Land Scarcity and the Imperative of Growth: Challenges for Bangladesh Development

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SUMMARY

Bangladesh has sustained a solid growth over the past few years and is aiming at becoming a middle-income country by 2020. However, in order to continue on such a growth path Bangladesh will need to fill a large "infrastructure gap" that holds the country back. Access to land is the crucial bottleneck to fill that gap. All infrastructure (roads, bridges, economic zones, pipelines) have a footprint, and in a land-scarce and densely populated country like Bangladesh, gaining access to land for infrastructure projects is a major unresolved issue. Land records are in a despicable state, land administration is ineffective, and legal instruments are inadequate. At the same time policies for resettlemnt do not exist and compensation under the law seldom reaches the affected parties. Given all of these constraints, Bangladesh will need to find a menu of options that will allow development to continue and affected people to avoid unnecessary sufferings. The paper addresses the current status of land acquisition and resettlement in Bangladesh and provides a set of options for moving forward based on experiences in countries with similar constraints.

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1. INTRODUCTION

Recent World Bank publications state that Bangladesh can reasonably aspire to become a middle-income country by 2016 or soon thereafter, arguing that to achieve this will require a sustained 7.5% annual GDP growth or more. In order to achieve this, Bangladesh will need a series of structural changes to ensure a more rapid, sustained and employment-generating growth. The World Bank argues that this transition will ultimately require a shift in economic structure from agriculture to labor-intensive manufacturing, and the unleashing of the growth potential of urban centers (World Bank 2007).

The shift from a predominantly agricultural society to a more diversified economy will need to be accompanied by a substantial investment in physical infrastructure (especially power sector, ports, industrial estates or economic zones, and transportation) all of which has a footprint and all of which need land. At present, the situation in Bangladesh is characterized by a combination of inadequate power supply, congested ports and underdeveloped transport networks – including roads, bridges, and railways. Recent surveys among private sector operators consistently cite access to power among the biggest obstacles to investment. At the same time, trade facilitation, critical for export competitiveness, cannot proceed strongly as long as the Chittagong port is the only point of entry and exit for about 85% of the country's merchandise trade (World Bank 2007, 2008a).

Similarly, the World Bank (2006, 2007) cites electricity supply as the most serious and immediate of the infrastructure constraints, with a chuckling and growing electricity shortage that affects commercial operations and households alike. Data collected in 2005 shows that approximately 35% of the population has access to network power, and that the power sector generated only 160kwh per capita – a figure that ranks among the lowest in the world. Firms have reported power losses for 2 every 3 days in a given year, and most either own or share a generator, which increases dramatically the electricity cost (World Bank 2007).

The vivid scenes of bottlenecks and horrific traffic jams in Dhaka for city-dwellers as well as for inter-regional transport are a common feature of Bangladeshi newspapers. The desperate need for space and order in people's movements in the city (which hosts about 15 million people) are probably one of the most published themes of letters to editors with all sorts of solutions. Though some argue quite rightly that a solid traffic management system could improve the situation, there is no doubt that additional infrastructure is needed to ease off the congestions that afflict the lives and productivity of millions on a daily basis.

The increasingly high rates of urbanization, with a heavy concentration in Dhaka but growing urban pressure in other parts of the country[1], have generated an increment in pressure on land use for housing developments and all the other services that are required to sustain an urban population. This seems an unstoppable trend linked to a diversifying economy, and one of the most critical side-effects is the astronomical increase in land prices with the connected speculator practices that normally accompany high growth periods in land markets. This affects private entrepreneurs making the cost of operating a business in Dhaka and other urban areas very difficult to afford, but it affects also the possibility of the state to acquire areas for development projects as the cost of acquiring such lands is getting out of reach of Bangladeshi authorities. This partially explains governments' reluctance to change the current land acquisition laws that, as it will be explained later, do not consider replacement values at market rates as standards for compensation.

Adding insult to injury, Bangladesh is also one of the most vulnerable countries to weather variability and natural disasters, and flooding affects the viability of the country for several months a year during the monsoon season from June to October. In urban environments, flooding is exacerbated by rampant land grabbing and illegal occupation of a natural system of drainage canals. Many are occupied by a slew of temporary squatters, illegal people setting up houses and renting them out to poor people, as well as influential individuals and institutions that end up blocking the flow of water in and out of the city, causing flooding in many parts of Dhaka, Chittagong and the other urban spaces.

The scenario depicted above illustrates the two main stories of BD development: 1) development is possible and is underway, but 2) major infrastructure gaps need to be filled if the first predicament is to be realized.

While the World Bank report rightly indicates the economic pathways to achieve middle-income country status, the challenge posed by acquiring or getting access to a significant footprint in a land scarce and overpopulated country is not adequately addressed. Yet, interactions with implementing agencies of the Government of Bangladesh that deliver infrastructure projects, as well as interactions with financing institutions and private sector leaders point to the issue of access to land for growth and development as one of the primary stumbling blocks to bridge the "infrastructure gap" required to sustain the levels of growth seen in the 1990s and the first decade of the 21st century.

