

Land Law Review and Drafting of Land Laws for Bangladesh

Prepared for



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Prepared by

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Human Development Research Centre

www.hdrc-bd.com

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Abbreviations

AC	Assistant Commissioner
ALRD	Association for Land Reform and Development
CHT	Chittagong Hill Tracts
DC	Deputy Commissioner
DLR	Dhaka Law Reports
GoB	Government of Bangladesh
HDRC	Human Development Research Centre
LA	Land Acquisition
MJF	Manusher Jonno Foundation
NGO	Non-Government Organization
RBA	Right Based Approach
SAT	State Acquisition and Tenancy Act
ToR	Terms of Reference
UNO	Upazila Nirbahi Officer
UP	Union Parishad

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Purpose of the Report

The purpose of this report is to describe the activities which have taken place in the third quarter of the assignment period. The areas covered in this interim reports are: 1) Study progress status, and 2) Planning for the next phase of the study.

1. Introduction: Previous Quarters at a Glance

The major portion of the first quarter (i.e., February-April 2011) of the study period was utilized mainly for finalization of the methodology. At the very onset of the study, the team leader and a small team of some core consultants interacted several times in long brainstorming sessions to have a lucid understanding on the assignment and to fix the next work plan. When a consensus was build among the core team in consultation with MJF, then the study procedure was formally presented to the steering committee meeting at MJF office. With the comments and suggestions from the participants of the steering committee meeting, necessary modifications were done in the study implementation planning. In the first quarter of the assignment, the major heads of task done at HDRC were as follows: a) Working meetings among team members; b) Arrangement of logistics at HDRC premise; c) Deployment of Research Associates and Research Assistants ; d) Collection of legal and other relevant documents; e) Compilation of laws and relevant documents; f) Contract with relevant Ministries and Agencies; & g) Presentation at the Steering Committee¹.

At the second quarter (i.e., May-July 2011) the study period was being used mostly in intense reviewing of the relevant laws and documentation of them by the core team members. The study was formally inaugurated through a launching ceremony held on 12th May 2011 at Dhaka University Senate Building. People from different communities, Minister, Member of Parliament, NGO representatives, legal experts, economists, officials of public administration, Government representatives, teachers, and students actively participated at the program². In the second quarter of the assignment, all the relevant laws were dichotomized into 19 (nineteen) broad categories for operational convenience. The categories were as follows: 1) Abandoned property; 2) Char land; 3) Debottor property; 4) Khas land; 5) Land acquisition; 6) Land administration; 7) Land management; 8) Land of indigenous people; 9) Land of religious minorities; 10) Land recording; 11) Land reform; 12) Land registration; 13) Land survey; 14) Land use policy; 15) Policies (relevant); 16) Transfer of property; 17) Trust; 18) Vested property; and 19) Waqf. In the second quarter, five from the above nineteen topics, had been selected for critical review and documentation. Five sub-teams have been formed under the close guidance and supervision of the team leader Prof. Abul Barkat. The topics reviewed in the second quarter are the following ones: 1) Khas land; 2) Land acquisition; 3) Land of indigenous people; 4) Land registration; and 5) Waqf. The progress in the second quarter was presented by a Power Point Presentation³ in the Steering Committee Meeting by HDRC team.

¹ A report titled "First Quarterly Progress Report", describing the activities that took place in the first quarter of the assignment was submitted to MJF by HDRC on April 30, 2011.

² The program was chaired by Shaheen Anam, executive director of MJF, and Prof. Abul Barkat presented the details regarding the study. The Chief Guest of the program was Honorable Minister, Mr. Rejaul Karim Hira, Ministry of Land, GoB. The other honorable designated speakers were: Advocate Muzammel Haque, MP, and Chairman of parliamentary standing committee for Land, Mr. Abdur Rouf, Deputy Secretary, Ministry of Land, GoB, Prof. Sadaka Halim, Information Commissioner, Information Commission, GoB.

³ The presentation was made on July 28, 2011 at MJF HQ. The Power Point Presentation is shown in Annex 3.

Box 1.1: Objectives of the Study***Broad Objectives***

1. To take stock of all the land laws of Bangladesh and relevant land-related documents.
2. To identify and understand the aspects of mismanagement, mis-governance, exploitative and depriving situation in the land laws from the lense of poor, marginalized and landless people (including gender dimension).
3. To furnish draft laws based on the recommendations from the review of different laws.

Specific Objectives

1. To study all general land laws including land administration manuals.
2. To study all the relevant laws as may be necessary for the purpose of reviewing the land laws.
3. To study land law related relevant documents (i.e., literature, policies, journal, occasional papers etc.).
4. To study special land laws some of which are part of general laws as in the case of plain land adivasi's.
5. To study special land laws for adivasi's of CHT (Chittagong Hill Tracts).
6. To study ancestral laws, customary laws and tribal laws of different adivasi communities in both the CHT and plain land of Bangladesh (the customary laws of adivasis in other countries such as in India will also be studied as required).
7. To study *khas* land related laws and policies (including *khas* water bodies and different use of *khas* land, such as for shrimp cultivation etc.).
8. To study agricultural land and its land use policy.
9. To study land laws regarding religious minorities.
10. To study *char* land and its relevant policy.
11. To study land reform laws and policies (land reform experience of other countries such as Indian land reform including Operation Barga in West Bengal and experience in Kerala will be studied as required).
12. To study land management policies.
13. To study legal perspective of land surveys.
14. To study forest policy and laws (The forest acts of other countries such as Nepal, India will also be studied as required).
15. To identify and understand the aspects of mismanagement, mis-governance, exploitative and depriving situation in the land laws especially in terms of poor, marginalized and landless people.
16. To furnish draft laws based on the review of different laws, key informant interviews, focus group discussions, discussions, suggestions and other relevant documents.

2. Study Progress Status: The Third Quarter

In the *Second Quarterly Progress Report* it was planned that work on the four topics out of the five (i.e., *khas land*, *land acquisition*, *land registration* and *waqf*) will be completed and work on *land of indigenous* people will continue. It was also planned that work on four new topics (i.e., *abandoned property*, *vested property*, *char land*, and *debottor*) will be started.

With some alterations and modifications, research team of HDRC, has been able to continue in the Third Quarter in line with the planning. The status of the study in the third quarter is shown at a glance in the box below:

Box 2.1: The status of the study in the third quarter	
Completed draft work ⁴	Work on the following topics continues
<ol style="list-style-type: none"> 1. Land Acquisition 2. Land Registration 3. Waqf 4. Charland 5. Land Use Policy 6. Agricultural Khas land 	<ol style="list-style-type: none"> 1. Abandoned property 2. Debottor property 3. Non-agricultural khas land 4. Trust 5. Land Reform 6. Land Survey 7. Land laws of indigenous people*
<p><i>* The work on the land laws of indigenous communities in Bangladesh has been continuing. It will take more time to be completed, as the issue is titanic, caviling, and sensitive as well.</i></p>	

The review process and some of the findings/outcome of the above mentioned completed six topics have been delineated in the following sub-sections:

2.1 Review of land acquisition related laws

Introduction

Government needs land for various purposes⁵. But in most cases, ownership of the land is vested with the private individuals. Government takes the land from the private individuals through acquisition and requisition. Acquisition and Requisition of Immovable Property Ordinance, 1982 deals primarily with law of acquisition and requisition. Besides this Ordinance there are many special laws regarding acquisition and requisition.⁶ Acquisition, in every case, means the transfer of ownership.⁷ Concept of acquisition has an air of permanence and finality in that there is transfer of the title of the original holder to the acquiring authority or the Government.⁸ On the other hand, the concept of requisition merely taking of domain or control over property without acquiring rights of ownership. From the nature of things, it is only of a temporary duration.⁹ Article 42 of the Constitution implies that land cannot be acquired without compensation.¹⁰ Section 3 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 reveals that land is acquired for the purpose of public interest. Provisions for compensation have been spelt out in Sections 7-10. From the above point of view it is evident that process of acquisition and requisition has an express linkage to the right to property of the people. Now this right is violating in many ways for the

⁴ Each of the topics has been viewed as an individual chapter of the research report. The outline for each of the topics is shown in Annex 1. In this report, each section only shows some glimpse of the original work. All the sections of the reviewed laws, all tables, all figures, all analysis are not given in this progress report.

⁵ Land can only be acquired from the people for public purposes.

⁶ Following example can be cited in this regard: Emergency Acquisition Act, 1989; Jamuna Multi Purpose Bridge Project (Land Acquisition) Act, 1995

⁷ Dwarkadas Vs. Sholapur S & Co.; AIR 1951 Bom 86.

⁸ Brij Narain Vs. Union of India; AIR 1988 Delhi 116

⁹ Ibid.

¹⁰ (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law. (2) A law made under clause (1) shall provide for the acquisition, nationalisation or requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate.

lacunas¹¹ of the Acquisition and Requisition of Immovable Property Ordinance, 1982. Receiving of notice not timely, under valuation of land, delay in getting compensation, corruption and malpractices of officials, lengthy procedure of Arbitration and rehabilitation of evicted people are common form of problems. Therefore, the above Ordinance needs to be reviewed critically from the perspective of Right Based Approach (RBA).

The review process

- In the review process we have dealt with Acquisition and Requisition of Immovable Property Ordinance, 1982 and the rules made there under.¹²
- In Table 2.1, this Ordinance has been divided into three columns, in the first column we summarized the various provisions of the Ordinance and in the second column endeavored to find out the problems of those provisions from various perspectives, and in the last column made recommendations for resolution of those problems.
- In the Table 2.2, we discussed the Ordinance in four perspectives which are as follows:
 - i. Whether there is any contradiction within the provisions of this Ordinance and contradiction with any other laws enforceable in Bangladesh?
 - ii. Whether there is any ambiguity in the Ordinance?
 - iii. Whether there is any problem in practice?
 - iv. Whether the Ordinance follows Right Based Approach?
- In the Table 2.3, an attempt has been made to quantify the status of the Ordinance with reference to above mentioned key points. A scoring method¹³ giving values to the specified variables has been applied and scoring table has been prepared¹⁴.
- From the experience of review of acquisition related laws the following new drafting of laws were proposed: a) A Proposed Bill for Enactment of a new law relating to Acquisition and Requisition of Immovable Property ; b) Proposed Acquisition of Immovable Property Rules...; c) Proposed Requisition of Immovable Property Rules...; d) Proposed Instructions regarding Acquisition, 1997; and e) Proposed Rehabilitation and Resettlement Bill...

In the above drafting, Proposed Rehabilitation and Resettlement Bill is completely a new Bill and totally foreign in our jurisdiction. In case of some special projects like Bangabandhu Multipurpose Bridge there was an arrangement for rehabilitation and resettlement, but in general there is no such arrangement for rehabilitation and resettlement in the laws of the land. Drafting of new laws which are a Proposed Bill for Enactment of a new law relating to Acquisition and Requisition of Immovable Property, Proposed Acquisition of Immovable

¹¹ Lacunas embedded in law itself and also in the implementation level.

¹² We also concern with the Acquisition Rules, 1982 ; Requisition Rules, 1982 and various forms under these Rules

¹³ Scoring rule developed by HDRC is shown in Annex 2.

¹⁴ Scoring is made on the basis of gravity of problems. If the problem is seriously grave then we scored 5 out of 5. If no problem is found then score is 0. The total number of sections and preamble of the Ordinance is '51' and the number '4' is four key points i.e. contradiction, ambiguity, problem in practice and Right Based Analysis. Then aggregate total number is 51*5=255. The scoring in respect of each key point is: in contradiction 11, in ambiguity 18, in problem in practice 104 and in Right Based Approach 99. Hence, the summation of these figures gives us a total 232. This total figure of 232 should be treated as out of 1020 (255+255+255+255). It is implied that there are substantial contradiction, ambiguity, and problem in practice in the present Ordinance.

Property Rules..., Proposed Requisition of Immovable Property Rules... and Proposed Instructions regarding Acquisition, 1997 were based on existing laws of the land and problems identified there under.

People/institutions consulted

During the study period the team visited the field level offices and met informed/knowledgeable persons to know the real life situation. As part of the review, research team visited the Office of the Deputy Commissioner, Mymensingh and talked with Additional Deputy Commissioner (Revenue), Mymensingh; Additional Land Acquisition Officer, Mymensingh and Officials of Land Acquisition section. Team members had the opportunity to go through some Land Acquisition (LA) cases and strived to find out how acquisition laws are implemented in real field as well as identifying the problems in implementing the acquisition laws. Team members again visited office of the Deputy Commissioner, Tangail and exchanged views with concerned officials and sought suggestions from the key persons: a) Additional Deputy Commissioner (Revenue)- Abdus Sattar Sheikh; b) Additional Land Acquisition Officer- Nipotti Sheel; c) Kanungo, Land Acquisition section- MD. Hasan Ali Khan; d) Surveyor, Land Acquisition section- MD. Shamshul Hoque. They put forward valuable suggestions to develop the acquisition and requisition related laws. In Tangail we talked with some interested persons who were affected by the acquisition and requisition. As part of the field visit, the team also visited the office of the Deputy Commissioner, Dhaka and sought suggestions from the officials of land acquisition. Additional Land Acquisition Officer Mr. Bibek Anand also put forward some valuable suggestions.

During our field visit we availed the opportunity to discuss with the following people who were reported to be suffered by land acquisition: 1) Md. Abdullah Pramanik, Former village: Delutia, Present village: Horina P.S.: Ghatail, District: Tangail; 2) Md. Tofazzal Hossain, village: Dhonbari khaspara, P.S.: Dhonbari, District: Tangail; 3) Md. Abdullah Pramanik, village: Dhonbari khaspara, P.S.: Dhonbari, District: Tangail; 4) Md. Shahid, Former village: Delutia, Present village: Horina P.S.: Ghatail, District: Tangail; and 5) Md. Kawser, Former village: Delutia, Present village: Horina P.S.: Ghatail, District: Tangail.

