

# Comparative Evaluation of Land Acquisition and Compensation Processes across the World

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One of the key challenges in the development of infrastructure in India is the acquisition of land necessary for the projects. Land acquisition techniques adopted across a variety of other countries are reviewed in this paper. Although no single “best practice” exists, viewing land acquisition practices through a framework of principles, processes, and compensation mechanisms allows us to position the Indian experience within the international context.

One of the key challenges facing the development of infrastructure in India is the acquisition of land. Landownership confers tangible benefits such as shelter and livelihood, as well as intangible benefits such as security and a standing in society. Landowners are thus often reluctant to part with their land unless mutually acceptable terms for compensation are agreed upon. Problems arise when land is required for “public purpose” and the state can invoke laws that allow for compulsory acquisition through “eminent domain”. Often, the land acquisition process is neither consultative nor transparent. Further, land-titles are unclear and identifying parties eligible for compensation is rendered difficult. Finally, the compensation, and resettlement and rehabilitation packages that are offered to the erstwhile landowners are often outdated, inadequate, based on artificially low land values and are thereby keenly contested.

This issue of compensation is multifaceted and is often the most widely debated. Most Resettlement Action Plans (RAPs) are not supported by an economic feasibility analysis capable of examining whether the rehabilitation promised by RAPs – including the establishment of alternative livelihoods – will or will not lead to economic recovery. Thus, the projects that forcibly dispossess people of vital productive assets and dismantle their existing economic systems are seldom equipped by the project sponsors with sufficient financial and economic resources to rebuild the livelihoods they dismantle (Cernea 2008).

The value of land itself is difficult to determine. Government rates are often well below market rates and any compensation paid out is likely to be below expectations. Corruption further limits the actual compensation that affected parties. Further, in the case of infrastructure, land value increases substantially after acquisition, as the land use changes. Dispossessed landowners may see some of their own neighbours and private developers profiting from this turn of events which then serves to promote dissent and discord.

It is intuitively obvious that an alternative livelihood source must be established through strategies such as the offer of alternative land, or of a lump sum of cash for alternative land purchase, and/or through guaranteed access to employment for the economically uprooted families in the new enterprise being built (Hemadri 1999). In many cases, a combination of such strategies are required since cash payments once again can be easily squandered, leading to affected families becoming impoverished.

Much research has been undertaken on the subject of land acquisition, aimed primarily at reforming the process and

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addressing existing inequalities. This paper aims to add to this body of knowledge by addressing three issues. First, we compare land acquisition practices across various developed and developing countries. We propose a framework through which land acquisition practices can be compared and comparatively position prevalent Indian practices within this framework. This is the focus of the next section. Following this, we present five case studies of land acquisition for infrastructure projects in India, and through an empirical analysis determine specific bottlenecks that arise in practice, as well as their antecedents that are rooted in the prevailing institutional environment. Finally, we review some innovative solutions that have been implemented in India that can help overcome these issues and provide an indication of the way forward in managing the process of land acquisition.

In general, land acquisition practices in various countries can be viewed along three axes – the principle of land acquisition, the process of land acquisition, and the method by which compensation for acquired land is arrived at. We now attempt to describe these three axes in greater detail, by drawing from international experience.

### Land Acquisition Principles

All across the world, the state is given the power to acquire land for public purpose, in lieu of a compensation that may be paid to the landholders. This power and the terms under which it can be exercised is either directly vested in the constitution, as in the case of the us, Australia and China, or, is specified in enacted legislation, as is the case in Hong Kong, Malaysia and Singapore.

However, the definition of the term “public purpose”, and therefore the justification for acquiring land varies across countries. Several countries, France, Japan, China, Mexico and India among them, explicitly enumerate situations and projects under which land can be acquired or appropriated by the state for public use. In China for instance, land can be appropriated for public purpose for setting up public undertakings, such as national defence, transport, water conservancy, government agencies and so on,<sup>1</sup> while in Mexico public purpose includes infrastructure development, conservation of history or culture, national security or public benefit projects, and projects that preserve the ecological balance and natural resources.<sup>2</sup>

Other countries, Malaysia, Brazil, us, UK and Singapore among them provide a more generic definition of the term “public purpose”, which can therefore be subject to interpretation and potential dispute. In Singapore, land can be acquired by the state if it is for “public benefit or public interest projects”,<sup>3</sup> in Australia for “purposes that the Parliament has the power to define by legislation”<sup>4</sup> and in the UK for “planning and public purposes if it is suitable for, and required for development”.<sup>5</sup>

The principles or philosophies that guide land acquisition in most countries can be classified into three main categories – the “value to the owner” principle, the “just compensation” principle, and the “reasonable compensation” principle. The “value to the owner” principle aims at compensating landowners to the tune of the market value of the land together with other losses

suffered by the claimant (Denyer-Green 1994). This principle is broadly followed in most Commonwealth countries and regions such as Australia (Rost and Collins 1984) and Hong Kong. For example, the Commonwealth government’s Lands Acquisition Act of 1989 and the New South Wales government’s Land Acquisition (Just Terms Compensation) Act of 1991 require compensation to be provided after an assessment of the market value of the land acquired as well as special values attributed to the land, severance payments, consequential financial losses, value loss to other retained land and a solatium (Chan 2003).

