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LAND ACQUISITION AND THE UNBEARABLE DELAY OF SOLAR PROJECTS

Bangladesh should presently be a super attractive destination for international investment in solar energy. Even though it does not lag as much behind in terms of electricity production as it used to earlier, nearly all of the present generation is fossil fuel based. As the Government has indicated, more solar and wind power will be needed as the energy transformation will plow ahead. As for solar, the irradiation is not overwhelming, but certainly more than sufficient. The legal framework is there, and the Power Purchase Agreements are bankable. But especially foreign investors and lenders have post-COVID nevertheless cooled quite a bit when it comes to putting time and resources in trying to get solar projects off the ground in Bangladesh. Most, if not all of that reluctant sentiment has to do with land acquisition. Bangladesh solar is now by many in the international IPP community unfortunately seen as “too difficult to get land for the project”.

Is this true? Or deserved? To put it another way: who is to blame for the land problems of solar projects in Bangladesh? And how do we get past this?

How did we get here?

For a while there, Bangladesh was the darling of the IPP community. A push for more power generation was facilitated in 2010 with a law freeing the Government from the normal public procurement rules and procedures for power projects, for example allowing unsolicited proposals.

Highlights of this note

- ▶ How did we get here?
- ▶ Yes, buying land is hard. But that’s not it.
- ▶ Commercial intermediation in land acquisition
- ▶ A closer look at the sponsors and the results
- ▶ Conclusions: what or who is to blame?
- ▶ Where do we go from here?

In 2016 and 2017, the solar space heats up with significant size LOIs¹ started coming out of the BPDB². International IPPs seeking solar projects also turned to Bangladesh, and LOIs were given to several renowned global names in the solar sector, although most projects were awarded to local sponsors, especially early on.

From 2018, reports about problems

¹ The Letter of Intent is the formal in principle approval by the Government, locking in the project

² In 2016 a total of 500 MW projects was approved. For 2017, this number was 260 MW.

start dripping in³. The developers who obtained their projects in 2016-2017 have by now realized that the relatively large portions of land you need for solar are the project's biggest hurdle. One of the first high profile cases is that of SunEdison, a developer from the USA, which is currently in arbitration with the BPDB. This company signed the PPA in early 2017, including a commitment that COD would have to be reached by middle of 2018. It failed to acquire almost any land whatsoever and sought extensions, which were finally not granted and the PPA was terminated in 2019⁴.

The problem was somewhat hidden by the general COVID delays, but by 2022 at the tail end of the pandemic, the perception grew with international

sponsors that (1) several famous international solar IPP were not able to get to a financial close in Bangladesh, mostly -it was said- because of land problems, and (2) the vast majority of solar projects by all the other sponsors were not moving forward either. This is to a large degree true. Of the 1,700 MW of solar projects approved, less than 200 MW actually made it to COD so far, and most of them have been on the books since 2016 and 2017. Particularly the fact that some highly respected international developers were unable to pull through has deterred foreign investors. As a highly respected developer told me face to face: "if those guys could not make it work after a long time, having a team on the ground and spending millions, I do not think we can do any better than them."

Sparked by the highly publicized SunEdison case and confirmed by the perceived problems or massive delays of many projects, the perception took a solid foothold that it might just be too risky in Bangladesh to develop a solar project. "The country is not ready", one sponsor told me. We are now, sadly, at the stage where many (not all) international IPP will not seriously look at solar projects in Bangladesh unless the land has already been provided, for example by the Government.

Yes, buying land is hard. But that's not it.

It is undeniable that Bangladesh has a number of systemic factors which complicate all land transfers. You will hear a lot about density, which is true, but in reality we need just a few thousand acres for solar in a country size of 150,000 km², and that is objectively not a problem.

Bangladesh has no comprehensive land titles issued by the authority. Instead, ownership is proven by sale and purchase deeds which are registered with a local authority called the Subregistry. Each deed contains a narrative of historic ownership (e.g. "the seller bought this land in 1996 from Mr. A, who inherited it in 1984 from his father Mr. B, who bought it from Mr. C in 1970, who bought it from Mr. D in 1955"). That title and its historic chain is normally substantiated by supporting evidence from the land surveys done by authorities going back to 1880, surveys that recorded at the time who held which land (e.g. you would ideally find Mr. A, B, C and D's names on those surveys or the intermittent records or "Mutation Khatians").

