
Impacts and Policies of the Involuntary Resettlement in Kenya

Kenya has previously faced local oppositions and tense relations over transmission lines, pipeline infrastructure, and access roads have led to project delays, cost overruns, and even project cancellations. Proactive engagement and commitment to partnering with tribal groups at the initial stages of project development. Early engagement with affected communities helps utilities deliver low-cost power projects by reducing delays caused by community objections and litigation.

The Kenya-New Zealand exchange facilitated by Power Africa and the U.S. Energy Association, proves that community engagement is actually good for a utility's bottom line — it is not a charitable practice, or just an exercise in corporate social responsibility (<https://medium.com/power-africa/the-sacred-nature-of-geothermal-energy-9f5f9f0de532>)

The following standard performance indicators are derived from the case studies above and which are useful in ensuring smooth land acquisition, resettlement programme and ultimate realization of energy project development:

1. Proactive engagement of affected communities during geothermal development. Experience in New Zealand's geothermal sector shows that community engagement helps to avoid costly legal suits, project delays and protest while creating shared value among utilities and tribal groups.
2. Partnerships with hosting tribes to ensure that the rights and customs of are protected while at the same time meeting the country's energy needs.
3. Joint venture between local tribes and state-owned utility to successfully energy projects while improving the wellbeing of local populations through environmental stewardship and local economic development projects.
4. Proactive stakeholder engagement to help energy developers design smart social and environmental programs.
5. Exchange mission between state owned energy producers and their global champion-counterparts in similar land based energy projects for benchmarking purposes. The exchange mission should include tribal representatives and officers implementing policies of counterpart organizations to foster best practices.
6. State Owned energy providers should consider incorporating shared land ownership arrangements with the local communities. This should form state-of-the-art community engagement program that draws on New Zealand's successes where communities have a stake in energy project gains

In the case studies (Turkey, Uganda, Kinangop Wind Park) failures in LSLAs and involuntary resettlement programmes alongside energy projects are attributed to among others:-

1. Lack of prior information unreliable information captures on census of households, entitled beneficiaries, ascertained ownership claims and engagement of the PAPs and community.
2. Failure to implement RAP within the various principles of transparency, integrity, access

and right to information, grievance redress and just compensations.

3. Failure to incorporate certain guidelines and safeguards as a control mechanism.
4. Unresolved grievances and land tenure problems
5. Inadequate and late compensation and agreement on offers
6. Inclusion of players and proactive partnerships at earlier stages of the projects.

Local opposition is an indicator Land tenure problem associated with resettlement and compensation for restoration. The failed RAP implementation will always result to the community dissatisfaction, foreign stakeholders and financier's withdrawal from support. There is a need for reforms in the governance and legal frameworks to ensure successful development of land based energy project without compromising livelihoods of land owners. Therefore, analysis of risks and impacts of resettlement should be carried out in light of tenure rights, environment, cultural and economic aspects.

Policy and Legal Frameworks on Involuntary Resettlement

Kenyan Land Laws

The Kenya Transmission Company Limited (KETRACO) is a wholly owned Kenya Government entity incorporated in 2008 in accordance with Electricity Power Act 1997 with a mandate to build the high voltage electricity transmission infrastructure linking generation stations owned by KenGen and Independent Power Producers (PPs) and the supplier sub-stations owned by Kenya Power. All these participants at some point engage with land owners with regard to land. This calls for some regulation framework and safeguards to protect the parties and stakeholders.

The present land related legislations (Kenya Constitution 2010 and Land (Amendment) Act of 2016) only provide for compensation of losses without a clear framework for relocation or resettlement and related support mechanisms. There is also no uniform Resettlement Policy Framework that sets guiding principles for managing the impacts of resettlements while recognizing the livelihoods of the PAPs. In particular, the Kenyan Constitution of 2010 requires "prompt payment in full, of just compensation" to the affected person. The Land Act 2012 provides that "just compensation shall be paid promptly in full" to affected persons while Land Registration Act 2012 registers transactions/interests in land. These legislations also provide for acquisition or purchase of private land for a public purpose or in public interest. However, they do not provide for resettlement of displaced persons as a result of such compulsory acquisition beyond monetary compensation. This is notwithstanding the fact that affected persons may incur much more than they are paid in compensation in order to restore their livelihoods to the previous status.

Presently, where the project is funded externally, there is the tendency to conform to the guidelines on involuntary resettlement required by the lender mostly influenced by World Bank guidelines (OP 4.12). There is evidently gaps that require some evaluation strategy to: identify impacts and principles lacking but necessary for equitable and best practice in involuntary resettlement.

