

Module VII

Valuation, Compensation, Investments in Resettlers' Development, and Benefit-Sharing

Introductory Note

Having explored systematically in the prior sessions the basic “building blocks” of the IRR framework, it is appropriate to consider now some of the key economic, financial and legal issues that are surfacing with increasing acuity from the research carried out under the RETA capacity building program on how the resettlement risk are being managed in practice. As the module makes clear, many of these issues are under exploration and discussion in various countries as information is coming in from research and project practice. The module examines in particular key aspects of valuation procedures in resettlement, of eminent domain law application and interpretation, issues related to the compensation principle and to the investments and benefit-sharing proceeds that can be instrumental toward achieving “resettlement with development”.

Public sector projects rely on the legal principles of eminent domain for carrying out expropriation and condemnation of lands and assets, because the public sector projects are “public use” programs and the state has the Constitutional entitlement to act for the implementation of projects of “public use”. But the eminent domain requires also that a correct valuation of the assets lost be carried out and that “just compensation” be paid. It turns out, however, that valuation methods often are too crude. Even when market values are taken into account, the estimates values are not reflective of the real losses incurred by those displaced. Furthermore, when valuation itself is done only by the party which decides upon expropriation and has the power to enforce it, that is the state, the resulting valuations are often highly biased downward. The normal democratic procedure that

valuations be done by a third party, which would be a neutral party, is rarely if ever implemented.

There is much room for improving the currently applied methods for valuation and the calculations of replacement costs, first from a technical economic point, but also in terms of considering who should done the valuation. Existing eminent domain regulations leave sufficient room for involving neutral specialists for carrying out such valuations, but is this “room” utilized? This is a question to be explored collectively during the training session(s) using this module.

Further, the estimated values need to be subject to consultations and negotiations between the project that requires “right of way” and the people who lose their lands and houses, while adequate grievance avenue for situations in which agreement is not achieved must remain open at all times. In this respect, the module calls attention also to recent research in economics that attempts to refine valuation techniques by proposing a shift from valuation based on “willingness to pay” (WTP) to valuation based on “willingness to accept” (WTA). The trainer has a good opportunity to explain how good resettlement risks management can create a conducive environment for correct and accepted valuation.

Another important issue discussed in module is about the applicability of the eminent domain legal principle to projects in the private sector. In some MDCs, the eminent domain law has been extended to private sector projects (which are “for profit” projects) rather than “public use” projects. This extension replaces the market norm usually applied in private sector projects for valuation through *“willing buyer-willing seller transaction”*. This shift exposes resettlers to new or increased risks of de-capitalization, as their prior capacity to negotiate prices with a private entrepreneur is disabled. What would have been otherwise a free market transaction becomes now subject to the coercion involved in state-led expropriation.

The ways in which assets valuation is carried out result in different levels of compensation payments. This module asks (and helps) the trainer to explain the dysfunctions and new risks which biased valuations, unfair compensation calculations, and the compensation delivery process itself, impose on those displaced.

A rather new question is also placed under the light in this module: namely if (by some miracle of ideal calculation and delivery) the compensation would reflect the value of the assets lost, would “perfect” compensation achieve the higher goal of improving livelihoods above pre-displacement levels? Recent research, of which the trainer must make the audience well aware, has pointed out that there are structural limits not only in the ways compensations are calculated but also in the ability of full (say, at the limit, ideal) compensation to supply the capital required not just for restoring pre-project livelihoods, but also for doing much more: improving them.

Strong arguments are being made in favor of supplementing the compensation paid by development projects with increments of investments, targeted to support development programs for the resettlers. These additional efforts and investments would, if successful, enable them to surpass their pre-project income levels and livelihoods.

International policy guidelines are increasingly recommending that support to resettlers should aim precisely at the higher goal level of improving livelihoods, rather than the lower level of simply restoring them. Indeed, the trainer can easily make clear that, if the prior level was below the poverty line, it would not be a great achievement to restore those people to their pre-project condition of poverty, but rather that development benefits need to be extended to the displaced people as well

Innovative best practices in compensation from Japan and from China are described in the module. Japan has replaced expropriations in several dams with land lease, while China serially and steeply increased state-mandated compensation rates per unit of land .

Finally, relevant to overcoming these dilemmas is the last part of the module. It shows that, in practice, the governments of a number of developing countries have adopted and continue to enact legal measures to enable resettlers to access the benefit-streams resulting directly from the projects that have displaced them. Benefits-sharing is increasingly regarded as the best practice in this respect, capable to provide financial

support for “resettlement with development”. The module provides the example of important legislation newly adopted for Brazil’s hydropower sector in the last decade, and information from China, demonstrating that such approaches are not only desirable but also feasible.

Since this module concludes the study of the impoverishment risks and reconstruction model, trainers would be well advised to recapitulate during it the main themes of the entire training course. If one main idea should be retained from the full course, this is the idea that the intrinsic impoverishment risks of resettlement must be **overcome by mobilizing the entire arsenal of institutional, economic, financial and legal means necessary**, including the mobilization and empowerment of the energies of the resettlers themselves.

Overall, this can be achieved only and only if resettlement is firmly oriented, from the outset, towards achieving “resettlement with development”

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