



Addressing Gaps Between International Standards & National Legislation

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Three Challenges

How can we improve client's/government's acceptance of International Resettlement Standards?

How can we improve the integration of international standards with our delivery of resettlement programs?

How can we create conditions where we can do away with the need to refer to international standards?



Standards adoption needs to be based on a transaction

- ◎ Acceptance of ‘international standard’ resettlement by displaced communities is seldom a problem
- ◎ Focus on negotiating acceptance of International Standards by Government:
 - ◎ Dialogue
 - ◎ Reach a mutual understanding of gaps, measures to address
 - ◎ Government needs to take ‘ownership’



What are International Resettlement Standards?

- ③ WB Involuntary Resettlement Policy
- ③ IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement
- ③ EBRD Performance Requirement 5 Land Acquisition, Involuntary Resettlement and Economic Displacement
- ③ Asian Development Bank, Inter American Development Bank standards, etc



National Sovereignty vs. International Standards

“We are a sovereign government. We have evolved our own laws. What right do you have to you come here and tell us how we should manage land acquisition and resettlement? We don’t need international standards!”

Permanent Secretary, East Africa



Possible responses:

- ⊙ Inadequate country systems argument
- ⊙ Social development argument
- ⊙ Donor countries standards argument
- ⊙ International Human Rights argument
- ⊙ National interests/ to facilitate access to funds
- ⊙ Mitigate project risks – commercial and political
- ⊙ Slip references into project agreements, postpone discussion to later
- ⊙ Not proceed with the project



Pitfalls in promoting use of international best practice standards

- ⊙ Sovereign pride – resistance to bowing to external interests
- ⊙ Fear of creating a precedent (higher compensation rates)
- ⊙ Cultural mismatch – a multinational company (or a multilateral bank) often has a very different negotiation style & agenda to a national government
- ⊙ Failure to understand each others position and drivers
 - ⊙ Government needs time because it has to balance multiple political interests/ put in place new legislation/ sell the concept to the electorate
 - ⊙ Private project proponents are time driven because they see a market opportunity or because of shareholder pressure about costs
- ⊙ Different priorities about timing



How to proceed?

- ③ Before reaching agreement on using International Standards – building trust
- ③ Ways to go about agreement
- ③ How to integrate national standards and international standards in resettlement execution



Building a working relationship...

- ③ Start by building trust between the Regulator and Project
- ③ Ensure internal alignment within your project team – ‘internal training’ across your organization
- ③ Allow sufficient time – don’t be surprised if it takes 6 months to reach agreement on harmonized standards
- ③ Start on simple issues – move to more challenging issues later
- ③ Offer training to the regulator- avoid being condescending



Building a working relationship...

- ③ Do establish:
 - ③ High level steering group (for large projects, as high as possible – ministerial desirable)
 - ③ Land Access and Resettlement Working Group (Project team, Ministry responsible for the Project, Ministry of Lands, Attorney General's Department, national, regional district)
- ③ Be emphatic - your Project wants land acquisition and resettlement done to the letter of the legislation – no short cuts



Reaching agreement...

- ③ Aim for a unified Project standard – that harmonizes national legislative requirements and international standards requirements
- ③ Or, identify differences, with the project to:
 - ③ Top-up statutory compensation rates (structuring of resettlement agreements)
 - ③ Fund compensation required through international standards
- ③ Gap analysis – run a workshop with all government stakeholders (and, if appropriate, with community reps) to:
 - ③ Agree relevant legislation (land, EIA, family planning law)
 - ③ Agree gaps – based on government capacity, practical application
 - ③ Agree measures to address gaps
 - ③ Include people practically involved in national land acquisition – lawyers, valuers, surveyors



Reaching agreement

- ③ Consolidate the harmonized standards in Resettlement Policy Framework
- ③ Ensure that reference to international land acquisition and resettlement standards gets built into project-government agreements:
 - ③ Reference to a specific standard (e.g. IFC PS 5)
 - ③ International best practices
 - ③ Accepted international industry good practice



Implementing

- ③ Workshop will all levels of government to ensure there is understanding of the harmonized Project standards (national cum international)
- ③ Provide training to field teams (community engagement, census and survey teams, negotiators, grievance) – role play
- ③ Provide training to communities as part community mobilization for resettlement
- ③ Agree payment mechanism and signatories
- ③ Monitor and evaluate outcomes – project / government / community



Summary

- ③ Allow time – East Africa experience
- ③ Have robust dialogue with Government and all stakeholders
- ③ Agree what are the ‘real gaps’ and measures to address them
- ③ Agree a harmonized standard
- ③ Document in Resettlement Policy Framework
- ③ Build references into project – government agreements



Call to Action 1 Develop National Resettlement Policies

- ⊙ Revitalize technical assistance for development of national resettlement policies
 - ⊙ National framework for promoting national & international good practice
 - ⊙ Take care to harmonize any policy with national legislation
 - ⊙ Draw on multilateral/bilateral lenders' expertise
 - ⊙ Carefully conceived, a Policy can facilitate both sovereign and private sector borrowing through IFIs
 - ⊙ Can be a precursor to legislation



Call to Action 2: Up-to-date Empirical Research...

- ③ Prioritize empirical research into the outcomes of contemporary resettlement practice
 - ③ Current resettlement approach is based on 1997- early 2000s research
 - ③ Paucity of recent empirical research into resettlement effectiveness and outcomes
 - ③ Resettlement standards revisions have tended to be based on interest groups concerns & facilitating loan approvals - not empirically-supported resettlement measures



Call to Action 3 – Promote Positive Change

- ◎ Strive to create conditions where reference to international standards is no longer required
 - ◎ Resolved land legislation
 - ◎ Legislation that is predisposed to fully compensating displaced people for all the costs that they incur in compulsory acquisition and/ or resettlement – people are not left worst off
 - ◎ Well developed land cadaster and property registration
 - ◎ Enlightened approach to regularizing extra-legal land use
 - ◎ Well trained and resourced government agencies/ complementary private sector services
 - ◎ Functioning and active land and property markets
 - ◎ Licensed land and property professionals – surveyors, valuers, building and quantity surveyors
 - ◎ Well developed social safety nets for vulnerable households
 - ◎ Mechanisms for timely mediation and dispute resolution (Land Courts?)
 - ◎ Accessible legal aid for those displaced – government or civil society
 - ◎ Government predisposition towards information disclosure, public participation and transparency