The “just compensation” principle aims at providing dispossessed groups with adequate financial compensation. This is best exemplified in the case of *Horn vs Sunderland Corporation* in the UK where the judgment held that a dispossessed person is entitled to compensation and to be put, “as far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a monetary payment not less than the loss imposed on him in the public interest, but, on the other[hand], no greater” (Valuation Office Agency 2000). The Constitution of the United States requires “just compensation” for all takings of private property.<sup>6</sup> Similarly, the Constitution of the Philippines requires that “payment of just compensation must be made”.<sup>7</sup> The Philippines Republic Act 8974 (2000) provides detailed standards on determining the value of compensation to be paid, and aims to “enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible”. Brazil<sup>8</sup> and Cambodia’s<sup>9</sup> constitutions also require fair and just compensation.

Finally, countries such as China and states such as British Columbia follow a principle of “reasonable compensation” as stated in their constitutions. The guiding principle here is that landowners should be fully indemnified only for their direct losses. British Columbia’s Expropriation Act adopts the concept of market value as the basic measure of compensation and landowners are paid an amount strictly equal to the value of the land. China follows a similar philosophy. However, it has been noted that dispossessed landowners often suffer huge consequential losses from the sale of the land that are not compensated for (Chan 2003).

In summary, the “value to the owner” principle takes into account socio-economic considerations related to the acquisition of the land, and aims at compensating the landowners for the land value as well as tangible and intangible benefits that are attributed to the land, through monetary as well as non-monetary means. The “just compensation” principle aims at providing the landowner with economic parity, primarily through monetary means such that the landowner is at an economically – comparable position post land acquisition. The “reasonable compensation” principle envisions the land acquisition process to be a financial transaction where the value of the land alone will be disbursed in the form of monetary compensation without considering any intangible value associated with the land. The Japanese constitution for instance decrees that, “the criteria of calculation

of loss should be socially objective. Consideration should not be given to subjective or emotional losses”,<sup>10</sup> and “any development value or potential value of the property shall not be included in compensation”.

### Land Acquisition Processes

Broadly, land acquisition processes traverse a spectrum from compulsory acquisition procedures that forcibly procure land from landowners and provide them with a predetermined compensation package, to consultative processes that involve negotiations with stakeholders. The latter is particularly implementable when the land is not required for public purpose and if the developing agency has more than one option on which land parcel to acquire. In such cases, negotiation often leads to an economically-efficient and socially optimal solutions. However, even in cases where land acquisition is critical and for public purpose, countries such as Japan advocate the use of negotiation techniques in order to decide upon the compensation to be provided to stakeholders. Many countries combine these two approaches. Singapore and the Philippines for instance recommend that government agencies and developers first negotiate with stakeholders to arrive at a mutually acceptable compensation package that may include monetary as well as non-financial compensation for the property acquired. If such negotiations should fail, the state can then resort to compulsory acquisition based on predetermined formulae provided in land acquisition acts. In China, Australia, New Zealand and India however, compensation guidelines are often prescribed through set formulae, which are enforced upon affected landowners.

### Land Valuation Methods

In general, there are four methods that are used worldwide to value land and to arrive at appropriate compensation. These are (a) evaluating the market value of the land, (b) evaluating the net value of income from the land, (c) determining original land use value as set by the state, and (d) arriving at land values through negotiation.

The Asian Development Bank defines the fair market value of land as “the amount that the land might be expected to realise if sold in the open market by a willing seller to a willing buyer” (ADB 2007a).

A comparable sales technique is often used to determine the fair market value of the land. This method takes into account the sales of land in nearby areas over a recent time frame. From sales deeds of similar land transactions in the past, an average sales price is calculated that represents the market value of the land. Such a technique is expected to represent true market conditions. Among other countries, Malaysia, China, the US and India advocate following the comparable sales method for determining the value of land.

