



**UNIVERSITY OF NAIROBI
CENTER FOR EXCELLENCE IN LAND ACQUISITION AND RESETTLEMENT
STUDIES**

**NATIONAL COURSE ON LAND ACQUISITION AND RESETTLEMENT
MANAGEMENT**

**COURSE TITLE:
COMPENSATION TIMING AND DELIVERY**

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1. Introduction

This module introduces the student to comprehension skills in compensation timing and deliverable for infrastructure development. It trains the student in planning and executing different stages of compensation and deciding on the appropriate modes in different project scenarios. The course also highlights the best international practices in compensation timing and delivery.

2. Module objectives (from the perspective of the module)

The objectives of this module are to:

- a) Introduce participants to the concept of compensation timing and delivery
- b) Enable participants to understand the key steps in compensation delivery
- c) Equip participants with knowledge to understand the different modes of compensation
- d) Introduce the students to best international practices in compensation timing and delivery.

3. Learning outcomes

At the end of this module, participants should be able to:

- a) Discuss the concept of compensation timing and delivery
- b) Explain how compensation delivery is executed
- c) Develop practical approaches for addressing the challenges associated with compensation delivery and timing
- d) Discuss the different modes of compensation

4. Course content

- a) Principles of timing and delivery of compensation for land acquisition
- b) Timing of compensation
- c) Compensation count-down
- d) Cut-off date
- e) Interest on compensation
- f) Compensation delivery
- g) Steps in followed by the national land commission in awarding the compensation
- h) Procedures of inquiry as to compensation (Public hearing)
- i) Documents required by NLC to effect compensation
- j) Preparing PAPs for compensation and relocation
- k) Compensation for community land
- l) Compensation for absentee PAPs and PAPs with disputes
- m) Compensation options
- n) Informal Structures on the land which PAPs do not legally own

5.0 Principles on timing and delivery of compensation for land acquisition

- a) Fix exact area of land required
- b) Fix rates of compensation for lands building, crops and trees.
- c) Identify owners/Tenants.
- d) Follow the laws and Rules strictly.
- e) Hasten the stages of LA.
- f) Get Funds on time & pay promptly.
- g) Shift the PAP within the prescribed time.
- h) Transfer the land & use it faster.

6.0 Timing of compensation

The procedures for timely compensation is provided for in the World Bank's guidelines specifically ESS5. One of the objectives of this framework is to mitigate unavoidable adverse economic impacts from land acquisition or restriction of land use by providing timely compensation. Involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented (WB, 2018).

7.0 Compensation count-down

Two factors to be considered:

- a) Start and end of census
- b) Cut-off date

7.1 Cut-off date

A cut-off date is a date that government sets following a census in which it identifies property owners and their property for which government will pay compensation during compulsory land acquisitions. The countdown for compensation timelines commences at the time of declaration of cut-off-date

IFC standards set the cut-off date (also often referred to as the moratorium date) as the date of completion of the census and assets inventory of persons affected by the project. In reality this approach can cause issues related to speculation. Ideally, the project can declare a cut-off date just before resettlement related asset surveys commence on the basis of legislation, failing which it will need to be agreed with affected people.

7.1.2 Effect of cut-off date

- a) Persons occupying the project area after the cut-off date are not eligible for compensation and/or resettlement assistance
- b) Fixed assets (such as built structures, crops, fruit trees, and wood- lots) established after the date of completion of the assets inventory, or an alternative mutually agreed on date, will not be compensated

7.1.3 Key issues related to the cut-off date

- a) Making sure you have a sound basis for declaring the cut-off date
- b) Ensuring the cut-off date is well communicated
- c) Taking the necessary steps to try and pre-empt and manage influx and speculation
- d) The reality is that this situation offers huge potential opportunities to make money for affected communities and newcomers
- e) Even with the optimal set of measures, it is still likely that some level of speculation is inevitable

7.1.4 Key steps related to the cut-off date and managing speculation

- a) Being well prepared in advance and moving quickly with surveys once cut-off date is declared
- b) Using a variety of tools to record the situation at the time of the cut-off date and expedite data collection e.g.: obtain imagery to record situation at time of cut-off e.g. satellite imagery and unmanned aerial vehicles, including video footage and if possible, registration of aerial imagery in court in order to make it valid evidence for use in litigation.
- c) Undertaking and recording stakeholder engagement in a variety of ways to ensure people cannot claim they did not know the cut-off date e.g. regular meetings at community and household level to explain eligibility criteria
- d) Putting in place measures like joint patrols (with community and government), informing people immediately when the census will start and end to stop unauthorized activities such erecting unauthorized structures or planting new vegetation.