In this paper I will first analyze the current status of land acquisition and resettlement in Bangladesh from a legal and policy (or lack thereof) perspective. Subsequently I will use three examples from different Government of Bangladesh implementing agencies (PGCB, WASA and JMBA) to look at the practice of land acquisition and resettlement as it happens on the ground. This will allow an analysis of discrepancy between the statutory aspects and the practice of this domain in Bangladesh. Finally I will highlight some examples from Indian and Thailand that have managed to resolve similar and seemingly intractable issues, from

[1] The World Bank (2007) (estimates a population growth rate of 7.1% on annual basis for Dhaka, and between 4.6% to 7.6% in other cities (Chittagong, Khulna, Rajshahi, Mymensing and Comilla).

which a reflection can emerge on finding the right approaches to facilitate Bangladesh's transition to middle-income status and the bridging of the infrastructure gap from the standpoint of land requirement in an equitable manner.

2. CURRENT STATUS OF LAND ACQUISITION AND RESETTLEMENT IN BANGLADESH

In countries that recognize private ownership of land, land acquisition is defined as "the right and action of the government to take property not owned by it for public use."(Chan 2003). In the United States the right is referred to as "eminent domain" and the action as "condemnation" (Eaton 1995). Other countries use different terminology for the same process. These include expropriation, compulsory purchase, compulsory acquisition and resumption (Boyce 1984; Denyer-Green 1994; Brown 1996).

The compulsory acquisition of land has historically been a difficult and delicate issue for governments. This is even more so in countries like Bangladesh where the pressure to deliver public services, create employment for a growing population, and the request of businesses who see the comparative advantage of Bangladeshi cheap labor force occur in a country that has a limited land mass and one of the highest population densities of the world (Wennergren 1986). As a result, in Bangladesh the field of land acquisition (and the concomitant resettlement that is nearly by default triggered in Bangladesh) is almost always filled with tension. While authorities and economic actors evidence the conflict-ridden and inefficient aspects of the process, affected people stress emphasize the disruption it brings about to them, even if in the name of a generic public good delivered to society as a whole (FAO 2008).

In addition to micro-level conflicts relating to the implementation of specific projects and the communities impacted by those, land acquisition processes generate disputes at a higher level when associated with possible differential uses of lands. In contrast with countries like China (Cahn 2003), however, Bangladeshi law does not distinguish between processes governing the acquisition of farmland and urban lands. While the Industrial Policy of Bangladesh (2005) addresses the potential conflicts emerging from uses of farmland (especially fertile and prime agricultural lands in a predominantly rural economy) for industrial purposes, there are no effective mechanisms to ensure the application of the principles put forth in the policy. This represents a challenge when large footprint projects in are to be implemented in green-field areas, as in the case of industrial estates, special economic zones or export processing zones.

The current legal instrument for expropriating lands for public purposes is the 1982 Land Acquisition and Requisition of Immovable Property Ordinance. The 1982 Ordinance has roots in the British colonial Land Acquisition Act of 1894 that laid the basis for the practice of land acquisition in South Asia during the colonial and post-colonial periods. As it stands, the 1982 Ordinance presents significant challenges in its application, among which

- It is based on compensation rationale alone. As such it monetizes productive (for ex: land) or important assets (houses) at rates that are not based on market valuations and

it provides affected people with a promise (often not delivered in full) of a payment later for an asset foregone today.

- Only people who can demonstrate legal title to lands are eligible for compensation[2]. This rather simplistic distinction between *legal* and *illegal* affected people poses a lot of problems during the implementation of projects, particularly in urban areas, land tenure assumes multiple forms beyond this dichotomy[3] (Shafi 2007);
- Compensation rates for lost assets are calculated on the basis of recorded transactions over the preceding 12 months of comparable assets. They do not reflect market rates at replacement cost. As people declare lower property values at registration of new deeds to avoid paying fees, when it comes to expropriation, the figures recorded officially are significantly below market values (estimates in the context of recent projects speak of up to 1/6 of actual market value) (Zaman 1996).
- The 50% top-up rate on the value extracted from official records recognized and inscribed in the Ordinance itself fails do justice to the affected party given the point above;
- Payment of compensation is often made in installments, making it impossible for affected people losing property to purchase replacement land or invest in a new house or business (Halcrow 1995).
- The process of acquiring lands in extremely cumbersome, involves 22 steps, multiple government bodies and agencies, and payments to affected people are seldom delivered on time, and when they are delivered they reach the affected person not in full due to the well-known but not as well documented rampant corruption that affects the system (CARE 2003, Zaman 1996).
- The full amount of compensation may never be paid in actual fact, in which case households try to take back their lands for farming or remain burdened with having to continue to pay taxes for land on which the public infrastructure project has been realized[4]. In the case of poor people, furthermore, even when money reaches the affected people, most of it is dissipated, as they have lots of immediate issues to deal with and they are mapped to social networks that require sharing of resources.
- Given the deltaic nature of Bangladesh, finally, and due to confusion over land records, migration of actual land owners during erosion, it is possible for others to falsely claim land by paying taxes on it when it re-emerges from rivers, or when there is a chance of it being acquired and compensation being paid (Halcrow 1995).
- No process of consultation with affected communities is envisioned in the law.