To be sure, there are disadvantages with this method. First, there can be cases where sales data on comparable tracts of land may not be available. Second, there are several cases in various developing countries where the registered value of the sale is kept artificially low for tax purposes. Finally, an open, reliable, fair market environment might not be available thus

distorting the value of land. For instance, Great Britain uses the market value as a means to determine compensation. However, in Great Britain, the market value of, say, an ancestral home is often much lower than the value attributed to it by the landowner.

Another related method of land valuation is the “replacement value” technique. Replacement value is the amount it would cost to replace the asset (land, in this case) with a similar asset. Replacement value includes not only the cost of acquiring or replicating the property, but also all the relevant costs associated with replacement. This bottom-up method of value calculation is used in the Philippines and in other countries where legal systems are not robust, where either the land market is not well developed, or does not provide active reliable information.

Where the market for land is not developed or is not reliable the “net value of income from the land” can also be used to calculate the value of the land. This method has its greatest application in the appraisal of farmland. Using this method, the value of the property is taken to be the value of the expected economic income that could be earned through the ownership of the property. This method calculates the value of land as the present worth of future income from the land including streams of income during the lifetime of the property and from the sale of the property. Tanzania is one country where this method is used, primarily because the market is assumed to be inefficient.

This method has its own drawbacks. First, it requires accurate estimates of the total cost incurred by the landowner, the price at which the crops from the land are sold, the cost of inputs to land, etc. Second, the use of a discount rate or capitalisation rate gives rise to uncertainty in itself. Most importantly, the method does not account for non-income benefits of the land for example, livelihood, social security, source of credit and so on.

The principle followed in China for rural lands is not based on market value but on original land use. The Land Act of China does not permit free transfer of rural land and on the basis that there is no active land market, the original use of land is used for compensation purposes (Chan 2006) with valuation mechanisms set by the state. However there are two major problems with this requirement. First, “original use” is undefined. There is a lack of clarification when it comes to deciding the original use of land converted from agricultural to commercial use before acquisition. Also, the original use compensation principle assumes that agricultural use is the highest and best use of all rural land but excludes the possibility that rural land may have other more profitable uses, such as residential, commercial or industrial development.

Further, in some cases, compensation is fixed purely on the basis of discussions with stakeholders. Peru follows a policy of compensation based strictly on negotiation with the affected parties. Singapore and Japan are other countries that endorse this approach.

As this discussion indicates, virtually every land acquisition technique has its limitations and runs the risk of incorrect or

incomplete assessment of the land. Due to this reason, several countries also include non-monetary means of compensation and attempt to address the indirect costs of land acquisition. Land-for-land transfers are one such mechanism used where a displaced landowner is compensated not by cash but by the provision of an alternative – a comparable plot of land. This method however is dependent upon the availability of such land. There are instances in China where replacement structures have been built on alternate land parcels and given to displaced parties.

Of the various types of indirect costs that are calculated during the land acquisition process, perhaps the most commonplace is the calculation of a “solatium”. McGregor (1988) states that compensation which is granted as a substitute or solace for what has been lost would seem to comprehend the intangible loss of something that cannot be replaced. This is sometimes referred to as “householder’s surplus”, which reflects the value of ties with the area, friendships made, social relations, and so on – items which are difficult to value (Rowan-Robinson 1990). Various factors are to be included here. The loss of shelter tends to be only temporary for many people being resettled; but, for some, homelessness or a worsening in their housing standards remains a lingering condition which leads to social deprivation. Marginalisation occurs when families lose economic power and spiral on a “downward mobility” path. Many individuals cannot use their earlier-acquired skills at the new location; human capital is lost or rendered inactive or obsolete; economic marginalisation is often accompanied by social and psychological marginalisation.

In Brazil, in addition to direct compensation for the land, a “social subsidy” is also given that allows a displaced party to buy replacement real estate. Great Britain provides for special compensation when expropriation of agricultural land disturbs a farmer’s operations. Likewise, in Germany, when an expropriation divides or transverse agricultural land, the government must pay additional compensation based on the following: (i) increased time required for the farmer’s road travel and preparation of machinery; (ii) damage due to detours; (iii) damage due to increased boundaries on the land; and (iv) damage caused by worsened alignment of the land (ADB 2007a). Similarly in Italy, a high level of compensation with additional incentives is provided in case of agricultural lands. The compensation is based on a combination of the market value of the land and the profits from the land.

### International Practices and Implications

The previous section has reviewed some of the generic and most commonly used land acquisition practices and templates. Innovative approaches to solve the land acquisition conundrum have been tried across various regions and will be addressed later in this article. One of the key insights that can be drawn from an analysis of international practices and experiences is that intangible costs associated with the loss of land must also be compensated for.

