Section 4

Flashpoint Issue 3
Compensation

CDA Corporate Engagement Project[1]

Flashpoint Issue 3
Compensation

The issue

Companies become involved in compensation issues for a variety of reasons:

- To acquire land and assets
- To compensate for the impact or 'nuisance' their presence generates
- To compensate for accidents (trespass, spills, destruction, casualties).

This paper focuses on the first category.

For many communities, compensation is the only legitimate way to access company resources. In the process of land acquisition and compensation, the stakes are high for both company and community. Land acquisition and ownership have become important conflict factors for two further reasons:

- Land ownership determines if a company designates a community as a 'host' or gives it a related qualification that signals a 'special status'. The kind of qualification bestowed is directly linked to beneficiary entitlements, such as employment and contracting opportunities, or community projects.
- Being legitimised by companies as the landowner is important vis-à-vis other communities, especially in areas with a cultural attachment to land.

Companies use a variety of approaches to compensate for the land and assets they wish to acquire. Typically they follow national legislation. In some countries, like Nigeria, all land belongs to the state and the company is only obliged to compensate for pre-existing buildings and one yield of harvest. In others, land is privately owned (98 percent of land in Papua New Guinea is held privately). Companies operating there must reach an agreement with each group of owners according to well-specified procedures.

The business case

Company experience shows that the level (or lack) of protection that landowners or land users enjoy from government under existing legislation is unrelated to the level of protection they enjoy from the grievances (or satisfaction) of local stakeholders. Dealing with well-protected and compensated landowners is no guarantee of a problem-free relationship with land users. However, it is possible to deal with poorly protected land users in a cordial and constructive manner.

The manner in which compensation is made can help a company obtain a social licence to operate. If a company's compensation policies and practices are not locally perceived as fair, adequate and satisfactory, this can hinder the development of constructive relations with local stakeholders. This in turn can lead to project delays and the waste of significant management time. Associated threats of reputational and/or legal damage are high.

Standard assumptions and responses

Companies use a variety of policies and procedures to handle compensation. As noted above, they are based on government regulations, though regulations vary greatly in their specificity.

1. This paper is an adapted version of work published by the Collaborative for Development Action, Corporate Engagement Project. **Collaborative for Development Action,** 130 Prospect Street, Suite 202, Cambridge, MA 02139, USA. Tel: 1 617 661 6310, Fax: 1 617 661 3805. www.cdainc.com/cep

Company procedures stipulate:

- To whom compensation should be paid: landowner or land user?
- Which social unit is seen as owner: individual, family, community or clan?
- For what is compensation paid: land, non-productive assets (e.g. buildings), productive assets (e.g. crops, trees)?
- Level of compensation: is compensation based on one year's yield of the productive assets, lifetime economic value, government regulations or other regulations?
- Compensation currency: is compensation paid in cash, revenues, land/buildings, through a trust fund, through other in-kind 'currency' such as community projects, employment, contracts or a combination package?

Given the wide variety of terms under which compensation is paid, it is difficult to generalise but it is still possible to identify some basic assumptions underlying company practice that can become, or feed into, conflict issues:

Land and assets can be monetised. The assumption that land and assets can be directly compensated for in cash, given the right arrangement, does not acknowledge the cultural value of land in contexts that stress a critical relationship between people and the land on which they live.

Compensation is a finite process. A negative result of this can be demonstrated by company/community clashes that are based on divergent views about the value of land. The company claims it can do with the land whatever it wants, while local people perceive that they can never be alienated from it, and that the land always 'belongs' to them.

Compensation is a benefit to local people. This assumption leads to a company expectation that people who are compensated should show gratitude and not be too demanding in requests for employment, contracts or community services. This tends to be the case where communities have been compensated with new houses or other assets of better quality than the original ones. This expectation overlooks the reality that communities often do not associate compensation with a benefit but with loss of land, their previous community structure and other non-tangibles.

