Review and Update of the World Bank’s Environmental and Social Savegards Policies

Agenda Topic 6: Compensation

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The Problem of huge **DISCREPANCIES** between the proposed Saveguards and the *Real World* in many partner countries

*Ideal situation ESS 5* **versus** *Realities in many countries*

- Principles based on livelihoods- and human rights approach
- Negotiated solutions

**Strategic considerations for discussion:**
- Linking project with country-wide needs
- Incremental approach by improving the country‘s policy, normative and operational framework (VGGT)
- Flexibilty in adaptation, e.g. approach for (1) large scale projects and (2) small scale projects
- Attempts for creative alternatives
- Land aquisition/compensation increase poverty!!
- Misuse/abuse of PUBLIC PURPOSE
- Gaps in the normative framework
- Compensation not paid for land rights not registered/recognised
- Lack of client capacity, responsibility and ownership
- Corruption! (Compensation not paid or only partial payments)
- One large scale ESS 5 project will consume all resources of a country and increase problems elsewhere
Factors that lead to unjust compensation

• Poorly drafted laws and regulations create confusion, error, conflicting outcomes, and opportunities for abuse of power.
• Determination of equivalent compensation is difficult when people do not have clear legal rights to the land.
• Affected owners and occupants often have less negotiating power, experience and skills than the acquiring agency. They may be unaware of their rights, and under pressure to accept a low offer in order to be able to resettle quickly.
• A lack of standards and good governance practices allows corrupt officials to provide favourable compensation to those who offer bribes.
• Accurate valuation is difficult because it is time-consuming and expensive: each land parcel must be inspected to determine the value of the land and improvements. A shortage of skilled valuers will increase the time required to complete the work. News of the project may affect the market value of the land and lead to speculation.
• Appeals processes that are expensive and difficult to use are accessible only to the rich.
Basic Law of the FRG   Article 14

Property – Inheritance – Expropriation

(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

(2) Property entails obligations. Its use shall also serve the public good.

(3) Expropriation shall only be permissible for the public good. It may only be ordered by a law that determines the nature and extent of compensation.
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest

**Expropriation and compensation (extract)**

- States should expropriate only where rights to land, fisheries or forests are required for a public purpose. States should clearly define the concept of public purpose in law, in order to allow for judicial review.

- States should ensure that all actions are consistent with their national law as well as their existing obligations under national and international law.

- States should ensure a fair valuation and prompt compensation in accordance with national law. Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination. To the extent that resources permit, States should ensure that implementing agencies have the human, physical, financial and other forms of capacity.

- All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.
The Range of Options for Compensation

Financial Compensation: cash compensation at replacement cost is based on the value of the land rights and improvements to the land (and housing) and on any related costs (e.g. lost income, transitional cost)

Alternative Land: Resettlement

Security payments: e.g. land delivery pension

Alternative income earning opportunities: Business start-up assistance, employment opportunities, e.g. Ranger in „green acquisition“ areas

What are creative and viable alternatives?

• Land sharing models
• land swaps (e.g. with public land)
• Value-added land development and value capture
• Special purpose land consolidation
• The best mix of land banking, land development and consolidation
recent challenges of land consolidation in Germany

- Efficient accompanying of public infrastructure projects
  - highways and other transport constructions,
  - high speed rail ways,
  - dams for drinking water,
  - airport/ harbour enlargement,
  - flood prevention
**Smart Land Tool Box for minimising compensation by combining:**

1. Land banking (willing seller, land delivery pension, state land)
2. Land development for increasing and capturing land value (irrigation, rural roads, reforestation, flood protection…..)
3. Simplified land consolidation (incl. agricultural services)
Points for discussion:

• The Problem of huge **DISCREPANCIES** between the proposed Saveguards and the *Real World* in many partner countries (strategic considerations, linkage with VGGT initiative)

• Discussing and strengthening approaches for creative alternatives to acquisition / displacement / compensation

• Linkages: Biodiversity (EED 6) targets will lead to large scale land acquisition (green acquisition) for conservation (CBD target 17 % conserved), ESS 4 impact of dams, ESS 7 indigenous people, REED+