Difficulties faced

- Lack of literature which analyzes the laws relating to acquisition in the light of Right Based Approach.
- No accurate data about the total amount of acquisition at national level is available.
- Proper filing system about total amount of land which has been acquired during last 5 years found absent in relevant offices (e.g., in the office of Deputy Commissioner, Mymensingh, even no register is maintained in this regard; there is no computer facility in the Land Acquisition Section of that office).
- Commissioner, Tangail has been provided with two or three computers. These are yet to be made functional.
- People who suffered by land acquisition did not want to respond regarding corruption. They were rather frightened to tell anything about corruption. It is presumed that they thought about victimization in case of disclosure about corruption and also names of the officials involved in corruption.

Example of review

Table 2.1: Acquisition and Requisition of Immovable Property Ordinance 1982: Problems identified and recommendations

Section No. Preamble	Content	Problems identified	Recommendations
3. Publication of preliminary notice of acquisition of property	Whenever it appears to the Deputy Commissioner that any property in any locality is needed or is likely to be needed for any public purpose or in the public interest, he shall cause a notice to be published at convenient places on or near the property in the prescribed form and manner stating that the property is proposed to be acquired	<ul style="list-style-type: none"> ✓ Notification is not made properly. Affected persons do not receive notice of acquisition. ✓ Notice is not served rather the notice is published. This notice is inadequate in the sense that public do not get the notice properly which affect the right to hear the people. However, provision of serving of notice is present in the Article 34 of Instruction relating to Acquisition, 1997. ✓ Publication of notification is not made in national or local newspapers. ✓ Notification is not uploaded in the website(District web portal and website of Ministry) ✓ No reference for establishment of acquisition committee/committees and their terms of reference. ✓ Two options, 'needed' or 'likely to be needed', cause problems in many cases. Deputy Commissioner used both options in one case. (See Sankar Gopal Chatterjee 41 DLR 326) ✓ For giving of compensation, time is counted from the publication of notice under section 3. It is seen that a long time is required, in many occasions, for the approval of the Land Acquisition case. But the valuation is made on the basis of the average price of preceding 12 months before immediate publication of notice under section 3. As a result, the recent or present value is ignored. 	<ul style="list-style-type: none"> ✓ Notification should be made wide, incorporating beating of drums in hats and bazaars, posting of notices at UP offices, union land offices, schools, use of TV, Radio, and newspapers(one local and another national). ✓ Upload in the website. ✓ Important information on land acquisition and related matters should be produced for the people in a simple booklet and widely disseminated. ✓ Notice under section 3 may be published along with a map. ✓ The option 'likely to be needed' may be curtailed.
7. Award of compensation by Deputy Commissioner	Deputy Commissioner shall proceed into the value of the property at the date of the publication of the notice and shall make the award.	<ul style="list-style-type: none"> ✓ There is a universal dissatisfaction with valuation; affected households/persons face the problem of undervaluation. ✓ Even in case of initial satisfaction over valuation, subsequently satisfaction evaporates with galloping land price inflation as because acquisition continues for a longer period of time. ✓ Present system is faulty; it takes into account average value of the deeds executed in the office of the local sub-registrar during the last one year. Under valuation of land is often made. ✓ Insufficient arrangement to address grievances of affected persons. ✓ The process of realizing compensation is time consuming and costly. ✓ Though there is a time frame under different sections but this are not followed strictly. Rather these are left at the whims of officials. ✓ Public consultation does not take place systematically. Public participation is 	<ul style="list-style-type: none"> ✓ A district level committee is to be framed to assess and make a valuation of the land of different categories on Upazila basis. ✓ Consultation procedure has to be made more systematic and organized. All interest groups must be met separately and jointly. ✓ Separate consultation must be made with vulnerable groups. ✓ A 'Public Information Cell' shall be set up by the Project Executing Agency in the office of the Deputy Commissioner, ensuring easy access to all affected persons. This may be established at the early stages and for the purpose of dissemination of project related information. ✓ The projects must be explained in clear and unambiguous terms and its costs, benefits, and funding arrangements, duration of acquisition time fully stated. ✓ At the local level public meetings should

Section No. Preamble	Content	Problems identified	Recommendations
		<p>not ensured properly. Public awareness meetings are not arranged.</p>	<p>be held where public representatives and concerned officials explain the project in clear and simple terms.</p> <ul style="list-style-type: none"> ✓ Affected persons are to be made aware about the time frame under different sections of the Ordinance and officials must follow this time frame; otherwise they should be made personally liable for delay and causing public sufferings.
<p>8. Matters to be considered in determining compensation</p>	<p>In determining the amount of compensation following things shall be taken into consideration: market value of the property at the date of publication of notice, standing crops, damage for severing of the property, injuriously affecting other properties, if compelled to change the residence, diminution of profits</p>	<ul style="list-style-type: none"> ✓ Location of homestead and other establishments are not taken into consideration properly. ✓ No reference of compensation regarding transfer, registration fees and taxes is specified. ✓ Classification/types of land in the project areas by productive value, income from the land and taxes paid for land had not taken into consideration. ✓ Fertility of land is not taken into consideration ✓ Matters under this section include factors of economic significance but social factors like the way of life, culture, tradition, customary rights of interested parties etc. are not included. ✓ No provision for rehabilitation of affected persons. ✓ No arrangement for replacement costs for lost assets, relocation assistance, and resettlement and restoration of income in post-resettlement period. ✓ No provision for i) persons below nationally defined poverty line ii) indigenous or tribal people, iii) landless and marginal farmers v) people with disability vi) elderly. ✓ Inventory is not made locally. Sometimes it is made sitting in the office in connivance with unscrupulous officials. ✓ Existing updating of land records and registration of transfer of deeds and mutation system is lengthy. Even after transfer of mutation takes a long time. As mutation takes a longer time, the record of rights still contains the names of the persons who have already transferred the land. Evaluation of compensation depends on this system. As a result the compensation process becomes complex. ✓ Sometimes public works Department delayed the procedure of valuation. This ultimately prolongs the acquisition process. ✓ Sometimes sale price is not found in the Sub-registration. If the price of any mouza is not found than price of adjacent mouza cannot be taken as there is no arrangement regarding this 	<ul style="list-style-type: none"> ✓ The compensation amount should be estimated taking into consideration the existing market price of land and also the establishments located in those lands. ✓ A committee may be formed, for fixation of common valuation, headed by the ADC (Revenue) and taking member from Sub-Registrar of all Upazila and Upazila Chairman of all the Upazila of that District. This Committee will fix the price according to Mouza. In fixing the price they will not take into consideration abnormally high price and abnormally low price. ✓ If the price of any mouza is not found than price of adjacent mouza can be taken into consideration. ✓ Classification/types of land in the project areas by productive value, income from the land and taxes paid for land also needs to be taken into consideration. ✓ Along with market price, cost regarding transfer, registration fees and taxes are to be considered. ✓ Valuation of land made by the proposed district level committee is to be given due consideration. ✓ Fertility of land need to be taken into consideration. ✓ The social factors e.g. the way of life, culture and traditions, customary rights of interested parties need to be included. ✓ Additional benefits need to be paid for i) persons below nationally defined poverty line ii) indigenous or tribal people , iii) landless and marginal farmers v) people with disability vi) elderly. ✓ Person Interested about government leased land will be eligible for partial compensation for loss of access to land and establishments developed by them. ✓ People who are resettled must be able, through income and livelihood restoration programs and other supports as may be required, to restore or improve upon their level of living. ✓ Livelihoods restoration and improvement programs shall be implemented through appropriate local income generation initiatives under the project involving the NGOs. ✓ Separate Resettlement Plan needs to be made along with Land Acquisition Plan. ✓ Income restoration plan will be time bound with clear targets/ goals that can be

Section No. Preamble	Content	Problems identified	Recommendations
			<p>measured to assess the pre- and post-project well being. The interested person shall be provided necessary and appropriate trainings for development and adjustments of life skills, income generation schemes, entrepreneurship skills so that these interested persons can take up self-employment ventures.</p> <ul style="list-style-type: none"> ✓ All interested persons shall be identified through census to be conducted locally by the NGOs having expertise in this area. ✓ Project developers shall be obligated to propose to interested person undergoing resettlement more than one option by which to restore their livelihoods, including providing the relocation site with all civic amenities, where appropriate or necessary. The multiple options for resettlement may include i) self-relocation with all eligible resettlement benefits and assistance ii) relocation to resettlement site iii) relocation of business to newly built market/shopping complex. ✓ Appropriate legal and institutional arrangements shall be brought into place for effective planning and management of resettlement in line with the aims and objectives of this policy. <u>Arbitrator may be empowered to supervise the status of these entitlements.</u> ✓ Rule 8 of the Acquisition Rule, 1982 may be amended. A Sub- Assistant Engineer may be appointed in the Land Acquisition section of the office of the Deputy Commissioner for the valuation of the any building, including pucca, kutcha, . ✓ The freedom of access by aggrieved parties to the concerned and their freedom to carry out rites, ceremonies or their activities of cultural signification on the land in accordance with their traditions. ✓ A process is to be devised so that updating of all land title records is made. ✓ Computerization of the land records system. ✓ Inspector General of Land Registration may be brought under the Ministry of Land. ✓ Price escalation factor needs to be considered.

Table 2.2: Acquisition and Requisition of Immovable Property Ordinance 1982: Contradiction, ambiguity, problem in practice, and compliance with basics of rights

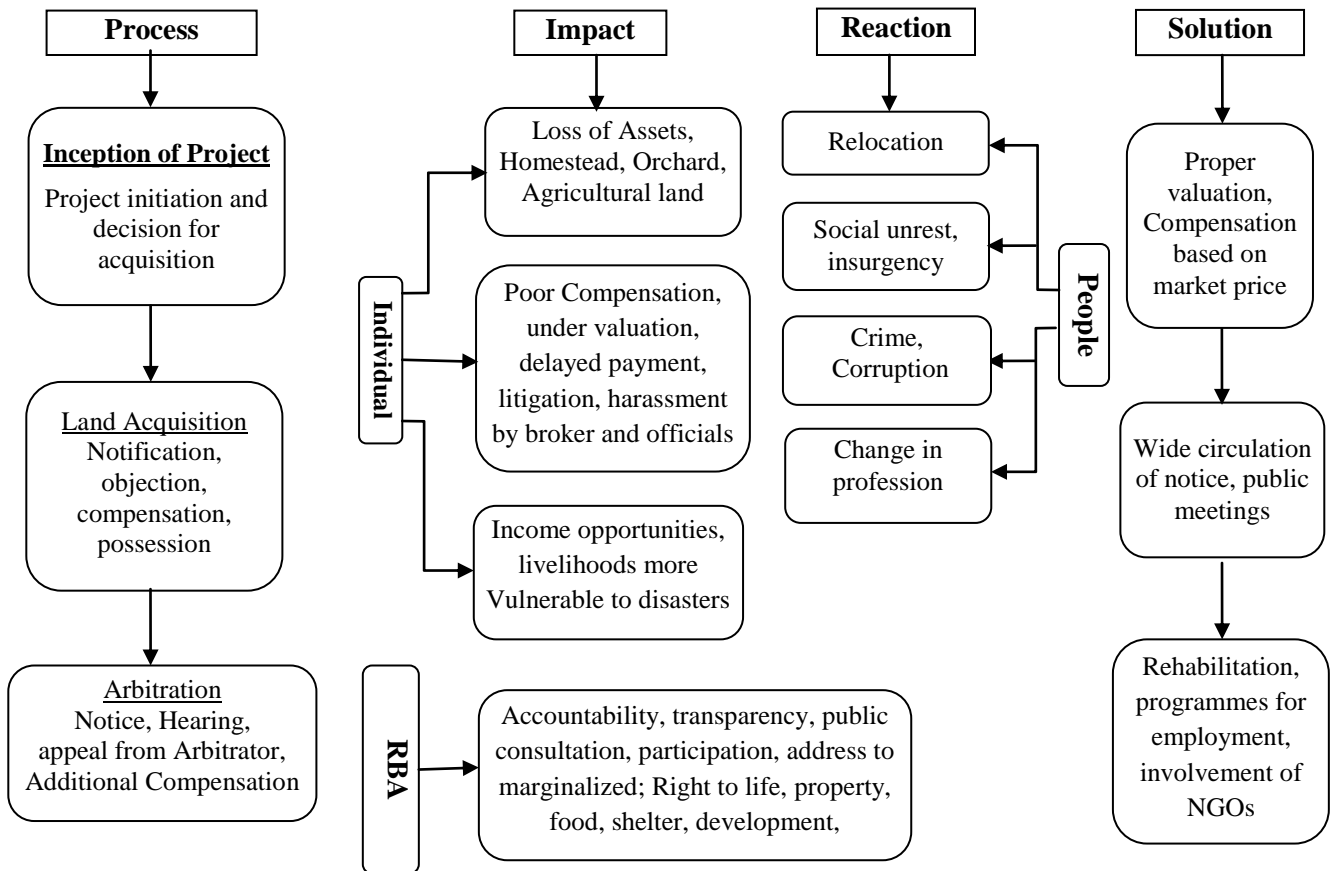
Contents	Contradiction	Ambiguity	Problem in Practice	Compliance with basics of rights
3. Whenever it appears to the Deputy Commissioner that any property in any locality is needed or is likely to be needed for any public purpose or in the public interest, he shall cause a notice to be published at convenient places on or near the property in the prescribed form and manner stating that the property is proposed to be acquired	Not found	Using two terms i.e. needed or likely to be needed creates ambiguity.	All affected persons do not receive notice of acquisition. Publication of notification is not made in national or local newspapers	Being heard is a basic human right. Participation of people is absent. Accountability of concerned officials not present.
7. Deputy Commissioner shall proceed into the value of the property at the date of the publication of the notice and shall make the award.	Not found	Not found	a. Present system is faulty; it takes into account average value of the deeds executed in the office of the local sub-registrar. Under valuation of land is often made. b. The process of realizing compensation is time consuming and costly.	a. Effect the right to property of affected person. b. Public participation is not ensured properly c. Though there is a time frame under different sections but this are not followed strictly.
8. In determining the amount of compensation following things shall be taken into consideration: market value of the property at the date of publication of notice, standing crops, damage for severing of the property, injuriously affecting other properties, if compelled to change the residence, diminution of profits	Not found	Not found	a. Location of residence and other establishments are not taken into consideration properly. b. No provision for rehabilitation of affected persons. c. Social factors like the way of life, culture, tradition etc. are not included.	a. Affect right to life, property

Table 2.3: Acquisition and Requisition of Immovable Property Ordinance 1982: Total score for Rights Based Approach

Content	Score (Highest =5; Lowest =0)				
	Contradiction	Ambiguity	Problem in Practice	Whether compliance with basics of rights	Total Score (Out of 20)
2. Definitions of Arbitrator, Deputy Commissioner, owner, Person interested, prescribed, property, requiring person.	0	0	5	5	10
7. Deputy Commissioner shall proceed into the value of the property at the date of the publication of the notice and shall make the award.	0	0	5	5	10
8. In determining the amount of compensation following things shall be taken into consideration: market value of the property at the date of publication of notice, standing crops, damage for severing of the property, injuriously affecting other properties, if compelled to change the residence, diminution of profits	0	0	5	5	10
Total	0	0	15	15	30

- ✓ *Best scenario= No. of indicator: 3 * No. of variables: 4 * Score: 0 = 0*
- ✓ *Worst scenario= No. of indicator: 3 * No. of variables: 4 * Score: 5 = 60*
- ✓ *If, converted into a scale between 0 (best) – 100 (worst) then, it becomes = (30/60) * 100 = 50*

Figure 2.1: An Analytical framework on Land Acquisition: its impact on People and their rights, reaction of people and proposed solution



2.2 Review of land registration related laws

Introduction

Land registration generally describes systems by which matters concerning ownership, possession or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title, facilitate transactions and to prevent unlawful disposal. The information recorded and the protection provided will vary by jurisdiction¹⁵.

