



**ASSESSMENT OF POLICY IMPLEMENTATION OF RELOCATION PROGRAMMES:
A CASE OF NACALA RAILWAY PROJECT**

POLICY BRIEF



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1. Introduction

In November 2010, Vale Logistics Limited (Vale) approached the government of Malawi through the Ministry of Transport and Public Infrastructure with a proposal to construct a railway line from Moatize coal mine through Malawi to the port of Nacala as part of the logistical solution for the export of about 18 million tonnes of coal annually.¹ According to reports, the benefits of the Nacala railway project were projected to be many; amongst which were employment opportunities, business activities, projection of reduction of Malawi's transportation cost by 40 percent and an expectation that Malawi would receive approximately 5.8 billion Malawi Kwacha in taxes and concession fees annually. The concession contract was signed in December 2011 for US\$1.1 billion² and the agreement is to build 136 kilometres of new railway line and repair an existing 99 kilometres of old railway.³ The railway passes along Chapananga in Chikhwawa, Ntchache and Kanduku in Mwanza, Simon and Mlauli in Neno and Nsamala in Balaka.⁴ As of November 2013, 56 percent of the work had been concluded with most of the completed work in the Mwanza – Neno part of the project.⁵ The project is set to be completed in 2014.⁶

The study was aimed at assessing the implementation of the relocation policy of the Nacala Railway project. The study focused on Mwanza and Neno, as much of the railway work has been completed in these areas and because of time constraints, only limited places could be visited. The findings of the study broadly fall in the following categories: institutional framework, legal framework, overview of the relocation and compensation process and socio – economic impact.

The policy brief assesses the implementation of relocation programmes with specific focus on the Nacala railway project. The policy brief is aimed at providing the best practices that have to

¹ Lungu V (2011) *Malawi Government and Vale Logistics Agreement* <http://www.tntnews.co.za/readmore.asp?tID=1312012191239> (accessed 4 June 2014 at 2pm).

² Mtumodzi C *Railway to revolutionize* <http://www.mbc.mw/index.php/business2/item/913-railway-to-revolutionize-economy> (accessed on 4 June 2014 at 12.30pm).

³ *Mining company Vale starts building section of railway in Malawi* <http://www.macauhub.com.mo/en/2012/12/07/mining-company-vale-mocambique-starts-building-section-of-railway-in-malawi/> (accessed 3 June 2014).

⁴ *Vale to prioritise Malawi rail project* (March 2013) <http://www.malawitoday.com> (accessed 5 June 2014).

⁵ As note 2 above.

⁶ As note 4 above.

be implemented in instances of relocation as a result of development projects or other justifiable reasons that necessitate relocation of persons affected by a particular project (PAPs).

It is worth noting that the Concession Agreement between the Malawi Government and Vale has provisions on relocation and compensation, specifically clause 11 of the Agreement. Within the relocation and compensation framework envisaged under the Concession Agreement, where land has been identified for use for the project it provides that it is the responsibility of government to negotiate with the owners to release the land and for government to designate alternative land for PAPs. Further, the Agreement provides for reasonable compensation determined with regard to researched market values of the land needed for the project. The Concession Agreement refers to a resettlement and compensation plan as one of its annexes, unfortunately this is not accessible in the public domain and requires complex procedures to access it. Of course, clause 11 provides that the resettlement and compensation plan was to be developed by Vale in consultation with the Malawi government. This points to the fact that there is lack of a standard relocation and compensation policy, as investors are allowed to develop their own framework.

2. Policy implementation of relocation programmes

2.1 Institutional framework

The institutions that were involved in this project are Vale Logistics Limited, Ministry of Transport and Public Works, Ministry of Land, District Commissioner officers, Chiefs and Villagers who owned land that was affected by the project.

2.2 Legal framework

The Legislative framework was basically governed by the Republic of Malawi Constitution, Railway Act, Land Act, Land Acquisition Act and National Land Policy of 2002. However, it was found that these statutes are archaic thus not offering sufficient protection to people affected by developmental projects (PAPs). Further, the government of Malawi does not have a specific

compensation and relocation policy framework, thus every project adapts its own specific compensation and relocation framework.

