

Safeguards for communities during acquisition of land for investment purposes

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Summary

Kenya is going through a period of intense transition. The country's main development policy, Vision 2030, is just entering the second Medium Term Plan of Implementation from 2013. The development priorities focus extensively on large scale investments, for industrial, irrigated agriculture, utilization of newly discovered natural resources, and infrastructure development. Land is therefore a central commodity for realization of the sought after socio-economic transformation. However, this poses significant risks to the dominantly rural population that still relies on subsistence agriculture or pastoralism for basic needs. The high levels of poverty raise the question of vulnerability to manipulation during land acquisitions, as well as exposure to negative impacts when social and environmental safeguards are not deployed to protect people during the involuntary displacement that often results when land is acquired for large development projects. This brief looks into the social, economic and environmental safeguards for communities as the state undertakes compulsory land acquisition for investment purposes.

Introduction

Land is critical to the economic, social, and cultural development of Kenya and as such, land issues remain sensitive for the government and the citizenry. Large Scale Land Investments that call for the acquisition of land usually have far reaching social, economic, cultural and political consequences since they may disrupt economic and social activities, interfere with cultural sites and practices and, where displacements of large numbers of people arise, also influence voting patterns. The law often creates formal mechanisms to guarantee accountability in public systems that drive land acquisitions, but additional mechanisms are necessary to ensure legitimate community interests are addressed, and therefore the acquisition is accepted and supported by the affected local community. Kenyan law has recently made provisions for safeguards during involuntary displacement caused by development projects; and further requiring guarantee of local community benefit when public land is set aside for investments.

The Land Development & Governance Institute has since 2013 been conducting a research to look into how land acquisitions for investment purposes are affecting communities in areas where these investments are happening. The research targets promotion of greater community benefit and accountability in large scale land acquisitions for investments in Kenya. One of the objectives of the report was to explore and propose mechanisms of implementing social, economic and environmental safeguards for communities during acquisition of land for investment purposes, including specific application to the interests of women.

Approach and Findings

Approach

The approach taken for the research began with reconnaissance visits guided by pre-identified research assistants conversant with the local area and research issues. This guided the identification of specific research sites in each of the three county locations (Isiolo, Siaya and Lamu Counties). In Lamu, research sites along the path of the Lamu-Garissa road, where land acquisition had occurred, or was ongoing in certain parts, in Hindi Magogoni, and in Bargoni were selected. In Isiolo, areas where the local community was previously impacted by land acquisition (Isiolo airport, Kambi ya Gabra) and challenging land tenure (Isiolo town, Ngare Mara) were identified. In Siaya County, Yimbo and Osieko were identified owing to their proximity to Dominion Farms Investment. Focus Group Discussions were carried out with respective communities to further examine the role of legislation and policy in ensuring community benefit from land acquisition, and to determine how communities relate to these laws. Open-ended interview guides were used to engage individual respondents.

From the focus group discussions, and interviews with specific respondents, and as a result of the research team building trust and rapport, there was a snowball effect, with respondents suggesting further individuals in the locality that might have valuable information, or ability to clarify certain issues. This snowball sampling was anticipated in the research methodology.

Findings

1. Limited of knowledge about land laws, policies and land administration processes

Communities in areas where land acquisition is taking place reported to have only heard about the new land laws (Land Act, 2012, Land Registration Act, 2012, National Land Commission Act, 2012) but are not familiar with the provisions. Similarly, communities lack knowledge of the specific details of LAPPSET projects. Communities indicated that they would want to have some form of civic education on this, especially regarding tenure rights, the land administration system (surveying, adjudication and registration), the implications and contents of the new community land law, and legal protection of community rights during land acquisition. One key finding was a preference by community members to have their own members trained in order to pass the knowledge to the communities, a sentiment that arose from a desire to receive information from a trustworthy source who was part of the community. Another finding was that community members did not have clear details on available grievance mechanisms on the land administration system, and while some had managed to access the National Land Commission, they lamented that it was based in Nairobi.

2. Lack of meaningful public participation

There are instances of inconsistencies due to lack of consultations with the public. In the Isiolo Kiwanjani settlement (displaced for the airport), residents of Kiwanjani Zone G Squatter complained that maps generated during the acquisition process continued to record their land as part of the airport complex despite there being a 75 feet road between the airport boundary, and the plots in question. With effective consultations before and during project implementation, such incidents would be avoided.

3. No integrated networking system for project affected communities to build knowledge and exchange thoughts

In both Lamu and Isiolo, the research engaged with multiple focus groups drawn from within the same project locality but in different geographical sections – and there was evidence there was no integrated system to promote consultations and learning from each other. Further, even where acquisition and investments have been undertaken in separate parts of the country, people from Isiolo or Lamu could learn coping techniques from those in Siaya, or by learning of the adverse impacts in Siaya, become more interested in enhancing their voices in the local context to avoid a similar outcome.

4. Women involvement in community interventions

The study revealed some good lessons in the involvement of women in community interventions and leadership on communal land rights. For instance in discussion with the Aweer group in Bargoni, Lamu, some women participants in the focus group discussions were very active and made crucial contributions. Women also made distinguished contributions during discussions with the Turkana community at Ngare Mara, Isiolo County. Here, women hold very critical leadership positions within the community. Given the opportunity, women could play helpful roles in the various phases of these kinds of projects.

On the other hand, incidents were recounted of husbands and fathers pocketing the proceeds of compensation and departing home with the entire compensation sum. This leaves the wives and children vulnerably exposed and without alternative livelihoods. Such people become a problem for the community and State.