Negotiation should aim to pay the lowest compensation possible in persuading others to agree to a document. This approach, which companies sometimes bring to the negotiations during compensation claims – when their land departments are under pressure from the operations department 'to deliver' – has a negative impact on engagement. Communities may feel under pressure to sign an agreement. Companies may obtain a short-term, cost-effective legal solution but undermine their relationship with communities in the longer term.

Key conflict issues

There is considerable potential for conflict over compensation claims, usually in the form of ongoing disputes, but sometimes fuelling wider social instability and fragmentation.

Conflicts over ownership and who to compensate. There may be pre-existing conflicts over ownership of the land in which the company becomes entangled through its own designs. These can include conflicts between communities and/or local governments over boundaries; conflicts between landowners and land users; conflicts between 'real' and 'hoax' owners; and, after a company's arrival on the scene, conflicts between any of these groups and the company. Companies can fuel these tensions in a variety of ways, for example by recognising and compensating communities that host a company facility (such as a well head) to deter assaults on assets. But this community may be different from the one sitting on top of the resource, fuelling conflict over who is entitled to the compensation.

Compensation policies tend to focus on those directly impacted by company operations, such as landowners or the host village. Companies overlook those outside its operating area who may be no less impacted indirectly, due to increased costs of living, an influx of jobseekers or increases in alcohol consumption or prostitution. This can feed inter-group jealousy when groups that are or are not compensated overlap with groups who are already in conflict with one other. When land users are not the landowners (as occurs when groups have settled but never officially owned the area) owners can evict users from land they may have occupied for generations.

A village in Georgia received compensation for communal pastures and hayfields affected by the construction of a pipeline. The village leadership determined that the compensation should only be distributed among the original residents, but not more recent settlers who had relocated there after a landslide in their original village. The settlers opposed the village leaders' decision and took the matter to the district court, which found in their favour. The original residents subsequently challenged the decision in a higher court. The communal compensation created an acrimonious divide between old and new residents of the village that will take a long time to mend.

Conflict over how ownership is determined. If land ownership is based on official recognition of a community by the ministry of land, but the maps they use are old and obsolete, the company may fail to recognise new communities or settlements. This fuels a concern among communities that they are not being appropriately identified. Some companies require owners to be physically present on their land when an ownership survey takes place. Despite a company's best efforts to announce assessments widely, this allows false owners to claim land and be compensated, leading to conflict when the 'real' owners arrive. Some company policies assume individual land ownership in areas that traditionally have known only communal ownership. Acquiring land from individuals without going through traditional structures gives rise to community distrust and jealousy of the individuals who collect compensation. A non-inclusive approach to benefit distribution (individual land owners, host or spearhead communities only) means that groups and individuals have to compete to distinguish themselves. This creates conflict where it did not exist before. Rewarding groups based on narrow identities leads to social fragmentation and increases the number of stakeholders a company has to satisfy.

One company hired an anthropologist to help get its compensation policy 'right'. The anthropologist reported that there were seven major societal groupings and 23 smaller sub-groups with distinct identities in the area. To be as responsive as possible to local realities, the company launched compensation negotiations with all 23 sub-groups and soon found itself facing a growing number of sub-sub groupings with further special claims. More and more people demanded compensation payments and fights broke out between sub-groups. While trying to be as inclusive as possible, the company had focused on the differences between groups, rather than basing its policy on shared interests.

Conflict over the level of compensation. Companies may strictly follow government compensation standards but these may be outdated and not reflect current values, leading to owners feeling cheated. Companies may apply different standards to different people. For example, if a company first reaches agreement with the 'easy' landowners and, under pressure from colleagues in operations, settles a higher amount of compensation for the 'difficult' landowners, this can cause serious grievances among the former, however much they received. It also sets a precedent for company/community interaction across a range of associated areas. In other cases, ongoing negotiations over (relatively small) differences in compensation levels between what owners request and the company is prepared to pay can considerably delay the process of final purchase. Some companies reward their staff for making minimal compensation payments. Such a policy can result in staff 'cutting corners' or being non-transparent. Regardless of how reasonable the compensation, the process of negotiation can become a conflict issue if owners feel pressured into agreement. Lastly, compensation policies often only consider the immediate interests of those directly impacted by company operations (i.e. for loss of crops for one season only) and do not take into account future losses that a community might suffer. Faced with these losses, communities become hostile from the outset.

