

LAND ACQUISITION IN INDIA

Will the Proposed Bill Protect Displaced People?

A coherent policy response to the tough social questions raised by compulsory land acquisition in India is long overdue. Conflicts have escalated, while successive governments failed to enact a law protecting the livelihoods of affected people. The proposed Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill 2011 is a major step forward in this regard. However, a number of loopholes in the bill need to be addressed. Otherwise, it will not respond adequately to the sensitive nature of India's land situation and instead, make the conflict more intractable by covering unchanged practices under a new law.

SUMMARY

The proposed Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill sets out to reconcile two agendas that have so far clashed:¹ it aims to secure the land requirements of the government's development agenda, while addressing the mounting resistance of people whose land is acquired. The bill is a major step forward because it links land acquisition with rehabilitation and resettlement (R&R). By doing so, it brings to the forefront questions that have long since been at the heart of conflicts around land acquisition:

- When can the government legitimately exercise its powers of 'eminent domain', that is to forcibly acquire land in exchange for compensation of previous owners and users?² In other words, how narrowly should the notion of public purpose be defined?
- How should compensation and R&R procedures be designed to counter the negative impacts on displaced people?

These questions are arguably harder to answer in India than in most other countries. Land is both scarce and unequally distributed. Fragmentation of small plots has prevailed over redistribution of larger ones, pushing an increasing number of households into landlessness. Alternative opportunities rarely exist for farmers who lack the skills required for other avenues of income generation. These systemic constraints result in dysfunctional and opaque land-markets, where sales are few and often unreported.

While the draft bill is an important step forward, it falls short of expectations in some crucial aspects: it opens the door to abuses by adopting an excessively

broad definition of public purpose, and its progressive safeguard clause needs to be strengthened. Oxfam India urges policymakers to address these weaknesses by adopting the following recommendations.

Recommendations

1. Compulsory land acquisition should be limited to a few strictly-defined government purposes. For private projects, the government's role should be to regulate purchases.
2. Social safeguards should be strengthened by giving binding powers to the expert committee's recommendations.
3. Provisions for R&R should be revised to ensure that people's livelihoods are restored.
4. Special laws that regulate a broad range of acquisition should effectively be aligned with the proposed bill.

Beyond these aspects, the draft bill raises a number of questions. Given the complexity of the issue, much-needed public debates risk focusing on secondary issues, while letting some of the crucial and more problematic aspects unquestioned. Two such aspects are:

1. What should the respective roles of centre and state governments be in defining compensation norms?
2. How can civil society be efficient in holding the government accountable?

Context

The government does not keep official figures on how much land was acquired, and how many people were displaced as a consequence, but the most reliable estimates suggest that about 60 million people were displaced between 1947 and 2004.³ The overwhelming majority of acquisitions has historically been carried out by the government for its own uses. However, the policy of economic liberalisation is progressively changing this picture: many public enterprises have been partially or entirely privatised, and the emphasis on PPP advocated in the 12th Five Year Plan further blurs the distinction between public and private interests.

Acquisitions, often carried out without proper compensation and R&R measures, have been met with growing resistance. Struggles such as those of the Narmada Bachao Andolan in Gujarat nearly thirty years ago, of Nandigram and Singur in West Bengal or Greater Noida in Uttar Pradesh have drawn public attention to the claims of those affected. The case of Singur, where the Left Front had intended to expropriate 1000 acres of land for a Tata car production site, exemplifies this trend. The conflict acquired political tone after courts failed to settle the issue. In fact, the Trinamool Congress's promise to reverse the land acquisition in Singur was one of the factors that led to its victory in the state elections.⁴

