



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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“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

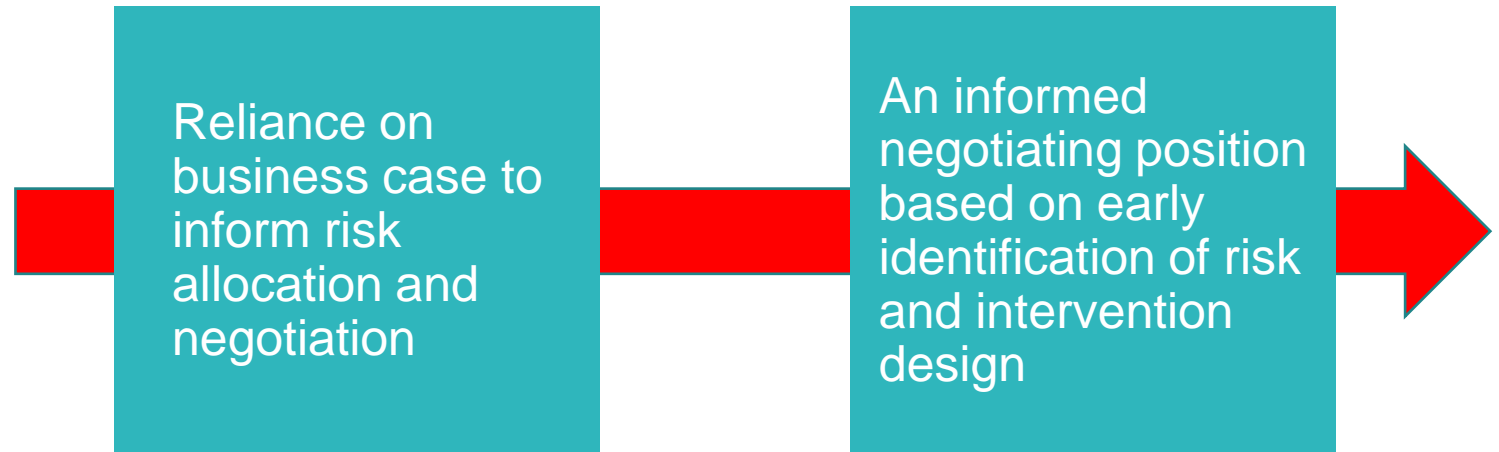
Central Java CFPP

- 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



Developing an Informed Position

A Four Step Process





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?



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?



Step Three: Procedures

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

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

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 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



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 Four: Developing a Position



Has the Project been developed with DFI Assistance?

Does the Project exhibit one of the four at risk factors?

What procedural and human rights risks are present?

What is the level of risk, and how can it be allocated?

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 unmitigated 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