The process of Land registration is normally guided by Acts in every country. Bangladesh has also incorporated an act in this respect called Registration act, 1908 which, later on, has gone through various amendments, and is the guiding law in this field in Bangladesh.

But the present land management system of which land registration is an inextricable part has been causing not only mismanagement in land administration but also social unrest, corruption and chaos in family life. The present land registration system in the country is terribly complicated. Land disputes are the main reason for not less than 70 to 80 percent civil and criminal cases. At present about 3.2 million lands dispute cases are pending in courts. This huge figure does not include millions of the aggrieved who are terrorized by the touts to remain silent or not strong enough to approach the courts for litigation. Shoddy and hackneyed management of land registration system is one of the main reasons for fraud and manipulation in land ownership and has given birth to land grabbers and their cohorts.

¹⁵ http://en.wikipedia.org/wiki/Land_registration

Corruption is rampant in Bangladesh. In 2009, the country ranked 139 out of 180 in Transparency International's Corruption Perceptions Index. Of the various sectors in Bangladesh that are affected by corruption, the Land Management System is among the worst. Corruption has been highlighted as the main reason behind slow, poor quality and faulty land related services in the country.

As evident from the reality, the people of Bangladesh are harassed in many ways when they go for registration. Now, it has become expedient to review the appropriateness of present law. The information generated by research initiatives to date has created a basic understanding on the issue of registration system. But this research works critically reviews the Registration Act, 1908 and helps to draft a new Registration Act by recommending specific measures to overcome the problems identified keeping in mind the pro-poor, pro-women, pro-marginalized and rights based approach.

The review process

- ✓ At first, the Registration Act, 1908 has been scrutinized in detail.
- ✓ Each of its provision is subject to the review process. In every section an attempt is made to find out the problems and make recommendations.
- ✓ In finding out the problems, the following things have been taken into consideration. 1) Whether the provision is ambiguous or not; 2) Whether the provision is in conflict with any other law or not; 3) Whether the provision can be implemented in practice or not; and 4) Whether the provision is in accordance with right based approach or not.
- ✓ If the provision is found ambiguous or conflicting with any other law or ineffective in practice or not in accordance with right based approach, then that is identified as a problem.
- ✓ In making recommendations, the problem and context of Bangladesh have been taken into consideration.
- ✓ Then a table, comprising three columns has been formed. In that Table 2.4, every section of the act has been divided into three parts: 1) Content; 2) Problem in practice; and 3) Recommendations.
- ✓ In Table 2.5, the act is scrutinized from four perspectives for identifying whether there is: 1) Any contradiction within the provisions of this Act and contradiction with any other laws enforceable in Bangladesh; 2) Any ambiguity in the act; 3) Any problem in practice; and 4) Compliance with basics of rights.
- ✓ In Table 2.6, the status of the Act has been quantified with reference to the requirements mentioned above. A scoring method of imputing values to the specified variables has been applied and scoring table has been prepared¹⁶.
- ✓ Then, a framework on Registration process (Figure 2.2) has been designed.

¹⁶ Scoring is made on the basis of gravity of problems. The total number of sections and preamble of the act is 110. For estimation, four variables has been used- contradiction, ambiguity, problem in practice and right based approach. For each of the variables if the problem is serious, then, 5 out of 5 has been scored and if no problem is found then the score is 0. Thus, for each of the section or preamble has gained score between highest 20 (worst situation) and lowest 0 (best situation). Thus, for 110 sections or preamble the score in case of worst situation will be 2200 (i.e., 110*20) and for the best situation the score will be 0 (110*0). Hence, the summation of these figures gives us a total 112 Out of 2200. If this is converted into a scale of 0-100 (where 0=best situation; 100=worst situation), then the score becomes 20. This implies that there are some contradiction, ambiguity, and problem in practice in the present Act.

People /institution consulted

Apart from these, some information were also congregated from the concerned offices and personnel.

- ✓ We went to the office of Inspector General of Registration at Dhaka in this respect. There we talked with Mr. Samad who is the Additional Inspector General of Registration. He informed us about the problems of our registration system and gave his opinion as recommendation in this respect. According to him, digitalization of the registration process is the prime need of our country.
- ✓ A field trip was made to the Sub-Registrar Office of Naryanganj. The team started their work to find out the problems in practice. We talked with different persons in this regard, such as: a) Mr. Abdus Samad, the Sub-Registrar of Narayanganj; b) Mr. Aleem (pseudo name), a deed writer; and c) persons who came to registration office for registration or searching.
- ✓ To know the actual situation, we consulted with Mr. Mirza Md. Azim Haider, Assistant Program Officer of Association for Land Reform and Development (ALRD) on 8.09.2011 who gave us many valuable advises to eliminate the miseries of people in case of registration.

Difficulties faced

We have faced some difficulties in conducting the present study. We have also experienced these both at the desk and practical implementation level. Some of those are highlighted below:

- ✓ Materials insufficient for extensive research in this area
- ✓ Relevant souvenirs, brochures, handbooks etc. are also few in number
- ✓ Registration offices are overcrowded. This makes collecting information extremely gawky
- ✓ Service recipients who come to Registration Office are too scared /defensive to talk. They are averred to disclose their problems due to dissonant behavior of the officials
- ✓ Registration Manuals of our neighboring countries (e.g., West Bengal Registration Manual) need to be visited. We are in the process of collection.

Example of Review

Table 2.4: Registration Act, 1908: Problems identified and recommendations

Content	Problem	Recommendation
<p>Section 52 of the Registration Act, 1908 states that every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of it's admission.</p>	<p>The old <i>Balam</i> system is still here. <i>Balam</i> is a book where the description of the registered deed or document is kept in short When a document is registered, it's description is inserted into the <i>balam</i>. After the insertion the document is handed over to the presenter. In practice, it is seen that it takes so many days for insertion of the information into the <i>balam</i>. So, it causes delay in getting</p>	<p>The old <i>Balam</i> system should be abolished to make the process comfortable. A new section which can be introduced is: 'Notwithstanding anything contained in the act, the registering officer shall refuse to register any document presented to him for registration unless such document is accompanied by a true copy thereof.' The authority shall sign the two documents. Then original copy is given back to the</p>

	<p>registered document. As a result, the process of registration has become a time consuming process. People are harassed by this complicated process every day.</p>	<p>presenter and the true copy is deposited in the office. The file where the document is kept in the office will serve the purpose of <i>Balam</i>. But it makes the process easier and less time consuming. People will get back the document in time.</p> <p>So, The section:52 can be such: subject to the provisions contained in section 62, where a document is admitted to registration, a true copy thereof shall, without unnecessary delay, be filed in the appropriate book according to the order of its admission.</p>
<p>FROM NO.40 of Appendix 1 is a sample form of transferring property under section 22A of Registration Act, 1908.</p>	<p>Deed writer’s signature is incorporated in the FORM NO.40. Generally, people go to deed writers for writing their deed as there are no specific forms for many documents. Professional Deed Writer acts as a medium of corruption. They take excessive money from the common people as bribe of the registrar. From the interview of a deed writer, it has been known that half percent of every document’s value is given to the sub-registrar by the deed writer. Besides this, they charge people more highly for their benefit. Deed writers have an association. The association determines the fees and none is able to registrar his document by giving less than the fees fixed by the committee. The committee is very strong and powerful and doing unlawful job openly. Registering authority always supports this gang because they are the medium of their unlawful income.</p>	<p>In the FORM, the provision for the signature of the deed writer should be omitted. They should not be made an essential part of registration process.</p>
<p>Section 16 of Registration Act, 1908 states that The Government shall provide for the office of every registering officer the books and fire-proof boxes necessary for the purposes of this Act.</p>	<p>Our registration system is corrupted. Bribes are exchanged openly in the registration offices. Digitalization of such organizations is urgent because massive use of information technology can curb corruption and expedite development. Our system is very much weak in this respect and need to be improved.</p>	<p>This section:16 should be such: ‘The Government shall provide for the office of every registering officer the books, fire-proof boxes and also the information processing and storage devices like computer and scanners along with the software prescribed by the Inspector-General, for purposes of this Act from time to time necessary’. Another section which if inserted would be very much helpful to serve the purpose in this respect. The section is as such: ‘(1)Notwithstanding anything contained in section 16, the books provided under subsection (1) of that section may also be kept in computer diskettes or in any other electronic form in the manner and subject to the safeguards as may be prescribed by the Inspector-General with the sanction of the government.’</p>

Table 2.5: Registration Act, 1908: Contradiction, ambiguity, problem in practice, and compliance with basics of rights

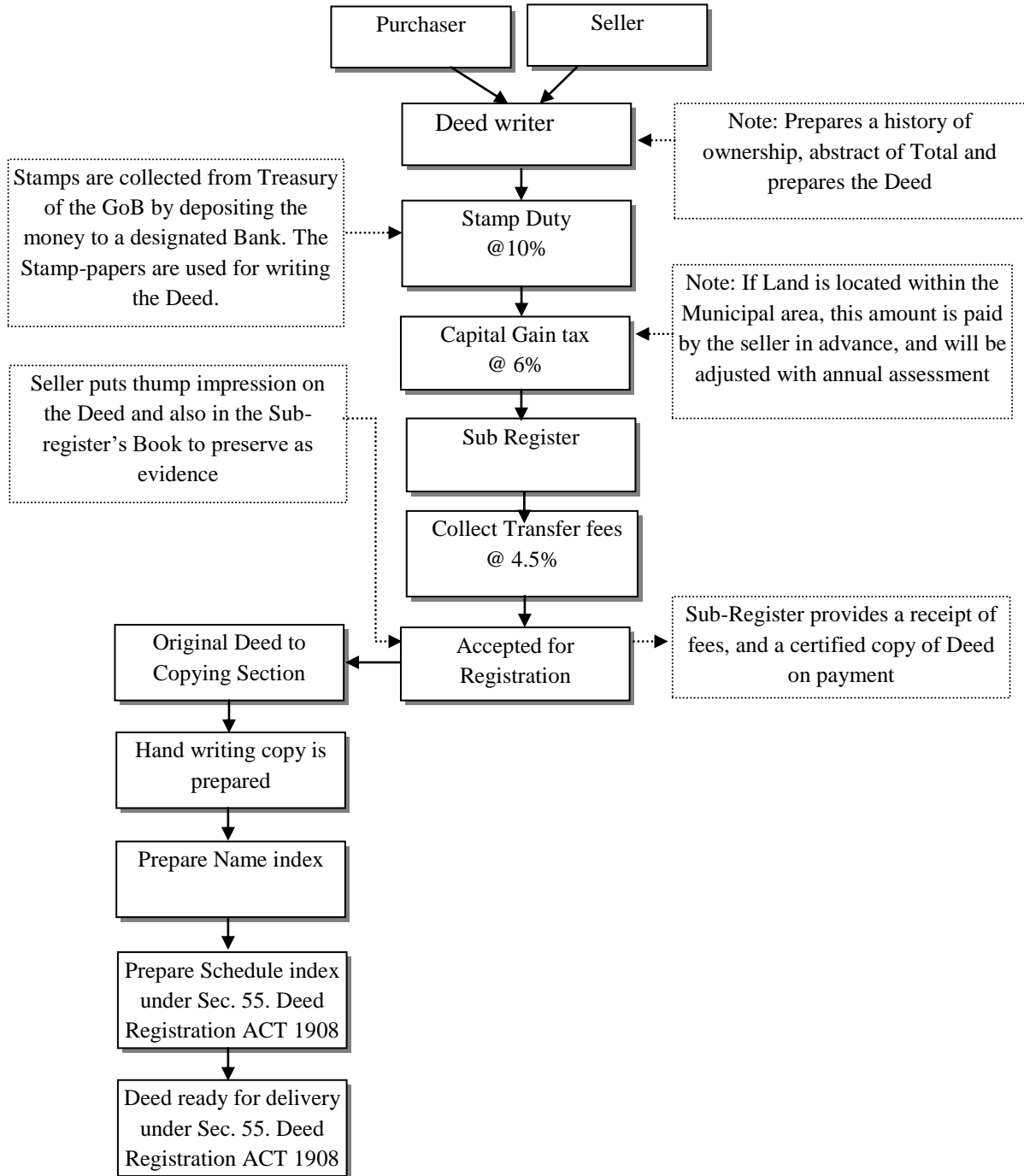
Content	Contradiction	Ambiguity	Problem in Practice	Compliance with basics of rights
<p>Section 52 of the Registration Act, 1908 states that every document admitted to registration shall without unnecessary delay be copied in the book appropriated there for according to the order of it's admission.</p>	Not found	Not found	The process is too complicated. Ultimately, it results in wastage of time and money.	<ul style="list-style-type: none"> Accountability is not ensured Transparency is absent Effective participation is absent
<p>Section 16 of Registration Act, 1908 states that The Government shall provide for the office of every registering officer the books and fire-proof boxes necessary for the purposes of this Act.</p>	Not found	Not found	<p>In many ways this obsolete system makes harassment to the people. The registration process is operated manually. At present, "Sub-register's Office" follows the age-old system of writing down everything related to land e.g. who owns what, where, how much, and what is grown in which land in illegible and archaic manners. These land record and registration are filled with tattered and handwritten paper documents and registers, many of them dates 100 years back, most of them are already damaged and brittle due to humidity or half-eaten by book lice, wood worms, termites, mice and cockroaches.</p> <p>This manual system has made the affairs cumbersome. Many mistakes are made due to the manual system. This Shoddy and hackneyed management of registered documents is mainly responsible for corruption, fraud and manipulation in land ownership and has given birth to land grabbers and their cohorts.</p>	<ul style="list-style-type: none"> This process can not ensure transparency Accountability of officials is not present. Participation of aggrieved person is not ensured.
<p>Section 10 of the Registration Act states that in the absence of Registrar or vacancy in his office, the Inspector-General may appoint any person in this behalf, or, in default of such appointment, the Judge of the District Court.</p>	Not found	Not found	<p>Conditions of the appointment are absent. Any person should not be there as a criterion for any post.</p>	<ul style="list-style-type: none"> Absence of Participation No accountability Not transparent process.