The growing conflict around land acquisition takes place in a context where demographic and economic pressure on land has increased tremendously. Sizes of landholdings in rural India are amongst the smallest in the world, with averages as low as 0.57 acres in Kerala and less than 10 acres in states such as Punjab, where land properties are large by Indian standards. Landholdings are smaller in countries like China (0.5 acres) and Bangladesh (0.6), but India's average remains amongst the lowest if compared to regions like Europe (32.3), South America (111.7) and the US (178.4).⁵ Inequality in land distribution is huge and rapidly increasing: the GINI coefficient of landholding sizes is as high as 0.7 according to conservative estimates,⁶ in comparison, GINI coefficients for consumption and income indicate a more equal distribution at 0.32 and 0.53 respectively.⁷ Demographic growth and low urbanisation rates further fragment landholdings: mere or complete landlessness is estimated to have increased by as much as 6 per cent between 1992 and 2003.⁸ To complicate matters, there is no ready alternative to the land-dependant livelihoods of most rural inhabitants: economic opportunities are limited across rural India, and even where new projects generate alternative sources of income, local populations generally lack the required skills.

This complex pressure on land results in dysfunctional land-markets, where voluntary land sales are few and reported transactions are generally undervalued to avoid taxation. The underlying systems of ownership also vary widely from region to region: while land rights are reasonably formalised in certain areas, customary rights are often not recognised officially, notably in many Scheduled Areas where forest dwellers are yet to be awarded land titles under the Forest Rights Act.

History of the Bill

The draft bill will replace the colonial-era 1894 Land Acquisition Act. Amendments by successive governments did not address the controversial aspects of the Act, despite decade-long civil society calls for adequate R&R measures; instead, governments pursued land acquisitions without addressing tough social issues resulting from forced displacement. Never before had any central law guaranteed R&R in cases of compulsory land acquisition: a number of state governments had introduced R&R policies in response to increasing resistance, but a single legal framework is still missing.

In the late eighties, the Narmada Bachao Andolan opened discussions around a coherent R&R policy. This was followed by a number of propositions, by both civil society organisations and successive governments. However, none of them were made into law. Finally, in 2011, the National Advisory Council (NAC) called for a law linking land acquisition and R&R. The Ministry of Rural Development prepared a draft bill, and opened a short window for comments before referring the draft to a Standing Committee. The latter proceeded with thorough public consultations. Its report highlights major weaknesses in the bill. These include the broad definition of public purpose; the limited scope of the bill given the fact that a majority of compulsory land acquisitions fall under special laws; the centralised definition of compensations and rehabilitation packages.⁹

Despite these weaknesses, the bill is a meaningful step forward: it provides for safeguards against acquisitions whose impact on people and food security are deemed unacceptable; it establishes the precedence of special laws for Scheduled Areas, such as the Forest Right Act (FRA) and the Panchayat Extension to Scheduled Areas Act (PESA); it entitles all affected people to a diversified R&R package and sets generous standards to calculate compensations for landholders.¹⁰

The range of positions that have been taken on the bill reflects the complexity of the issue it addresses. Defenders of a broad definition of public purpose justify government acquisitions for private use on grounds of long-term economic development: in the absence of a functioning market, government facilitation is required to unlock these opportunities. However, others within the corporate sector fear the hurdles caused by government interventions and prefer to rely on markets. Most civil society organisations agree on the need to define public purpose narrowly: potential economic benefits have to be weighed against the impacts for affected populations, they claim. Beyond this, questions remain on numerous aspects of the bill.

Oxfam India associates itself with the Standing Committee Report and recommends the following amendments:

Recommendations

1. Compulsory land acquisition should be limited to a few strictly-defined government purposes. For private projects, the government's role should be to regulate purchases.

The causal link between compulsory land acquisition and impoverishment is well documented in India and abroad.¹¹ The guiding principles of the bill should therefore be to minimize such acquisitions. Accordingly, the scope of public purpose should be narrowed down to a few strictly defined government purposes such as schools, hospitals, infrastructure and defence. In such cases, the government has an important role to play in avoiding information asymmetries and preventing abuses, but it should not exercise its power of eminent domain.