Lack of transparency about compensation policies. If there is insufficient transparency about the amount of compensation, who receives it and why, a climate is created in which rumour and jealousy flourish, and this can degenerate into violent inter-group conflict. In some cases, conflicts arise over the anticipated routes for a pipeline and their implications for land use. The transparency of compensation payments is a related issue. Paying compensation at company headquarters or in locations where the transactional details can be concealed can lead to allegations of mismanagement or abuse. Community leaders may face scrutiny on returning to their community. Similarly, if claims agents represent the landowners, a lack of transparency about payment details can lead to accusations of deal making and similarly backfire on the company.

Compensation currency. Cash impacts the social dynamics of resource-scarce communities and has implications for a region's long-term stability, a fact that companies often underestimate. When communities have little experience of dealing with cash, particularly large amounts, its presence can upset traditional power balances and relationships between groups. In many societies, hierarchy is still based on wisdom and age. When cash is introduced, it alters how prestige and political importance are attained. For example, a company's presence can change a society from a traditional system involving community responsibility to a cash-based system in which loyalty and, in some cases, security, can be bought and sold. Youth, who in traditional systems would not pass these social benchmarks, become empowered to exert their influence in a community based on wealth acquired by compensation payments.

Options and alternatives

Companies have at their disposal a number of methods to avoid doing unintended harm through their compensation policies. These include:

1. Conduct context analysis and impact assessment (see P-CRIA)**.** Context analysis and impact assessment is an essential tool in the design of a compensation policy, ensuring that it is based on accurate understanding of potential conflict issues, including land ownership history, the socio-economic context into which compensation will play, the most appropriate channels of communication and compensation, and so on. Such assessments are also essential in identifying the inter-group divisions that could become possible conflict pressure points during negotiations over compensation.

2. Explore 'yield-based' or direct revenue distribution approaches to compensation. Some companies have experimented with these approaches which can promote stronger buy-in to the project production by affected communities.

3. Consider payment above government standards. Where government and communities are at odds over land ownership, buying land from local owners in spite of legal arrangements with the government can reduce the risk of hindrance by people who may lose out from the company's presence. Some companies have lobbied governments to ensure their outdated compensation terms conform to current market rates.

4. Be consistent in paying compensation rates. Some companies have a clause in their contract with land owners that no compensation is paid until an agreement is reached with all landowners. This is to avoid causing later conflict by paying different rates to owners.

5. Validate non-monetary value of land. Through careful context analysis and an appreciation of land's non-monetary value, companies can endeavour to be sensitive to local cultural values in their project design and compensation policies.

6. Provide land-for-land compensation. This guarantees economic stability for villagers who have little hope of successfully investing their money in the long term.

7. Take steps to ensure that compensation is used effectively. Increasingly, companies take responsibility not only for compensation but also to ensure that the compensation is used effectively. Some provide beneficiaries with advice and assistance in selecting investment opportunities. Others help landowners set up scholarship or trust funds and even their own companies to invest the compensation wisely.

8. Compensate according to traditional ownership structures. A context analysis should inform the compensation policy so that traditional ownership structures are respected and reinforced. This requires a focus on shared interests rather than separate identities. Staff should enquire from communities in the immediate and broader impact areas what the affected communities identify as issues/ideas/histories/assets that connect, rather than divide them. For example, a company might construct a hospital serving several communities or an entire region, rather than making services available only to residents of the host community. This helps bring communities together through shared use of this resource, rather than fostering jealousy or frustration that they must compete for services provided to one community over another.