Compensation for compulsory purchase must reflect the price which the claimant would have expected to have obtained for the property on a sale in the open market together with other consequential losses (Rowan-Robinson 1990). Further, as Bell (1980)

points out, great benefit can be achieved by a measure of compensation which provides claimants with a small balance of advantages as compared to their expectations, thereby encouraging fewer objections and speedier settlements. Despite this, worldwide experience shows us that compensation provided, even when intangible costs are considered, is usually unsatisfactory either due to the time lag between determining compensation and resettlement, or due to a failure to adequately account for non-market values such as environmental services, cultural assets, social cohesion, psychological costs and market access (Cernea 2008).

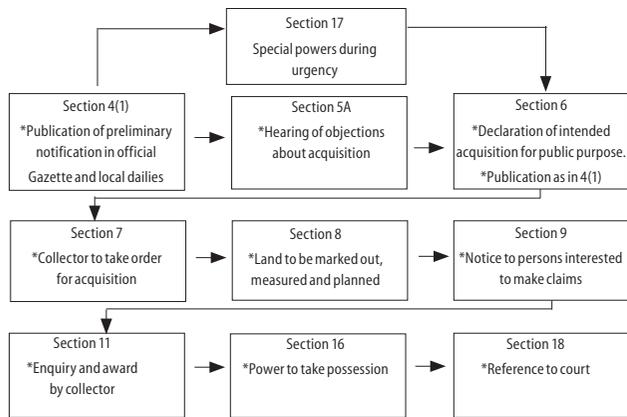
Worldwide experience also indicates that the policies, frameworks and philosophies laid down in the statutes are best treated as guidelines and some flexibility can be incorporated into the land acquisition processes. For instance, a negotiated settlement in lieu of a compensation formula enshrined in a land acquisition policy can be attempted to reach an amicable settlement. Furthermore, it is difficult to discern a set of international best practices with respect to land acquisition. Several approaches exist, each with their own limitations. Various countries follow combinations of these approaches with differing levels of success.

The framework of looking at land acquisition through the lenses of the principles, the processes and the compensation mechanisms behind land acquisition, however, provides us with some insights on why land acquisition in India is particularly contentious. India does not have a clearly articulated land acquisition principle, and often tend towards providing landowners with only “reasonable compensation”. The process of land acquisition is forced with little scope available for negotiation. Despite a solatium being calculated to address the intangible costs of losing land, the basis for calculating this solatium does not vary with respect to the context within which land is being acquired, and the process of acquisition itself is so slow that when compensation is paid, market values are higher than the value used to compensate the affected party (Morris and Pandey 2007; Debnath 2008). The combination of these conditions leads to widespread dissatisfaction among project-affected parties and consequent protests. A land acquisition policy that aims at providing “value to the owner”, a negotiated settlement process, and a fair method of assessing land value based on the direct and indirect costs of the land acquired is a potential strategy that could minimise land acquisition risks. In this context, it might be worth emulating the land acquisition models of the UK or Singapore that broadly follow these principles.

### The Indian Land Acquisition Experience

Several acts govern the land acquisition process in India. Of these, the most prominent is the Land Acquisition Act of 1984, which was partially amended in 2007. This Act is invoked in the majority of land acquisition cases. Besides this, there are sector-specific Acts such as the National Highways Act and the Indian Railways Act. In addition, some states have their own land acquisition Acts that are variants of the National Act. Finally, a separate National Policy on Rehabilitation and Resettlement covers the resettlement of project-affected people. Most of

Figure 1: Process of Land Acquisition as Per the Land Acquisition Act, 1894



Source: Land Acquisition Act 1894.

these Acts have been reviewed and acknowledged in the literature on land acquisition. However, another set of guidelines that often play a part in the land acquisition process are those laid down by multilateral organisations such as the World Bank or the Asian Development Bank, when such organisations are involved in project development. These guidelines often differ widely from the practices espoused by the various acts mentioned above.

### Land Acquisition Act of 1894

In general land acquisition is composed of three macro-processes. First, affected parties are to be identified. Second, a fair-process by which stakeholders are notified of the acquisition and are given a chance to voice their views must be followed. Finally, an acceptable compensation package must be arrived upon and distributed. On the face of it, the Land Acquisition Act of 1894 seems to take all of these three issues into consideration. The Act contains a definition of “persons interested” in the project which is intended to be used to determine groups affected by the acquisition of the land. A detailed land acquisition process is prescribed, and shown in Figure 1, wherein public authorities are required to submit several notifications prior to acquiring the land. Affected stakeholders are provided with ample opportunity to contest both the acquisition of the land (on the grounds, for instance, that a particular parcel of land is not wholly or in part needed for the project, that due process was not followed, or the purpose of acquisition is not for public good), and the amount of compensation that is being paid to them. Here again, the Act defines several ways by which compensation can be awarded – including a consideration of the market value of the land, assets present on the land, income derived from the land and a solatium for compulsory acquisition (Government of India 1985).

