

Land Disputes and Stalled Investments in India



November 2016

Introduction

India's ambitious development agenda involves facilitating investment for economic growth, infrastructure development, and social progress. Yet, thousands of investment projects have been stalled to date, raising red flags for the health of the country's financial regulatory systems, public sector banks, and investment community.

While official reasons given for stalled projects remain opaque, deep contestation leading to conflict on public (and private) lands must be better understood as a substantive risk to investments. An improved understanding of the actual causes of stalled projects will not only help investors, financial institutions and regulators make better decisions, but also inform public policies regarding communities' property rights and provide a path to more inclusive development.

However, the discussion on stalled investments and land-related disputes in India is often mired in political controversies and presumptive positions, mainly due to the fact that there is little data to inform this highly sensitive debate. As a result, the usual policy prescriptions often lack a data-based examination of the situation.

A new analysis—initiated by the Rights and Resources Initiative and the Bharti Institute of Public Policy, Indian School of Business—seeks to provide evidence-based insight into this complex subject. It aims to inform policy discussions and interventions that can mitigate the current situation. The study is part of a larger geo-spatial analytical platform being developed by the Bharti Institute of Public Policy. This brief is based on the interim findings of the ongoing study, which are significant enough to be shared widely and considered in proposed policy interventions.

The main source of data on stalled projects in India is the CapEx database from the Center for Monitoring Indian Economy (CMIE). This database "tracks the creation of new capacities from intentions through implementation and completion." This study takes the CapEx database as a starting point, and seeks to understand how important land-related issues are to the stalling of projects.

Findings

- Analysts have seriously underestimated the role that land-related conflicts play in stalling investment projects, and the magnitude of the cost imposed by these conflicts on the Indian economy and society.
- Out of 80 high-value stalled projects, more than a quarter (21 projects) are stalled due to land disputes.
- The total investment at risk in these 21 projects is Rs.1,92,620 crores (Rs.1,926.2 billion). This is 300 percent more than estimates provided in the CapEx database.
- Land acquisition of both common and private lands is a major cause of stalling of projects.
- Contrary to the common perception of disputes being limited to privately-held lands, at least 15 percent of the stalled projects were on common lands. The total investment value of these stalled common land projects was Rs.118,800 crores (Rs.1,188 billion).
- Fourteen of the 21 stalled projects cite acquisition of private land as the root of the dispute.

RRI Partners



Methodology

The CapEx database on projects, the main source of this study, provides the status of 48,806 projects. The data used was first cleaned and geo-referenced. Projects were then re-classified into four categories: announced, completed, under implementation, and stalled. Spatial and data analysis was carried out for the stalled projects.

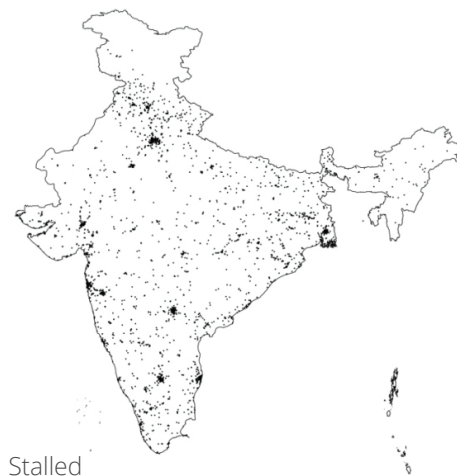
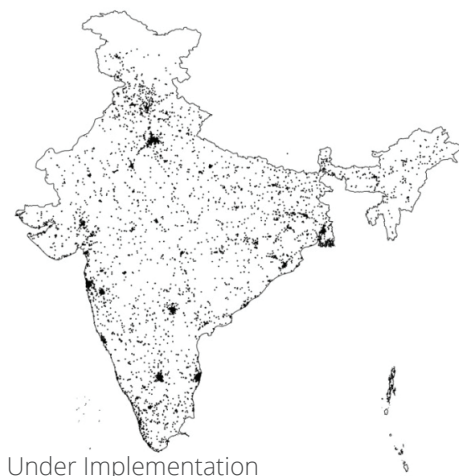
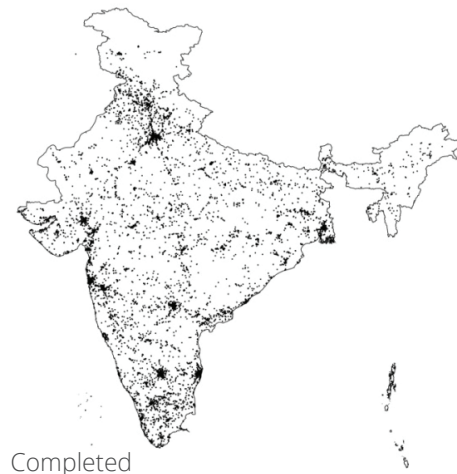
Building on information provided by the CapEx database on the reasons for stalling of projects, the data was further classified into four categories: 1. Lack of official clearances (environmental and non-environmental); 2. Land acquisition problems; 3. Reasons not available; and 4. Other reasons. This fourth category includes projects stalled for market, financial, or operational reasons (for example, unfavorable market conditions, fuel/feedstock/raw material supply problems, lack of funds, or lack of promoter interest, etc.).