This does not want to be an exhaustive list of problems stemming from the application of the 1982 Ordinance, but because of these and other issues, the Ordinance fails to provide a solid ground on which implementing agencies of the Government of Bangladesh (and increasingly PPP types of arrangements for public infrastructure development) can implement public

[2] The 1982 Ordinance also recognizes share-cropping arrangements backed by written and legally valid contracts – something extremely rare in Bangladesh.
[3] For example, a recent study by the UN-Habitat program Local Partner for Urban Poverty Alleviation Program (LPUPAP) recorded 14 different types of tenure categories in Bangladesh urban centers.
[4] This happened during the works related to the Flood Action Plan of 1991.

infrastructure projects to sustain growth and development. This is exacerbated by a variety of other issues, among which the most prominent are:

- A dismal state of land records. (Halcrow 1995, Zaman 1996) This is also recognized by the current Government of Bangladesh, whose political manifesto of the last 2009 election emphasizes the need to digitalize and bring order to them.
- It is estimated that over 80% of all civil disputes involve land and these include criminal offences (murders and other hostilities) surrounding land disputes.
- Given that land is scarce and claimants are many, corruption is high (Zaman 1996), and influential people (inside and outside the administration) find creative ways to gain control over land in rural and urban areas alike.
- Many lands are still today in the name of Hindu individuals who left Bangladesh during the various partitions and civil wars of the last few decades. These are referred to as "*vested lands*."

From the implementation perspective, institutional issues and arrangements create additional problems. Most of the implementing agencies of the Government of Bangladesh do not have staff dedicated to the land acquisition and resettlement programs. Social scientists are seldom, if ever, hired by institutions that are heavily staffed with civil, transport, water, and all other types of engineers. The figure of an anthropologist, a sociologist or simply someone who is not a "technical" person in the various fields (water, sanitation, roads, airports, railways, power, etc.) is perceived as an anomaly of some sort. And in interactions with Government of Bangladesh officials who are assigned to resettlement aspects of multilateral agencies' funded projects, one hears repeatedly that the task is seen as a "punishment" of sorts within the institution. Thus, the institutional aspects related to the implementation of more responsible land acquisition and resettlement programs remains a challenge as the new profiles needed are not envisioned in the recruitment practices of their respective home institutions.

To complete a rather daunting picture, Bangladesh does not have a resettlement policy or resettlement law that addressed the array of problems faced by people affected by development projects in moving residence from one area to another (Zaman 1996, Zaman et al. 2008).

Many infrastructure projects in Bangladesh are not financed directly by government sources alone. Many are funded by bi-lateral or multi-later donors, and a growing trend in PPP-type of arrangements is taking hold. Bi-lateral and multi-lateral donors tend to apply stricter standards than Bangladeshi law. This is true in publicly financed development projects just and in privately financed projects, as many international and national banks aspire to a more environmentally and socially sustainable finance model and embrace voluntary standards such as the Equator Principles or the IFC Performance Standards[5].

[5] Performance Standard 5 of the IFC addressed the issues of Land Acquisition and Resettlement in privately financed projects, and is increasingly being adopted by private companies as "best practice" from a risk management perspective, regardless of requirements on the part of financiers.

In situations where the government participates to the financing of public infrastructure projects together with multilateral donors, however, the stricter standards prevail, creating a situation where even the state, outside of its legal remit, has to raise the bar. Both ADB and the World Bank require borrower countries to take seriously the impacts on affected people caused by land acquisition for public infrastructure project, and both institutions require the preparation of Resettlement Action Plans (RAP), de facto requiring governments to meet a higher standard than the law of the land in Bangladesh. This happened during the construction of the Jamuna Bridge in the 1990s and is currently the case in the preparation of the background work for the Padma Bridge over the river Ganges. The discrepancy in standards between multilateral organizations and the law of the land, however, should not be viewed as an issue of better or worse standards. Multilateral donors such as the World Bank or the Asian Development Bank have to apply rules to their projects across a very different range of countries, sectors, implementing agencies with very different capacity etc. And they have to respond to a series of international constituencies that may not figure very highly on charts of national politicians.

However, the fact that the Bangladesh managed to go beyond what is purely mandated by the law and decide to provide better packages to affected people to better manage its own "social risks" represents an important and feasible (in practice) departure point for a reflection on policy reform. In the case of the Jamuna Bridge, for example, the Government of Bangladesh implemented a resettlement program, though this is by no means covered in the scope of the 1982 Ordinance. Similar steps are being taken during the preparation of the Padma Bridge that requires the relocation of approximately 4000 families. Although there is no legal requirement for the Bangladesh Bridge Authority to do so, *de facto* the Government of Bangladesh is following best practice emerging from its own and international experiences. This opens up spaces for a reflection on extending the application of these principles to other projects as well.

