DEVELOPMENT PROJECTS AND THE NEED FOR PARTICIPATORY AND TRANSPARENT CHANNELS OF NEGOTIATION WITH AFFECTED COMMUNITIES.

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ABSTRACT

Recent efforts made by some developing countries to foster economic growth has caused the displacement of communities from long time government owned territories and, thus leading to grave social conflicts. This paper presents a study on the conflicts occurring as a result of the construction of Açu Superport Industrial Complex (CISPA) on the northern coast of Rio de Janeiro State, Brazil. CISPA is lead by the EBX Group, owned by a Brazilian billionaire. And, in spite of being a private enterprise, we found different areas of government supporting CISPA initiative. In addition to a series of loans from State and Federal banks, CISPA benefitted from the State government’s eminent domain to transfer land from small farmers and fishermen to the EBX Group. The State government also facilitated the approval of environmental licenses through a fast-track approach. As a result, CISPA has faced a strong reaction from affected communities that see the project as a menace to their means of survival and social reproduction. Our goal is to demonstrate that the lack of mechanisms to allow community participation and project accountability is the root of an ever-growing opposition to CISPA.

Keywords: accountability, Açu Superport, economic development, participatory
Introduction

The recent surge in large development projects in Brazil is associated with the implementation of the Growth Acceleration Program (PAC) by the Federal Government. Zhouri & Oliveira (2007) and Zhouri (2010) suggest PAC is the driving force in the displacement of smallholders and traditional communities in different parts of the country. A source of the disputes in the implementation of PAC has been the perceived lack of compensation for the inhabitant population displaced from the territories targeted to host different types of industrial activities and urban infrastructure (Gaffney, 2010). Governmental agencies, on behalf of the Federal and State governments, are in charge of securing the removal of landowners and untitled occupiers from targeted areas. Through provisions given by eminent domain, these agencies claim private or communal land and, in many instances, without application of existing Constitutional safeguards designed to mitigate the negative effects brought by forced resettlement (Pedlowski, 2012). Brazilian legislation has guarantees provided for secured land rights through the principle known as “usocapão,” (squatter rights). These should have been taken into account during the events of land eviction. However, in order to be eligible for compensation within the PAC program, both financial and non-financial, state agencies demanded the presentation of formal documentation from affected parties. This type of legal demand is especially problematic in poorer rural areas where land property certification is difficult because of the high costs associated to titling.

Governmental agencies in charge of land registration are being outpaced by other fellow agencies in charge of implementing development projects, a situation often leading to internal rifts inside the government. And even in cases where there were legal provisions for compensating titled and untitled landholders, entire communities were being summarily removed from the land without the assurance of reimbursement (Barreto & Pinedo, 2012). This situation is especially problematic in Brazil. Federal and most state constitutions have clearly defined cases in which property rights of individuals and communities can be removed. In addition, there are different judicial bodies both at the State and Federal levels responsible for protecting the rights of landowners. Therefore, perception of private corporations and governmental agencies unfair and/or unlawful treatment of the affected populations is leading to a growth in local opposition to these projects and, in many instances, to social conflicts.

Meanwhile, there is a growing body of evidence indicating natural ecosystems, in areas targeted for economic development, are under increased environmental stress resulting from a fast-track approach to issue all required environmental licenses (Fearnside, 2006). However, some authors indicate that a main problem with environmental licensing in Brazil is the lack of institutional capacity within environmental agencies to oversee the implementation of the
environmental impact assessment reports mitigating measures (McAllister, 2010; Reid and Sousa Jr, 2005). Thus, the public’s association of development projects with major causes of environmental degradation and social conflicts is leading to growing opposition in different parts of Brazil. Grassroots reaction to potential degradation of natural ecosystems is delaying construction and jeopardizing the viability of certain projects in many cases (Carvalho, 2006).