Table2.6: Registration Act, 1908: Total score for Right Based Approach (RBA)

Contents	Score (Highest =5; Lowest =0)				
	Contradiction	Ambiguity	Problem in practice	Whether in compliance with basics of rights	Total Score (out of 20)
Section 52 of the Registration Act, 1908 states that every document admitted to registration shall without unnecessary delay be copied in the book appropriated there for according to the order of it's admission.	0	0	5	5	10
Section 16 of Registration Act, 1908 states that The Government shall provide for the office of every registering officer the books and fire-proof boxes necessary for the purposes of this Act.	0	0	5	5	10
Section10 of the Registration Act states that in the absence of Registrar or vacancy in his office, the Inspector-General may appoint any person in this behalf, or, in default of such appointment, the Judge of the District Court.	0	0	3	4	7
Total	0 out of 15	0 out of 15	13 out of 15	14 out of 15	27 out of 60

- ✓ Best scenario= No. of indicator: 3* No. of variables: 4 * Score: 0 = 0
- ✓ Worst scenario= No. of indicator: 3* No. of variables: 4 * Score: 5 =60
- ✓ If, converted into a scale between 0 (worst) – 100 (best) then, it becomes = (27/60) * 100 = 45

Figure 2.2: A framework on land registration process



2.3 Review of waqf related laws

Introduction

Waqf is an Arabic term, which means hold, confinement or prohibition. In Islamic jurisprudence the word *Waqf* is used in the meaning of holding certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective. This definition accords perpetuity to *Waqf*, i.e., it applies to non-perishable property whose benefit can be extracted without consuming the property itself. Therefore, *Waqf* widely relates to land and buildings. However, there can be *Waqf* of any type of property. In statutory law ‘*Waqf*’ is defined, The *Waqfs Ordinance 1962* defined it as follows:

“*Waqf*” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a *Waqf* by user, and a *Waqf* created by a non Muslim.¹⁷

The present study focused on identification of drawbacks of prevailing legal provisions and forming proposals for reformation.

The review process

- ✓ Collection of all legal instruments on *Waqf* in Bangladesh, books on *Waqf*, Articles published in national and international journals on the same.
- ✓ Perusal of the prevailing laws, by laws and case laws regarding *Waqf*.
- ✓ Consulting personnel of *Waqf* administration, *Mutawallis*, beneficiaries.
- ✓ Identification of problems in the prevailing laws from the view point of right based approach .
- ✓ Study of *Waqf* administration under different legal systems e.g. Indian, Malaysian and Egyptian legal system. Identification of typical and atypical factors between and among the legal systems. Identifying the provision which we can adopt in our *Waqf* administration with due objectivity.
- ✓ Preparing reform proposal (where seems necessary)¹⁸
- ✓ To have the idea of legal and practical aspect of *Waqf* administration and management we have gone through the relevant books available in Bangladesh. Articles published in different journals have been collected to know various dimensions in legal development.
- ✓ Collected enormous documents of complete listing of all *Waqf* estate in Bangladesh.

¹⁷ Section 2(10) of The *Waqf Ordinance 1962*.

¹⁸ Generally, the reform proposals are section based, at the same time some issues are not covered by respective provisions, distinct points of proposals are made.

People /institution consulted

- ✓ In the process of our perusal of legal provision we have tried to see the practical aspects of laws, that is implementation process and anomalies prevailing therein. In furtherance of this end, we have met and interviewed personnel of Waqf administration. People consulted so far are the following: a) Dr.Md.Hafizur Rahman Bhuiyan, Additional secretary, The Administrator of Waqf Bangladesh; b) Md. Aulad Hossain, Waqf Auditor, Mymensingh, Tangail; c) Munjur Ahmed, Waqf Inspector, Narayangonj, Munshigonj and Narsingdi.
- ✓ To consult with the officials and to see the practices of legal provisions, we have visited the Waqf administrators office situated in 4 ,Eskaton Road, Dhaka 1000, where they are operating both administrative and quasi judicial functions.
- ✓ In a visit to the office of Waqf Auditor, Mymensingh (Dealing with Mymensingh ,Jamalpur, Sherpur and Tangail District)¹⁹ the team observed the process of field level administration of Waqf.

Difficulties faced

- ✓ Lack of well-written books on prevailing application of Waqf related laws is a constraint to proceed with the research in this area. There is no compilation of Waqf related laws and judicial decisions in Bangladesh.
- ✓ There is no updated conclusive data regarding the total amount of Waqf estates in Bangladesh, the amount which is generally mentioned is of a survey made by The Bureau of Statistics in 1986.
- ✓ In the process of collecting amount of waqf estate, some officials of Waqf Administrator Office including Deputy Waqf Administrator were reluctant to give any information regarding amount of waqf estate.

Example of review

Table 2.7: The Waqf Ordinance 1962: Problems identified and recommendations

Prevailing legal provision	Problems identified	Proposed reform
<p>S. 20. Constitution of Committee:</p> <p>(1) The Committee shall consist of the Administrator as Chairman to and ten members be appointed by the Government of whom one shall be a mutawalli of Shia sect, and three shall be mutawallis of the Sunni sect, and the remaining six shall be from among the prominent, respectable and benevolent citizens of the Muslim community, well versed in Muslim Law.</p> <p>(2) The names of the members of the Committee, when appointed, shall be published by the Government in the official Gazette.</p>	<ul style="list-style-type: none"> • The terms prominent, respectable, benevolent are not defined anywhere in the ordinance, there is no guided mode of selecting people under this category. • Formation of the committee is delayed, as the Govt fails to select persons as the members of the committee .Influence by the aspirants of membership makes the process lengthy. • Participation of women in the committee is not ensured in the provision. 	<ul style="list-style-type: none"> ✓ Categories of members should be more specific. In rules under this law list of persons can be given. ✓ Tenure of the members should be designed in such a way that half of his/her tenure will overlap with succeeding member. ✓ Specific reservation of seat (s) for women.

¹⁹ The office of Mymensingh and Tangail Zone, 94, Kachijhuli Road, Mymensingh.

<p>S. 64. Action against trespassers and miscreants: (1) If a co sharer in a Waqf property or an individual beneficiary or any other person interested in a Waqf, or a stranger, creates disturbances or obstruction in the peaceful management of the Waqf or any institution attached thereto in any way, or disturbs the possession of a Waqf property by the Mutawalli or any person or a managing committee appointed by the Administrator for managing the said property, or commits trespass on any such property, the Administrator shall apply to the Deputy Commissioner, who shall evict the trespasser, or take such steps for preventing such disturbance or obstruction as he deems fit. (2) Any person evicted by the Deputy Commissioner under sub section (1) may, within three months from the date of his eviction, appeal to the District Judge against such order of eviction; and the decision of the District Judge on such appeal shall be final.</p>	<ul style="list-style-type: none"> • The process of eviction of trespassers in Waqf property is complex. The provision of application to the Deputy Commissioner makes it lengthy. Trespassers take refuge of this process. 	<p>✓ Administrator should have the power to make requisition for magistrates to evict trespassers and miscreants.</p>
<p>S. 82. Administrator may be made a party to a suit or proceeding regarding a Waqf on his application: In any suit or proceeding in respect of a Waqf or any Waqf property, whether instituted or preferred before or after the commencement of this Ordinance, the Administrator may intervene and shall, on his application, be added as a party and shall be entitled to conduct or defend such suit or proceeding on behalf of and in the interest of the Waqf.</p>	<p>✓ The process of making the administrator a party depends upon the application of administrator</p>	<p>✓ Administrator shall be a pro-forma defendant in every Waqf related case or proceeding.</p>

Box 2.2: Sample list of Waqf Estates collected at HDRC

According to the Waqf Administrator of Bangladesh, there are total of 13,827 Waqf Estate of Bangladesh (amounting of 606,107 acres of land). To do some exploratory research on the issue (apart from ToR of this assignment), HDRC has collected the details of the entire list (official) the Waqf Estates in Bangladesh. HDRC will computerize all the information, and make some further analysis to substantiate the issue.

জেলাওয়াসী ওয়াকফ এন্ড ট্রেস তালিকা :

জেলা : চট্টগ্রাম

থানা : হাট বাজারী

ক্রমিক	এন্ড ট্রেস নাম বা ওয়াকফের নাম	ই.সি.নং	ওয়াকফ সৃষ্টির তারিখ	তালিকাভুক্তির তারিখ	ওয়াকফের শ্রেণী	এন্ড ট্রেসের অবস্থান প্র. চিঠি নং	সম্পর্কিত তফসিল	আবানী	অনাবানী	প্র. জরিফ	শেডি	মন্তব্য						
১	হাজী আমিনুর রহমান	৮৮৮	১০/৬/১২৬৫ বাং	৯/১১/৩৭ইং	পারলিক	মানজিদ-১ মদ্রা সা-১	মৌ জা- উত্তর মদ্রা সা মৌ জি-ন্যাবাদ ১৪/৩/১৪২ খতিয়ান- ৬৮৯২, ৬৮৯৬-৬৮৯৭, ৬৯১০, ৬৮৯৯, ৬৮৯৯, ৬৮৯৬, ৬৯০২, ৬৯০১, ৬৯০৩, ৬৮৯১, ৬৮৭২, ৬৮৭৮, ৬৮৭৮, ৬৮৭৮, ৬৮৭৮, ৬৮৯৮, ১৫১২, ১৫১৩, ৩৩২, ৪৪৯৮, ২১৬৬/২৫১৪৫, ২৬১৮, ২৬১৪, ২২৮৫০, দাপ- ২৬১৫, ২৬১৬, খতিয়ান- ২৬১৭ মৌ জি-১৭৭০৫, ৩১২৮৬, ২১৮০৫, মৌ জি-নিকল মট, কুলগাঁও দাপ-৯০৬০, ৯০৫৪, ৯০৫৫, ৫৫২৩, ৫৫২৭, ৯০৫৭, ৫৯০৮৫, ৯০৭৬, ৯১৬০, ৯১৫৮, ৯০৪৭, ৯০৪৮, ৯০৪৮, ৯০৮৮, ৯০৮৮, ৯০৮০, ৯০৪১, ৯০০৫, ৮২৩৪, মৌ জি-১৪০৭, ১৪৫৭, ৬১, ২২৪৪, খতিয়ান-১৬৬০, ১৫৯২, ২৬৭, ২৭২, ১৪৯৭, ২১৭৯, দাপ-১০০২, ৫৬২৩, ৫৫৪৪, ১০৬২২/১০৬১৩, ১০৬১৪, মৌ জি-৩৪৩৯, ৩৭৯৯, ৩৭১৮, ২২২৪, ২৬২২৬, ম. জারক ২৬৩৫৬, ২৬৩১৫, ২৬৩১০, মৌ জি-আলীপুর ১/১/১৩২১, জে.এম-২৬ খতিয়ান-৩৬৮, ৩০৫, ৩৩৬, ৬৫৪, ৭৩৩, ২৯৭, ৫৪৯, ৩১২, ৪০, ৪১৭, ৮১, ৭৩২, ৭৫৫, ৫৬৭, ৫৭০, ৫২৫, দাপ-২২৯, ১২২২, ১১৪৬, ১১৩২, ১১৪২, ১১৪০, ১১৪১, ১১৪৩, ১১৬১, ১২২৯, ১২১৪, ৫৮৭, ৬০৯, ২৩৮, ২৭২, ২৭২, ৫৪০, ৫৪১, ১১১৭, ৬৪২, ১০৬৫, ১০৭৪, ১১৩৭, ১১৪৪, ১১৩৮, ১৬৮১, ১১৪৫, ৯৪৯, ১০৮৫, ১০৮৬, ৩৯৯	৭.৭১			৭.৭১	১০৮৮১	১০৮৮১	৬১	১০৮৮১	৬১	১০৮৮১	তালিকাভুক্তি দরখাস্ত নাই
২	হাজী দরবেশ আলী ও/এ	২৯২৮	২/৫/১৯২৯ইং	৩/৮/৩৮ইং	পারলিক	মানজিদ												
৩	আঃ হাভার গং	৩৯৯৩	১০/৫/৪৪ইং	৩১/৫/৩৫ইং	পারলিক	মানজিদ												
৪	মৌঃ আঃ বাবী	৪০৪০	২/৭/৩৪ইং	২৯/৫/৩৭ইং	আওয়ানী													

১৫

2.4 Review of charland related laws

Introduction

Bangladesh consists mainly of riverine and deltaic deposits of three large and extremely dynamic rivers entering the country: the Brahmaputra, Ganges and Meghna rivers. These mighty rivers originating in the Himalayas carry millions of tons of mud and sand every year on their journey to the Bay of Bengal and forming *chars* or accretions along the course of the rivers and at their confluence.