Despite the rather grim outlook, some light can be seen at the end of tunnel. For example, in 2009 the Government of Bangladesh has slashed the land registration fee from 18% to 3%[6] – a fact that would in and of itself remove the negative incentive to declare the actual value of land transactions in order to avoid taxation. In addition, as argued above, the fact that Government of Bangladesh is going above and beyond the standards it sets itself in the implementation of projects that are in the national interest but that have large resettlement impacts leaves the hope that at a minimum some of these principles be extended to other projects and that endogenous and emic best practice be extrapolated from those projects to form the basis of a broader policy for the country.

3. THE PRACTICE OF LAND ACQUISITION AND RESETTLEMENT IN BANGLADESH

As indicated above, the 1982 Ordinance is based on a philosophical rationale that distinguishes between legal and illegal owners of immovable property to determine eligibility

[6] http://www.highbeam.com/doc/1G1-200705697.html

for compensation. In so doing, it effectively acknowledges leaves out of any form of compensation categories of affected people such as sharecroppers, renters, landless laborers and squatters. However, Tomasson-Jannuzi and Peach (1980) estimate that more that 50% of all rural households in Banlgadesh are landless and live on water labor and other farm-related activities, and Zaman (1996) argues that this legal framework effectively deprives a large chunk of the Bangladeshi population of any compensation related to public infrastructure development projects.

The philosophical rationale of the 1982 Ordinance is even weaker when applied to non-rural areas. Recent studies conducted in urban settings (Shafi 2007) showed a more complex system of arrangements for accessing, occupying or utilize lands[7]. These include street dwellers, bed renters, room renters, squatting tenants (tenants in illegal structures built on public or private lands), squatters (differentiating from the earlier category by having built the structures themselves), tenants in housing structures built on lands that have been subdivided and purchased but not registered, legal owners of unregistered lands with buildings that may be unauthorized (also known as "illegal subdivision"), tenants living in housing under verbal agreements, tenants with legal written contracts, "tied tenants"(i.e. people who receive housing from their public employers but whose tenure is tied to their employment contracts), lease-holders, members of co-operative housing, communal owners, and individual owners with full legal rights to the property.

These categories of "practiced" land tenure arrangements make it really difficult for the 1982 Ordinance to provide a viable set of solutions in its application. To that effect, it can be argued that some improvements have been introduced in Bangladesh by multilateral development agencies that consider all people affected by a project (directly and indirectly) eligible for different forms of compensation, and by introducing the distinction between legal owners, squatters and encroachers[8]. In the Bangladeshi context *squatters* are defined as people who reside on a private or public land without having any kind of formal or informal permission and live in own housing structures, and do not pay any rent, whereas the term *encroacher* usually refers to people who illegally occupy by way of filling wetlands or extending the perimeter of their own legal properties onto state lands without formal permission from competent authorities. In projects financed by multi-lateral donor agencies, squatters are eligible for compensation, whereas encroachers are not – thus drawing an important moral line in terms of equity on the one hand, and law enforcement on the other.

Nevertheless, the political economy of land tenure makes it virtually impossible for influential encroachers to be evicted or subjected to the exercise of eminent domain on the part of the state, while often poor citizens without access to power have no means of objecting to the

[7] Urban land tenure is regulated by Bangladeshi law that recognizes two systems of land ownership, i.e. freehold and leasehold title. These apply to both private and public lands. Private lands are also ruled by the Transfer of Property Act (1882) and the Registration Act (1908), while the Non-Agricultural Tenancy Act (1949) is the most significant piece of legislation applying to the use of government –owned land in urban areas. Finally, additional legislation that applies to land issues in urban areas include the Pourashava Act (1977) and the Town Improvement Act (1953) (Salma 2007)

[8] These three categories are the typical ones used in Resettlement Action Plans in Bangladesh.

state. This leaves some open cracks in the application of the 1982 Ordinance, as in the case of the famous BGMEA building in the Hartijeel canal – a protected wetland in Dhaka. BGMEA illegally built a multi-storied complex right in the middle of one of the major drainage canals of Dhaka[9]. While all other structures (mostly occupied by illegal slum dwellers) were dismantled and removed, the building still stands in the middle of the canal and there is simply no political appetite to remove the building.
In order to illustrate the complexities of land acquisition and resettlement in Bangladesh I will look at the current practice of a number of agencies in the Government of Bangladesh emerging from recent projects execute by the same.

3.1 PGCB struggle with draconian laws

Power Grid Company of Bangladesh (PGCB) was created under the restructuring process of Power Sector in Bangladesh with the objective of bringing about commercial environment including increase in efficiency, establishment of accountability and dynamism in accomplishing its functions. PGCB was incorporated in November 1996 and it was entrusted with the responsibility to own, operate and expand the national power grid in a more efficient manner.

PGCB operates under the auspices of the Electricity Act of 1910. The law was drafted when electricity distribution lines entailed the establishment of simple poles. Thus, the early twentieth century legislator favored an approach that allowed planting poles with or without the consent of the landowner, given that the public good was deemed greater than the impact borne by affected parties. Since then, power lines in Bangladesh have been established following this approach. The modality worked relatively well as long as the poles utilized resulted in only minor disturbances to people, and it did not encounter major resistance in rural areas, given that farmers were granted the right to continue to use the land below the power lines, albeit with some restrictions (for example planting of trees or building houses).