There are a number of things that can go wrong with buying land in Bangladesh, but given the low degree of modernization in the land system it is striking how many checks and balances there nevertheless are. If someone tries to sell you land that does not belong to them, it suffices to check with the AC Land Office, which can tell you the recorded owner. If someone tries to sell you Government land ("Khas") as if it is their own, it suffices to check with the DC Land Office, which has a record of all Khas land. If someone pretends he is the only heir to the land, you can ask his siblings to confirm that, or you can ask villagers. If there are persons residing on the land with ownership claims, other than the seller, you will find that out rather quickly if you make a visit. If there are civil protests by people who claim they own the land, or they are vehemently opposed to the project, this would most often be detected at any advance land due diligence, and you would have bought land somewhere else.

There are also factors that you cannot avoid, that you just have to deal with. Corruption by or collusion with land officials does happen occasionally, but most of these instances can

- 3 <https://www.thedailystar.net/backpage/news/land-dispute-threatens-solar-plant-1837234>;
<https://www.thedailystar.net/opinion/economics/why-solar-power-development-so-slow-bangladesh-1560934>;
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- 4 <https://www.thedailystar.net/city/news/sunedison-challenges-cancellation-solar-park-project-1681417>;



be detected, and we rarely see this involving large infrastructure projects. Involuntary sales are sometimes reported and these will require careful attention from the sponsors. But maybe the most noticeable factor, which is just the way it is, is the sheer number of people you would be dealing with to buy say 200 acres of land for a solar project. In Thailand you might have to buy land from 10 to 20 owners to get that kind of size, but in Bangladesh you would need 200 owners or more for the same plot⁵.

And that is where the “agents” come in.

Commercial intermediation in land acquisition

If you are looking for land in an area that you do not personally know, you will not blindly go door to door, particularly when you are a foreigner. You will find someone who knows the area well, who can tell you which areas are for sale, which are not suitable, what the prices are. More importantly, as in Bangladesh the average tenancy is a lot smaller than in most other countries, it is likely helpful to have an agent acting as an aggregator who sources the land from the retail owners and then provides it to you “wholesale”, so you do not have to deal with 200 small owners who do not know you or trust you.

On the other hand, the prospect of making millions flipping land from unsuspecting owners to a company that might be able to afford top dollar, attracts people from a wide range of backgrounds and motivations, from the reasonable and mostly reliable to the questionable and infamous.

As long as the developer has several competing agents or his own deep network in Bangladesh, there are checks and balances to keep the whole process on tracks. But the agent may also find himself in a position of exclusive knowledge and information, particularly with foreign developers without deep existing direct networks of reliable and alternative information. This problem is exacerbated if the interests of the local partner and that of the agent are mixed, for example because the local partner receives a shareholding percentage based on the investment in land which he contributes as capital in kind, or

because the local partner actually is, or is performing the function of, the agent.

A closer look at the sponsors and the results

If you try to determine why so many projects are not moving forward, we also need to take a look at who the developers are. Let’s take a closer look at the two years when the most solar projects and MW were approved, 2016 and 2017. With respectively approximately 500 MW and 260 MW approved new solar projects, these two years show the peak of solar LOIs. These are also a large part of the projects that have been approved, but which have yet to reach financial close or COD.

When we focus on the experience of the sponsors that were awarded projects in these two early years (if we only look at IPP projects that were initiated by the sponsors themselves) we actually see that the profile of many of the consortium members at that time is different from the profile that you usually find in Asia for utility grade solar project developments. The usual list of large, experienced, international developers is largely absent in 2016 and 2017. In that period, basically every businessman in Dhaka was looking at doing a power project, and the Government was, understandably, doing the best it could to include its domestic industry in a sector where its national players were far behind the international experience. Although some experienced EPC providers or solar panel producers were supposedly roped into the consortia with less experienced members, it appears in hindsight that some of those loose cooperative links were not sufficiently productive. From 2019, perhaps conscient of the issues, the BPDB has approved proportionally much more projects for sponsors which have the usual profile you would expect of internationally experienced solar IPPs.