Instead of this clear distinction between public and private, the bill allows acquisition for private purposes where “their benefits largely accrue to the general public”.¹² This could include any PPP and most private projects, thus opening the door to widespread compulsory acquisitions. The 2011 version of the bill seeks to balance such risks by making it mandatory to secure the consent of 80 per cent of affected people. But flawed consultations, where signatures are faked and people pressured into consent, are too numerous to rely on this safeguard. Moreover, the government now appears to further weaken this safeguard by limiting the consent clause to a smaller percentage of landowners only.

2. Social safeguards should be strengthened by giving binding powers to the expert committee's recommendation.

The Social Impact Assessment study and its review by an independent group of expert is the main social safeguard provided by the bill. The study draws on consultations with Gram Sabha members to assess: the nature of public interest involved in the project and its potential benefits compared to social and environmental costs; the number of affected families and the socio-economic impact on adjoining areas; whether the extent of land proposed for acquisition is the bare-minimum required, and whether acquisition at an alternate place is not feasible.¹³

The assessment is then reviewed by a group of five external experts, who may “make a recommendation that the project shall be abandoned” if its impacts are deemed unacceptable.¹⁴ Ambiguities in this sentence undermine the reliability of the social safeguard. The binding nature of the recommendation needs to be spelt out in a way that leaves no room for future interpretations.

3. Provisions for R&R should be amended to ensure that people are not worse off after displacement.

The dangers of monetary compensations handed out without planned efforts to “resettle people productively on land and in jobs” are well documented.¹⁵ Another dark side of land acquisitions is that compensations have traditionally

been given to landholders alone, leaving out scores of tenants, agricultural labourers, share croppers and forest dwellers.

The proposed bill takes one major step forward by providing R&R entitlements to all affected people, in addition to the generous monetary compensation for landholders. However, this will prove meaningful only if R&R measures are strengthened—land should be compensated by land of similar value wherever possible; in other cases, R&R measures should restore the livelihoods of affected people. The guarantee of employment provided in the current bill is of little help in that regard, because it holds for only one person in the household and is not associated to clear conditions for termination. R&R measures in the current bill also fail to adequately protect women’s livelihoods. The attribution of a single job and money to an entire household will concentrate economic power around the male head of the family. For Scheduled Tribes notably, studies have established how displaced women lose their traditional economic roles, based on forest and agricultural resources.¹⁶

4. Special laws that regulate a broad range of acquisitions should be effectively aligned with the proposed bill.

The significance of the bill will remain limited if 13 special laws that cover a broad range of acquisitions are not effectively aligned with it. Acquisitions for atomic energy, metro, railways, highways and mines fall under special regulations. These purposes, in fact, constitute the majority of government acquisitions. The requirement to align social safeguards and R&R measures under the 13 special laws within a two-year timeframe therefore is positive and should be maintained.

Questions for Debate

Beyond these aspects, the draft bill raises a number of difficult questions. Two such questions are:

1. What should the respective role of central and state governments be in defining compensation norms?

Various stakeholders have highlighted the challenges of outlining a one-size-fits-all rule to calculate the compensation in a context where land-markets are highly differentiated and transactions are few and rarely reported adequately. Similarly, packages for R&R cannot ignore the specific features of a population and their economic and social context.

Frequent cases of compulsory acquisitions by governments from various states show that the Union Government has a crucial role to play in setting minimum countrywide standards of compensation and R&R. However, these standards need to be flexible enough to accommodate best practices from specific states. More thinking is needed to outline a normative framework that is strong enough to ensure these minimum standards, but flexible enough to accommodate local variations.

2. How can civil society be efficient in holding the government accountable?

The real challenge for civil society will start after the bill is passed. How can

the government be held accountable to its responsibilities towards those it displaces? Will the application of the provisions in the final bill really minimize compulsory displacement? Will the livelihoods of the displaced be restored? As the bill is soon to be introduced in Parliament, the time has come to think about new ways to keep an effective check on the government. International accountability frameworks such as the Extractive Industry Transparency Initiative may be a source of inspiration: civil society organisations have campaigned for governments worldwide to voluntarily sign up to a set of minimum standards, and used the latter to hold them accountable. Can this tool help hold the government accountable by making its action visible, and ensure that the bill is more than a new framework sanctioning unchanged, socially disrupting practices?