Today, however, power distribution has dramatically changed, and instead of 20cm diameter poles electricity companies install much bigger high voltage towers. The average size of a 230 kv tower, for example, is 14 m. by 14 m., with an additional safety area around it, so that the size of a land-plot required for the installation of one single 230 kv tower reaches 400 square meters. PGCB has to date built 1324 km of 230 kv and 2134 km of 132 kv towers in Bangladesh. It is difficult to estimate the total footprint as the distance between towers varies depending on the terrain type and angle, but the figures presented above clearly demonstrate the relatively large footprint that PGCB has had to occupy without being able to acquire it. In other words, 20 cm poles have been substituted with up to 400 square meters towers – with obvious differences in the magnitude of impact – without a realignment of the legal instruments and policy approaches to permit a smooth and fair establishment of new power lines.

[9] See for example http://priyo.com/news/govt/20080422/bgmea-bhaban

The scenario faced by PGCB is even more complex when the grid touches urban or peri-urban areas. In such situations, in fact, towers have to be built in very densely populated areas, often displacing people whose residences are in the project footprint. PGCB operates in a very difficult environment where access to land needs to be negotiated on a tower-by-tower basis, as PGCB has no authority to expropriate and cannot purchase lands for the establishment of power lines given the provisions of the Electricity Act of 1910. The act states in section 12 (2):

Provided that any support of an aerial line or any stay on street required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land or, having been so fixed, may, be altered, notwithstanding the objection of the owner or occupier of such building or land if the District Magistrate by order in writing so directs.

Such provisions simply allow PGCB to access land, but not to acquire it. This subtle distinction engenders a fuzzy operating environment that forces PGCB to gain access to lands by means of negotiation with affected parties. In numerous interactions with the author, PGCB officials have consistently reported the high level of frustration that PGCB staff has to endure for operating under a very uncomfortable and unclear system and a high level conflict with affected communities emerging from such practice (which was referred to as "barbarian" by one senior official).

Recently, however, PGCB has opted for the application of the World Bank Involuntary Resettlement Policy OP 4.12 for the Siddhirganj Peaking Project, conducting a full-scale Social Impact Assessment and a Resettlement Action Plan, engaging with the affected communities via a meaningful consultation strategy and agreeing to compensate affected parties for lost assets (movable and immovable). Special provisions were designed for assisting in the relocation of vulnerable people. This approach is certainly laudable and efforts should be made to extract from these practices what can become an effective land acquisition and resettlement policy for the institution, as well as a springboard for reassessing the effectiveness of the Electricity Act of 1910 in that respect.

3.2 Resettlement policy vacuum and Dhaka WASA

Dhaka Water and Sewerage Authority (WASA) is the Government of Bangladesh entity responsible for water supply and sewerage network in Dhaka city. It is a semi-autonomous organization under the Ministry of Local Government and Rural Development established in 1963, headed by a chairman and managed by a board. Before its establishment, Dhaka Municipality and the Department of Public Health Engineering provided water supply services.

DWASA currently supplies water to about 70% of the population of the Dhaka City Corporation (DCC) and its suburbs, i.e. the Dhaka Metropolitan Area (DMA). DWASA is also responsible for developing and operating the city's storm water drainage system that covers an area of about 140 km2, including a network of storm water drainage canals (*khals* in

Bangla) and pumping stations. Under a deteriorating urban planning environment, a significant number of natural channels and wetlands that help Dhaka cope with storm water flows have been filled in and restricted by the accumulation of solid wastes around the canals. Currently, only 26 of the former 43 *khals* (canals) are recognizable in the city. The remaining *khals* have been partially filled in. This situation has exacerbated the effect of flooding which occurs periodically. During the 2004 floods, it was estimated that approximately US$6.3 million of losses per day were sustained by businesses and residents during the 30 days when the city was incapacitated by flooding. Water logging is a common occurrence during each annual monsoon season.

As indicated earlier in this paper, flooding of urban areas and water logging are a major constraint in Bangladesh for a number of months every year and result in enormous economic losses, in addition to invisible costs borne by individual citizens in terms of to public health and frustration in moving around town. The Dhaka wetlands and natural drainage system that allows water to flow during the monsoon season have severely shrunk at the hands of encroachers over the last decades. Many *khals* have been filled up illegally to create additional lands. Today the *khals* are occupied by a mixture of low income communities/slum dwellers coming to Dhaka in search of employment opportunities[10], influential people who illegally built apartment blocks or housing structures that are then rented out to working class families, factories, influential institutions that have the backing of politicians etc. The analysis of encroachment patterns of Dhaka and Bangladeshi wetlands is beyond the scope of this paper, but here it is important to point out the strong political economy underpinnings of access to land in Dhaka.