Char land comprises 1.2 per cent of the country's land area; 5 per cent of the country's population lives in the chars, 80 per cent of whom live in poverty. Absence of comprehensive land use policy, as well as widespread corruption in the land administration and outdated land laws, economic and political criminalization in the society- all these have created a vested parasitic interest seeking land grabbers who have been grabbing char land for years and decades, thereby accumulating land and assets making millions of char people landless and leaving them in poverty. In spite of their inborn rights on the lands char people have not been rehabilitated even after long forty years of independence, which clearly depicts the shameful state of human development of the country²⁰.

Presently charland is dealt with under sections 86 and 87 of the State Acquisition and Tenancy Act, 1950. According to section 86 the title of the diluvium land should prevail with the original owner subject to its re-appearance in situ within 30 years. But if it reappears after 30 years, then the ownership of this land will absolutely be vested with the government. The amendment of section 86 of SAT Act in 1994 re-imposed the provision of the title of the previous owners on the diluvium land subject to reform in situ within thirty years. When any land is gained from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it may be thus annexed, but shall vest absolutely in the Government of the People's Republic of Bangladesh and shall be at their disposal.

The review process

- ✓ The present study makes extensive review of existing literature in the field of char land management and settlement. A critical examination of the relevant laws and policies was made during the study period. Books, journals, handouts, working paper, websites constitute the basis of secondary information. Necessary rules and circulars were collected from published and unpublished materials of the Ministry of Land, Land Reforms Board, Land Appeal Board and other agencies involved in research on land issues. We have reviewed related provisions of State Acquisition and Tenancy Act, 1950.
- ✓ In Table 2.8, the provisions have been discussed under three heads:
 - i. Summarizing the related provisions of the Act.
 - ii. Identifying the problems of those provisions from the various perspectives.
 - iii. Making recommendations for resolution of those problems.

²⁰ Barkat, Abul and Roy, K, Prosanta and Khan, Shhnewaz, Md., Charland in Bangladesh: Political Economy of ignore Resource, First Publication, January, 2007, Published by Pathak Samabesh, Dhaka, p-24.

- ✓ In Table 2.8, we discussed the Provisions from legal perspectives to identify whether there is:
 - i. Any contradiction within the provisions of this Act and contradiction with any other laws enforceable in Bangladesh.
 - ii. Any ambiguity observed in the Act.
 - iii. Any problem in practice.
 - iv. Application of Rights Based Approach in the Act.

A proposed policy under the title Charland Management and Settlement Policy, 2011 has been formulated.

People/Institutions consulted

To understand the problems of the laws relating to charland and also the practical problems regarding the implementation of the laws in practice, we have talked to many persons working in the arena of land. For example, we can refer to our discussion with Mr. Mirza Azim Haider, Assistant Programme Officer, Association for Land Reform and Development (ALRD). We pursued to know different field level experiences relating to settlement of charland and difficulties there under.

Difficulties Faced

- ✓ Lack of reliable and recent data about the amount of Charlands in the country.
- ✓ No data is available on the amount of land which has been illegally occupied or grabbed by land grabbers and vested quarters.
- ✓ Limited research work on the char land so as to include legal aspects of the char land management in Bangladesh.
- ✓ Earlier research works available on this issue are not found to follow the Rights Based Approach. Research works on this issue have been conducted mostly on the sociological and economic considerations and consequences associated there in.

Example of Review

Table 2.8: The State Acquisition and Tenancy Act, 1950: Problems identified and Recommendations.

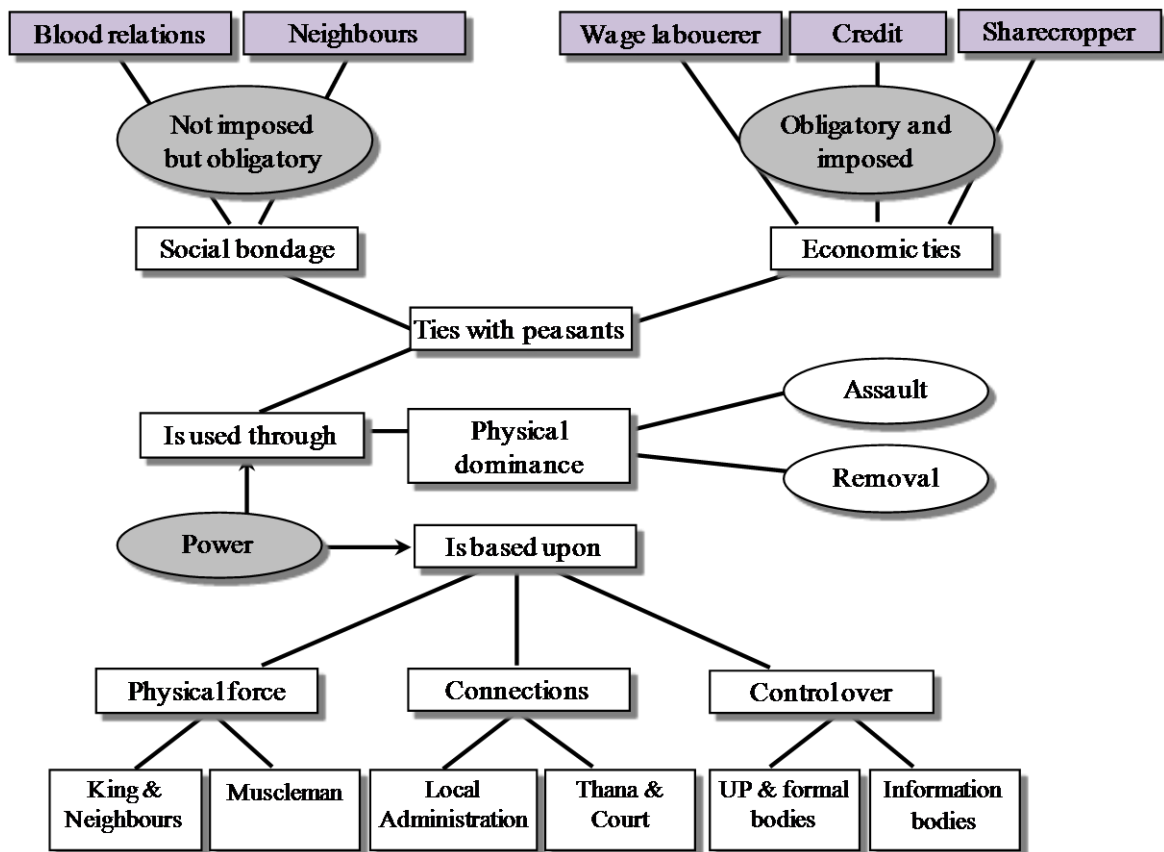
Article No	Content of the Provisions	Problems Identified	Recommendations
86	Abatement of rent on account of diluvion and subsistence of rights on the alluvium land reappeared in situ within thirty years of its diluvion.	Thirty years time limit regarding the alluvium land is superfluous and complex one. Since it is quite impractical to think that the owners of diluvium land would remain on the river bank or nearby without rehabilitation for long thirty years. The time limit as specified here is higher than the period mentioned in any of the earlier laws. This creates scope for the feudal position of the land grabbers. Every year a serious law and order situation is being created in the char land areas of the country due to forcible or illegal occupation. As a result, the tenacity and legality of the Act has been questioned.	Time limit for regaining the alluvium land should be reasonably shortened .Moreover, projects are to be undertaken by the government for the proper rehabilitation of the owners of diluvium land till the alluvion of their land. This should be implemented involving local elected representatives and the affected people. Besides, the records of the diluvium land should be maintained and protected by the concerned land officials.
87	When any land has been gained from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it may be thus annexed, but shall vest absolutely in the Government of the People’s Republic of Bangladesh and shall be at their disposal.	In practice land officials are not seen to take possession and to make proper management or fair distribution of this type of land.	The provision of absolute ownership of government for these types of lands and fair disposal should be strictly maintained.

Table 2.9: The State Acquisition and Tenancy Act, 1950: Contradiction, ambiguity, problem in practice, and compliance with basics of rights

Contents	Contradiction	Ambiguity	Problem in Practice	Compliance with basics of rights
Section 86 Abatement of rent on account of diluvion and determination of right in land reappeared on account of alluvion.	Not Found	Not Found	Proper account of alluvium-diluvium land is not maintained, since the field level survey is not made though it is statutory duty of the officials of the land office. Even the affected persons feel hesitant to inform the local office on the apprehension that they might face difficulties in future in case of accretion. As a result a big gap is created in the proper	Participation of people is absent. Accountability of concerned officials is also absent. Transparency is also not ensured. Participation of the other stakeholders is absent. All these affect the right to property of the landless people.

Contents	Contradiction	Ambiguity	Problem in Practice	Compliance with basics of rights
			<p>maintenance of the record of rights on the diluvium lands. Thirty years time limit is also unreasonable to think that the owners of diluvium land would remain on the river bank or nearby without rehabilitation for long thirty years. The time limit as specified here is higher than the period mentioned in any of the earlier laws. This creates scope for the feudal position of the land grabbers is also reason of much violence in the char area.</p>	
<p>Section 87 1)When any land has been gained from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it may be thus annexed, but shall vest absolutely with the Government of the People's Republic of Bangladesh and shall be at their disposal.</p>	<p>Not Found</p>	<p>Not Found</p>	<p>In practice government is not seen to take possession of these types of lands which create scope for the land grabbers to occupy unlawfully. Moreover, no record of this type of land is maintained by the concerned land officials.</p>	<p>The right to property of landless is affected. Moreover, the Participation of the sufferer is not ensured. Accountability of the concerned land officials is not satisfactory.</p>

Figure 2.3: Dynamics of power bases in the charlands



2.5 Review of land use policy

Introduction

Bangladesh is a land scarce country where the per capita cultivated land is only 12.5 decimals. In Bangladesh the high growth rate of population and urbanization is creating enormous pressure on land and land-use patterns. It is adversely affecting the country’s agricultural land, forestland and water bodies and causing less agricultural production, climate change, deforestation, desertification and the loss of biodiversity. As a result, sustainable land use has become an important analytical and policy issue in Bangladesh.

“Land” refers to all natural resources which contribute in agricultural production and “Agricultural land” means all land that is in agricultural use or has the potential for agricultural use, which has not been developed for another use or would not be unduly restricted for agricultural use by its size, shape and proximity to adjoining non-agricultural uses. Among different categories of land in Bangladesh, agricultural land is of special importance. On the other hand, a policy is a specific plan or settled course adopted and followed by a government or individual to achieve desired ends.

In 2001, the Ministry of land has prepared the National Land Use policy, 2001 to fill up an crucial policy gap in the country. The Policy mainly deals with land uses for several purposes including agriculture, housing, forestry, industrialization, railways, roads and highways and so on. In fact, this document identifies the land use constraints in all these sectors. The National Land Use Policy, 2001 highlights the importance and modalities of land zoning

for integrated planning and management of land resources of the country. The Policy also mentioned the need of formulating a Zoning Law and Village Improvement Act for materializing the identified land zoning area. But in practice for some specific reasons there are some limitations in the implementation of this policy.

For these reasons the Ministry of Land has recently drafted the Conservation of Agricultural Land and Land Use Act, 2011; a proposed Act which is yet to be passed in the parliament. The main objective of the study is to scrutinize the proposed Act, identify the inherent problems in the Act and make recommendations, on the basis of which a new Act shall be drafted keeping in mind the concept of “Right Based Approach”.

The review process

- i. The present National Land Use Policy, 2001 have been studied and reviewed.
- ii. The proposed Conservation of Agricultural Land and Land Use Act, 2011 drafted by the Ministry of Land have been studied and scrutinized.
- iii. Made an attempt to find out the ambiguities within the policy.
- iv. Made an attempt to identify the lacunas, ambiguities, problems and inadequacy of the proposed Act of 2011.
- v. In every section of the proposed Act attempt is made to find out the problems and to make recommendations.
- vi. In making recommendations, the issues and context of the present study have been taken into consideration.
- vii. Tried to find out the various problems in the implementation of the policy and the proposed Act.
- viii. Drafted a new proposed Act of parliament on the basis of given recommendations.
- ix. In drafting the new proposed Act the land use related policies and Acts of different countries of the world such as South Africa, India and Australia have been studied.
- x. A table comprising four columns has been formed, where every section has been divided into four parts:
 1. Existing provisions
 2. Translation (unofficial)
 3. Problem identification
 4. Suggested recommendations
- xi. The study largely draws information relating to land use policy obtainable from various articles of renowned writers and official websites of related departments of countries and various international organizations dealing with the matter.

People/Institutions consulted

In the review process, the team consulted with Abdul Halim Mia (Team Leader/Chief Technical Expert of Coastal Land Zoning Project, Ministry of Land) and also visited the Harirampur Upazila Office of Manikgonj District. In Harirampur, research team also consulted with following persons:

- i. Upazila Agriculture Officer, Mr. MD. Lutfur Rehman
- ii. Surveyor of AC (Land), Mr. MD. Ramjan Ali
- iii. Assistant Land Officer Azimnagar and Lechra Union, Horirampur, Manikgonj
- iv. Others official of Upazila Nirbahi Officer’s Office

Difficulties faced

The team have faced some difficulties in conducting the present study, and these needed great effort to overcome. Some of those are as follows:

- Materials insufficient for extensive research in this area.
- Lack of literature to analyse the laws relating to land use policy.
- Relevant journals, souvenirs, articles, handbooks and research papers etc. are also few in numbers.
- There are no case laws on the land use policy of Bangladesh.
- No actual updated data about the total amount of agricultural and non-agricultural land at national level available.