For a more detailed examination, stalled projects that met the following criteria were selected: 1. Six industry groups having the highest frequency of projects; 2. Projects initiated after 2007; 3. Investments of more than Rs. 1000 crores (Rs. 10 billion); and 4. Located in 10 major states that had the highest frequency of projects.

After cleaning the data, a total of 80 stalled projects meeting these criteria were selected for further investigation to understand their reasons for stalling. The investigation included online searches, review of annual reports and media reports.

Map 1

Spatial distribution of all 48,806 projects



Findings

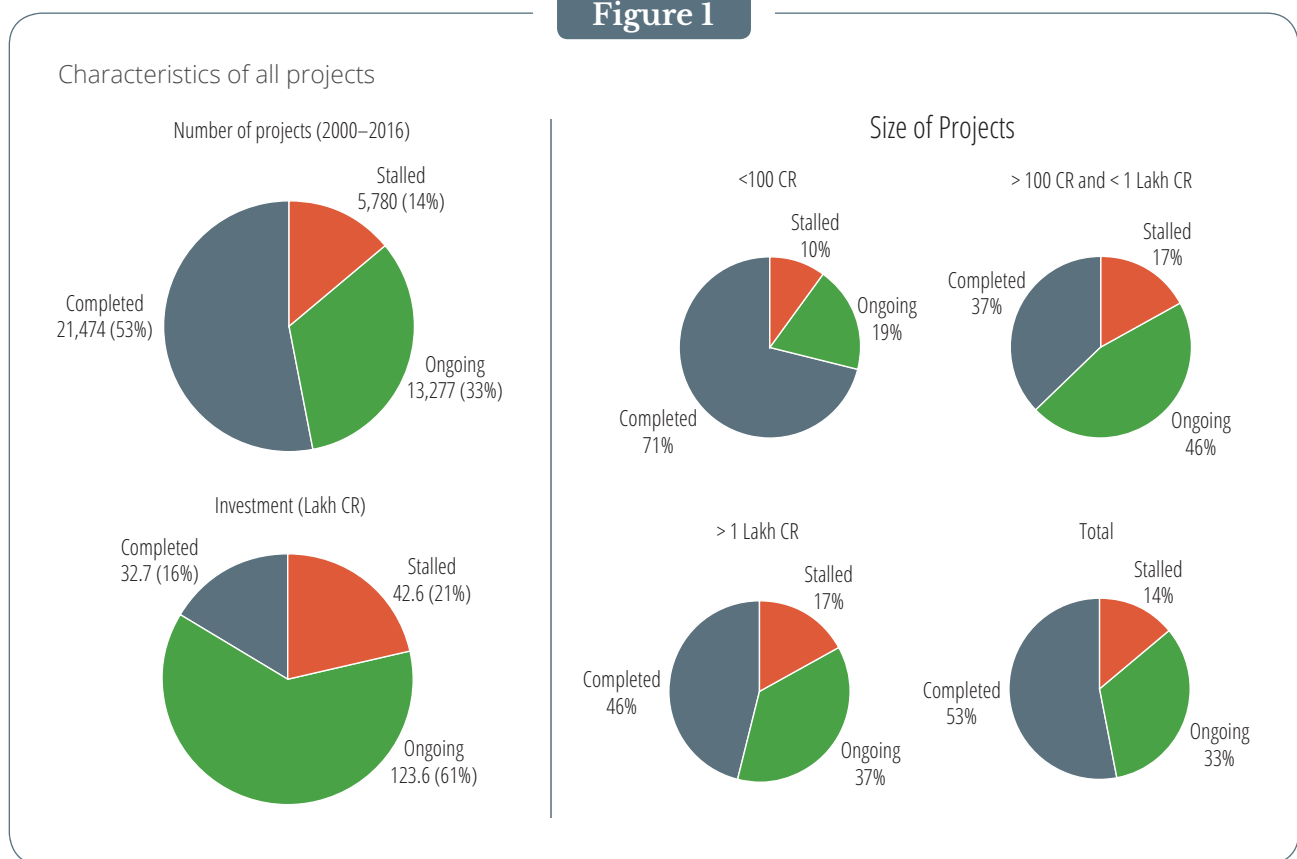
Spatial distribution of projects

Projects under the four categories—announced, completed, under implementation, and stalled—are spread throughout the country. Particularly, stalled projects are distributed similarly across the other categories, suggesting that there are no specific geographical clusters that might be associated with stalling of investments (Map 1).