In keeping with its institutional mandate, WASA has the responsibility of providing storm water drainage services to the city of Dhaka. Ensuring water flows in the canals means keeping them free from encroachment and illegal occupants. For the most part, *khals* are state land (*khas* land in Bangla), and not private lands. Thus WASA seldom needs to apply the 1982 Land Acquisition Ordinance, as it does not need to trigger the expropriation procedure to free up *khals* from encroachment. However, WASA consistently has to remove people from the canals to avoid flooding and water logging, but has no legal or policy framework under which it can operate a resettlement program that, while ensuring the viability of the storm water drainage system, also provides for the respect of human rights and the search of a viable solution to the millions of people who currently live in the canals. Effectively, WASA has to deal with removing people despite the absence of a national resettlement policy.

Even when applied to *khas* land (i.e. in a non-expropriation context), the logic of legality vs. illegality of occupancy, while understandable from a theoretical perspective, does not provide a good practical set of solutions for the city. In fact, removing illegal occupants from one canal without a more sustainable option for the affected families, nearly always results in "recycling poverty" from one area to another of the city. People evicted from one *khal* would simply move to another one, or onto other state lands (for example along the railways), or

[10] Many of these are people who lost their lands in their villages of origin due to river erosion, especially those coming from Char areas.

simply return to the same location once the civil works have been finalized. This latter issue is a critical one that afflicts WASA operations, as under the current system there is no clear solution to preventing the return of evictees to the same spot. People are driven there by strong social networks on which they depend and by proximity to their work place – two intangible aspects that have a strong bearing on people's decision making with regards to residence selection.

The end result of this policy vacuum is that WASA is constantly faced with enormous challenges when it comes to removing people from the *khals*, high levels of conflict with affected communities, and increasingly a near-impossibility to operate given a strong anti-eviction movement in Bangladesh. (Hackenbroch 2008)

Recently, WASA prepared a Resettlement Action Plan for the rehabilitation of a number of canals as part of one project financed by the World Bank. The approach included also the retroactive compensation provided to affected people who had been evicted from a number of *khals* during the early days of the Care Taker Government in 2007. Compensation and resettlement assistance certainly represents a major step forward in search of a more viable policy for maintaining the *khals* free of encroachment. However, in espousing such an approach WASA is stuck in a double-bind of wanting to operate a responsible institution vis-à-vis affected people, while at the same time avoiding signaling that squatting on the canals renders people eligible for compensation in the case of resettlement. This would simply attract more people into the state-owned lands and would not provide a solution to flooding and water logging. Clear policy guidelines and legal instruments to prevent rent-seeking behavior are urgently needed to allow institutions like WASA to implement projects responsibly and provide goods and services to citizens of Dhaka without bypassing the poor.

3.3 Emic best practices: the Jamuna Bridge project

In 1998 the Government of Bangladesh completed the construction of the Jamuna Bridge - a project jointly financed by the World Bank, Asian Development Bank (ADB), JBIC, and the Government of Bangladesh. The Jamuna Bridge was a landmark project in more ways than one, due to its unprecedented scale and in that it was the first time that the Government of Bangladesh with the assistance of bilateral and multilateral co-financiers implemented large infrastructure project in Bangladesh according to international environmental and social standards. The overall project included the construction of a 5 km bridge over the Jamuna River, but a large portion of the impact on land acquisition and resettlement was linked to the need for massive river training works to stabilize the Jamuna course – for which 2680 hectares of land were acquired. The project affected directly and indirectly about 82,000 people, many of whom through land acquisition and resettlement (Zaman 1996). Ultimately, land was acquired in excess of what was required for project implementation, (for example, in the acquisition of a hundred meter wide corridor for access roads), a strategy that led to unnecessary displacement of people.

Although it was not perfect, many people in Bangladesh view the Jamuna Bridge project as a

successful example of public infrastructure developments from which substantial positive lessons learned can be drawn. In fact, it was the first project whereby the Government of Bangladesh decided to go above and beyond what is mandated by law and offer a more generous compensation, resettlement, and rehabilitation package to affected people. To that effect, the Jamuna Bridge project presents a set of possibilities for mainstreaming at least some of the least controversial elements of mitigating impacts of land acquisition and resettlement due to public infrastructure projects.

Prior to the initiation of civil works for the Jamuna Bridge, the Government of Bangladesh established the Jamuna Multipurpose Bridge Authority (JMBA) specifically dedicated to the realization of this improtant piece of infrastructure. Today, the JMBA has renamed Bangladesh Bridge Authority and has taken over the supervision of additional bridges constructed in the country, of which the latest is the Padma Bridge – currently under preparation. JMBA utlized the services of an NGO – i.e. the Bangladesh Rural Advancement Committee (BRAC) – to conduct a socio-economic analysis of impacts on affected people, carry out consultation sessions with the communities, and determine all losses incurred into by directly and indirectly affected people as a result of the project. Compensation rates and options of resettlement and livelihood restoration programs were also defined during this phase of the project (Zaman 1996).

Interestingly, the studies conducted by BRAC reported a more complex land tenure and land use patterns than recognized in the 1982 Ordinance. Different categories of affected people were identified, i.e. tenant cultivators, farm workers, non-farm workers, business and industries, and squatters[11]. Despite the legal and policy vacuum in Bangladesh for addresing these categories of affected people, the JMBA went ahead with the preparation of a Resettlement Action Plan that provided compensation packages for all types of affected people (Zaman 1996).