Example of Review

Table 2.10: The Conservation of Agricultural Land and Land Use Act, 2011: Problems identified and recommendations

Existing Provisions [Translation (Unofficial)]	Problems Identified	Recommendations
Sec.2(1): “land” means generally all cultivated and uncultivated land and river, canal-swampland-channel, pond, sink, houses, buildings and also things attached to the earth etc. are treated as land. But ocean or bay is not treated as land.	➤ Several definitions of “land” have been provided in sec.2 (1) of the Act.	✓ There should be a unique and exhaustive definition of “land” in the Act. ✓ The words “benefits to arise out of land” have to be included as land in the definition.
Sec.2(7): “ewaz or exchange” to which the provisions of section 118 of the Transfer of Property Act, 1882 shall apply.	➤ The detailed definition of “exchange” as provided in section 118 of the Transfer of Property Act, 1882 has not been included in this Act.	✓ The whole definition of “exchange” has to be included in this section.
Sec.3(2): This Act shall immediately come into force to the whole of Bangladesh.	➤ This is a redundant provision. This provision has been mentioned in section 1(b) of this Act. ➤	✓ This redundant provision is to be omitted from this Act.

Existing Provisions [Translation (Unofficial)]	Problems Identified	Recommendations
<p>Sec.4(1)(vi): Every cultivator or farmer of the country shall have right over all agricultural lands of Bangladesh and the right to take possession of it by purchase, or by inheritance or by settlement from the Government shall be unrestricted. The holding-land or share of it or part of it of any raiyat cannot be sold to any person except an actual cultivator.</p>	<ul style="list-style-type: none"> ➤ As per sec.82 (8) of the SAT Act, 1950 the word “malik” shall be deemed to have been substituted for the word “raiyat”. ➤ This subsection is contradictory with Art.42 (1) of Constitution. ➤ In this sub-section by using the words “The holding-land or share of it or part of it of any raiyat cannot be sold to any person except an actual cultivator”, the right to property as fundamental right under Art.42 (1) of the Constitution has been violated. 	<p>✓ The right to dispose of property to any person is to be ensured by amending this provision.</p>
<p>Sec.12(1): (1) There shall be the following committees regarding the implementation of land zoning: (i) Land Use Implementation Committee; (ii) Divisional Land Zoning Coordination Committee; (iii) District land Zoning Examination and Evaluation Committee; (iv) Upazilla Land Zoning Implementation Committee; and (v) Municipal Land Zoning Implementation and Examination Committee.</p>	<ul style="list-style-type: none"> ➤ In this sub-section there is no Land Zoning Committee in the Union Parishad level. 	<p>✓ In the union parishad level, the Union Land Zoning Implementation and Examination Committee should be incorporated.</p>

2.6 Review of khas land related laws

Introduction

Agricultural *khas* land deserves special attention in the land administration system of Bangladesh. The total amount of agricultural *khas* land constitutes approximately 5.34 per cent of the sum total of the arable land in the country. After independence since 197, the government started allocation of agricultural *khas* land to the landless peasants 2 in pursuance of the then land reform programme. Afterward a guideline was promulgated in 1987 in order to facilitate allocation of agricultural *khas* land to the landless peasants.²¹ According to that guideline, all agricultural *khas* lands were supposed to be distributed only among the landless peasants. Over and above, widespread irregularities in allotment of *khas* land were reported all over the country. Under the circumstances, need was felt for an instrument that could ensure efficient distribution of *khas* land among greater number of landless people. With this end in view, the Guideline on Management and Settlement of Agricultural *Khas* Land, 1997

²¹ 01 July 1987.

was promulgated. The Guideline has been declared to be enforceable in all the districts of Bangladesh except *Rangamati*, *Bandarban* and *Khagrachari*.²² All the previous orders, notifications, memorandums, directives etc have ceased to have effect after coming into force of the present Guideline. The present Guideline has validated all the previous settlements of agricultural *khas* land made in accordance with earlier law before coming into force.²³

In spite of all the expectations, the real achievement of the Guideline was a base minimum, and a far cry from its coveted goal. The Guideline has been subjected to criticism mainly on three grounds. First, the provisions of the Guideline were below standard and hence, could not ensure efficient distribution of *khas* land. These criticisms are directly concerned with the contents of the Guideline itself. For example, the criteria for selection of eligible candidates for allotment of *khas* land etc. Other criticisms have been directed to the areas that are not included in the main operational domain of the Guideline, however, are concerned with realization of the objects thereof. These criticisms mainly alluded the inadequacy of provisions relating to identification of *khas* land and the rate of retention of *khas* land. While identification of *khas* land is more concerned with preparatory or even earlier stage, retention of *khas* land entails consequential implications. And lastly, there is criticism that the Guideline could be assailed for lacking a pro-poor, pro-gender and right-based approach. 'Pro-poor' and 'pro-gender' indicates policy aspects while the 'right based approach' indicates the instrument for implementation and achievement of the policy concerned. In the following, we shall look into the Guideline on Management and Settlement of Agricultural *Khas* Land, 1997. We shall also try to explain how the practical problems are generating from jurisprudential characteristics of the Guideline.

Critical analysis of the guideline: Jurisprudential perspectives

The Guideline on Management and Settlement of Agricultural *Khas* Land, 1997 at first glance stamps the impression of an facile document. However, this impression is misleading to a large extent. In this part we have made a critical analysis of the Guideline on Management and Settlement of *Khas* Land, 1997 from jurisprudential point of view. Although distribution of public good i.e., *khas* land appears to be the mater in issue, the manner and procedure that the Guideline prescribes for carrying out the programme of allocation of agricultural *khas* land in practice hardly does justice to its avowed objective. Public good has been defined as one where the distribution of its benefits within a society is not subject to voluntary control by anyone other than each potential beneficiary controlling his share of the benefits.²⁴ A normative analysis of the Guideline have been done to reveal that distribution of benefits i.e., *khas* land has been made excessively subjected to discretion of the executive to such an extent that it cannot be said to be free from voluntary control of the distributing authority. In addition, prospective beneficiaries i.e., the landless families possessed of not the least amount of rights enabling them to exercise any control over distribution of *khas* land. Having regard to the objective and normative content, we have reviewed the Guideline from two viewpoints. The effectiveness and usefulness of the provisions of the Guideline have been assessed in the light of the objects of the Guideline. In addition, features which have been missing in the Guideline but necessary for realization of its objects have been taken into consideration.

²² Article 1.3, *ibid*.

²³ Article 2.0, *ibid*.

²⁴ Joseph Raz, *The Morality of Freedom*, 1986, p. 198.

The actions and decisions of the concerned committees under the Guideline on Management and Settlement of *Khas* Land, 1997, as has been noticed, are not consistent with the provisions thereof in many cases. Data indicates that the provisions of the Guideline are not properly ensured when put into operation. We have discussed some of the reported common deviations in the following:

Identification & recovery of *khas* land: Earlier, it has been pointed out that the Guideline is not a primary piece of law laying down rules for identification or recovery of *khas* land. Identification of *khas* land under the Guideline means identification of *khas* land for the purpose of making allocation. Identification and recovery of *khas* however connotes special significance because it has been noticed that the purpose of allocating *khas* land may be defeated only on this ground. Under the Guideline, identification of *khas* land remains a paper work without field investigations. There is a huge gap between the official record of *khas* land and the actual amount of *khas* land in the possession of the government. For this reason, identification of *khas* land has immediate nexus with retention of *khas* land and ultimate implication for the objective of the programme of allocating *khas* land. There are numerous instances that in spite of being allotted with *khas* land, the recipient could not get into possession. A significant number of recipients do not have complete control over *khas* land. The influential persons who are in possession of the *khas* land file a claim often supported by false documentation.²⁵ Other instances will include working as share-cropper in *khas* land which has been allotted to the recipient. Although the Upazila Agricultural *khas* Land Management and Settlement Committee has been entrusted with the duty to recover *khas* land²⁶, no specific mechanism has been provided for such recovery. It has been observed that the illegal occupants of *khas* land are influential persons of the locality concerned and very often politically dominant. Therefore, absence of specific procedure in this regard has led to non-retention of *khas* land as well as aggravation of poverty of the recipient.

Committee formation and functions: The formation of different Committees as per the Guideline is a matter worth considering. Although the Guideline provides that the different Committees shall have to be formed within one month of the promulgation of the Guideline, the stipulated time frame has not been duly maintained in practice. *Khas* Land distribution process has been impeded due to delayed formation of the Committees. It has been reported that members of the different Committees at district and upazilla level do not attend meetings regularly resulting in delay of the *khas* land allotment procedure. The Upazila Committee has been charged with not being participatory, public-spirited and transparent. There is empirical evidence that sometimes it is difficult for Upazila Committee to make selection among the candidates for *khas* land; because of the large number of applications, it can deal with efficiently.

Dissemination of information: Generally, many eligible landless candidates for *khas* land are not informed of the programme of the Settlement of Agricultural *Khas* Land. There prevails a common inference among the citizenry that *khas* lands being the government property are meant for those who are close to the government officials. Although the Guideline provides for making 'wide circulation' of the *khas* land allocation programme, the government officials are least active about dissemination of information about the *khas* land distribution programme. Official advertisements are neither adequate nor effective for making the programme successful. It has been noticed that information relating to

²⁵ Land policy and Administration in Bangladesh: A Literature Review, Care Rural Livelihood Programme, 2003, p-23.

²⁶ Article 5.0 (kha) of the Policy.

distribution of *khas* land was not circulated properly in order to serve the interests of the vested quarters so as to hat real landless people become less informed.²⁷

Application procedure: For *khas* land, the Guideline requires photos of the candidates to be attested by local Union Parishad Chairman or Member along with the application forms. The Union Parishad Chairman/Member makes inordinate delay to attest photo. At times, they demand bribe from the candidates for such attestation. The landless peasants are mostly illiterate. The application for allotment of *khas* land requires furnishing information or documents which are difficult to obtain at short notice. The aspirant candidate is required to answer 16 different questions- which is almost an impossible for an ignorant landless peasant to do accurately. The landless peasants have complained that many of the questions in the application form are hardly relevant. For example, the application mention names of two important persons who are well acquainted with the applicant. The candidates have to seek help from other persons in filling out in the application form.²⁸ The consequence is that many applications are rejected as being incomplete. Further, it has been complained that the concerned officials of Union Parishads demand bribe from the aspirant candidates to fill out the application form. There is also allegation that the Assistant Land Officers (Tahsilders) demand bribes for correction of errors done by the candidates while filling out the application form. In the absence of any specific criteria, rejection of the applications on the plea of even a minor mistake or omission has been noticed.

Selection of candidates: From practical point of view, selection of candidates for *khas* land involves two steps. These are: (i) primary enlistment as landless peasant, and (ii) final selection for allotment. In respect of the first, the official lists of landless persons are defective in many cases. Many landless families have been left off the list and the persons who are not landless have been enlisted. The inclusion of the landless persons in the list depends upon factors like nepotism, corruption etc. As regards the final selection, there are instances that in spite of being included in the primary list, many candidates for *khas* land were not finally selected for allotment. The reasons includes lack of correspondence with the office (in terms of bribe) and the local influential persons. Submission of incomplete application form and availability of less *khas* land than required add to the are the other reasons to be added here. In most of the cases, the process of making selection of candidates for *khas* land was very brief.

Settlement of *khas* land: In spite of being finally selected many of the landless could not finally receive *khas* land. The reasons includes lack of correspondence with the office (in terms of bribe) and the local influentials. Other reasons are that *khas* land could not be settled because possession of such land had passed to the illegal occupants. Availability of less *khas* land than required is a reason for not getting allotment of *khas* land. There are many families who were neither landless nor included in the list but got allotment of *khas* land.²⁹

Non-retention of *khas* land: Transfer of *khas* land given in settlement in favour of the landless individuals and families under the Guideline is prohibited with the only exception of inheritance. Nevertheless, instances of transfer of such land by way of sale are widespread. A study conducted in four Upazialas of different districts (Debhata of Satkhira, Gaibandha of Gaibandha, Hatia of Noakhali and Shailakupa of Jhenidah) has found that about 50% of the

²⁷ Barkat, Abul, Zaman, Shafique Uz; Raihan, Selim; Political Economy of Khas Land in Bangladesh, 2001, PP. 108-121.

²⁸ Ibid., PP. 122-123.

