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Rural Development, Dynamic Political Economy and Social License – a Case Study in Renewable Energy Project Missteps and Lessons Learned

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Abstract

In the process of bringing resources to market, companies frequently rely on social performance elements including social impact assessment; stakeholder engagement; community investments; etc.—as a means of establishing preferred 'good neighbor' status.

Alternative energy companies are increasingly looking to the experience of 'traditional' projects as they attempt to manage non-technical risks. In a developing country context, project sponsors may view their investments as 'win-win', offering employment, electricity, and economic opportunity—and governance 'gains' associated with good practice social performance. Progress and profits would seem to go hand in hand.

Yet in some cases what is catalyzed by a new project is conflict, rather than innovation and growth. Anticipating land-related governance challenges associated with developing country and agrarian contexts is far from simple. In this paper, the authors consider a recent solar power project in Nigeria, and present lessons learned regarding the challenges and choices facing project managers and investors.

Key Words: Conflict; Customary land use; Social License; Stakeholder analysis

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Introduction

This paper considers a project[1] intended to construct and operate a 100 megawatt (MW) solar power farm in Kaduna State, Nigeria . As a relatively small installation, it was estimated that about 100 local workers could be employed during construction, with considerably fewer jobs during the operation stage.

While the project would offer limited local employment, it would do so in a region where jobs and financial resources were scarce. Perhaps more significantly, it was believed that successful installation would bring stable, low-cost electricity to a poor and disadvantaged rural population. With the generated power to be fed into the newly built National Integrated Power Project (NIPP) substation, project developers envisioned a 'win-win' scenario, and were successful in their pursuit of an environmental permit.

Yet as this paper reviews, project implementation turned out to be far from straightforward. Local challenges and opposition demonstrated that regulatory endorsement alone would not ensure social 'license to operate'. Rather than a ground-swelling of local support for potentially beneficial investment, the project was met with land and governance-fueled conflict.

Land Ownership and Governance

Nigeria is comprised of multiple kingdoms and approximately 250 ethnic groups. The largest ethnic groups (by percentage of total population) are the Hausa-Fulani (29%), Yoruba (21%) and Igbo (18%); the country's religious makeup is about 50% Muslim (largely located in the northern part of the country) and 40% Christian. Indigenous beliefs and practices comprise the remaining 10% of the population.

The country is governed by a system of English Common law, Islamic law (in 12 northern states) and traditional/customary law.

Kaduna State, as one of 36 states that make up the Federal Republic of Nigeria is divided into a number of Local Government Areas (LGAs). LGAs are considered the third tier of government and are managed by a chairman and LGA council, and supported by funding from the federal government.

Southern Kaduna—the site of the project—is multi-ethnic and predominantly occupied by largely non-Muslim ethnic groups. Administrative governance within the project area is headed by the State, through

[1] Acorn International was the lead international Environmental and Social consultant on the development team for a confidential client.

the Local Government Council. At traditional level, the Chiefdom is the highest in the administrative structure and is followed by the district heads; village heads administer the affairs of each village and report to the chiefdoms through their district heads.

Nigerian land law is complex in that it recognizes both legal and traditional land use rights (see below).

Nigerian Land Use Legislation

The key Nigerian legislation applicable to the land use aspects of the project is the Land Use Act 1978 (modified in 1990). The Land Use Act establishes the legal basis for government expropriation of land required by the State. It outlines the process in which occupancy may be revoked and details the compensation provisions that accompany expropriation.

According to the Act, land is controlled and managed by the government, through a common tenure system. When an occupant or land user loses occupancy status, they are entitled to compensation for the value of any improvements they have made to the land. This includes buildings, crops, trees, etc. Furthermore, the Act stipulates that compensation may be received by an individual, a community, a community leader or chief, or a fund set up to benefit an impacted community. The Land Use Act indicates that in-kind compensation may be used in lieu of monetary settlement.

The Constitution of Nigeria states that in addition to the process of compensation, stakeholders have "right of access to the relevant adjudicatory forum", where they can raise and resolve land-related grievances. Land ownership is complex, as it must account for ancestral rights, private development interests, informal and customary use, local government and business lobbying, and State interests in zoning for development.

Nigerian law recognizes land rights as either statutory right of occupancy, or customary rights of occupancy, and further declares that both such rights can be held either by individuals or communities. Thus, rights of occupancy are recognized by law, but no individual, household or community has capacity to own such occupied land. For this reason, compensation is not required for loss of land, but rather for improvements made (upon the land). Other land occupancy forms, including influx and encroachment, are not recognized under law and accordingly do not require compensation.

As might be expected in a rural Nigeria development initiative, this project presented an example of the challenge and need to balance government development initiatives, informal and customary land ownership, traditional authority and itinerant land use. Complicated by the presence of sacred woods, herding routes, and a shifting authority border between two chieftains, the project 'discovered' and exacerbated local disagreements between rival chiefs, between prosperous and marginalized community members, etc. Success in this context required far more early analysis and effort than the project sponsors and investors anticipated.