A key aspect of the Jamuna Bridge land acquisition and resettlement program was a shift in focus from compensation alone to affected people's livelihood restoration and ideally improvement. This was influenced in part by negotiations with the World Bank which had adopted a policy on involuntary resettlement in 1991 in light of strong criticism for its involvement in hydropower project that had caused significant displacement and impoverishment among affected populations. Despite all good intentions, Ahsan (2007) argues that the generous Resettlement Action Plan for the affected people has only partially achieved the goal of reconstructing and restoring completely their pre-project living standards. Accroding to his analysis of the case, the major failure consisted in the affected people's inability to regain access to the amount of land lost to the project. However, considerable success was attained in other aspects of the resettlement program, such as a significant increase in affected people's average annual income despite their shrinking land-

[11] Squatters were referred to in the original documentation as *uthulis*, a Bangla term that translates roughly as "free-users." It refers to people who use homestead land for free without ownership. *Uthulis* are composed of individuals who lose lands due to river erosion on a yearly basis and become landless. To retain their social networks, *Uthulis* stay either on relatives' lands for free or are allowed by richer landowners to stay and cultivate plots of lands they own. Details of this system are articulated in Zaman, M. (1991a, and 1991b).

base, and the quality of housing for the resettled ones also improved. In addition, as a result of the resettlement program, affected persons had better access to health services, drinking water and sanitation – not an insignificant achievement in Bangladesh.

As argued by Zaman et al. (2006), however, despite the good practice emerging from the Jamuna Bridge experience, to date Bangladesh has no clearly formulated resettlement policy for project-affected people, and the 1982 Ordinance remains the only legal (albeit inadequate) instrument to acquire land for public infrastructure projects. The experience of the Jamuna Bridge has established a ”precendent” rather than a ”tradition” (as argued by Zaman et al.) for formal resettlement plans to mitigate project impacts on affected people. In fact, with the exception of cases where Bangladeshi authorities have a strong incentive in implementing resettlement program to secure funding from multilateral donors who would in any case require those standards, the practice of more responsible land acquisition processes and resettlement and livelihood restoration for affected people has yet to be mainstreamed in the public infrastructure domain in Bangladesh. Nevertheless, the current debate about, and the preparation of the Padgma Multipurpose Bridge can provide a good ground for formulating a policy on resettlement and revise, where needed, the practice and procedures for land acquisition and expropriation.

4. Policy directions for the future

The trend in the practice of large infrastructure projects today is to move beyond pure compensation and resettlement to sharing the benefits of development projects with affected communities (Fisher 2005). This has been argued also by Palmieri (2002) from the large number of project experiences in the water infrastructure and dams, where often beneficiaries of electricity live far away from the project sites, while impacts are mostly felt by people living in or close to project location. Benefits shared with affected communities can be of a monetary nature (redistribution of revenues to local or regional authorities, establishment of development funds financed from project revenues, part or full ownership of the project by project-affected populations for example) or of a non-monetary nature (priority hiring for affected people, fishing rights on newly created reservoir to affected people, for example).

Similar trends can also be seen in the provisions of IFC Performance Standards, and in a number of voluntary codes and commitments that private sector companies are embracing as part of their CSR strategies. Finally, a number of innovative approaches are being subscribed by progressive governments in various countries (see for example Maharashtra in India for the MUTP project and the SEZ policy) (Government of Maharashtra 2000; Mumbai Special Economic Zone).

At this historic juncture that is promising a serious possibility to leave poverty behind, Bangladesh needs to reform the domain of land acquisition and resettlement and move on to a more conducive legal, policy and implementing environment to ensure that its growth potential is not compromised. But the road to accomplish this will be a winding one and not without bumps. Complexities of land records management, registration, etc. are beyond the

scope of this paper and would require entire volumes on each of the topics. Here it suffices to say that there are multiple complexities in the execution of land acquisition and resettlement programs in Bangladesh and that a close look at the current systems is required in order to render the procedures and approaches more supple, expedite the times of execution of the orders, and finding fairer compensation and livelihood restoration of affected people. However, this concluding section of this paper wants to offer a few ideas for consideration that may help unlock what otherwise could seem a set of intractable issues.

First, there needs to be a differentiation in approaches and policies applicable to urban and rural areas. Benefit sharing can be the right policy direction to follow in rural areas, given that there is a need to diversify the economy in any case, and for a more equitable distribution of benefits derived from development projects – including the increase in land values in areas surrounding given projects (for example economic zones). The urban milieu, on the other hand, with all its institutional complexities, high population densities, and uncontrollable land markets, will require a different stand. Recent experiences from around the world show that socially responsible policies do provide better solutions to the sticky problems related to resettlement and land acquisition than policies and laws based on concepts of legality (often ending up with evictions) (Rahman 2001). Though in theory evictions serve the purpose of enforcing the rule of law, in practice in Bangladesh the state is weak in applying the same sanctions across the board, and the underlying political economy of land tenure charges eviction drives with social class overtones and makes them politically untenable.