Of the more than 40,000 projects announced since January 1, 2000, 14 percent or 5,780 were stalled as of October 2016. During the same interval, 53 percent of all projects were listed as complete (Figure 1). Only 10 percent of the projects under Rs.100 crores (Rs. 1 billion) were stalled, and 71 percent had been completed. In contrast, the proportion of stalled projects for projects where the investment is greater than Rs.100 crores (Rs.1 billion) is 17 percent.

The total investment across all projects adds up to almost Rs. 200 lakh crores (Rs. 200 trillion), of which 21 percent (Rs. 42.6 lakh crores or Rs. 42.6 trillion) is tied up in stalled projects.

Figure 1



Spatial analysis of 5,780 stalled projects

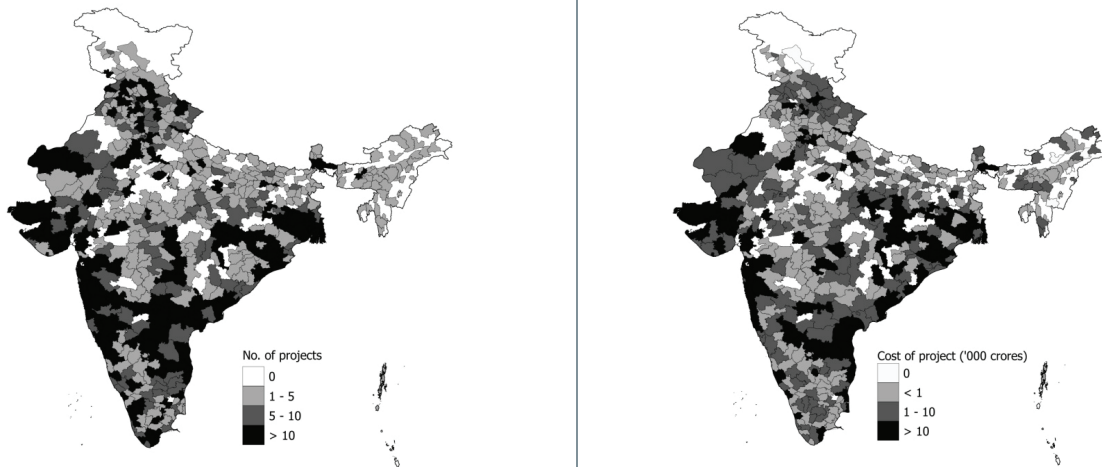
At the national level, the 5,780 stalled projects are fairly evenly distributed. Districts with more than 10 stalled projects and/or more than Rs.10,000 Crores (Rs.100 billion) investment tied up in stalled projects are spread across the states of Gujarat, Maharashtra, Odisha, Chhattisgarh, Karnataka, Telangana, Andhra Pradesh, Madhya Pradesh, Kerala, Rajasthan, Haryana, Punjab, and Uttarakhand (Map 2).

Analysis of stalled projects by reason

For the purposes of our analysis, we re-classified all stalled projects into four categories by reason, based on information provided in the CapEx database.

Map 2

District-level distribution and costs of all 5,780 stalled projects



1. We combined lack of environmental and non-environmental reasons as 'Lack of official clearances.'
2. Under 'Not available', we combined all projects that were listed as 'no reason' and 'not available.'
3. The category of 'Land acquisition problems' was left untouched.
4. Finally, in the 'Others' category, we combined unfavorable market conditions, fuel/feedstock/raw material supply problems, lack of funds, lack of promoter interest, natural calamity, and others.

The highest number of stalled projects fell into the category of 'Other reasons' (Figure 2). As per CapEx database, only 6.5 percent of the projects are stalled due to land acquisition problems, which account for 16 percent of the total investments. In comparison, 6 percent of projects stalled due to environmental and non-environmental clearances account for 9 percent of total investments. 50 percent of investments can be attributed to projects stalled for 'Other reasons.' Notably, there is no specific reason listed in the CapEx database for almost 25 percent of investment at risk.