A special challenge in this case was that farmers with traditional (but not titled) land use rights were in favor of giving up land rights in return for compensation, but most refused to participate in the formal registration/land mapping/compensation process because of cultural-political beliefs that it would be to their financial and hierarchical positioning advantage to hold out.

An added challenge was to determine if and how to accommodate the traditional rights of nomadic herdsmen, the Fulani, who claim to have used the site for many generations but are regarded as criminals by the sedentary agricultural community.

Climate Change and Land Conflict

Herders (pastoralists) and farmers have long competed for natural resources, primarily land and water (Cabot, 2017). In Nigeria specifically, key factors leading to conflicts between pastoralists and farmers include (Chukwuma, 2014):

1) Loss of arable land
2) Disputes over land ownership and use
3) Intentional acts of provocation (e.g., destruction of crops or theft of cattle)
4) Politicization of cultural differences through mobilization of ethnic and/or religious groups
5) Increase in population
6) Youth opportunism
7) Inefficient land use laws and administration
8) Differences in religion between predominantly Muslim nomadic pastoralists and large populations of Christian farmers in the south

These challenges will only increase over time, as the International Panel on Climate Change (IPCC) reports (IPCC, 2014):

- Climate change will amplify existing stress on water availability in Africa (high confidence)
- A reduction in precipitation is likely over Northern Africa (medium to high confidence)
- Mean annual temperature rise over Africa, relative to the late 20th century mean annual temperature, is likely to exceed 2°C as early as mid-century (medium confidence)
- Climate change will interact with non-climate drivers and stressors to exacerbate vulnerability of agricultural systems, particularly in semi-arid areas (high confidence)

This project presents a clear example of how climate change is making formal changes in land use status and resettlement more difficult. Desertification has been and will continue to push nomadic herders south into areas used by farmers. Meanwhile, the project required managing typical challenges of resettlement (e.g., delineation between traditional land users and those with a less formal claim, and agreement of compensation and livelihood restoration actions) while also adjudicating long-standing societal conflicts that are expected to increase with a hotter and drier climate.

Expectations for evaluation of climate change risks and impacts have increased significantly in recent years with the adoption of updated international financial institution (IFI) lending standards (e.g., IFC PS, 2012); however, climate change evaluation is complex and full of uncertainties. The focus of evaluation is often on identification of project impacts to the environment from greenhouse gas emissions and/or how climate change may impact the project from a resiliency lens (e.g., 'will water scarcity, hurricanes, or fires make this project unviable/at risk of catastrophic loss?'). However, evaluation of social aspects of climate change are often not adequately evaluated in the ESIA process.

Further, while the government had facilitated a Memorandum of Understanding to manage the issue of use and conflict, their timing—not early enough in the process—was seen by some as a veiled act of favoritism. It is not clear if a more proactive and early government effort to address underlying issues (had they had resources available for such an effort) might have resulted in a project-supporting structure and accompanying processes, defined by the overarching agreement. However, government and other actors (including development finance institutions) must play a key role in creating the enabling environment. Projects are often a good catalyst for putting plans into action, and projects need to be developed under the terms of such agreements. In this case, the lack of such structure and processes set the project on a challenging course.

Management Approaches

The proposed Solar Project was launched with a declared intent to implement good practice environmental and social standards that met or exceeded Nigerian legal requirements. Given a need to restrict access to land traditionally used for both livestock and agricultural purposes, the project would by design include livelihood impacts and economic resettlement. Pursuit of project financing appeared likely to impose additional standards regarding the project's approach to land acquisition and stakeholder interests. A comparison of law and international standards is provided in Table 2, below.

Table 0-1: Standards Comparison

Aspect	Nigerian Law	AfDB ISS	IFC PS
Minimize Land Take	Land Use Act: explore all viable alternative design options to minimize impacts	Consider feasible alternative project designs, including re-siting, to avoid displacement	Avoid, or minimize displacement by exploring alternative project designs
Consultation	Ministry of Lands prepares and publishes a notice of acquisition	Open consultation with local communities	Appropriate disclosure, consultation, and engagement
Eligibility	Occupancy recognized, not ownership. Compensation for improvements.	Compensation entitlement for those with formal legal rights to land, those with customary claim, those with occupancy of at least 6 months	All occupants prior to cut-off date eligible
Survey Requirements	Asset and land surveys required	Census and socioeconomic survey required	Census and socioeconomic survey
Livelihoods	No provisions	Strategy for livelihood improvement required	Strategy for livelihood improvement required
Cut-off provisions	No formal cut-off date, customary to give six week notice period	Documented cut-off date requirement	Documented cut-off date requirement
Compensation	Compensation based on market value; in-kind possible, but cash is common practice	Full replacement cost compensation; packages to include assistance, livelihood improvement options, determination based on engagement. Compensation made before asset or access loss.	Full replacement cost compensation; packages to include assistance, livelihood improvement options, determination based on engagement. Compensation made before asset or access loss.
Grievances	Disputes to be settled by Land Use and Allocation Committee	Requirement for appropriate, well-communicated grievance mechanism	Requirement for appropriate, well-communicated grievance mechanism
Monitoring	No Provisions	Independent 3rd party required to monitor large scale RAP	Requirement to establish monitoring and evaluation procedures