²⁹ Ibid., 161-171.

landless persons who got settlement of *khas* land have been unable to retain his land.³⁰ In 24.3% cases the *khas* land given in settlement has been grabbed by the local influential persons by means of forged documents.³¹

Miscellaneous: Allotment of *khas* land to the landless families should be an expedited and easy process. According to the Guideline, all that a landless peasant needs to do are the following: (i) apply for *khas* land, (ii) know whether s/he has been selected as a recipient of *khas* land (i.e. to see the notice board of the Upazila Parishad) and (iii) to collect the lease deed. Thus, ideally, a beneficiary of *khas* land should not have to spend more than 3 days in this regard. However, a study by Abul Barkat, Shafique Uz-Zaman and Selim Raihan has revealed that a landless peasant has to spend a total number of 195 hours on an average in the process of receiving *khas* land. Out of this, 98.2 hours is spent on the way for travelling and meeting the concerned personnel and officials responsible for distribution of *khas* land. It takes further 82.3 hours in the course of waiting to meet such persons. Lastly, 14.5 hours is spent on discussing the matter. Apart from this, there are cases where a landless peasant has to spend a greater amount of time. As a result, a landless peasant has to spend almost 24 working days (assuming 8 hours a day) which is eight times more than the required liberal estimate. The estimated 24 working days in reality can be equivalent to 48-72 working days or even more due to the fact that loss of 2 or 3 working hours a day for a landless person might result in loss of a full day in terms of loss of wage.³²

Table 2.11: The Guideline on Management and Settlement of Agricultural *khas* land, 1997: content and problems identified

Clause No.	Content	Problems identified
1.0	Introduction: ✓ Provides the background and purposes of the present Guideline. ✓ Provides that the present Guideline shall extend to whole Bangladesh except <i>Rangamati</i> , <i>Bandarban</i> and <i>Khagrachari</i> districts.	
2.0	✓ The present Guideline shall come into force immediately. ✓ All the previous orders, notifications, memorandums or policies relating to <i>khas</i> land shall cease to have effect on and from the date of coming into force of the present Guideline. ✓ All the settlement cases approved finally before 13-08-96 shall continue to have effect and therefore <i>kabuliyat</i> shall be executed and registered accordingly under the present policy.	
3.0	✓ Formation of the National Agricultural Khas Land Management Executive Committee with the Minister of Land Ministry as the Chairman, the State Minister of the Ministry of Land as the Vice-Chairman, 22 other members and the Joint Secretary (Administration), Ministry of Land as the Member Secretary. ✓ Activities of the Committee: <ul style="list-style-type: none"> • Will take policy decisions regarding distribution of Khas land. • Will evaluate the progress on distribution and management of Khas land. 	✓ There is no provision for effective women representation. ✓ Representatives from some relevant ministries are not included.

³⁰ Ibid., PP. 189-199.

³¹ Khan, Md. Nazrul Islam, Easy Study of Land Laws, Research Initiatives Bangladesh, Series-8 of 11, First Edition- January, 2008 P.25.

³² Barkat, Abul; Zaman, Shafique Uz; Raihan, Selim; Political Economy of Khas Land in Bangladesh, 2001, PP.125-126.

	<ul style="list-style-type: none"> • Will meet at least once in every three months. 	
4.0	<ul style="list-style-type: none"> ✓ Formation of the District Agricultural <i>Khas</i> Land Management and Settlement Committee with one Member of Parliament selected by the Hon'ble Minister of the Ministry of Land as its advisor, 10 other members and the Revenue Deputy Collector as the Member Secretary. ✓ Function of the Committee: <ul style="list-style-type: none"> • Publication of the Guideline of distribution of agricultural khas land within the district. • Approving the distribution proposal of Upazila Committee as well as analyzing and supervising the activities of that Committee. • Taking necessary actions as per the rules on account of any irregularities in the process of distribution of khas land. • Will meet at least once in every month. • Will report to the Ministry of Land on account of progress on settlement activities. 	<ul style="list-style-type: none"> ✓ There is no provision for effective women representation. ✓ No expert on land and legal matters is included in the Committee.
5.0	<ul style="list-style-type: none"> ✓ Formation of the Upazila Agricultural Khas Land Management and Settlement Committee consisting of 14 members. Assistant Commissioner (Land) acts as the Member Secretary. Concerned Member of Parliament and the Chairman of the Upazila Parishad are the Advisors of the Committee. ✓ Activities of the Committee: <ul style="list-style-type: none"> • Identification and recovery of agricultural khas land within the Upazila. • Dividing the recovered khas land into plots for easy settlement. • Taking measures for widespread publication. • Inviting application from the landless persons. • Scrutinizing the received applications and preparing priority list of the landless persons. • Recommending allotment of plots for the selected landless persons. • Ensuring possession on behalf of the recipient of the settlement. • Supervising the compliance of the conditions of settlement by the recipient of settlement. • Recommendation to the DC to take actions for violation of any condition. 	<ul style="list-style-type: none"> ✓ Committee not public oriented, participatory and transparent. ✓ The Committee is empowered to perform two different functions at the simultaneously e i.e. listing as well as settlement of khas land. As a result of corruption multiplies. ✓ No root level committee for the listing of the landless persons. ✓ No effective mechanism to recover illegally grabbed khas land.
6.0	<p>Landless selection process:</p> <ul style="list-style-type: none"> ✓ Landless persons shall apply to the Upazila Committee in prescribed form. ✓ Land cannot be given to more than one member of a joint family. ✓ Land shall be given in the joint name of husband and wife. ✓ A family can get maximum 1.00 acre of land. But in coastal areas this ceiling may be extended to maximum 1.50 acres of land. 	<ul style="list-style-type: none"> ✓ The present system requires attested photos of the applicants to be made by local UP Chairman/ Member along with the application forms. In reality The UP Chairman/ Member causes unnecessary delay and even at times demand bribe from applicants. ✓ Assistant Land Officers (Tahshilders) harasses the applicants for not giving information in the application form and for committing errors or mistakes in the forms due to their ignorance and level of literacy. Bribe is even demanded from the applicants for correction of mistakes.
7.0	<ul style="list-style-type: none"> ✓ The land given in settlement cannot be transferred to anybody in any form except by way of inheritance. 	<p>Although transfer is barred under this policy, there is no bar to register deeds of transfer as a result of the provisions of the Registration Act 1908.</p>

8.0	<ul style="list-style-type: none"> ✓ Objections can be made to the District Committee against any irregularities committed by the Upazila Committee. ✓ If upon local investigation, the District Committee finds any irregularities, it shall cancel the settlement case and recommend to the Land Ministry for taking penal action. 	
9.0	Definition of Agricultural <i>khas</i> Land: all the <i>khas</i> land except the Non-agricultural <i>khas</i> land as defined in the Non-Agricultural <i>Khas</i> land Management and Settlement Policy 1995 shall be deemed to be agricultural <i>khas</i> land. More precisely- all the cultivable <i>khas</i> land situated outside the Metropolitan areas, City Corporation areas and Upazila Headquarters shall be deemed to be agricultural <i>khas</i> land.	This definition is not exhaustive enough since agricultural land situated within the Metropolitan areas, City Corporation areas and Upazila Headquarters is not included in the definition of Agricultural <i>khas</i> Land.
10.0	<p>Definition of Landless Family:</p> <ul style="list-style-type: none"> ✓ Family having no homestead or agricultural land but depending on agriculture; or ✓ Family depending on agriculture and having upto 10 decimals of homestead but having no agricultural land. 	
11.0	<p>Priority list of landless families:</p> <ul style="list-style-type: none"> ✓ Indigent freedom-fighter's family. ✓ Family displaced by river erosion. ✓ Widow with competent son or family left by husband. ✓ Agricultural landless or homestead less family. ✓ Family becoming landless as a result of acquisition. ✓ Family depending on agriculture and having upto 10 decimals of homestead but having no agricultural land. 	<ul style="list-style-type: none"> ✓ Rights of the peasantry have not been protected here because it has not been provided categorically that the families mentioned in this priority list must be a family depending on agriculture. ✓ Giving settlement of agricultural <i>khas</i> land in favour of families employed in non-agricultural professions. ✓ Contradiction with Articles 14 and 16 of the Constitution. ✓ Widows having no competent son or daughters but competent to cultivate lands do not get <i>khas</i> land. ✓ Persons with neutral genders do not get <i>khas</i> land.
12.0	The Committees mentioned in this policy shall be formed within one month of the formulation of the present policy.	<ul style="list-style-type: none"> ✓ Committees are not formed within the prescribed time limit. ✓ <i>Khas</i> Land distribution process is often hampered due to the non-formation of the Committees.
13.0	<ul style="list-style-type: none"> ✓ Within 30 days of the formation of the Committee, the Upazila Committee shall: <ul style="list-style-type: none"> • Identify all the <i>khas</i> land which can be given in settlement of the concerned Upazila • Publish the list of <i>khas</i> land • Make widespread publication in this regard. ✓ Objections against any land included in the list may be made in writing within next 30 days; the Upazila Committee shall decide the objections upon hearing within next 15 days and thereafter shall publish the final list. ✓ Appeal may be preferred to the District Committee against the decision of the Upazila Committee and it shall be decided within the next 15 days. ✓ Appeal may be preferred to the National Executive Committee against the decision of the District Committee within 30 days and it shall be disposed of within the next 60 days upon hearing. ✓ The decision of the National Executive Committee shall be final. 	<ul style="list-style-type: none"> ✓ The list of <i>Khas</i> land is not properly maintained by the Union Land Office. ✓ Additional <i>khas</i> land (excess of ceiling, land recovered from grabbers, alluvion, dilluvion etc.) is not included in the list. ✓ There is no modern data base system.
14.0	<ul style="list-style-type: none"> ✓ The Upazila Committee shall invite applications from the landless persons within one month of the publication of the list of <i>khas</i> land which is to be given in settlement. 	<ul style="list-style-type: none"> ✓ The present application form is complex in character. ✓ Applicants are required to collect so many documents which is difficult for

		<p>them.</p> <ul style="list-style-type: none"> ✓ An applicant is to answer 16 different questions which are very much difficult for an illiterate farmer. ✓ Many applications are rejected for not being filled up properly. ✓ Sometimes corrupt officials of concerned offices (U.P. Chairman, Assistant Land Officer (Tahshilder) etc.) take bribe from the genuine applicants to fill up the application form.
15.0	<p>Within one month of getting the applications, the Upazila committee shall:</p> <ul style="list-style-type: none"> ✓ Complete the landless selection process; and ✓ Fix the quantity of land to be settled with those landless persons. 	
16.0	<p>The Assistant Commissioner (Land) shall, within 21 days of the completion of landless selection process and the fixation of land to be fixed by the Upazila Committee, create a settlement case record and submit the proposal before the Upazila Nirbahi Officer (UNO).</p>	
17.0	<p>The UNO shall, within 21 days of getting the proposal, send the same to the Deputy Commissioner.</p>	
18.0	<p>The Deputy Commissioner(DC) shall:</p> <ul style="list-style-type: none"> ✓ Within 30 days of getting the proposal, submit it before the District Committee. ✓ Upon approval of the District Committee, return it to the concerned Assistant Commissioner (Land). 	
19.0	<p>Within 15 days of getting return of the approved proposal the Assistant Commissioner (Land) shall:</p> <ul style="list-style-type: none"> ✓ Execute a Kabuliyat in favour of the recipient of the settlement in exchange of 1(One) taka. ✓ Take necessary steps for registration. ✓ Open Record of Rights (Khatian) in favour of the recipient of the settlement. 	
20.0	<ul style="list-style-type: none"> ✓ The Upazila Committee shall, within 15 days of the execution of the Kabuliyat, handover possession of the land in favour of the recipient of the settlement. 	<p>For completion of the whole procedure as mentioned in Articles 15-20, the applicants need to spend a lot of time.</p>
21.0	<ul style="list-style-type: none"> ✓ Agricultural khas land of any Mouza shall be distributed on the basis of priority among the applicants of the concerned Mouza. ✓ If, after distribution of the land to the applicants of the concerned Mouza, any land remains undistributed, such land may be given in settlement to the landless persons of the adjacent Union and later on to the landless persons of adjacent Upazila. 	
22.0	<ul style="list-style-type: none"> ✓ Measures shall be taken for widespread publication by mike on the days of local assembly at the hats/bazaars of the concerned Upazila. ✓ The UNO shall take necessary steps in this behalf. 	<ul style="list-style-type: none"> ✓ No effective and transparent publicity have been made in this regard. ✓ In practice, only notices are hanged at the concerned offices and the general people do not have any knowledge about these.
23.0	<p>Notice shall be hung at all the government/ semi-government as well as non-government offices and also in the notice board of the Union Council about the distribution of khas land among the landless persons.</p>	
24.0	<ul style="list-style-type: none"> ✓ All the decisions of the Upazila Committee are required to be unanimous. <ul style="list-style-type: none"> • In case of any disagreement, decisions shall be taken by the votes of the majority. • In case of equal voting, the president shall have casting vote. 	

25.0	Overall care and strict impartiality shall be maintained in the selection of the landless persons and preparing of the list.	In practice, unnecessary delay is made and people are subjected to unnecessary harassments. Even corruption and nepotism are being made by some of the members of the Committees.
26.0	Agricultural Khas land notified as forestland as well as shrimp and salt cultivable khas lands cannot be given in settlement under this policy.	
27.0	<ul style="list-style-type: none"> ✓ In case of diluvion and Charland, settlement of such land can be given before completion of “Diara Settlement” after being sure about the correctness and propriety of the “Carcha Map”. ✓ Diara Survey of such land has to be completed as soon as possible on priority basis. ✓ After completion of Diara Settlement, settlements made on the basis of “Charcha Map” have to be amalgamated. 	
28.0	Khas land selected for the purpose of establishing “Adarsha Gram” cannot be given in settlement under this policy.	
29.0	<ul style="list-style-type: none"> ✓ If any applicant provides any wrong information or conceals any information in the application, his application will stand cancelled. ✓ Lawful measures can be taken against such applicant, if necessary. 	Reasons for cancellation are not shown always.
30.0	<ul style="list-style-type: none"> ✓ If after getting settlement, any recipient contravenes any Act/ Ordinance or Order relating to land, such settlement will stand cancelled. ✓ Upon the approval of the District Committee, the Upazila Committee shall re-establish such land as khas land and preserve in the Khas Khatian. 	
31.0	<ul style="list-style-type: none"> ✓ If any grave problem arises in case of settlement under this Policy in any place, concerned Deputy Commissioner shall present the matter in writing before the Member-Secretary of the National Executive Committee. ✓ The Member Secretary shall submit the matter in the meeting of the Committee. ✓ The decision of the National Executive Committee in this regard shall be final. 	
32.0	<ul style="list-style-type: none"> ✓ In all the meetings of the concerned Committees, quorum shall be fulfilled if 1/3 of the total members are present. ✓ If a member is absent in three consecutive meetings, the matter will be brought to the notice of his appointing/selecting authority for the cancellation or dismissal of his membership. 	There is no provision for continuation of the meeting if any post of the member falls vacant.
33.0	All the Committees formed for the management and settlement of agricultural khas land shall be respectful to their mutual decisions.	
34.0	The National Agricultural Khas Land Management Executive Committee can amend or alter any provision of this Policy, if necessary, for public interest.	