Two very interesting, but also very different, approaches from which Bangladesh can draw ideas to develop national policies on land acquisition and resettlement come from the State of Maharashtra for the Mumbai Urban Transport Project on the one hand, and the Community Organization Development Institute approach of the Government of Thailand on the other.

In front of a daunting urban environment such as the megacity of Mumbai, the State of Maharashtra took an innovative approach to resettlement, thinking outside of the box and focusing on the need to find a solution rather than on processes. The State of Maharashtra took advantage of a particular historical conjuncture where the real estate market and the value of land in Mumbai were skyrocketing. It developed the idea of Transferable Development Rights (TDRs) as an alternative to the compensation packages available under the Land Acquisition Act of 1894 (Giovannetti 2008).

TDRs were offered to landowners whose land had been reserved for public purposes. By agreeing to surrender such lands, owners received TDRs for the equivalent space relinquished, and those TDRs could be used in the northern part of the Mumbai Metropolitan Area – a zone that is much less intensely populated than the south of the megacity. In addition, TDRs were also made available to housing developers who agreed to build and hand over, free of cost to the State of Maharashtra, apartment units to resettle slum dwellers occupying large portions of prime lands in Mumbai. By deciding to go vertical, the State of Maharashtra managed to obtain thousands of small apartments where it resettled slum dwellers, while developers could access prime lands in south Mumbai and obtain additional

TDRs to develop additional real estate elsewhere in the north of the city. The newly built resettlement towns are equipped with services like schools, clinics, nurseries and open social spaces, and the State of Maharashtra also engaged NGOs for livelihood reconstruction programs such as business development, re-qualification training, and micro-credit facilities. In a nutshell, the State of Maharashtra managed to find an innovative solution based on the historical moment the city of Mumbai was going through, and without having to mobilize massive resources, it managed to free up space for large – but heavily needed - transport infrastructure projects, while at the same time providing better housing and security of tenure to thousands of squatter families.

The experience of CODI[12] in Thailand, on the other is very different in nature and approach. If the MUTP method was rather top-down, the CODI philosophy is rooted in a belief in social mobilization and bottom-up methodologies. CODI is a public organization under the supervision of the Ministry of Social Development and Human Security set up by Royal Decree in 2000. CODI's mandate is to provide leadership and financing schemes for community based organizations, with a focus on settlements and human security for poor communities (CODI 2008). To that effect, CODI developed the Baan Mankong Program in 2003 – a concept that was based on allowing poor communities to study the physical environments in their settlements (mostly informal and illegal), develop their own plans for resolving these problems and subsequently take the lead in the implementation of their programs themselves. In this community-driven development approach, CODI facilitated the organization of slum dwellers, helped them to establish saving schemes, and communities could then use those funds as collateral for additional funding provided by CODI to solve their housing problems.

CODI does not have one-size-fit-all solution to the informal housing settlements on Thailand. It facilitates communities to find their best solutions, rather – solutions that are site-specific, are affordable given the social fabric of the specific community involved, and feasible. Solutions included negotiations with private land owners for the purchase of lands, reallocation and rationalization of space utilization on public lands in exchange for 30-year leases, freeing up of private lands in exchange for the right to stay on a smaller but better organized portion of private lands, among others. To date, about 50 projects have been implemented by CODI with a very high degree of success and a commensurate amount of dedication and hard work on the part community members and professionals. Because this program gives people the power to think and to do, and to search for their own solutions, each solution inevitably takes a completely different form (CODI 2008a).

An in-depth analysis of the resettlement policies enacted by the State of Maharashtra and the Government of Thailand cannot be the focus of this article. What emerges from these two approaches is that the search for solutions needs to take innovative pathways, moving away from legislation that is purely based on the dichotomy legal-illegal, and recognize the complexity of diverse situations that need practical and feasible solutions. Mumbai took advantage of a particular conjuncture in real estate markets, and Thailand bet on the rich

[12] For more information see www.codi.or.th

human capital of its citizens. Both have demonstrated that it is possible to find ways out of what otherwise seems an impossible conundrum of problems only.

These lessons are of vital importance for a country like Bangladesh that is also living a historical moment in its social and economic development. The current law on acquisition and requisition of immovable property, combined with the policy vacuum on resettlement create a very difficult environment for the state, its implementing agencies and private sector to find viable solutions that allow infrastructure to be developed and fair outcomes for the affected parties. Clearly, different approaches seem to be needed for rural and urban environments, particularly given that the latter present additional challenges such as high population densities, zoning problems, and extremely high land values. A responsible resettlement policy that is in line with best international practices would substantially help in avoiding the "recycling of poverty" or worse the creation of poverty in the name of public goods and services. As indicated by Cotula et al. (2009), lack of clarity and ineffective legislation result in a "lose-lose" situation for investors as well as for local people who end up internalizing costs. To that effect, the Government of Bangladesh and donor agencies involved in public infrastructure financing should consider the possibility of establish a fund accessible by implementing agencies and local governments to execute fair and equitable resettlement programs that could concretely use public infrastructure projects as points of entry for development – as the World Bank policy predicament aspires to.

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