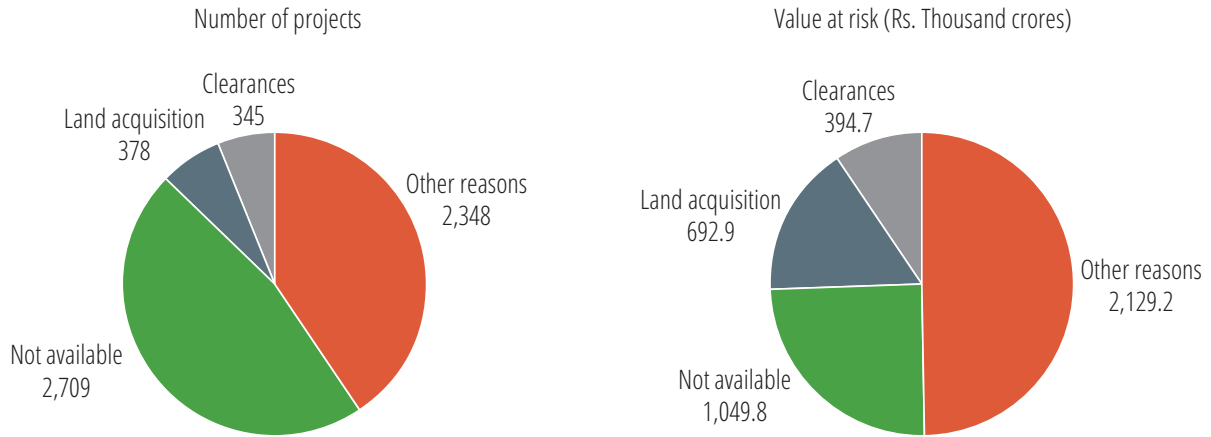
Detailed investigation of 80 selected high-value projects

The reasons behind the stalling of development projects are complex and many, and the CapEx categories cannot reflect all the socio-political factors that come into play. A sample of projects for further investigation was selected from the list based on the following criteria:

1. The following reasons for stalling were selected: fuel/feedstock/raw material supply problem; lack of clearances (non-environmental); lack of environment clearances; land acquisition problem; not available; and others.
2. Six industry groups (as classified by CapEx) that had the highest frequency of projects were selected: aluminum and aluminum products; cement; coal and lignite; electricity generation; minerals; and steel.
3. Only projects that were announced on or after January 1, 2008 were selected to ensure a greater likelihood of their being relevant today.
4. Only projects with an investment/cost of Rs.1000 crores or higher (Rs.10 billion and higher in the CapEx database) were selected.
5. The 10 states that had the highest frequency of projects were selected: Andhra Pradesh, Telangana, Madhya Pradesh, Tamil Nadu, Maharashtra, Odisha, Uttar Pradesh, Chhattisgarh, Gujarat, and Karnataka.

Figure 2

Reasons for stalling, all 5,780 projects



After cleaning the data, a total of 80 projects that met the above criteria were shortlisted (Map 3).

Findings from the high-value project analysis

Sector-wise number and investment

Power sector projects were found to have the highest frequency, followed by cement, steel, and mining sectors (Figure 3). In terms of investments, stalled power projects accounted for the highest value, about Rs.286.9 thousand crores, followed by the steel, mining, and cement sectors (Figure 4).

The state of Odisha leads both in terms of number of projects and investment at risk (Figure 5).

Land disputes and stalled projects

Of these 80 projects, only seven are listed in the CapEx database as being stalled due to land acquisition problems. However, upon further investigation, it was found that 21 of these (26.25 percent)