9. Be transparent about all aspects of the compensation policy. Compensation policies should be developed in consultation with a wide range of stakeholders and a copy of background work should be made available to the affected communities.

10. Respect the process as much as the result. The tone of negotiations is as important for longer-term outcomes as the result. Companies often rush this phase of a project, when allowing communities to develop a sense of ownership over outcomes is a critical conflict-avoidance factor. When discussing compensation policies, companies benefit from sitting down with communities to focus first on the relational aspects, before addressing the legal detail.

11. Emphasise long-term impacts over short-term payments. Community representatives feel that the company has a responsibility to thoroughly inform the population prior to negotiations about the social consequences of its impacts. People cannot realistically be expected to have a comprehensive overview of the impact of a mine or an oil installation and may be too easily impressed with the instant wealth they anticipate. Some communities say that the cash poured into their social structure as a result of compensation payments can have detrimental effects. Landowners could be compensated in cash, but in reasonable amounts and in phases, rather than as a one-time payment. Companies can invest from the outset in community development as part of the compensation package, depositing the remainder of any revenues or compensation into a trust fund for future generations. Developing such long-term approaches through dialogue and consultation with communities is an excellent way to insure an overall positive impact from investment.

Resources

International financial institutions, Operational Policies

Asian Development Bank Involuntary Resettlement Policy. www.adb.org

Inter-American Development Bank Operational Policy on Involuntary Resettlement. www.iadb.org

International Finance Corporation Operational Directive 4.30 Involuntary Resettlement. www.ifc.org

Japan Bank for International Cooperation (JBIC) Guidelines for Confirmation of Environmental and Social Considerations. www.jbic.go.jp/english/

OECD Development Assistance Committee (DAC) Guidelines on Aid and Environment, no. 3; and Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Developing Countries. www.oecd.org/home/

Websites

Collaborative for Development Action, Corporate Engagement Project. www.cdainc.com/cep/

Novib (Oxfam Netherlands). www.novib.nl/content/?type=Article&id=5229

Oxfam Community Aid Abroad, Benchmarks for the Mining Industry. www.oxfam.org.au/campaigns/mining/ombudsman/2001/benchmarks.html

Oxfam UK, sustainable livelihoods/land rights page. www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights

World Bank, land policy and administration page. lnweb18.worldbank.org/ESSD/ardext.nsf/11ByDocName/TopicsLandPolicyandAdministration

Other resources

Altman, J.C. (1998) 'Compensation for Native Title: Land Rights Lessons for an Effective and Fair Regime'. Issues paper no. 20. Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies. www.aiatsis.gov.au/rsrch/ntru/ntpapers/ip20web.pdf

Daudelin, J. (2003) **Land and Violence in Post-Conflict Situations** (Ottawa: North-South Institute). www.nsi-ins.ca/ensi/pdf/land_and_violence.pdf

Hansungule, M., et al. (2004) **Report on Land Tenure Insecurity on the Zambian Copper Belt** (Oxford: Oxfam). www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/full1998_landtenureinsecurityreport.pdf

Pons-Vignon, N. and H.B. Solignac Lecomte (2004) 'Land, Violent Conflict and Development' (Paris:OECD). www.oecd.org/dataoecd/29/50/29740608.pdf

Rae, M. and A.Rouse (2001) **Mining Certification Evaluation Project: Independent Certification of Environmental and Social Performance in the Mining Sector** (Sydney: WWF Australia).

'The Control, Use and Management of Land' (2002), in **Breaking New Ground: Mining, Minerals and Sustainable Development** (London: Earthscan). www.cplpress.com/contents/C1226.htm

USAID **Land and Conflict: A Toolkit for Intervention** (2004) (Washington, D.C: USAID). www.usaid.gov/our_work/cross-cutting_programs/conflict/publications/docs/CMM_Land_and_Conflict_2004.pdf