Fig. 1 - Goats at pasture in the foreground of the Kipsing Gap, the expected location of the Isiolo Resort City, a component of the LAPPSET project.

5. Compensation to “occupants in good faith” without title to land

Article 40(4) of the Constitution of Kenya states that 'provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land'. While the rules to govern how the discretion implied by this Article are yet to be developed, the study reveals that the State has exercised this discretion positively in the studied Port site in Lamu and the Airport site in Isiolo. Despite land owners not holding title to their land in the two places, cash-for-land and land-for-land compensation was made to the claimants in Lamu and Isiolo respectively. These are good precedents for the exercise of this constitutional provision by the State.

6. Indigenous and local knowledge

Project activities involving large scale land acquisition have the inevitable consequence, in some cases, of interfering or totally defacing available traditional/indigenous knowledge from the affected site. This is the case in some parts of Lamu and Isiolo where invaluable oral and cultural knowledge, including some cultural sites, have been preserved over the years. In any event, if enhanced community participation is adopted, and a threshold placed to examine if the participation is meaningful, the indigenous and local knowledge of the communities will also benefit the project at the point of local risk assessment. In this case, recording of such knowledge can be undertaken for posterity use.

Conclusion

From the research, it is evident that engaging respective communities at an early stage of project design is crucial to ensuring protection of community interests. As feasibility studies are carried out for projects that will require compulsory acquisition of land, socio-economic impacts of the land acquisition process on respective communities should be taken into consideration.

Recommendations

1. A community dissemination manual for transfer of knowledge about land laws, policies and land administration processes:

There is a need to develop a basic community dissemination manual that includes a provision for empowerment of community based trainers (through a Training of Trainers concept). In such an approach, the dissemination manual can be published in simple language, including translation to Kiswahili or local languages where preferable.

2. Enhancement of meaningful public participation in the entire continuum through effective consultations and disclosure of relevant information:

Enhanced community participation can provide a valuable avenue through which affected local communities can enhance their voice by having their opinions taken into

account early on in the stages of the project design. However, this approach would also require protection from speculative behavior that could result in an artificial increase in market value of land, due to market behavior triggered by anticipation of a project, and land acquisition.



Fig. 2 - Part of the road linking Lamu to Juba, South Sudan under construction.

Access to information requires that this type of information is made available to the public, but in order to control speculative behavior that drives up the cost of land compensation, government can apply the new 2016 Access to Information Act to sieve out aspects that are either confidential or considered deliberative and therefore not to publicly disclose. Another helpful approach would be to undertake the feasibility studies focusing on multiple alternative sites, without showing preference for any particular site. Meaningful community participation requires a legal or policy definition of how to ensure consultations are effective. This could include possibility of requiring consulting (public) agencies to return to the host community and disclose how they considered the various opinions, and provide feedback. The community dissemination manual proposed above would provide a valuable tool through which to structure techniques that affected local communities can apply in order to have meaningful consultations. The manual can also include implication of the procedures set out in the new 2016 Access to Information Act.

3. Promotion of Networking by Project Affected communities in various parts of Kenya to build knowledge and exchange thoughts:

The idea of a network that brings together representatives of the various communities is useful to consider. Such a network would also include policy makers drawn from the national and county governments. Already in most of these

local communities, the research observed that chiefs (who are national government administration officers) are an integral part of the community process. Learning forums can be organized, and a feedback process put in place such that when representatives return to their local communities, they can provide details to their neighbours. Such a network would however require that policy makers also commit to provide valuable information and feedback to any questions and problems raised by participating communities.

4. Involvement of Women in Community Interventions

The study exposes some good lessons in the involvement of women in community interventions and leadership on communal land rights. Yet, the two communities, like many others in Kenya, are largely patriarchal.

This experience provides a good bench-marking lesson that, despite the cultural practices that have informed many communities in the past, given opportunity, women may play critical roles in helping communities protect and mitigate their communal land rights where circumstances so demand.

5. Protection of interests of legitimate beneficiaries during compensation:

The Government, in liaison with the National Land Commission, should put in place modalities to explore how a social safeguard procedure similar to the one applied by Land Control Boards under the Land Control Act where the rights of children and spouses are protected during hearings, could be instituted in the proceedings for compensation under the Land Act. This would protect vulnerable legitimate beneficiaries in instances where acquisition of land for projects has to be done with requisite compensation to successful claimants who are heads of households.

6. Preservation of indigenous and local knowledge:

Implementation of large scale investment projects that require land should be preceded by a quick knowledge mapping to determine and document vital knowledge before destruction or adulteration, together with enhanced community participation. Where possible, such knowledge can be pro-actively preserved in collaboration with the relevant state organs. Such a mapping can still be done for the LAPSSET Corridor and Isiolo Resort City before implementation takes off.

ABOUT LDGI

The Land Development and Governance Institute (LDGI) is a not-for-profit organization committed to promoting equitable access and sustainable management of land and natural resources. LDGI tracks implementation of land reforms to provide information on policy and land administration, creates avenues for effective public participation, and builds capacity of different stakeholders to increase their understanding of sectoral issues. The Institute also conducts appropriate research that informs legislation and policy development and improves various aspects of land and natural resource management in Kenya.



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Prof. Nelson Awori Centre

P.O Box 8222 – 00100, Nairobi Kenya.

Tel: +254 – 20 2714574, +254 706623636

www.ldgi.co.ke / www.ldgi.org



Land Development and Governance Institute



@ldgi_kenya