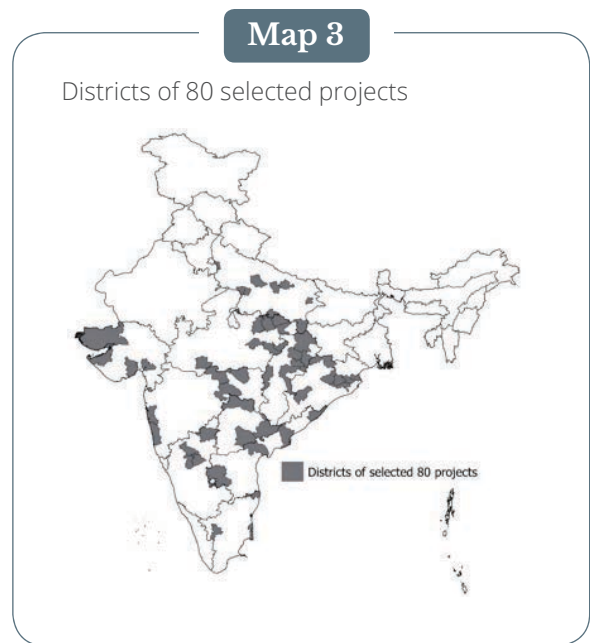


Figure 3

Number of high-value projects across sectors

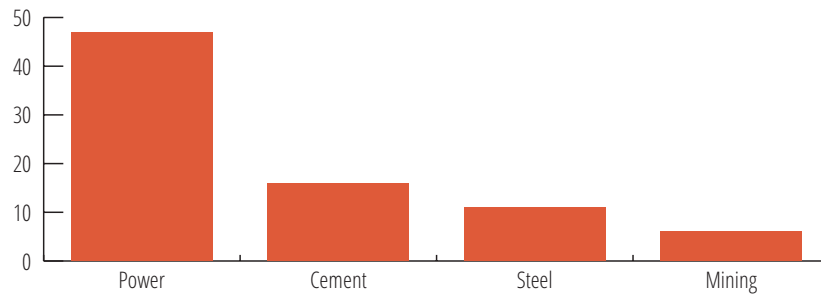


Figure 4

Investments in high-value projects across sectors

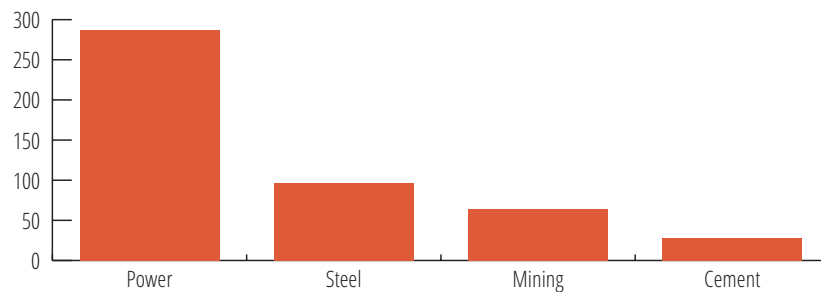


Figure 5

Number of projects and investments across different states

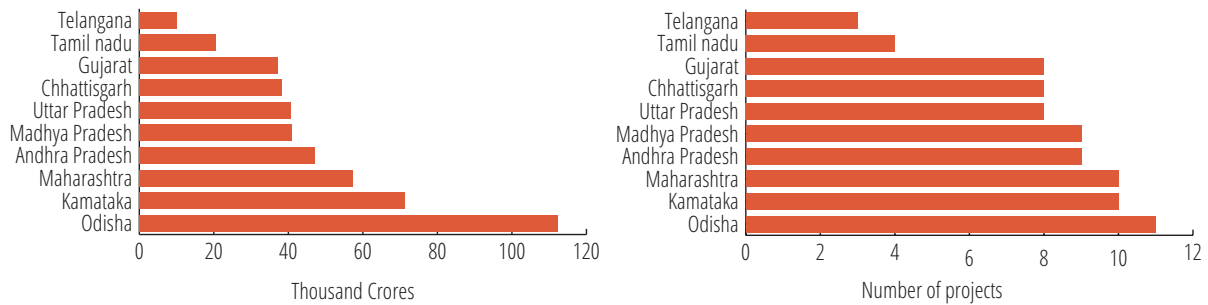
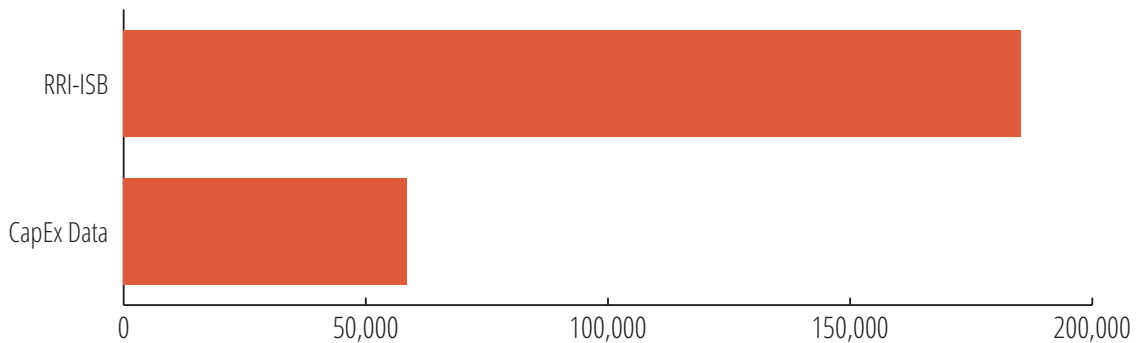


Figure 6

Value of stalled projects with land disputes (Rs. crores)



had significant land-related conflicts. These 21 projects implicate INR 192.62 Thousand Crores, which amounts to about 40% of the investment of all 80 projects.