However, there are several shortcomings in the practical implementation of the Act. First, there is no clear basis as to how affected parties can be determined and the existing definition is imprecise. Very often, only the minimum subsets of landowners who are affected are identified. Encroachers, sharecroppers, landless labourers and so on, who have an interest in the land are not compensated. Several people practising agriculture are not legally registered and are thus not eligible for compensation,

leading to widespread unrest. Second, the process of acquisition is very time-consuming and can take up to three years even if implemented without undue resistance. Further, although the broad steps of the land acquisition process are outlined in the Act, an enormous amount of discretion is vested upon the district collector and the district *tehsildar*, who effectively adjudicate on several objections related to the acquisition as well as on the compensation to be provided (Raghuram et al 2001). This often leads to decisions and awards that are ad hoc and are not readily accepted by the local community. Finally, no clear formula is given as to how compensation must be calculated. Government officials often consider the least value derived from all possible compensation approaches and as a result the final compensation arrived at is often an order of magnitude lower than that expected by landowners. The real value of this compensation is further reduced due to the time lag between determining the compensation and awarding it to project-affected parties. Project-affected stakeholders then need to seek recourse to the judiciary. The unfairness of the compensation amount has been demonstrated in several cases, where, the courts have ruled that the government pay compensation more than three times the original amount, to affected parties. Nevertheless, the process of obtaining such an award is extremely lengthy and in the interim, affected groups are effectively uncompensated and landless.

### Other Land Acquisition Acts

None of the other state- and sector-specific Acts address these lacunae. For instance, the National Highways Act attempts to shorten the process of land acquisition to 18 months, but does not address the compensation issue (no solatium is given), and allows a developer to access the land before the entire acquisition process is complete. The Tamil Nadu Act of 2001 provides for compensation to be first decided by an agreement with the affected parties, if possible. However, the collector is permitted to forcibly take possession of the land, once a notice has been issued.

On the other hand, multilateral agencies advocate much more lenient guidelines that are relatively more favourable to the affected parties. Take the example of the World Bank guidelines. Based on the framework identified in the previous section, these guidelines tend to provide “value to the owner”. Going beyond reimbursing affected parties for the damages they have suffered, these guidelines aim at preventing involuntary resettlements if possible, initiating sustainable development programmes, restoring the livelihoods of people and bringing them above the poverty line, if the potential exists. The guidelines explicitly state that:

Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, *whichever is higher* (emphasis added).

From a compensation point of view, this indicates that the sponsoring agency plans to consider multiple compensation options and approaches, and will then select the approach that provides the highest magnitude of compensation to the

stakeholders – a marked deviation from the philosophy enshrined in the Land Acquisition Act. These guidelines also mandate that displacement support in both monetary and non-monetary terms be provided through the period of displacement for affected parties and that development assistance in the form of land preparation, credit facilities, training or job opportunities must also be provided. Finally, the guidelines require the compensation to be promptly and effectively, at full replacement cost for losses suffered, distributed to affected parties. In practice, such an approach considers both direct and indirect forms of compensation and has proven more likely to appeal to affected parties. Furthermore, the sponsoring agency is also expected to play an active role in the rehabilitation process, beyond merely providing a financial package to affected parties.

In terms of the process of land acquisition, the World Bank guidelines prescribe a consultative approach. Stakeholders are to be informed about their rights and allowed to select between economically feasible compensation alternatives. Land-for-land alternatives are offered as a first choice, and alternative sites should have a combination of productive potential, locational advantages, and other factors at least equivalent to the advantages of the old site. These guidelines also take a liberal view on the constitution of parties that are affected by the land transaction. Parties with common property resources, squatters residing on public lands, encroachers deprived of established access to resources as well as those with formally recognised property rights, tenants, artisans, and wage earners are all eligible for compensation (World Bank 2001). Only actors who act opportunistically and invade a site for compensation benefits are denied.

Despite being more liberal with respect to the views of the erstwhile landowners, the consultative process set out in the World Bank guidelines may result in the entire process being played out over an extended period of time, thus delaying the benefits that citizens would receive from infrastructure or facilities that are to be built post-land acquisition. Furthermore, as in the case of the Indian Land Acquisition Act, the theoretical guidelines laid down by the World Bank may not be adequately implemented in practice. What then would be an optimal land acquisition strategy? In the next section, we present a series of five case studies of land acquisition undertaken through national and local land acquisition Acts as well as through the World Bank guidelines, to compare the benefits and shortcomings of these varied approaches.