During the ESIA process, the following stakeholders were consulted:

- Federal Ministry of Environment
- Kaduna State Ministry of Environment
- Kaduna State Urban Planning and Development Agency
- Kaduna Environmental Protection Agency
- Local Government Councils
- Chiefdoms
- Development Council

The Federal Ministry of Environment, Kaduna State Ministry of Environment, Kaduna State Urban Planning and Development Agency and Kaduna Environmental Protection Agency were at different times invited to the proposed project site and participated in the data collection process of the ESIA. Formal letters of introduction and multiple visits were made to the two Chiefdoms and Local Government Councils during the period in which permits and project financing were sought.

In addition to consultation for the ESIA, a site survey was conducted with participation by the community.

During these initial consultations, project team members heard a range of concerns and fears expressed by members of the community in the project area. These included:

1) Loss and damage of farmlands;
2) Air, water and noise pollution;
3) That they may not be compensated at all due to past experiences;
4) Youths may not be employed or empowered;
5) Confusion about the purpose of the use of the land; and,
6) That the land would be used for grazing (history of dispute between farmers and herders).

The Project team sought to overcome these latent social challenges by forming working groups with community, tribal and government leaders to adjust the processes to accommodate these cultural-political concerns while being fair to those who had already agreed to participate.

A ‘Local Development Authority’ was formed to facilitate discussions on behalf of various community stakeholders; and the team identified and started an initiative to train a community affairs manager from the region as well as community liaison officers from the local communities to represent local interests and provide a sustainable resource for managing on-going community relations needs. A project Grievance Mechanism was drafted and the process of rolling it out to both community liaison recruits and the project-affected communities was begun.

As noted above, the project did not feature a physical resettlement; rather economic impacts required planning for livelihood restoration and impact management. But it was not just land 'owners'/users that influenced the economic resettlement process, and this fact contributed to the derailing of the project. Youths, who had no relation to the land but were angered by government corruption and what they perceived as uneven economic opportunity, used the process to intervene and force focus on their issues of concern.

Likewise, engaging the Fulani herdsmen was a particular challenge, for two main reasons:

- Making formal notification and dialogue with a group of land users which was perpetually moving across the land and had no formal governance/leadership was impractical, and
- Engaging the Fulani, even without the promise of compensation, alienated local and tribal authorities who have for generations regarded the herdsmen as criminals who have violently defended their claim to use land without borders

Understanding how the disenfranchised interests as well as land-holder concerns combined to disrupt the development of a "win-win" project is helpful to avoid recurrent pitfalls and apply lessons learned.

Missteps and Lessons Learned

The project initially enjoyed strong government support at all levels, and project planning, environmental studies and government approvals proceeded efficiently. The first difficulties began when the project lender – the African Development Bank – required the developer to follow international livelihood restoration guidelines to study, document and compensate the families cultivating 100+ plots that would have to be displaced from the project site. As public awareness of project plans grew locally, so did positioning from land holders determined not to be left out of the best deal possible and disenfranchised youth and herdsmen who saw that the project would be of no benefit to them.

In particular, a number of challenges arose during the project finance review process:

- Landholders withheld cooperation
- Women objected
- Youth threatened
- Authorities weakened support
- Herdsmen resorted to violence

The developer's actions to employ international best practices in engagement, livelihood restoration planning and grievance management had some effect to facilitate cooperation on the first four challenges. In particular the adoption of a comprehensive community impact management plan, including the selection and training of a local community development officer and liaison officers from within affected communities, provided a common platform for resolving the challenging land use and communications differences. And, had it not been for the violent intervention—believed to have been initiated by the herdsmen—the transition to an orderly if not universally-agreeable land use arrangement might have been successful.

While specific land use and communication challenges are unique to each community and project, the lessons learned on this project in Kaduna reflect some common practices that can be applied to development project land-use conflicts in poverty-stricken regions worldwide. Each of the specific challenges and lessons learned can be traced back to a common challenge for development programs in rural Africa, particularly those with political conflict: the need to recognize, carefully map and manage underlying sources of conflict that may not be apparent during initial project planning.

