each investment project. A level playing field for all parties requires easy access to relevant information. Public notice should be required to provide interested and affected parties a true opportunity to register their claims.
- Given the significantly high potential for agri-business and mineral assets in the region, it is to the interest of EA nations to have a harmonized set of safeguard standards amongst them. It is high time EA nations are perceived as considerate to their people rather than being



seen as mistreating those affected by land acquisition project.

- Governments should ensure that resettlement processes are sustainable programmes supporting the resettled households to re-construct their livelihoods, a way out to reluctance to stay in the resettlement area. Planning authorities

should ensure that resettlement schemes involve the provision of public facilities and social services in the resettlement area. This is to minimize long walking distances to access services in well established neighborhoods which in most cases are located far from resettlement areas; reduces school dropout cases; minimizes pregnancy and sexual abuse to school children.

Recommendations for EALAN affiliated Universities



Universities play key role in influencing change and introducing better ways of handling land acquisition, compensation assessment and involuntary resettlement.



There is a strong need of improving current land administration curricula to inform on emerging skill areas and land governance matters.

RECOMMENDATIONS FOR CIVIL SOCIETIES IN EALAN COUNTRIES



Provide awareness, training, and legal aid programs to help communities understand and protect their land rights and to represent their interests in dealing with investors and governments.



Conduct impact assessments. Assist governments by developing expertise in and by conducting land tenure impact assessments, community impact assessments, and environmental impact assessments



Monitor and supplement government oversight and management of investor agreements.



Promote greater government and investor transparency by creating and implementing systems to monitor land deals and promote information sharing.



REFERENCES AND APPENDICES

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