### Case Studies of Land Acquisition in India

Data for these case studies was collected through primary, unstructured interviews with project officials, lenders, government officials and affected stakeholders. Furthermore, official project documents and records were also used as sources of information. Each case and its relevant findings are briefly described here.

**Case 1: World Bank Guidelines: TNUDP Phase III Project in Tamil Nadu:** The Tamil Nadu Urban Development Project (TNUDP) consisted of a combination of five roads in Tamil Nadu. The project was funded by the World Bank and coordinated by the Chennai Metropolitan Development Authority (CMDA) and

the Department of Highways and Rural Works (DOHRW). Private land of 40.12 hectares needed to be acquired for this project, affecting 2,073 people.

After notifying the local population, an initial baseline survey was done by consultants and NGOs to identify affected persons, who were issued with photographic identity cards. A negotiations committee was then formed that was constituted by the project implementation unit engineer, the special deputy collector, local representatives and deputy engineer-highways of sub-projects. Affected stakeholders with and without legal titles were identified. The affected parties were offered compensation of between 142% and 150% of the prevailing guideline value of their land. In addition, a building allowance equivalent to 25% of the total compensation, a subsistence allowance at the rate of Rs 1,800 per month for six months, a shifting allowance of Rs 1,000 as well as replacement for lost assets were provided. In cases where payments were delayed, affected parties were paid interest at the rate of 12% on the compensation due to them. In the end analysis, there were no court cases against the compensation offered.

The constitution of an independent committee, negotiating with stakeholders and providing compensation for indirect losses as well as delayed payments are creditable interventions. Despite this, there were several procedural issues that arose. First, World Bank guidelines mandate a minimum compensation of 150% of the guideline value. Project officials however did not exceed this minimal value by arguing that similar projects in the vicinity had offered lower compensation amounts and it would be unfair to increase the compensation package merely for this project. The guidelines were, in practice, subverted. Also, guideline values of the price of land were often lower than the true market value of the property due to the tendency of landowners to record lower value of their sale of lands to save stamp duty.

It can therefore be argued that true value to the owner was not provided in this case. Yet, project-affected parties did not protest against the award since the process of award was open and transparent, and due to the apprehension that compensation awarded through the Land acquisition Act would be lower and would take longer to arrive.

**Case 2: Land Acquisition Act 1894 under Conditions of Urgency: Indore Pithampur SEZ:** Land covering 1,038.57 hectares needed to be acquired across six villages to develop an SEZ in Indore. The need for land was deemed as an urgent requirement, and this allowed authorities to reduce the duration of the land acquisition process. As a result, early objections to the acquisition of the land were not entertained and the acquisition process was completed within 18 months between 2002 and 2004. In order to compute the value of the land, land sales registry records of transactions in the region from 2000 to 2003 were considered. A further premium was given to irrigated land. A solatium of 30% and a 12% interest rate for seven months (the time between notification of acquisition and takeover) were also applied to determine the final value of the compensation to be paid.

This project encountered several protests. First, the guideline values in the land registry were held to be much lower than the actual “market” price of land transactions, and most of the

affected people felt under-compensated. Second, landowners claimed that fertile land had been acquired for the project, even though adjacent barren lands were available. Furthermore, there had been no negotiations whatsoever with the stakeholders. Finally, several affected stakeholders held that the “urgency clause” had been incorrectly and unjustly invoked for a project which did not seem to be in the domain of public purpose. Writ petitions have been filed and cases are ongoing.

### Case 3: Land Acquisition Act 1894: Outer Ring Road, Chennai:

The Outer Ring Road (ORR) is a Rs 785 crore project undertaken by the CMDA that spans 62.3 km and requires 860 hectares of land. The process of land acquisition closely followed the 1894 Act. The initial notification was given in August 2000 and land acquisition was completed in May 2003. The land value for the project was fixed on the basis of comparable land sales over the past three years. Standing crops were taken into account. Apart from the compensation, 30% solatium and 12% additional interest was also given.

Once again there were several protests relating to the low amount of compensation that was provided. In the case of *V Madhusudan vs The Special Tehsildar LA*, the plaintiff claimed that the defendant had considered 1,152 sales deeds of transactions undertaken in the recent past, and had selected the lowest sale deed (which was 40 times lower than sales deeds of comparable plots) on the basis that the other sales deeds were highly priced or pertained to non-comparable plots of land. The court ruled in

favour of the plaintiff and ordered a reassessment of the fair market value of the land as an average of relevant transactions. Furthermore, the court awarded a 10% increase in the value of the land upon consideration of the development potential of the adjoining area.

