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Using regulation to drive improvement in SIA

Overview

Until 2013, governments in India acquired private land for development projects under a colonial law which was heavily tilted against the interests of landowners and land-dependent rural communities. Land acquisition became increasingly embroiled in conflicts, with farmers resorting to social movements and court cases against unfair land acquisition. Escalating project costs, stalled acquisition and pressure on political parties from rural voters caused the Indian Parliament to repeal the Land Acquisition Act (LAA) 1894 and enact the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (LARRA) in 2013.

This law widened the definition of project-affected families and inserted safeguards for vulnerable groups like women and Indigenous communities. Under LARRA, Social Impact Assessment (SIA) by an independent agency is mandatory for all public and private sector projects involving land acquisition. The SIA is supposed to determine the public purpose of the project, enumerate its social costs and benefits, identify affected families, and recommend mitigation measures for diverse social impacts. While SIA has become a key component of land acquisition, its transformative promise remains under-fulfilled.

Lessons from eight years of SIA in India

The national government itself tried, albeit unsuccessfully, to undermine the safeguard provisions of LARRA through an amendment in 2014 that sought to dilute/remove SIA. Similar attempts have been made by several state governments. Land is a concurrent subject in the Indian Constitution, allowing the national government as well as all 28 state governments to legislate on it independently. The subnational scale is therefore critical to understand the diverse outcomes of SIA in practice. State governments competing to attract private investment have diluted the safeguards laid out in LARRA to make land acquisition for industry faster and cheaper. States like Telangana, Gujarat and Uttar Pradesh have curtailed SIA through amendments in the LARRA. Some other states have circumvented SIA, bypassing LARRA entirely by (1) using special national laws meant for land acquisition for highways, railways and coal mines (Tamil Nādu); or (2) using land pooling schemes or 'voluntary sale' agreements (Maharashtra, Delhi).

Our experience of conducting SIA in Delhi, the national capital, illustrates other systemic limitations. SIA is often seen as a procedural compliance requirement that can be met post facto, and not as a serious exercise meant to determine the public purpose of projects or mitigate their adverse social impacts. Land acquisition is presented as fait accompli to the affected families as well as the SIA agency. The land bureaucracy is not legally mandated to take into account findings and recommendations of the SIA and Social Impact Mitigation Plan (SIMP) while preparing the formal rehabilitation scheme.

While the LARRA recognises the rights of livelihood losers and aims to pay market value for acquired land, in reality the land bureaucracy continues to undervalue the price of land. The entrenched legacy of the colonial era LAA continues to guide the mindset of the bureaucrats tasked with land acquisition under LARRA. In practice, fiscal conservatism is preferred to fair compensation, and the wider definition of project-affected persons enshrined in LARRA and SIA is usually ignored.

The individuals and institutions responsible for carrying out SIA are governed by perverse incentives. Quick, incomplete, and compromised SIAs are more likely to gain favour with the land bureaucracy than unbiased and professionally conducted ones. Not surprisingly, few incentives exist to deploy state-of-the-art SIA concepts and methodologies. Ensuring safeguards for affected families is not seen as a necessary step in efficient and equitable land acquisition for development.

> *"Procedural delays and legal complications… will arise if SIA does not maintain fidelity to the provisions of the Land Acquisition Rehabilitation and Resettlement Act in letter and spirit."*

Way forward

There is an urgent need for training and capacity building of the stakeholders involved in implementing LARR and SIA. Officials of the land bureaucracy and public/private agencies seeking land must recognise that SIA is not a mere formality, but is supposed to ensure fair compensation for all livelihoods affected adversely by development projects. They should understand the procedural delays and legal complications that will arise if SIA does not maintain fidelity to the provisions of LARRA in letter and spirit.

Training resource material that simplifies complex provisions of the law need to be created in multiple languages and accessible formats. Independent funding mechanisms and quality monitoring of SIA agencies are necessary to establish and implement best practices and benchmarks. The legal status accorded to SIA is an important achievement for land governance, but it is only the first step. To ensure equitable development, India's policymakers, SIA practitioners, and industry groups need to come together to change the way SIA is implemented.