Group work- 1 hour

You have been appointed by the government as the resettlement coordinator for an irrigation dam project in Baringo county. Design and execute the activities related to cut-off-date and use an appropriate channel to communicate the same to the project affected persons.

7.2 Interests on compensation entitlements

Compensation in Kenya can drag for years but National laws do not have provision for paying interest based on time lapse.

7.2.1 International best practices

Indian land acquisition law provides for paying of interest on compensation entitlements as indicated below:

- a) Period between valuation and compensation award: 12%
- b) Period between award and payment-9% in year one and 15 % in successive years

8.0 Compensation delivery

The law mandates the National Land Commission to undertake compulsory acquisition.

The national land commission is established under the National Land Commission Act 2012.

8.1 Steps in followed by the national land commission in awarding the compensation

- a) The implementing agency informs the NLC through the Principal secretary of the line Ministry on the intention to acquire land and provide the project design maps
- b) Budget for compensation is transferred to National Land Commission
- c) Gazette notification on intent to acquire- 30 days
- d) Inspection of assets
- e) Gazette notice for inquiry 14 days (Public hearing)
- f) Issuing and signing of awards
- g) Disbursement of funds to the respective PAPs Bank accounts

8.2 Procedures of inquiry as to compensation (Public hearing)

- a) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.
- b) The notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation to the Commission, not later than the date of the inquiry.
- c) At the hearing, the Commission shall make full inquiry into and determine who are the persons interested in the land and also receive written claims of compensation from those interested in the land.
- d) The Commission may postpone an inquiry or adjourn the hearing of an inquiry from time to time for sufficient cause.

- e) For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission of documents of title to the land.
- f) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

8.3 Documents required by NLC to effect compensation

- a) Copy of land title deed
- b) Grants and letters of administration for administrators of estates of deceased Land owners
- c) Copy of National ID
- d) Bank account details
- e) Copy of Tax registration pin certificate

8.4 Preparing PAPs for compensation and relocation

A meeting should be held to:

- a) Inform them on the date of compensation
- b) Explain the process of payment
- c) Provide a question and answer session
- d) Agree on payment method

8.5 Time period within which PAPs are expected to vacate the compensated land

This varies from one country to another. In Kenya it is estimated to be three months on ninety days. Other countries such as Japan allow for forty-five days or one half months.

8.6 Compensation for community land

The compensation for community land is conducted as per the provision of community land act 2016.

8.6.1 Role of County governments in compensation for community land

- a) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.
- b) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

- c) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.
- d) Any such monies shall be deposited in a special interest earning account by the county government.
- e) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.
- f) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

8.6.2 Compensation for absentee PAPs and PAPs with disputes

Compensation for absentee PAPs and PAPs with disputes is guided by both international standards and the national laws.

8.6.2.1 International standards

IFC stands and the world recognizes that there may be significant difficulties related to the payment of compensation to particular affected persons, for example: when land legal status of land use is the subject of lengthy disputes, where efforts to contact absentee owners have failed, or where individuals have rejected compensation that has been offered to them in accordance with the approved plan. On an exceptional basis, with prior agreement of the Bank and where the Borrower demonstrates that all reasonable efforts to resolve such matters have been taken, the Borrower may deposit compensation funds as required by the plan into an escrow account and proceed with the relevant project activities. Compensation placed in escrow will be made available to eligible persons in a timely manner as issues are resolved (WB- ESS5).

8.6.2.2 National laws

The National Land Commission Act 2012 allows the Commission to deposit compensation into an escrow account and proceed with the relevant project activities. Compensation placed in escrow will be made available to eligible persons in a timely manner as issues are resolved or when the absentee PAPs are located. If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.

9.0 Compensation options

There are three main options available for compensation and they include:

- a) Land for land
- b) Resettlement houses
- c) Cash for land

9.1 Land-for Land compensation

- a) Factors to consider in land -for -land compensation:
- b) Consult and select a site.
- c) Fix the number of plots required.
- d) Demarcate the sites.
- e) Provide public utility infrastructure
- f) Distribute benefits as per policy.
- g) Allow time to build houses.
- h) Shift within prescribed time.