### Case 4: Land Acquisition Act 1894: Koyembedu Market Complex Project, Chennai:

This project was also initiated by the CMDA and required the acquisition of 204 acres of mainly agricultural land. Once again, the general guidelines within the Land Acquisition Act were followed, and the process was completed in 28 months. Cash compensation was provided on the basis of the market value of the land, standing crops, a solatium of 30% and interest charges of 12% for the period between notification and acquisition. Furthermore, affected parties were rehabilitated and resettled.

As in the previous case, 424 sale deeds were considered and all but two were rejected on the grounds of being artificially priced. Even out of these two deeds, the lowest was picked to form the basis of compensation, leading to disgruntlement amongst the affected parties. However, since project authorities had built houses in nearby locations, allowed encroachers to resettle and provided employment opportunities in the project, protests and resistance were minimal.

### Case 5: Municipal Law: Bus Rapid Transit System, Indore:

This Bus Rapid Transit System (BRTS) project aims to create a

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separate dedicated bus transit corridor in Indore. As a result, land acquisition was minimal due to the narrow carriageway and was done using Indore's municipal laws. The acquisition was forced in nature and no negotiation was carried out whatsoever. The land acquired was residential in purpose, and in most cases, only a part of owned land was acquired.

No cash compensation was paid. Instead owners were given rights to further develop their existing plots to the extent of the floor area ratios that were taken away as a result of land acquisition. However the landowners were unhappy with this arrangement and requested that transferable development rights be provided so that the landowners could either sell, or could use to develop built space elsewhere. This request was denied to the landowners, who, as a result, felt impoverished by the land acquisition process.

### Land Acquisition Issues in the Indian Context

As these case studies indicate, the Indian Land Acquisition Act, local Acts and guidelines followed by multilateral agencies, all suffer from limitations in practical implementation, notwithstanding their theoretical commitment towards providing for a fair process of acquisition and just compensation. For instance, despite providing relatively liberal norms for compensation, the compensation actually provided in the TNUDP under World Bank guidelines was more or less commensurate with the compensation provided under the Indian Land Acquisition Act.

Two key issues with land acquisition in India stand out across most of these cases. First, very little meaningful negotiation is undertaken. In four of the five cases, very little attempt was made to involve stakeholders in a consultative discussion in order to understand their concerns about land ownership and to decide upon an equitable and mutually acceptable compensation package. In the Pithampur SEZ case, negotiations were even pre-empted by invoking the urgency clause under questionable grounds. As some informants professed, negotiations are likely to be time-consuming due to two factors. Professional facilitation is not available. Further, the demands of landowners are unlikely to be met by the compensation offered by land-acquiring officials. Since such negotiations could then delay projects considerably, most officials in charge of land acquisition try to avoid consultative discussions as much as possible, either by constitutionally circumventing this issue as in the Pithampur SEZ case or by going through the motions without intending to involve landowners in arriving at a solution meaningfully.

Second, the methods by which compensation is fixed are subjective and suboptimal. In several cases, guideline values in government registries were used. These values are often much lower than the actual "market values" since actual land transaction values are often under-reported for tax concessions. Where market transactions are considered, and where several transactions exist, government officials in charge of land acquisition almost unerringly choose the transaction with the lowest sale price as the basis for compensation. Government officials are often concerned about being investigated by anti-corruption agencies such as the Central Vigilance Commission (CVC) for paying extra compensation to landowners and choose to defend themselves by being as

conservative in their calculations as possible. Indeed, this is one of the reasons why government officials negotiated the compensation in the TNUDP funded by the World Bank to being not more than 150% of the guideline value, although World Bank norms allow for greater compensation. In many cases this increases the transaction costs of land acquisition, wherein landowners move the judiciary to grant them higher compensation. The judiciary often obliges as in the case of the Chennai ORR and grants enhanced compensation to an extent that could have been prescribed by land acquisition officials. However, through this method, public officials are placed above suspicion since enhanced compensation was not awarded out of their own discretion. From a societal perspective, time lost and judicial costs incurred represent inefficiencies in the transactions.

The case studies show that the land acquisition process in India can be improved considerably to deliver more equitable solutions and minimise protests. Indeed several potential solutions have been proposed and enacted in practice. Some of these will now be reviewed in the next section.