3. Seeking Peoples’ Suggestions on the Issue

It was decided earlier that public opinion on the issue will be asked through dedicated cell phone number, written document by post, e-mail. Regarding this, web-site announcement has been made in place since the very beginning of the assignment. Besides, according to original plan, a newspaper notice has been published in this quarter (published in the daily Prothom Alo, on September 30, 2011). However, the extent of response is not satisfactory. So far, 24 phone calls (mobile & land phone), 31

e-mails, 4 written documents, and 4 personal visits have been attained at HDRC. But, the content of the response is not relevant / substantive in most cases. Hence, this process of seeking response has not been found effective.

Box 3.1: Newspaper notice published in the daily Prothom Alo on September 30, 2011, Friday

জমি

সংক্রান্ত আইনী অভিজ্ঞতার

জটিলতাগুলো জানতে চাই

বাংলাদেশে জমি ও জীবন সন্মার্থক। দেশের উন্নয়নে জমির গুরুত্ব অপরিহার্য। অসচ্ছ জমি সংক্রান্ত সমস্যার মাত্রা আশঙ্কাজনক। এর অন্যতম প্রধান কারণ: আইনি জটিলতা, আইনের ফাঁকফোকড়, আইন সাধারণ মানুষ-নির্ভর মানুষ-প্রান্তিক মানুষ-নারী বাস্তু নয়, সেকেন্দ্রে আইন, এক আইনের সাথে অন্য আইনের বিরোধ, আইন প্রয়োগের সমস্যা ইত্যাদি। আইন এক এর প্রয়োগে সমস্যাগুলো কোথায় নিহিত, কী-ই বা তার সমাধান সেই বিষয়গুলো আমরা জানতে চাই।


জমির মালিকানা, হস্তান্তর, রেজিস্ট্রেশন, মিউটেশন, রেকর্ড, জরিপ, পরিত্যক্ত সম্পত্তি, খাস জমি, চরের জমি, বনের জমি, সংখ্যালঘুর জমি, অর্পিত সম্পত্তি, ওয়াকফ, জমির ব্যবস্থাপনা, আদিবাসীদের জমি, জলাজমি এক প্রাসঙ্গিক বিষয়গুলো নিয়ে আপনার নিজের অথবা নিকটজনের অভিজ্ঞতা ও আইনি জটিলতা, সম্ভাব্য পরিবর্তন ও পরামর্শগুলো আমরা জানতে চাই। আমাদের গবেষকদল আপনার মূল্যবান তথ্যগুলো একত্রিত করবেন যেন তার ভিত্তিতে সরকার এক নীতিনির্ধারণের প্রয়োজনীয় সিদ্ধান্ত নিতে পারেন।

আপনার অভিজ্ঞতা ও মূল্যবান পরামর্শ নিচের যে কোনো প্রক্রিয়ায় পাঠানোর অনুরোধ রইল:

- ই-মেইল: landlawreview@hdrc-bd.com
- লিখিত পরামর্শ: জমি আইন পর্যালোচনা ডেস্ক, হিউম্যান ডেভেলপমেন্ট রিসার্চ সেন্টার (এইচডিআরসি), বাড়ী ৫, সড়ক ৮, মোহাম্মদপুর হাউজিং সোসাইটি, মোহাম্মদপুর, ঢাকা-১২০৭
- ফ্যাক্স: (+৮৮০২) ৮১৫৭৬২০
- মোবাইল: ০১৭৫৭-৫০০৭৭৭ (সাপ্তাহিক ও সরকারি ছুটি বাদে: সকাল ১০ থেকে বিকেল ৪টা)।


যে প্রক্রিয়াতেই তথ্য পাঠানো কেন - নাম/ঠিকানা, সমস্যা, সম্ভাব্য সমাধান - জানতে অনুরোধ করি। প্রাসঙ্গিক কাগজপত্রের কপি পাঠালে উপকৃত হবে। নিশ্চিত করছি আপনার নাম, ঠিকানা, পরিচয় কোন অবস্থাতেই কোথাও প্রকাশ করা হবে না। চাইলে আপনি নাম, ঠিকানা নাও দিতে পারেন।

আপনার মূল্যবান পরামর্শের প্রতীক্ষায় রইলাম।



Human Development Research Centre
www.hdrc-bd.com

মানুষের জন্য
manusher jonno
promoting human rights and good governance



প্রথম আলো

প্রথম আলো

শুক্রবার, ৩০ সেপ্টেম্বর ২০১১

4. Recruitment of New Research Associates

The assignment is a huge one. In this process, a number of young Research Associates has been tasked in this assignment from its inception. To avoid time-gap due to turn-over of the Research Associates, a process has been instituted where the out-going Research Associates hand over their duties and responsibilities to the newly recruited research associates. In this process, a newspaper advertisement seeking Research Associates was published in the daily Prothom Alo on September 16, 2011. In response to that, a total of 41 resumes were dropped at HDRC. A 4-person recruitment committee was formed consisting of one professor law, one senior rtd. govt. official, one practicing lawyer, and one representative from HDRC in-house team. From the resumes, 19 candidates were shortlisted primarily, and were called for

Interview. After the interview, 4 (four) Research Associates have been recruited for this assignment. Now, a total of 7 (seven) Research Associates (3 female, 4 male) have been working as full-time research staff at HDRC exclusively for this assignment. It is to note that all the Research Associates have completed their Master degree from reputed universities with good academic background and sound knowledge on the issue.

Box 4.1: Advertisement seeking research associates in the daily Prothom Alo on September 16, 2011

HDRC **Want to be a Researcher on Land Laws of Bangladesh?**

Human Development Research Centre (www.hdrc-bd.com) a socio-economic research organization - is looking for committed women & men (aged 23-30) to appoint them as Research Associate to do critical review on Land Laws of Bangladesh:

- **Master of LAW (LL.M) with good results**
- Expertise/Interest in land laws of Bangladesh
- Able to work at least for one year continuously
- Good English writing skill & sound computer literacy

If interested, send your CV with a recent photograph to:

HR Manager, HDRC
House 5, Road 8, Mohammadia Housing Society
Mohammadpur, Dhaka 1207

Application Deadline: September 25, 2011

প্রথম আলো
 শুক্রবার, ১৬ সেপ্টেম্বর ২০১১

5. External Preliminary Professional Editing of the Draft Work

The draft works done by HDRC research team are being edited preliminary from external reviewers. There are two independent reviews by editors outside of HDRC:

- 1) First review: Review of English language;
- 2) Second Review: Review of legal sides.

6. Planning for the Next Quarter (i.e., November-January 2011) of the Study

1. Work on the four topics is planned to be completed (i.e., *Abandoned Property, Debottor property, Non-agricultural khas land, and Land Reform*)
2. Major portion of work on two topics (i.e., *Land Survey, and Trust*) will be done.
3. Work on land of indigenous communities will be continued.
4. Major study updates will be informed to steering committee (through MJF) by HDRC.

Annex 1

Draft outline for each of the topics

Sample Chapter Outline

1.1 Introduction :

- 1.1.1 What is Acquisition and Requisition: Basic Concepts
- 1.1.2 History of Acquisition and Requisition: From Past to Present
- 1.1.3 The Review: What and How

1.2 Review Findings:

- 1.2.1 Our Core Learning on the Topic
- 1.2.2 Our Criticism on the Law(s)

Box

- ✓ *Case Study*
- ✓ *FGD/GD/KII Findings*
- ✓ *Newspaper cutting*
- ✓ *Etc.....*

Table 1.1: Contents, Problems and Recommendations: Acquisition and Requisition of Immovable Property Ordinance, 1982

Table 1.2: Contradiction-Ambiguity-Problem in Practice-Whether Follows RBA: Acquisition and Requisition of Immovable Property Ordinance, 1982

Table 1.3: Scoring: Acquisition and Requisition of Immovable Property Ordinance, 1982

Figure 1.1: An Analytical framework on Land Acquisition: its impact on people and their rights (Rights Based Approach-RBA) and reaction of people and proposed solution of those

1.3 Proposed Laws

1.3.1 Introduction

1.3.2 Proposed Laws

- 1.3.2.1 A Proposed Bill for Enactment of a New Law Relating to Acquisition and Requisition of Immovable Property
- 1.3.2.2 Proposed Acquisition of Immovable Property Rules ...
- 1.3.2.3 Proposed Acquisition of Immovable Property Rules ...
- 1.3.2.4 Proposed Rehabilitation and Resettlement Bill ...

Annexure

Annex 1.1: The Acquisition and Requisition of Immovable Property Ordinance, 1982

Annex 1.2: Acquisition of Immovable Property Rules, 1982

Annex 1.2: The Requisition of Immovable Property Rules, 1982

1.4 Conclusion and Recommendation

1.4.1 Conclusion

1.4.2 Recommendations

Annex 2

Scoring rule developed by HDRC

Scoring Rule

Contradiction generally implies conflict or inappropriateness between two or more propositions but for the convenience of the study contradiction will entail:

1. Contradiction with Constitution of People's Republic of Bangladesh (here-in-after Constitution)
2. Contradiction within the provisions of the same laws and Policies
3. Contradiction with any other laws and Policies and policy decisions.

Scoring 0-5: meaning

Meaning of 5= If the provision contradicts the Constitution and/or if the contradiction of certain provision becomes ineffective or frustrates the whole laws or Policies.

Meaning of 4= If the provision contradicts any other primary laws (Presidential Order, Act of Parliament, Ordinance made by President, Rules made under article 133 of the Constitution) and/or partly frustrates the laws or Policies.

Meaning of 3 = If the provision contradicts secondary laws (rules, order, regulation, by laws, other legal instrument), Custom or usage having force of law and/or partly frustrates the laws or Policies.

Meaning of 2 = If the provision contradicts policies or policy decisions or administrative instruction which has no enforcement power like laws

Meaning of 1 = If there is a contradiction but that contradiction does not seriously harm or undermine effectiveness of laws or policies that is to say trifling violation of laws or policies

Meaning of 0 = If there is no contradiction

Ambiguity

a : doubtfulness or uncertainty of meaning or intention³³

b. an unclear, indefinite, or equivocal word, expression, meaning³⁴

b : a word or expression that can be understood in two or more possible ways : an ambiguous word or expression³⁵

Scoring 0-5: meaning

Meaning of 5= If the ambiguity of the certain provision becomes ineffective or frustrates the whole laws or Policies or process

Meaning of 4= If one word or expression is used but that word or expression creates two or more meanings which result in doubtful situation in the sense that which meaning will be taken into consideration under the particular case.

³³ . <http://dictionary.reference.com/browse/ambiguity>

³⁴ . <http://dictionary.reference.com/browse/ambiguity>

³⁵ . <http://www.merriam-webster.com/dictionary/ambiguity?show=0&t=1315978632>

Meaning of 3 = If certain words or expressions need to be used but are not used so and that debarring creates ambiguity.

Meaning of 2 = Law cannot be read and applied in isolation. If it is required that the two or more provisions need to be read and applied at a time in totality that create ambiguity.

Meaning of 1 = If there is an ambiguity but that ambiguity does not seriously harm or undermine effectiveness of laws or policies.

Meaning of 0 = If there is no ambiguity

Problem in practice

Implies problem in execution process or implementation level at different stages of laws and Policies

Scoring 0-5: meaning

Meaning of 5= If the certain problem in practice is such that which becomes ineffective or frustrates the whole laws or Policies or process

Meaning of 4= There is a provision regarding a process or thing but that process or thing cannot be implemented because of lack of willingness of implementation authority because of absence of proper or adequate method or mechanism.

Meaning of 3 = There is no provision regarding implementation standard that is to say law or Policy does not provide proper guideline or road map as how to deal with particular problems.

Meaning of 2 = Problem is of such nature which does not affect the service seeker (affected person) but problem has a impact on the service provider i.e. land administration or any other agency who implement the law or Policy

Meaning of 1 = Problem is of such nature which neither affect the service seeker (affected person) nor service provider i.e. land administration or any other agency who implement the law or Policy but which is mere deviation of laws or Policies. Or if there is problem in practice but that problem in practice does not seriously harm or undermine effectiveness of laws or policies.

Meaning of 0 = If there is no problem.

Whether follows Rights Based Approach

A rights-based approach to development is a conceptual framework that is based on international human rights standards and directed to promoting and protecting human rights.³⁶

A rights-based approach to development includes:

- * Express linkage to rights
- * Interdependence and indivisibility of Human Rights
- * Accountability
- * Empowerment
- * Participation
- * Non-discrimination and attention to most affected groups.

Scoring 0-5: meaning

Meaning of 5= If the Duty-bearer violates the rights of the Right-holder.

Meaning of 4= If there is no provision of Accountability + Participation + Transparency+ and attention to most affected people

Meaning of 3 = If there is a provision for Accountability + Participation + Transparency + care for Most affected people but in practice it is not at all maintained.

Meaning of 2 = If the mechanism of Accountability + Participation + Transparency+ care for Most affected people are present in the Constitution (if Constitution guarantees then this can be enforceable through court of law except Fundamental Principle of State Policy) and not in the International Human Rights Instrument

Meaning of 1 = If the mechanism of Accountability + Participation + Transparency+ care for Most affected people are not present in the Constitution though present in the International Human Rights Instrument (if only International Human Rights Instrument guarantees then this can not be enforceable through court of law)

Meaning of 0 = If Rights Based Approach is followed in its real sense.

³⁶. <http://www.unifem-ecogov-apas.org/ecogov-apas/EEGKnowledgeBase/EcoPerspective/whrIndonesia/RightsBasedApproachToDevelopmentOct03.doc>, last visited 07.10.2011

Annex 3

Presentation with the Steering Committee on Second Quarterly Progress Report

(the presentation was made on July 28, 2011 at MJF HQ)