9.1.2 Challenges in Land for land compensation

While land-for-land compensation is the most preferred method to cushion the rural populations from the risk of impoverishment especially those whose livelihood is agriculture based, the following challenges still abound:

- a) Not everyone willing or opt for resettlement sites
- b) Experiences show only one-third to two-thirds people opt for project-sponsored site
- c) Some affected household take this as opportunities to migrate to cities
- d) It may be difficult for the government to secure enough resettlement land for large scale projects which displaces so many people

9..1.3 Models to secure land for resettlement

Model 1	Government land available near the project area and leased to project authorities – not always available
Model 2	Government acquires additional land for project authority – this is typical of project experience as resettlement is considered part of the project
Model 3	Project purchases land for Resettlement Site from existing land owners – possible, but hard to achieve for a large project
Model 4	Project incentivizes the affected community to find/purchase land in bulk – rarely feasible, often used in urban projects

9.2 Challenges associated with Cash-for-land compensation

- a) The preference should be given to Land-for-land especially for rural PAPs whose livelihoods are land-based.
- b) Agricultural land should be replaced with land of the same potential where feasible.
- c) Cash compensation is prone to misuse by the PAPs
- d) Risk of impoverishment is high in cash compensation compared to other forms of compensation

9.3 Resettlement houses

This always apply when projects lead to displacement of urban dwellers who are then resettled in government build apartments.

9.4 Informal Structures on the land which PAPs do not legally own

Some communities live for many years in informal settlements and projects change their access to land/ livelihood and may not be legally entitled for compensation.

9.4.1 Possible Interventions:

- a) Replacement cost of structure if it is constructed by them
- b) Pay for any improvements made to the land (crops, structures)
- c) If legalization of informal residential structures is possible, assist the process
- d) If social housing, welfare benefits or assistance to find employment exists under national legislation, assist them to get these benefits.
- e) Provide replacement housing with security of tenure

10.0 Instructional methods and duration

The course shall be delivered through:

- a) Lecture and in-class discussions- 2 hours
- b) Group work- 1 hour
- c) Case study analysis. - 1hour
- d) Fieldwork and site visits- 1 day

11.0 Learning materials and resources

- a) Key course textbook(s)
- b) Useful online materials, websites and tools

Case study analysis

The Government of Kenya identified areas of expansion to boost supply of water for irrigation in Mutithi location of Mwea Division in Kirinyaga district. The objective of the project is to expand the irrigable area as well as increase cropping intensity in the original Mwea Irrigation Scheme area for higher production of rice and other crops among them French beans, tomatoes and onions and subsistence food crops (maize, beans, and bananas). The project consists of 8,860 hectares of irrigation area. To achieve this objective, a dam is being constructed across Thiba River which is located in two locations namely Kabare and Baragwi locations, of Gichugu division. The proposed dam was originally designed in 1996 and covers approximately 200 hectares of land, at a height of approximately 32 metres. The purpose of the dam is to create a reservoir for water from several streams upstream of Thiba River, and for the release of this for irrigation via various existing canals. The proposed dam is expected to have a widespread positive impact on overall socio-economic status and livelihoods of the people within the command area which currently experiences bouts of dry weather and lack of water, hence agricultural productivity is below expected capacity. The land area to be covered is owned by private individuals under freehold land tenure systems, and includes agricultural land, residential, commercial, institutional and others types of users that are expected to be discontinued to pave way for the dam. The resettlement is being undertaken following the JICA guidelines. The project is being financed by the GoK and partial loan from JICA. The project displaced 500 households from the dam site. Some of these families were resettled in public land at Ahiti Ndomba Veterinary training institute and Gathigiriri prison. Some PAPs were given cash for land. Compensation process took 10 years from 2012 to 2020. No interest was paid to the PAPs in lieu of time laps during compensation.

- a) **Highlight the major steps in compensation timing and delivery**
- b) **Identify the modes of compensation which applies to this project**
- c) **Give your opinion with regard to payment of interest on delayed compensation for this project**

References

GOK (2012). National Land Commission Act NO. 5 of 2012
GOK (2016). Community land Act NO. 27 of 2016
GOK (2012). Land Act NO. 6 of 2012
World Bank (2018). Environmental and Social standards