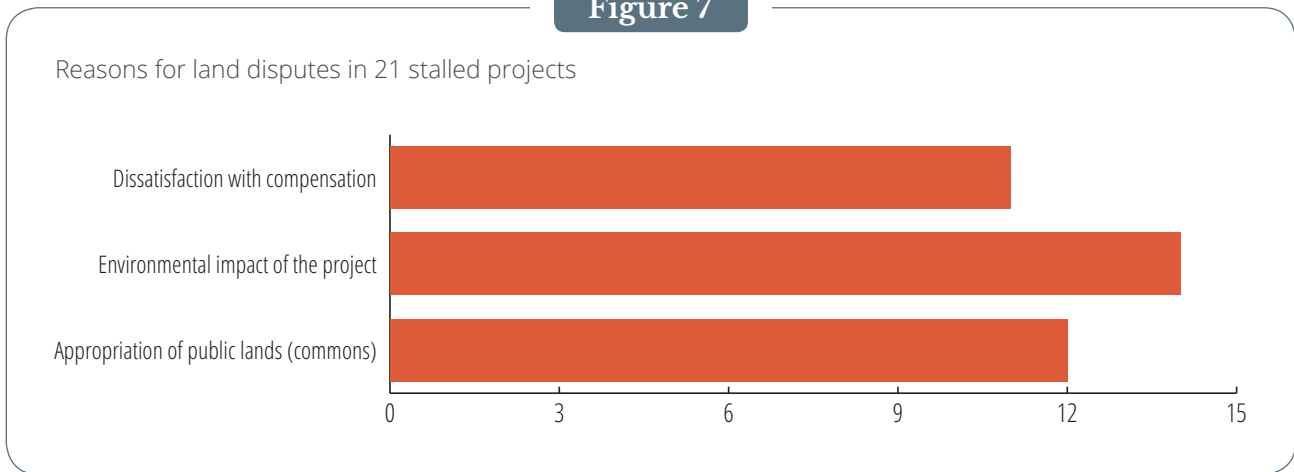
The value (investments) at risk related to land related disputes was also much higher in the sample compared to the Capex database (Figure 6).

Detailed investigation of projects involved in land acquisition disputes

The study included a more detailed investigation of 21 projects involved in disputes related to the possession and acquiring of land. These disputes include both public and private land. Out of the 21 projects, 12 involved commons or public land, 10 involved only private lands, and four involved both private and common lands.

The study shortlisted the major reasons for land disputes and resistance by local communities to the projects. The major reasons for these conflicts can be classified as: 1. loss of commons; 2. dissatisfaction with compensation offered for the land; and 3. concern over the environmental impacts of the project. Figure 7 shows the distribution of these reasons.

The threat to commons emerged as a major reason for land disputes and conflicts. Communities are dependent on commons for farming, fishing, livestock rearing, salt manufacturing, and grazing. The loss of these lands or denial of access to them often lead to disputes. The 12 cases studied included protests against the loss of commons, forest land, and coastal waters. These protests played a major role in the stalling of projects.

Figure 7

For example, the fishing communities of Srikakulam district in Andhra Pradesh have raised objections to the implementation of five thermal power plants on the grounds that they will disrupt the marine ecology by increasing the sea temperature and destroy local fisheries. Of the selected projects, four were stalled following such protests in Srikakulam district (Bhadreshwar TPP, Sompeta TPP, Kakarapalli TPP, and Srikakulam TPP). In Ratnagiri district, Maharashtra, similar protests took place against Rajapur TPP and the project was stalled. Only one of these projects was listed as stalled due to land acquisition in CapEx; all others' reasons were attributed to a lack of environmental clearance, fuel/feedstock/raw material supply problems, and others.