2.3 Overview of relocation and compensation process

The overview of the process of compensation and relocation was found to be in phases. First there was assessment of potential impacts of the project, this was followed by identifying eligible PAPs for compensation and relocation using particular set criteria, then valuation of the land was conducted using researched current market values of land and the gazetted prices of trees and plants. The valuation was conducted by officers from Ministry of Land, DCs, Vale Logistics, Chiefs and owners of the land. When the value of the land was determined, negotiations and where need be renegotiations were conducted. When a value was agreed the PAPs were instructed to collect their compensation money from the office of the DC and were given close to two months within which to relocate.

2.4 Socio – economic impact

The socio – economic impacts were diverse and varied amongst the PAPs. Most PAPs compensated and relocated were those who dropped out of school. Further, most PAPs were women as Mwanza and Neno are matrilineal in nature.

The main source of income, before the Nacala project, of the PAPs was found to be farming, with a few involved in business and a handful involved in piece work. It is also worth noting that most of the land affected by the project was farm land and not much was residential property. After the compensation and relocation process most PAPs the trend continued. However, the PAPs who lost farming land did not purchase more land thus their farming continues on a smaller scale than before. Further, they did not use the money to enhance their agricultural methods or inputs. The challenge faced by the PAPs in purchasing more land is that land prices rose as it was conceived that there was a steady cash flow with the compensation by those who had not been compensated. This perception also led to the increase in the cost of living as prices

of essential commodities were adjusted upwards. For instance, it was found in Mwanza that a bunch of green vegetables which costed K20 before went up to K50 soon after the compensation and relocation process.

Another pertinent issue observed was the time that was set for relocation. The time for relocation was basically two months. According to most PAPs, this was not sufficient time within which to harvest crops, scout for alternative land to purchase and be able to conveniently relocate.

The role of chiefs in the whole process was mostly to be witnesses of the processes and also to certify owners of land. The chiefs were tasked with observing the demarcation of boundaries, valuation of the land, negotiations and renegotiations of the value of the land. A majority of the PAPs expressed dissatisfaction with regard to the performance of the chiefs in their designated roles. For instance, some PAPs stated that they were threatened to accept the value of compensation by their chiefs even if they were convinced that the value was on the lower side. Additionally some chiefs were demanding for money from the compensation as a token of appreciation. However, according to the Ministry of Lands, the chiefs were not supposed to ask for token of appreciation from their subjects, more especially with the fact that they were given a duty allowance by Vale.

The access to compensation money by the PAPs was seemingly smooth, with most PAPs in Mwanza having received their compensation money. Nonetheless, some PAPs stated that they had struggled to receive and access their compensation money, with others complaining that the money they received was inadequate. It was noted that despite payment of the compensation money being delayed, the PAPs were not allowed to use their land as they awaited for their compensation money. Thus their livelihood was adversely affected.

Family disputes thrived as a result of the compensation and relocation process. Some of the land affected was land of which siblings had inherited from their parents or guardians. Thus there were times when only the person who had possession of the land was the one identified to receive the compensation, without considering that the compensation should be shared amongst the family members. Community disputes also characterized the compensation and relocation

process, with some PAPs recalling of how some members of their communities ridiculed them and even selling commodities to them at high prices.

It was found that most PAPs used their compensation money to build houses, buy building materials, goats, radios, bicycles, maize, clothes, cattle, fertilizer and renovating old houses. Other used the money for consumables such as food and beer.

Access to amenities such as hospitals, schools and water sources has been severely affected by the project. Other impacts of the project were in relation to health, education and culture.

3. Recommendations

The following recommendations are proposed for the effective and efficient implementation of relocation programmes.

3.1 Law review and reform

There is an urgent need for law reform. As found in the study Malawi has no legislation or policy that regulates the relocation of PAPs, thus the law needs to be amended to regulate relocation and compensation of PAPs. Further, section 11 of the Land Acquisition Act ought to be amended as it is not commensurate with the current Constitutional dispensation. Specifically, where it provides that receipt of compensation is a final settlement of the matter and PAPs cannot claim from the Ministry. This provision does not take into consideration that there are times when PAPs are coerced to receive compensation. The provision deprives an aggrieved PAPs access to the courts of Law as required by section 41 of the RMC.

