Land, Conflict, and Investment Risks: An Indian Perspective

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Outline

1. Land Acquisition and Development: What does the available evidence say?
2. What is driving land conflicts?
3. Alternate scenario
4. What measures can be taken by investors and financial institutions to mitigate risks?
# Top Reasons for Project Stalling Across Ownership

(Adapted from Table 4.3 Economic Survey of India, 2014-15)

<table>
<thead>
<tr>
<th>Owner</th>
<th>No of Projects</th>
<th>Top Reasons for Stalling</th>
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</thead>
<tbody>
<tr>
<td>Private</td>
<td>585</td>
<td>Unfavorable market conditions</td>
</tr>
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<td></td>
<td></td>
<td>Lack of promoter interest</td>
</tr>
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<td></td>
<td></td>
<td>Lack of Non-Environmental Clearance</td>
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<tr>
<td>Government</td>
<td>161</td>
<td>Land Acquisition Problems</td>
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<td></td>
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<td>Lack of Non-Environmental Clearance</td>
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<td>Lack of Funds</td>
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Land Acquisition Numbers

• 66 out of 804 stalled projects attributed to land acquisition issues (Nayak, 2015 based on RTI data from MOF)

• 41 (7%) out of 630 stalled private sector projects attributed to Land Acquisition

• Land acquisition issue remains relatively important for public sector (14% of stalled projects)

• Over exuberance and a credit bubble as primary reasons for stalled projects in the private sector (Economic Survey of India 2015, pp 70)
LA Paradox

• Low incidence of stalling because of Land Acquisition disputes - runs against the conventional wisdom
• Land acquisition data refers only to acquisition of privately owned lands and doesn’t count projects stalled due to public lands related issues
• The number and value of projects stalled due to public land related conflicts is very significant (in both numbers and value) but remains out of the frame
• No data available about such conflicts – only inferences through proxy indicators like media reports triangulated with on-ground information from CSOs and other informers.
• Preliminary analysis of media reports indicates significance of conflicts on public lands
Public Lands

• Around 40% of India’s land area
• Forest lands (70 mha)
• Non-forest rural public lands (revenue lands, pastures and grazing land, government wastelands, village commons) approximately 30 mha. (derived from NSS 54th Round)
• Estimates on forest land dependence alone range up to 275 million (World Bank 2006)
• NSS Survey showed 48% of rural households reported dependence on common lands for various purposes
• Dependence of landless poor and tribals higher
Public Lands claimed/used as customary land

- Example Odisha and Chattisgarh: 60% of land area is public land
- Scheduled V districts have high public land percentage
- Poor Survey and Settlements and forest notification have ensured that large areas of land customarily claimed and used by communities has been notified as state forest or non-forest lands
- Legally state owned but de-facto used and claimed lands, including for agriculture
- Areas having large areas of public land: rich in resources with poor people
Public Land (forests) and Minerals Map (CSE):

- Major mineral deposits in districts overlapping with forests and other public lands
- Similar overlap with tribal areas
Acquisition of Public Lands

- Assumption- Sarkaari zameen
- Customary claims are ignored despite constitutional and legal provisions
- States transfers public lands without Gram Sabha Permission by:
  - Ignoring provisions of FRA/PESA
- Major conflicts relate to public lands
Disputes linked to Public Lands

Land disputes involving Public Lands (Media Reports 2014-15)

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<tr>
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<th>Infrastructure Projects</th>
<th>Mining &amp; Minerals</th>
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</thead>
<tbody>
<tr>
<td>Land disputes reported in 2014-15</td>
<td>102</td>
<td>36</td>
</tr>
<tr>
<td>Land disputes involving public Lands</td>
<td>36</td>
<td>26</td>
</tr>
</tbody>
</table>

- Land disputes reported in 2014-15
- Land disputes involving public Lands

- Infrastructure Projects
- Mining & Minerals
Major flagship projects affected by disputes related to public lands

- Most efforts to divert public lands has given rise to conflicts
- Niyamgiri, Odisha (Vedanta): proposed mining area claimed as customary land by Dongaria Kondhs
- Mahan, Madhya Pradesh: Forest land for mining claimed by local communities
- Jagatsinghpur, Odisha – POSCO: Forest land under occupation for betel vines
- Most dams in North Eastern States and Himachal Pradesh
- Many more examples (Ganeshpur Coal Mines; Hansdeo-Arand Mines; Khandhadhar Iron Ore Mines; Maliparbat Bauxite mines; Samukha Tourist Project, Puri etc)
- None of these projects included in the Land Acquisition data provided by MOF (listed as others, lack of clearance)
Constitutional and legal safeguards for communities exist

- Forest Rights Act vests rights with tribal and forest-dwelling communities over at least half of India’s forest land and provides for Gram Sabha consent - reiterated by Supreme Court
- Panchayat Raj Extension to Scheduled Area (PESA) requires prior consent for acquisition of land
- Not respecting these laws leads to litigation and conflicts: significant risk to investments/projects
Alternate Scenario

- Customary rights on public lands are recognized
- Gram Sabhas function and govern public lands
- How would land acquisition function
  - Negotiation with Gram Sabha – terms are offered- consent is taken
  - Shared prosperity and fruits of development
  - Resources are transferred
- In some cases, Gram Sabhas may refuse
- If suitable incentives, Gram Sabhas would agree and the investments will be secure
- In effect communities become the guarantor against the risk to the investment
Principles to be Followed

• Jurisdiction and rights of Gram Sabha over public lands (including) forests need to be legally recognized
  • FRA recognizes Community Forest Resource Rights over forests
  • Similar frameworks can be developed for non-forest public lands at state level
• Free, Prior and Informed Consent (provided for in FRA, PESA and very partially in LARR 2013)
• Negotiated agreement with the community
Investors and Financial Institutions

- Conflicts linked to land tenure are substantive and a major risk for investments
  - delays and slippages
  - Failure of investments
- Using forced acquisition backfires in form of conflicts— the costs can be much higher
- A large number of these conflicts are linked to public land claimed by local communities
- Litigation risks
- Reputational risks and impact on brand equity due to human rights violations and repression (ex. Vedanta Plc)
Suggestions for Financial Institutions and Investors

• Investors should follow emerging global standards (VGGT Guidelines)
• Land related risks need to be integral part of analysis by financial regulators
• Risk analysis and screens should ensure adherence to FPIC and negotiated settlements
• Make compliance of law of land (FRA, PESA) as a part of due diligence for financial investments.
Reasons for Stalled Projects by Value (For projects more than Rs 500 crores)

Data Source: Business Standard, June 2, 2015 (based on analysis of MOF data)
• Substantial Public Sector Banks NPAs linked to land intensive project activities
  • Infrastructure
  • Steel, Cement and other mineral based industries
• Poses substantive risk to financial system
• Existing regulatory structure doesn’t acknowledge potential land-based conflicts and human rights violations in projects funded by financial institutions