This paper addresses the case of the Açú Superport Industrial Complex (CISPA) that is under construction in the municipality of São João da Barra, located on northern coast of Rio de Janeiro State, in Brazil. CISPA is an ambitious project led the EBX Group aimed at providing an export hub of agricultural and mineral commodities produced in other parts of Brazil. In spite of being a private enterprise, the construction of CISPA is being facilitated by the different government agencies supporting it with subsidized loans, fast-track licensing and public land obtained from of smallholders and fishermen. Our goals are to discuss the different strategies used by the State to evict small farmers and fishermen from their land to allow the construction of CISPA, and to examine the consequences of these approaches on the willingness of affected communities to abandon their landholdings.

**CISPA: A Complex to Supply Global Markets**

Even on the drawing board, CISPA is already an ambitious project. With an initial budget of US$ 40 billion and a declared potential to create 235,000 jobs between 2008 and 2025, CISPA is being presented by the EBX Group as the largest transportation and industrial hub under construction in the Americas. The so-called “Industrial District of São João da Barra” is where the industrial component of CISPA will be located, encompassing a total area of 7,036 hectares (AGB, 2011)

One of the stated goals of CISPA is to offer passage for a high grade iron pellet feed transported through a new 525 km long pipeline being built by the steel giant Anglo American to bring the production from its mines in the state of Minas Gerais to the Açú Superport for transportation to its consumption markets (Figure 1).
In addition to being a future export hub, CISPA is expected to host a series of industrial and energy installations that should include at least two steel plants, a shipyard and two thermoelectric plants (Figure 2).

FIGURE 2 ABOUT HERE

One of the strategic advantages of CISPA’s location is the proximity to large oil reserves located in the Pre-Salt Layer found offshore near Rio de Janeiro’s coast, which EBX Group’s subsidiary, OGX, has significant exploration rights. In this regard, CISPA should become a major logistics hub which will prove useful to the oil industry over the coming decades. An overarching goal for CISPA’s construction is strengthening Brazil’s access to global markets. In a recent move, the Brazilian government highlights the potential for CISPA to become a prime location for exporting mineral and agricultural commodities. A new Federal program was designed to increase and to improve the existing road and railway networks. The so-called “Programa de Logística para Rodovias e Ferrovias, “Logistics Program for Highways and Railways” was launched by President Dilma Rousseff in August of 2012 with an initial budget of US$ 65 billion. In spite of being formally a private enterprise, CISPA was included in this network, thereby connecting it by railway to soybean and sugarcane production areas located in the Brazilian Midwest.

The connectivity to commodity-producing areas that as planned in the construction of this railway network is not the only form of support that CISPA is receiving from the Brazilian government. Because of its inclusion in the PAC program, different components of CISPA became eligible for subsidized loans from the Federal government. An example of Federal funding to CISPA is a US $ 1.3 billion loan given by two Federal banks, BNDES (the Brazilian Development Bank) and Caixa Econômica Federal to OSX for the construction of a shipyard.

Eminent Domain and Fast-Track Environmental Licensing

An initial limitation faced by the EBX Group was to secure enough land to build all the planned industrial plants. The area selected for installing CISPA, the Fifth District of São João da
Barra, was traditionally occupied by small farmers and fishermen under different levels of land tenure arrangements. In addition, in spite of predominant sandy soils, the small farmers located in the Fifth District were considered very productive and important sources of several cash crops e.g., pineapple, okra, pumpkin and Jamaican cucumber. As a result of emotional attachment to a territory in which they bound by family ties and productive experience, most farmers were not willing to sell their land neither were they willing to be resettled elsewhere.

In order to guarantee the land needed by the EBX Group to install CISPA, the government of Rio de Janeiro State exercised the provisions of eminent domain to issue four decrees to expropriate farmland “in the public interest”. These decrees impacted directly an unspecified number of families (the total number ranges from 750 to 1,500 families) living in the region and mainly occupied in small farming and fishing. Although the use of eminent domain is not new in Brazil, the case of CISPA is controversial. The Brazilian Constitution of 1988 provides a series of safeguards against expropriation of land that is considered productive. In addition, the legal basis for the use of eminent domain to expropriate land from farmers and fishermen is the Decree 3365 of 1941 that does not supersede the chapter on legal rights present in the 1988 Constitution.