In Rayagada district in Odisha, the Aluminum Smelter and Refinery project set up by RSB Metaltech was opposed by local populations who claimed that the company had illegally encroached on public forest land that they depended on for their livelihoods. The Lanjigarh Alumina Refinery Expansion Project is a similar case in Odisha that faced stiff opposition because the mines for the plant were located on forest land sacred to tribals. Amtek Auto Limited also ran into resistance while trying to set up a mega auto complex near Choudwar in Cuttack district over an area of 2,500 acres at an investment of Rs 15,820 crore—much of the land for the proposed project was forest land. Similarly, the 2014 allocation of the Deocha-Pachami block (9.7 sq km) in the south-western part of Birbhum, West Bengal, was stalled following opposition from tribal populations who raised objections to mining activities on their forest land.

Dissatisfaction with compensation offered for valued lands: Another major reason for land disputes is that many farmers and land owners do not want to part with their lands, which may have a high economic and resale value due to their productivity. Several cases of land-related disputes also stem from the dissatisfaction of farmers and locals with the compensation offered. Examples of such cases are the Delhi Mumbai Industrial Corridor Project, the Haligudi Steel Project in Karnataka, the Kachchh Cement Plant Project in Gujarat, and the Balpur Thermal Power Project in Chhattisgarh.

The Delhi Mumbai Industrial Corridor project spans across six different states and has run into conflicts in almost every state. Many of the lands that must be acquired for this project are of high economic value, and farmers are unhappy with the compensation offered or fear that the value of their lands will appreciate greatly after they sell. Out of 13 projects listed under the Corridor in CapEx, only three are currently under implementation. POSCO, a multinational steel-making company headquartered in Pohang, South Korea, has similarly faced opposition from the farmers of the Haligudi village who wanted higher compensation for their fertile land where they grow cotton. POSCO eventually shelved the project due to the inordinate delay in acquiring land.

In the Janjgir-Champa region, the Balpur thermal Power Project and Chhattisgarh (Sapos) Coal Based Power Project were stalled due to dissatisfaction with compensation among local farmers. Across the Janjgir-Champa district, locals who previously sold their land to companies have felt cheated as they were offered significantly low prices for their high-value lands. Pathadi (Phase V & VI) Thermal Power Expansion Project in Korba, Chhattisgarh and Lakhpat Cement Plant Project in Kachchh, Gujarat had similar problems owing to perceived low compensation being offered to local people.

Environmental impact: Many of the land disputes related to stalled projects are linked to the perceived environmental impacts of these projects. In many of our case studies, we found that there was widespread

concern about the environmental impacts of these projects, even if this was not the only reason for their opposition.

In the case of the coastal thermal power projects, there has been opposition on the grounds that there would be damage to the marine ecology, and destruction of fish breeding grounds and wetlands. In another case, the Bhadradeni Thermal Power project in Telangana was opposed because it was being built near a wildlife reserve, and would be drawing water from the Godavari River. Activists argued that a study needed to be conducted on the ecological consequences of the project before it could go ahead. Lastly, many of these projects are on forest lands that are central to the livelihoods of many local people. Admittedly, the desire to protect these forest areas is tied in with the economic benefits that they derive from them. However, there appears to be a significant amount of support mobilized around the issues of environmental degradation and destruction.

A key observation emerging from this analysis was that often, forest land or commons in Schedule V Areas are being handed over to projects without consent as required by law. Legal procedures are often not followed or are subverted when beginning projects. Examples include Vedanta's mining activities in the Niyamgiri hills, the Bhadradeni power project in Telangana, and the Srikakulam power projects—all of which took off before receiving mandatory environmental clearances.

Moving forward

It is clear that analysts have underestimated the effects of land-related disputes and conflicts on stalled projects, as well as their risk to investment. To get a better understanding of this problem, a larger and more representative sample of stalled projects is needed.

This analysis shows that in the case of private land acquisition, which accounts for nearly 18 percent of all stalled projects in the sample, the perception of unfair or low compensation drives many of the disputes. The unwillingness of investors to adequately compensate landowners can lead to protracted conflicts that end up costing far more in the long run due to project delays.

The acquisition of private lands has at least elicited a public policy debate. However, the case of customary lands, which are a bigger cause of disputes and stalling of investments, has evoked little or no debate or policy response. Cadastral systems, which formalize ownership through legal entitlement, hardly mention customary arrangements. Lack of such legal recognition neither eliminates customary claims nor makes the lands “empty” to be assigned to new parties. When such lands are treated as public lands, enabling the governments to assign them for a new purpose, conflicts erupt because such assignments curtail access to food, water, energy, and other vital resources that are essential for the survival of local communities with customary claims.