### Potential Solutions to the Land Acquisition Conundrum

In several projects, Government Orders (GO) issued specifically for a project have been used to circumvent bottlenecks in the land acquisition process, and to imbibe public officials with the confidence to sanction greater amounts of compensation. For instance, a government order was issued in the TNUDP projects in Tamil Nadu to constitute a committee to negotiate and assess land values. This order empowered the committee to go beyond guideline values, sale deeds and code provisions to determine the compensation to be awarded to affected stakeholders.

Another instance of a government order streamlining a consultative and equitable land acquisition process can be found in the acquisition of 202 hectares of land for the Bangarmau Bypass by the Government of Uttar Pradesh. Through a GO passed in 2005, the government went through a negotiation with the landowners. The Resettlement and Rehabilitation Officer (RRO) in consultation with local NGOs calculated land values using the registered prices of land over the preceding five years, prevailing circle rates, and the agricultural productivity rate (with a multiplier for 20 years). The use of 20 as the multiplier was made possible by the GO. The highest compensation value was achieved through the agricultural productivity rate and was offered to the stakeholders (ADB 2007b).

A common cause of resentment with regard to compensation among erstwhile landowners is the increase in the value of the land post-acquisition and development, none of which accrues to the displaced landowners themselves, but could accrue to other landowners on the fringes of development. To combat this, land could be acquired in surplus to what is necessary for the project, and this excess land which is likely to be more valuable post-development could be reallocated to the displaced people (Dan et al 2008). This model, followed by the urban development and housing department of Jaipur can then allow landowners to benefit from an increase in land values (Gupta 2008).

Another approach could be to consider this increase in land prices as an unlocking of land value due to development, and to

then allocate this extra value between the landowners, the government and private developers. Shapely value solutions, a game-theoretical method that discusses the equitable allocation of such excess wealth generated, can be useful in this regard (Eckart 1985).

In some cases, several potential parcels of land are chosen for a project, and project developers can negotiate with landowners to acquire some of these parcels for development. Should some landowners wish to retain their holdings, developers can move towards other parcels. Further, negotiations can proceed within a liberal, competitive framework, thus ensuring that sale prices are likely to closely reflect market realities. Transaction costs are likely to be reduced and displaced parties are likely to be happier with their compensation packages.

Yet another approach that has often been mooted is the acquisition of a certain portion of the common stock in a development venture, and the subsequent distribution of these stocks directly, or of options on these stocks, to people whose lands have been acquired for the development. In this manner, in addition to a fixed compensation, displaced parties will also be able to participate in the benefits accruing as a result of the development venture, for which their lands were acquired. In effect, they would be “partners” in the venture. Several issues however need to be addressed in order to effectively implement this strategy in practice. One common pitfall of this approach has been that shares do not provide instant relief to project-affected parties and developers often buy back the shares at very low prices at the start of the project, depriving the displaced parties of a share in the success.

Another strategy that could ease the process of development and reduce protests is to allow landowners to pool their lands. For instance, recently 123 farmers near Pune pooled together 400 acres of farmland along with a private limited company to build Magarpatta city – a cybercity-cum-residential complex. These farmers continue to own the land, own shares in the company and collect dividends on these shares as well as rents from the tenants in the city (Magar 2008). In Gujarat, a land readjustment and pooling method has been used wherein planning authorities acquire and “pool together” a group of adjoining lands and then replan the entire area such that land parcels are provided for infrastructure, civic amenities and development projects, and land is allocated to the erstwhile landowners (Ballaney 2008).

The discussion in this section indicates that the land acquisition process can be innovative. There are cases where a combination of methods have been used. For instance, in a project in Salboni, JSW Bengal Steel offered landowners cash compensation, shares in the project company as well as one job per family (Kakani et al 2008). In the end analysis deciding upon land valuation is a complex task involving conflicting interests between landowners, developers and government officials. If, as Bell (1980) points out, innovative solutions such as those discussed in this section are used along with a consultative process of negotiation, compensation packages that are perceived to be marginally in excess of that desired by landowners could be arrived at, thereby greatly reducing the challenges to development posed by land acquisition.

## NOTES

- 1 Land Administration Law, 1988, Peoples Republic of China.
- 2 Expropriations Law, 1936, Mexico.
- 3 The Singapore Land Acquisition Act, 1996.
- 4 Australian Expropriation Law.
- 5 The UK Town and Country Planning Act, 1990.
- 6 Constitution of the United States, Amendment V.
- 7 Constitution of the Philippines, Article III.
- 8 Constitution of Brazil, Article 153.
- 9 Constitution of Cambodia, Article 44.
- 10 Constitution of Japan, Article 49.

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