To add another layer of resistance to CISPA, the State of Rio de Janeiro Development Company CODIN (Companhia de Desenvolvimento Industrial), started to evict families from their farms without the constitutionally mandated financial compensation for expropriated farmers. The argument presented by CODIN was that many owners were absent from their farms or did not have the required titles to be illegible for compensation. This strategy contradicts directly the Article 265 of the Rio de Janeiro State Constitution which requires expropriation to only occur where there is fair compensation for land and improvements on a given farm, regardless of the existence or not of a land title. Because of this requirement, only a minor fraction of farmers received any sort of financial compensation for being removed from their land.

Moreover, to overcome farmer’s resistance to eviction, CODIN implemented a strategy of using large groups of police officers to evict farmers from their land. To downplay an emerging sense of injustice against hundred of family farmers, the EBX Group established a rural village to receive the families being expelled from their farms. Vila da Terra was presented by EBX Group as a model for fair resettlement. Most farmers rejected the Vila da Terra settlement because of a myriad of problems surrounding life inside the village, such as precariousness of water and electricity services, restrictions on planting perennial crops, and lack of land titles.

Opposition resulted from the disputes around of the legality of land expropriation and resettlement strategies used by the state government to issue environmental licenses for the different projects to be built inside CISPA. First, the decision by the Rio de Janeiro environmental agency,
Instituto Estadual do Ambiente (INEA), was to evaluate each project separately. The argument used in favor of this approach was the need to expedite the licensing process. However, opponents of this fast-track approach pointed to the possibility that it would preclude the calculation of the overall emissions of pollutants and its combined impact on the local aquatic and terrestrial ecosystems (AGB, 2011). Second, and a highly important problem, the public hearings required by law were organized individually. This strategy favored the companies interested in obtaining licenses because it precluded a more comprehensive evaluation of the social and environmental repercussions attached to the combined impact of the different projects. In addition, these public hearings were held mostly at night and none was conducted in the Fifth District, thus precluding broader public participation (Figure 3).

FIGURE 3 ABOUT HERE

As a direct result from the combination of these problems, local resistance to CISPA has increased greatly over time. A more recent source of dispute between farmers and their representatives against the EBX Group and CODIN has been the detection of salt intrusion into superficial and underground aquatic systems, a process that has been associated with the construction of CISPA’s shipyard. This negative environmental impact has not only worsened the situation of farmers that have not yet been removed from their farms but it has also increased the local opposition to CISPA.

Strategies to Voice Demands for Participation and Accountability

Initially, small farmers and fishermen were overwhelmed by the pace of change CISPA brought to their territory. After land evictions started in 2010 they decided to organize their response to the expropriation process. The first step taken by a group of farmers living in Fifth District was to create the “Associação de Produtores Rurais e Imóveis de São João da Barra” (ASPRIM). Almost immediately after the creation of ASPRIM, a series of protests were held in the city of São João da Barra, and blockades were organized to close roads leading to CISPA (Figure 4).

FIGURE 4 ABOUT HERE

During these protests, farmers demanded a halt to the eviction process and a revision of the decrees issued by the State government to expropriate their land. In addition to protests, ASPRIM also organized a series of public seminars and hearings to educate the members of the community about the impacts of CISPA on their lives, especially on issues related to land rights and financial
compensations for any losses associated to environmental degradation and their displacement from
their farms. Furthermore, in an attempt to respond to the official public hearings which were seen as
controlled by the technical staff of both State government and the EBX Group, ASPRIM also
organized a public hearing in a locality inside the Fifth District. ASPRIM’s argument in favor of
holding its own hearings was based on the fact that the official events did not follow procedures as
prescribed by law. Although invited, the State government and the EBX Group did not send any
representatives to participate in the hearing.

The second step taken by ASPRIM involved the use of a wide array of legal measures to
question the construction of CISPA. They hired a lawyer that had been actively involved in
confronting the EBX Group in a similar project in the southern state of Santa Catarina. As a result,
several lawsuits were filed against the state government and the EBX Group in State and Federal
branches of the Ministério Público. Although lawsuits are not usually settled rapidly in Brazil, the
simple fact that a prosecutor accepts the complaints and decides to pursue legal actions against a
given project is seen as a powerful deterrent against abuses that may occur in large development
projects like CISPA. On this regard, a recent decision by a Federal judge in favor of ASPRIM has
placed severe restrictions on the construction of the CISPA’s shipyard. In spite of the fact that the
judge’s decision can be reversed in the upper chambers of the Brazilian judiciary, EBX Group’s
credibility with its shareholders has already been undermined.