Additionally, there is need for regulation to the effect that until PAPs have received their compensation they shall not be obstructed from using their land or assets.

3.2 Training and strategic public awareness campaigns

It is essential that PAPS be provided with financial management and entrepreneurial training before they receive any compensation money. This will mostly have to be the duty of the developer. This will ensure that the PAPS properly and efficiently utilize the funds that they receive.

In this regard, in as much as the investors/developers are have the primary responsibility, CSOs and other relevant stakeholders can take part in strategic awareness campaigns to sensitize PAPS and potential PAPS what is provided for in policies on relocation and compensation.

3.3 Communal benefit

It is critical that the every project not only benefits particular individuals but the community at large. this removes jealousy among the villagers. For instance, apart from compensating the PAPS, Vale would have utilised some of the funds the company has allocated to corporate social responsibility towards provision of social services to the people in the affected communities such as a dispensary/clinics, school blocks and even good gravel roads that would benefit all the people.

3.4 Clear procedures on accountability and transparency

There ought to be clear procedures on accountability and transparency with regard to the process of relocation and compensation. For instance, the villagers need to be told how much each item such as a tree was being priced at. This would result in reduction of complaints by the villagers. Further, there is need for the development and an outline of the proper channels of handling queries/grievances, which are brought to the attention of all PAPS beforehand.

Additionally, the is need to develop mechanisms and procedures that will act as checks and balances through which personnel such as Chiefs, DC officers and officers from Ministry of Lands are kept accountable. Furthermore, it is essential that extra care is provided by social welfare officers in the districts pertaining to the funds of the elderly and people living with disabilities to ensure that they or their next of kin manage their funds with due diligence.

3.5 Provision of alternative routes for accessing amenities

It is recommended that policies embedded in projects relocation and compensation frameworks pertaining to provision of proper alternative pathways in places where the railway line is cutting through accessibility to social services such as hospitals and schools, should be strongly enforced. There should be proper mechanisms for ensuring that this is done and follow ups should be conducted to verify that the proper alternative pathways have been built or constructed.

3.6 Use of reason and not force to solicit acceptance of compensation by PAPs

It is imperative that the government officials, chiefs and other stakeholders do not threaten the PAPs to receive compensation money when trying to implement any development project. People need to be respected and all negotiation processes should be undertaken. This is essential for the sustainability of the development program being implemented, otherwise the area might experience too many cases of vandalism.

3.7 Livelihood restoration

The objective of relocation policies is to ensure that livelihoods are improved; with compensation being a mechanism through which there is facilitation of full and smooth recovery without exposing PAPs to vulnerability. Some of the livelihood restoration measures that can be implemented include: provision of agricultural extension services; skills training; project related job opportunities and assistance through corporate social responsibility programs.

3.8 Provision of diverse forms of compensation

PAPs have to be given an opportunity to choose a particular form of compensation that they would be willing to accept. For instance land for land compensation or land for in kind compensation and of course land for cash compensation. The other avenues such as land for

land compensation will ensure that the PAPs still have land for the sustainability, while for the in kind that may be in the form of building a house for the PAPs thus the PAPs will not squander their funds on consumables. Where cash is given, the mitigation is as stated above, training in financial management and investments.

3.9 Monitoring and evaluation

Every project has a monitoring and evaluation component. This is crucial for relocation and compensation programs. This aspect of the project provides necessary information about the involuntary resettlement aspects of the project, measuring the extent to which goals of relocation programs have been achieved and the effectiveness of the mitigation measures. This is also essential after all relocation and compensation, and related development activities have been completed. A relocation program policy has to specify the methods to be employed for the monitoring and evaluation, the frequency of measurements, reporting procedures and the organization arrangements for the process.

4 Bibliography

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5 Acknowledgments

The policy brief was prepared by Tadala P Muyaya, Esau Chinkwezule and Martin Kapesa.