Neglect of customary claims of communities is even more problematic in forest land and Schedule V Areas. Constitutional provisions such as the Forest Rights Act (2006) and the Panchayati Raj Extension to Scheduled Areas (PESA) mandate that free, prior, and informed consent (FPIC) is obtained from local communities in case of diversion of forest lands and acquisition of any land (private or common) in the scheduled areas. However, there has been very slow progress in implementing the Forest Rights Act,¹ and in many cases,

Box 1

LAND AS A DISTANT CAUSE OF CONFLICT

Two aluminum projects in Odisha illustrate how land disputes can indirectly stall major investments projects.

The massive Smelter and Captive Power Project planned by RSB Metaltech in Kamakhyanagar, Odisha, has been stalled. The reason is listed as a ‘fuel/feedstock/raw material supply problem’ in the CapEx database. The Kamakhyanagar smelter was supposed to get its raw material supply from the aluminum refinery located in Rayagada district. However, the RSB alumina refinery in Rayagada ran into problems as the local communities claimed that the company was illegally encroaching on public forest land. Massive protests and resistance from the communities followed, holding up the refinery project and subsequently leading to a stalling of the main smelter project in Kamakhyanagar.

The Lanjigarh Aluminum Refinery Expansion Project is stalled due to reasons classified as ‘other’ in the CapEx database. The Lanjigarh refinery was to source bauxite from the Niyamgiri hills. However, the Niyamgiri Hills have become the site of one of the most contentious and controversial struggles over mining and land rights in India. The project was finally shelved after a Supreme Court judgement asked the government to seek the Gram Sabha's consent.

It is important to note that while both of these projects have been stalled due to land-related conflicts, this is not shown as such in their entries in the CapEx database.

there is a deliberate subversion of the Act's provisions by local governments. Similarly, the constitutional guarantees to tribal communities and provisions of PESA are often not enforced. The fate of communities outside these two categories of customary lands is even worse, as they receive no formal legal protection.

This analysis also makes clear the magnitude of the cost imposed by land conflicts and disputes on the Indian economy and society. For example, 15 percent of all studied projects have been stalled primarily because of disputes over common/public lands, with a total investment of Rs. 118,800 crores (Rs. 1188 billion) at risk.

It is clear that land conflicts pose a very significant risk to investments, and both investors and the government need to address the issue of how to account for this risk through risk analysis tools, and how to mitigate it through risk mitigation strategies.

Risk assessment: RRI and the Indian School of Business plan to take this study further, undertaking an analysis of a larger number of projects and building a large, publicly available database that would enable investors to make a reasonable tenure risk assessment for specific sites or regions. The study will be carried out in collaboration with the government, regulatory agencies, credit rating agencies, and investors to develop tools that will incorporate large-scale spatial data analysis. Such databases would form the basis of judgements regarding the proximate cause of tenure risks, such as the size of population in the proposed sites, current land use, degree of dependence on resources, and governance arrangements. These initial efforts are expected to herald the beginning of a larger, coordinated data collection and analysis to address the critical issue of land and investments in India.

Risk mitigation: The proposed database will also enable investors to engage with local people as counterparties.² In a number of cases, greater engagement with these communities can result in shelving the project, which is better than getting into a long drawn out conflict resulting in serious financial losses for companies. On the other hand, a meaningful engagement with communities can provide a competitive edge to companies in addition to managing the risks of insecure tenure.

There is, however, no substitute to effective policy response. First, the provisions of current laws in statute, such as the Forest Rights Act and PESA, need to be implemented vigorously. India's tribal communities need to have the assurance that their rights provided by the Constitution will be respected. Finally, there is an urgent need to provide legal security to communities in other common lands. This security can ultimately enable true engagement of communities in more inclusive and lasting development in India.

Endnotes

¹ Rights and Resources Initiative, NRMC, and Vasundhara. 2015. Potential for Recognition of Community Forest Resources Rights under India's Forest Rights Act. Washington, DC: Rights and Resources Initiative.

² TMP Systems. 2016. IAN: Managing Tenure Risks. Washington, DC: Rights and Resources Initiative. London: UKAID.

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<http://www.isb.edu/bipp/about>

The Rights and Resources Initiative

The Rights and Resources Initiative (RRI) is a global coalition consisting of 15 Partners, 5 Affiliated Networks, 14 International Fellows, and more than 150 collaborating international, regional, and community organizations dedicated to advancing the forest land and resource rights of Indigenous Peoples and local communities. RRI leverages the capacity and expertise of coalition members to promote secure local land and resource rights and catalyze progressive policy and market reforms. For more information, please visit www.rightsandresources.org.

Affiliated Networks



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