A third step involved the use of virtual social networks (e.g., Facebook, Twitter, and Blogs)
and the internet to disseminate information and to increase the social support for farmers and
fishermen in their struggle against the State and the EBX Group. Students and researchers from
three public universities located in the nearby city of Campos dos Goytacazes are providing support
for the dissemination of information through social media. This is enhancing ASPRIM’s capacity to
mobilize social networks and non-governmental organizations that operate both at the regional and
national levels. A perfect example of this type of engagement is the national campaign made by the
Catholic national nongovernmental organization “Comissão Pastoral da Terra” against the
perceived negative effects of CISPA on the rights of small farmers and their environment.

Conflicts and Facilitating Negotiation for Economic Development

The previous sections served to explain the conditions under which the implementation of
CISPA has been plagued by all sorts of social conflicts, environmental problems and legal
grievances. An important element of this situation is that all infighting is not new in cases where the
interests of governments and private corporations collide with communities living in areas targeted
for economic development. In fact, CISPA is the epitome of the problems listed by Lindsay (2012)
that occur during government’s compulsory acquisition of land to secure resources needed for the
development of infrastructure projects. Additionally, Lindsay also indicated a series of steps that
could be taken to minimize conflicts and alleviate the disproportional burden placed on
communities living in areas selected for compulsory acquisitions of land.

The CISPA case stresses the need for implementing policies oriented to overcome the
dualistic approach that, on one side, favors corporations and governmental agencies while the other
tramples on the rights of communities being dislodged by development projects. These policies
should not only create formal mechanisms aimed at enhancing accountability and transparency by
governmental agencies and corporations but, more importantly, they should provide conditions for
communities to have their voice heard and their constitutional rights respected. As illustrated in this
case, it is very difficult for communities to confront the economic and legal capabilities held by the
State and large corporations. A starting point would be the allocation of resources for communities
to hire their own experts responsible for presenting their case in all venues involved when the State
uses the provisions of eminent domain to take land compulsorily.

Meanwhile, corporations will also need to learn to consider the benefits of treating demands
brought by communities impacted by large economic projects fairly. CISPA is a perfect example of
how communities can rapidly learn to react when they see themselves mistreated by the process of
compulsory land removal. A group of disgruntled community members can become capable of
posing great difficulties to the implementation of projects that depend on rapid conclusions to hold
the faith of shareholders and investors in these projects’ success. This is especially true in a
historical period where the dissemination of strategic knowledge has become rapid and fluid
through the use of virtual social networks and the many tools that are available for the transference
of information and creation of public opinion. Conflicts emerging in cases similar to CISPA
suggest that the path suggested by Forester (2006) could be used to minimize conflicts and to create
more effective negotiation channels.

Concluding Remarks

The analysis of CISPA case reveals complex problems arising from when development
initiatives disregard existing land uses, prevailing land tenure structures and the interests and needs
of communities living in areas targeted for economic development. Moreover, this case exemplifies
what may occur when channels to resolve eventual disputes with communities affected by
economic development projects are not established prior to any initiative to dislodge individuals
and communities from their land. Finally, this case also exemplifies the need for designing
participatory and transparent approaches to handle conflicts of interest that unavoidably occur when
inhabited areas are chosen to host large economic projects.

REFERENCES


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Figure 1. Map showing the location of CISPA in the municipality of São João da Barra and the Anglo American slurry pipeline, Source: AGB (2011)

Figure 2. Map showing the location of different projects that form CISPA. Source: AGB (2011)
Figure 3. Public hearing held in the city of São João da Barra to inform the local community on the social and environmental impacts of the CISPA’s shipyard.

Figure 4. Road blockade organized by ASPRIM on the road leading to CISPA’s construction site.