Specific lessons learned on this project include:

- Landholders withheld cooperation – While the process of registering plot use with local farmers was well planned and carefully socialized, most farmers either delayed or refused to participate in the process. Local advisors informed the team that the concern driving resistance to the registration was not so much opposition to the displacement and livelihood restoration program, but a culturally common practice of holding out as a means to drive a better deal during a negotiation. Clearly and very publicly setting a realistic but hard deadline for the availability of benefits from the program up front might have avoided, and would have reduced, these positioning delays.

- Women objected – The project team expected that once landowners and local traditional authorities were supportive of the economic resettlement process, pursuing the requisite steps would be straightforward. However, team members were repeatedly greeted by hostile women who delayed the survey by refusing to participate in the asset survey. Stakeholder mapping that incorporated early evaluation of gender-related challenge and conflict might have foreseen this issue. Clearly these women needed to be engaged in a separate and parallel process to that which sought the participation of formal and customary authorities, be they at the regional, local, or even household level.

- Youth threatened – Youth throughout Nigeria feel disenfranchised, frustrated and resentful of government-supported actions that they feel are visible representations of the lack of opportunity and corruption that stifle their futures. Seeing opportunities for economic gain and a say in governance pass them by, the frustrations of young people too often turn to anger and even violence. So it was that a group of youths visited the site during the proponent's efforts to register land users and, brandishing weapons, threatened the farmers that they would be harmed if they continued to cooperate with the registration, which was a required step for financing the project. Preventing any disruption from disenfranchised youths in Nigeria may not be feasible, but a lesson learned in this regard was the need to understand the risk posed and plan sufficient socialization, security and resources (time and budget) to withstand the disruptions. Being realistic about the risk and management practices needed might lead to a decision that in extreme cases can be so great that they make the project nonviable – but better to know this up front than lose precious time, money and reputational capital on recognizing these risks during project implementation.

- Authorities weakened support – Community and traditional leaders who were initially proponents of the project became less visibly supportive as objections by farmers, women and youth complicated and delayed the development process. The need for a deeper relationship of trust and commitment between the developer and community leaders became apparent when complications, complaints and threats mounted – the very point at which local leaders' visible support was needed to shepherd an orderly and transparent progression through these challenges. The lesson learned here is to dedicate the time and culturally appropriate skills needed to develop relationships of trust and mutual commitment based on the concept of shared value with local leaders, before embarking on detailed project planning and public consultation. Establishing clear (and transparent) agreements on mutual benefits for communities as well as the developers (through instruments such as early on impact benefit agreements, for example) can help ensure that local leaders are there when needed.

- Herdsmen resorted to violence – The nomadic herdsmen (Fulani) who periodically used the site for grazing were not formally consulted or offered the benefits of the livelihood restoration program because they were not considered to have rights to use the land, did not have a permanent presence to enable consultation, and have had a history of 'resolving' conflicts with criminal violence.

> Unfortunately, this habit of conflict resolution prevailed in an event that eventually stopped progress[2] on the project. An armed group of men believed to be Fulani ambushed a group of the project team driving from the site after community socialization meetings, killing two and kidnapping five of the team. Aside from lessons learned about security—gained through an incident investigation—an important lesson about consultation emerged from this experience, one that we have also seen in conflict zones worldwide. While proponents need to be very careful about engaging with other illegal and criminal groups, the risks of (too) limited engagement need to be carefully understood and managed. Alternative mechanisms *should be considered* for engagement and informal (but again, transparent) land use agreements that respect the rule of law as well as concerns of land-holding communities—but seek to satisfy enough of each group's core concerns to maintain an effective, if tenuous order, based on agreeing to disagree.

While problems first became apparent when financiers insisted on formal communication systems and livelihood restoration plans for land users, if the issues had not surfaced during financing, they would likely have derailed project plans further into the development process, when financial risks would have been greater and solutions more difficult. In this case, and certainly in future projects, our changing climate exacerbates the challenges to successful implementation.

Regional, national, and local climate change adaptation initiatives are evolving and will be central to creating the enabling environment for project development and economic growth in developing countries. However, the institutional frameworks cannot yet effectively coordinate the range of adaptation initiatives needed. Government institutions tasked with developing and implementing such frameworks in emerging market contexts are often under-resourced and often lack competencies required to manage the complex socio-ecological concerns.

The project developer has re-assembled project team members and, encouraged by local leaders and improved security risk management, is working to proceed with the development. Time will tell if the lessons learned are applied, and if so whether these hard gained insights are enough to ensure sustainable support among a community that has very mixed interests in the project's success. And it is far from certain that even the most artful application of good international industry practice for land rights

[2] The developer is reportedly in the process of re-starting project development and land registration with a new team one year after the event.

management and community engagement will be enough to overcome the challenges that face any development program in rural areas of Africa that are fraught with poverty and conflict.

What is clear from this case, though, is that a deep understanding and careful management of land and community conflicts is a critical first step to building sustainable development programs.

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