NOTES

- ¹ Government of India (2011), 'The Land Acquisition, Rehabilitation and Resettlement Bill', Delhi: Ministry of Rural Development; for a summary also see: P. Bedi and S. Gangwani (2012) 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011', Legislative Brief, Delhi: PRS Legislative Research.
- ² Government of India (2012) 'The Land Acquisition and Resettlement Bill 2011', Standing Committee Report 31, Delhi: Ministry of Rural Development ([dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC\(RD\)'s%2031st%20Report.pdf](http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC(RD)'s%2031st%20Report.pdf); last accessed August 2012).
- ³ W. Fernandes (2004) 'Rehabilitation Policy for the Displaced', *Economic & Political Weekly*, 39(12), p. 1191.
- ⁴ K.B. Nielsen (2011) 'Land, Law and Resistance', *Economic & Political Weekly*, XLVI(41). For analysis of how Narmada Bachao Andolan, contributed to making international law more sensitive to resistances in developing countries, see also: B. Rajagopal (2003) *International Law from Below: Development, Social Movements, and Third World Resistance*, Cambridge: Cambridge University Press.
- ⁵ L. Wegner, G. Zwart (2011) 'Who Will Feed the World', Oxford: Oxfam International.
- ⁶ S. Chakravorty (2012) 'The Price of Land: Acquisition, Conflict, Consequence', World Bank New Delhi Seminar, 30 July.
- ⁷ The GINI coefficient measures the extent to which distribution deviates from perfect equality: zero is perfect equality and one perfect inequality. P. Lanjouw and R. Murgai (2011) *Perspectives on Poverty in India*, Washington DC: The World Bank, p. 24.
- ⁸ V. Rawal (2008) 'Ownership Holdings of Land in Rural India: Putting the Record Straight', *Economic & Political Weekly*, 8 March, pp. 43-47.
- ⁹ Government of India (2012) 'The Land Acquisition and Resettlement Bill 2011', Standing Committee Report 31, op. cit.
- ¹⁰ Four times the market value in rural areas and two times its value in urban areas. Government of India (2011), 'The Land Acquisition, Rehabilitation and Resettlement Bill', op. cit, First Schedule, p. 33.
- ¹¹ Independent Evaluation Group (2012) 'Recent Experience with Involuntary Resettlement: India - upper Krishna (Karnataka and Maharashtra)', Washington DC: The World Bank; M.M. Cernea (1996) 'Resettlement and Development', Environment Department Papers (32), Washington DC: The World Bank.
- ¹² Government of India (2011), 'The Land Acquisition, Rehabilitation and Resettlement Bill', op. cit., clause 2, za, vi, p. 6.
- ¹³ Government of India (2011), 'The Land Acquisition, Rehabilitation and Resettlement Bill', op. cit., Chapter II, A, 4, p. 7.
- ¹⁴ Ibid, Chapter II, B, 4, p. 8.
- ¹⁵ M.M. Cernea (1996) 'Resettlement and Development', Environment Department Papers (32), Washington DC: The World Bank, p. 109.
- ¹⁶ M. Barathi (2012) 'Tribal Women's Perspective on the Land Acquisition Bill', *Economic & Political Weekly*, XLVII(20).

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This Policy Brief was written by Lucy Dubochet, Research Manager, Oxfam India, with contributions from Sharmistha Bose, Programme Coordinator – Natural Resource Management, Rebecca David, Programme Officer - Economic Justice, and N. Sudhakar, Programme Officer - Livelihoods. Oxfam India also thanks Videh Upadhyay for his valuable comments.

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