All said, out of 11 solar IPPs with an international profile that have received an LOI in Bangladesh, 1 was terminated, 1 has achieved COD within 5 years, 5 were approved only in 2020 or 2021 and thus can hardly be seen as hopelessly delayed, and 4 have been in development for at least 4 years. In total for all sponsors, 4 grid-connected solar projects have reached COD so far, for a total of some 113 MW, and they needed 4 to 5 year to get it done (including

construction). Not unbelievably long, considering these were the pioneers in the country, particularly if you consider that COVID slowed down everything in 2020-2021, and that in Bangladesh you can only do construction for half of the year.

Conclusions: what or who is to blame?

We should not minimize the tough practical and administrative challenges solar developers face when seeking land for their projects. It is simply true that the multitude of sellers, the difficulties evidencing succession and various administrative problems are baked into the system. Yet, I see few projects that are purely stuck because of any of these systematic land problems.

The real reasons why projects are not moving forward are, I believe, usually (1) commercial problems and (2), financial problems.

Let’s look at the (1) commercial problems first. On many projects yes, there are land problems, but only because there is a commercial problem with an intermediary or business partner which is manifesting itself through the land acquisition. There is a conflict of some kind with one or more agents or partners, which are about prices, shareholding and various contractual obligations (such as deadlines) more than anything else, and not actually about the land, its legal status, its availability, or the processes that need to be done.

Reason (2) is a financial problem. A large number of projects have difficulty raising the money they need, and that financial problem manifests itself in the land not being bought. More money is needed to buy land but shareholders are unable or unwilling to invest (additional) capital. For these projects, often no lenders can be found under those circumstances either. That the land has not yet been bought then actually means that the sponsor has not been able to finance his 20% capital contribution into the project yet. It is not surprising that lenders are reluctant to finance if there is doubt the sponsors are able or willing to capitalize.

And these two causes (1) and (2) reinforce one another. A commercial problem with the agent or partner will slow you down so much that

5 World Agriculture Census, FAO, 2010.

your lenders will soon be a lot more reluctant. And vice versa, closing the money flow will not make the agent or partner very happy to speed things along and resolve land issues.

Where do we go from here?

Obviously, a pipeline of more than 700 MW in uncompleted solar projects which have been approved more than 5 or 6 years ago is harmful to the healthy development of the sector and energy transition as a whole in Bangladesh. It will complicate the Government's policy freedom to allow new, maybe more promising projects, likely at lower costs. This pipeline needs to be converted to financial closes and COD's, or slated projects need to be cut and re-issued to more promising sponsors.

Recently, the BPDB has taken a lot more action to look into long stalled IPP projects by forming three new working committees, which is certainly a positive development. One of these committees will focus solely on land issues. And this is on top of regular follow ups of pending projects with meetings and updated information on progress. Without a doubt, more land acquisition by the Government itself for power projects would be a fundamental solution as well, but that will mostly work for greenfield projects.

But I strongly believe that many of the key problems are actually real private sector problems, requiring private sector solutions. It is surprising, actually,

when you run the numbers. Take a 100MW solar park that needs, lets say for the ease of calculating, 700 acres of land. At a price of US\$15,000 per acre, this land will cost the project US\$ 10,500,000. The non-land investment cost depends of course, but let's say that you can get 100 MW plant setup for US\$ 700,000 per MW nowadays, so that makes US\$70 Million. Plus the land purchase that makes US\$80,5 Million. The sponsors are supposed to come up with at least 20% so that's US\$16.1 Million. That is much more than sufficient for the US\$ 10,5 Million land cost. Put another way, it is difficult for sponsors to justify not buying the land outright, with equity, before lenders even go hard on any commitment. I think they have that obligation at the latest once they are in the LOI stage, and performing that obligation would de-risk the projects considerably for lenders.

So, where do we go from here? We need to reassess the bankability of pending projects, and we need to do it fast in order to repair the reputation of the country in the eyes of the international IPP community. A large part of this is a purely private sector problem, which requires the private sector partners to take their responsibility. Capital committed should be paid in. Land earmarked for purchase should be bought. Technical partnerships must be real and meaningful, or scrapped. For the good of the country, we need to move forward and those who can't or won't need to get out of the way.

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