Land Acquisition Risk for Private Sector Companies: Diagnosing Early Intervention Needs in the Context of Public Private Partnership (PPP) Opportunities in South East Asia

IAIA Resettlement Symposium

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Present by T Nugent
“The conceptual framework determines the level of risk for project investors and lenders, and consequently determines both the tenor and conditionalities on which resources can be raised for such projects.”

ADB PPP Operational Plan 2012-2020
PPP and Land Acquisition

Royal Cambodia Rail
- Delays due to complex. Government led land acquisition
- Private partner withdrew

SNAPB Philippines HPP
- Complaints relating to unresolved grievances
- Mediated settlement which included unbudgeted CSR

Central Java CFPP
- Private partner had full responsibility for land acquisition
- Delays and declaration of force majeure
What Goes Wrong

- Over reliance on business case
- DFI safeguards compliance cannot be assumed
- Uninformed concession negotiation
- Unallocated risk manifest themselves

Reliance on business case to inform risk allocation and negotiation

An informed negotiating position based on early identification of risk and intervention design
Developing an Informed Position
A Four Step Process

- How has the business case been developed?
- Are host country context factors present?
- What procedural and human rights risks are present?
- What is the level of risk and how can it be allocated?
Step One
Equivalency Assured?

DFI Sovereign Loan Programmes have the status of Treaty’s – equivalence assured

DFI advised PPP Opportunities should lower risk, however risk allocation still requires assessment.

Unassisted Projects? Govt takes all risk?

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Step Two
The Risk of Risk

**Equivalency**
Has land acquisition been undertaken in a setting of “safeguards equivalency”?

**Purpose**
Was the land acquired for the specific purpose of the PPP Project, or was it for other means?

**Tenure**
Is the context one where rural land users do not have security of tenure or tenure type which limits accessibility to adequate compensation or rights of appeal?

**Governance**
Is the setting one which increases the probability that any land acquisition processes have been impacted by institutional capacity or governance factors?

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**Diagram**

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The Questions

1. Business case structure
2. Negotiation and Pricing Process
3. Tenure security and recognition
4. Impact Driven Livelihood Restoration
5. Documentation of the process

The Issue

DFI Safeguards incorporate minimum expectations
Failure to adhere to these can lead to sub-optimal land acquisition outcomes
Rectifying these can become the responsibility of Private Partner
Step Three: Human Rights

The Issue

Growing acknowledgement of private companies obligations
Amelioration of impoverishment and marginalisation
Moves past just restorative, to identifying pre-existing rights abrogation's

The Questions

Have people maintained the right to an adequate standard of living
Have the rights of vulnerable and disadvantaged been upheld
Not included coercive or cruel behaviour
Rights of indigenous peoples to self determination

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What procedural and human rights risks are present?
What is the level of risk and how can it be allocated?
Step Four: Developing a Position

Risk Ranking
- Leverage internal criteria
- Assign ranking based on unallocated risk
- Define desired risk level

Design Interventions
- Propose interventions to reduce to desired risk level
- Account for DFI safeguards
- Factor in limitations

Negotiating Position
- Identify cost and schedule implications in meeting desired risk level
- Informed negotiating position!
Cambodia Rail

Application would identify:

• Resettlement was government led
• Absence of a resettlement action plan
• Magnitude of displacement impacts
• Active role required

SNAPB

Application would identify:

• Presence of unresolved grievances
• The nature and risk that these grievances presented
• Led to engaging independent experts to assess these risks

What’s Important?

Knowing when to elevate consideration of Land Risks

Ability to identify key indicators through appropriate methods

Using the process to predict future risks in both mitigated and un-mitigated contexts
Where to Next?

Limitations

- All risks weighted equally
- Must better account for magnitude
- How can an easy cost component be integrated?
- Assumes all countries are the same
- Post hoc rationalisation

Opportunities

- Can be applied in all government led processes
- Feasibility Phase and Project Entry Decisions
- Subject to addressing limitations, can allow for large numbers to be assessed quickly

Conclusion

- Needs to move towards a more self contained version
- Benchmarking of costs, magnitudes and risks are needed
- As is, does provide a basis for developing a strong negotiating position
- Not revolutionary, just formalises the process
Thank You