Internationally Recognised Guidelines

In line with World Bank guidelines (OP 4.12), many international agencies recognize that

involuntary resettlement is associated with impacts that require avoidance or minimization. The guidelines require that an entity whose work involves involuntary resettlement should in the first instance prepare a resettlement policy framework (RPF) to guide its activities, and secondly prepare a resettlement action plan (RAP) for each project undertaken. It is on these instruments and principles that the implementation can be audited and reviewed against minimum safeguards. An examination of various international agencies (World Bank, African Development Bank, Asian Development Bank, Inter-American Development Bank, JAICA (Japan) and Commission on Dams) yield common principles that are internationally recognized to undertake projects involving involuntary resettlement:-

1. Need for preparation of the Resettlement Policy Framework (RPFs as well as Resettlement Action Plans (RAPs).
2. Identification of legal and institutional framework within which the compensation and rehabilitation measures have to be implemented.
3. Avoidance of involuntary resettlement wherever feasible, and minimizing of resettlement where population displacement is unavoidable by exploring all viable project options.
4. Compensation at equivalent cost required to replace the asset in its existing condition.
5. Assistance to the affected people to relocate and improve their living standards, capacity for income generation, and production levels, or at least to restore to their former levels.
6. Participation and stakeholder consultations of affected persons at every stage
7. Grievance redresses mechanisms for project affected persons.

In practice, however, implementation vary from one country to another, depending on national legislation on involuntary resettlement. For instance, while the Asian Development Bank (ADB) Involuntary Resettlement (IR) Policy stipulated that compensation of PAPs would be at the replacement value of the asset lost, the laws of India, under the Land Acquisition Act 1984, allowed compensation at market value based on asset registration value and not cost. In some instances in the case of China, there was a difference between the compensation standards stipulated in the RAP and the actual compensation provided to PAPs, where the actual compensation was evaluated as being too generous.

Classification of the impacts of Involuntary Resettlements

According to World Bank (2004) and International Finance Corporation (2002), involuntary resettlement should avoid or minimize involuntary resettlement. Where this cannot be avoided, the project team should have a monitoring and evaluation plan to restore and better livelihoods of the affected persons. RAP Report specifies the procedures that project team follow and the actions to be taken to mitigate adverse effects, compensate losses, and provide PAPs with opportunities to restore or improve their living standards and income earning capacity.

The project under study is in Category A usually associated with adverse impacts on livelihoods and ecosystems by the World Bank classification with regard to impact analysis. The socio-economic and environmental impacts of the project were, assessed (besides the RAP) through Environment and Social Impact Assessment (ESIA) studies under Environmental Management and Co-ordination Act (EMCA, 1999) and related legislations. The ESIA and RAP Reports both detailed how various resultant activities would affect human land-based livelihood and the diverse biodiversity, due to general impacts of resettlement program. The executive summary in the Disclosure Report on Resettlement Action Plan on the Eastern Africa Interconnector

identified the following impacts:-

1. Impacts on land; temporary and permanent loss of land
2. Impacts on structures: both residential and non-residential
3. Loss of trees and crops; farm crops and fruit trees.
4. Impact on businesses; limited liabilities companies and business centers (shops), horticulture farms.
5. Impact on public facilities (some of which would need relocation and compensation), graves and squatter settlements.

The analysis of impacts of LSLAs elsewhere by Richards (2013) uses Poverty Analytical Framework (OECD, 2007) and Land Governance Classification system of International Land Coalition (ILC). According to ILC (2012), the impacts of LSLAs are directly experienced by the poor (smallholder farmers, pastoralists, indigenous people and vulnerable groups). The highest incidents of poverty in Africa exist among citizens living in customary tenure regimes and that the poorest and landless are most dependent on the 'commons'. (<http://www.fao.org/docrep/ARTICLE/WFC/XII/0138-B1.HTM>)

This study adopted a hybrid approach from the two frameworks to classify the impacts of LSLAs. Although these frameworks were based in Agri-based LSLAs, they relate broadly to land based power transmission line projects in Kenya. The similar impacts have also been witnessed in oil based LSLAs in Uganda, Nigeria, Ecuador and Northern Kenya where in each case:-

1. Customary Land tenure was involved,
2. The land in question was agricultural (crop or pastoral) land, and
3. The land acquisitions were energy and hence competing with other land uses of food, water and other livelihood sources, and environmental conservation.

The hybrid framework classifies the impacts into four major categories: Tenure, land governance, livelihood and poverty, and environmental impacts having far reaching impacts at the macro- level.