



Norwegian University of Life Sciences  
Faculty of Social Science  
Department of Landscape Architecture and  
Spatial Planning (ILP)

Master Thesis 2015  
30 credits

# **An Introduction to the Property System of Pakistan, Focusing on Telenor's Operations in the Country**

En Introduksjon til Eiendomssystemet  
i Pakistan, med Fokus på Telenors  
Virksomhet i Landet

Mohammed Ihtaq Shakoor

## Preface

This thesis marks the end of my five years of studying Land Management at the Norwegian University of Life Science in Ås, Norway.

This thesis aims to investigate the challenges and obstacles a international company might face when operating in the property system of a foreign country, thus how an international company will have to adapt their business and understanding in relation to the process of acquisition. This is a relevant issue, since advances in the development of technology has resulted in a globalization process, which has made acquisition across national borders relevant and profitable.

The study has given me a better understanding of the significance of property in the society and the opportunities arising from a well-functioning property system, as well as the limitations imposed by a weak property system.

It has been a challenge to embark on such a extensive task and there are certainly some decisions that I could have made differently, but I am very pleased with the execution of this thesis. I believe that I have managed to highlight the research question in a good way, while I have described the Pakistani property system in a satisfying manner.

I would first and foremost like to thank my supervisor, Professor Emeritus Hans Sevattal, for having encouraged me to write this thesis and for the valuable guidance I have received from him in this work. His constructive feedback and advice has been of great benefit, in addition to his professional knowledge.

Furthermore, I wish to thank Richard Groven from Telenor Real Estate, for the interest he has shown to the thesis and for having put me in contact with representatives from Telenor Pakistan. I also want to thank Shakeel Ahmed from Telenor Pakistan for making me feel welcome and for his help in organizing the interviews with employees in Telenor Pakistan.

I want to give a special thanks to the interwivees, for their participitation in the interviews and for all the other help in relation to this study. Their contribution has been essential for the thesis.

Finally, I want to thank NJKF – Norges Jordskifterkandidatforening for financial suport, which made it possible to conduct the fieldwork related to this thesis.

## Abstract

The theme of this thesis is land acquisition for telecommunications purposes, with the research question: *How does Telenor acquire property in Pakistan and what are the challenges associated with operating in the Pakistani property system.* This thesis deals with Telenor's acquisition activities related to the establishment of Base Transceiver Station towers, focusing on the negotiation process. I wanted to illustrate how Telenor as a Norwegian company conducts acquisition in a foreign country and the challenges met by operating in the Pakistani property system. I wanted to explain the Pakistani property system, as I am well aware that religion and culture has a central place in the Pakistani society.

I have prepared three issues, in addition to the research question, in order to answer and refine the research question in a satisfying manner. The three issues concentrates on elucidating the main factors related to the acquisition process, which is executed by Telenor. These questions deals with the legal framework related to land acquisition in Pakistan, the Pakistani property system and Telenor's practical implementation of land acquisition in their business.

I found out that there is a large bureaucracy associated with land acquisition, and in general within the Pakistani property system. In addition there is a considerable uncertainty related to the information in the Pakistani property system. The study shows that Telenor has a strong position in negotiations with private landowners, as there is a limited knowledge among the owners about current market prices and their land rights.

There is a big difference in the Pakistani property system, from a theoretical perspective to the practical implementation of the system. The Pakistani property system is theoretically a good and well-functioning system, but as a result of corruption, extensive registration process of land rights and low wages among the administrators of the system has led to a little transparent system being used by resourceful people in the society.

The property system is often tampered with in practice, property and rights are transferred between landowners without the necessary process of registration and notification. A landowner may for instance lose rights to his own property without being aware of it, until one day someone knocks at the door and claims right to the property. It is also a great cultural impact on rights to property in Pakistan, leading to limitations on the access to various land rights; this concern especially women and the poor population.

Telenor does mainly acquire property through amicable agreements with private landowners; land acquisition is primarily carried out as leases as a result of various practical reasons. The biggest challenge which Telenor faces in the acquisition process; are the challenges related to the identification of the legal owner of a property and risks associated with terrorism and natural disasters in certain areas. Telenor has solved many of the cultural and legal challenges by establishing Telenor Pakistan as an independent company, while Telenor is involved on a consultancy basis and managing level.

## Sammendrag

Temaet for denne oppgaven er grunnerverv til telekommunikasjonsformål, med problemstillingen: Hvordan erverver Telenor eiendom i Pakistan, og hvilke utfordringer er det knyttet til å operere i det Pakistanske eiendomssystemet. Denne oppgaven omhandler Telenors grunnervervs virksomhet i Pakistan til telekommunikasjonsformål, med hovedfokus på selve forhandlingsprosessen i akkvisisjonen. Jeg ønsket å belyse hvordan Telenor som et norsk selskap gjennomfører akkvisisjon i et fremmed land og hvilke utfordringer selskapet møter ved å operere i det Pakistanske eiendomssystemet. I tillegg ønsket jeg å gjøre rede for det Pakistanske eiendomssystemet, ettersom jeg er godt kjent med at religion og kultur har en sentral plass i det Pakistanske samfunnet.

Jeg utarbeidet tre delproblemstillinger for å svare og avgrense hovedproblemstillingen på en oversiktlig måte. De tre delproblemstillingene tar sikte på å belyse de viktigste faktorene knyttet til den akkvisisjonsprosessen som Telenor gjennomfører i Pakistan. Disse tre delproblemstillingene omhandler det juridiske rammeverket knyttet til grunnerverv i Pakistan, det Pakistanske eiendomssystemet og Telenors praktiske gjennomføring av grunnervervsprosessen.

Jeg fant ut at det er et stort byråkrati i forbindelse med grunnerverv og generelt innenfor det Pakistanske eiendomssystemet, i tillegg er det en betydelig usikkerhet knyttet til opplysningene i dette eiendomssystemet. Studie viser at Telenor har en sterk forhandlingsposisjon i forhandlinger med private grunneiere, da det er liten kunnskap blant private grunneiere om hva som er gjeldende priser i markedet og hvilke rettigheter de har.

Det er en stor forskjell i det Pakistanske eiendomssystemet, sett fra et teoretisk perspektiv til den praktiske gjennomføringen av systemet. Det Pakistanske eiendomssystemet er teoretisk et godt og velfungerende system, men som et resultat av korrupsjon, en omfattende registreringsprosess og lave lønninger blant forvalterne av systemet, har ført til et lite transparent system som blir misbrukt av ressurssterke personer i samfunnet.

Eiendomssystemet er ofte tuklet med i praksis, eiendom og rettigheter overføres mellom grunneiere uten den nødvendige prosessen med registrering og varsling. En grunneier kan for eksempel miste rettigheter til eiendommen sin uten å være klar over det, inntil det en dag kommer noen på døren og hevder rett til eiendommen. Det er i tillegg en stor kulturell påvirkning på rettigheter knyttet til eiendom i Pakistan, som fører til begrensninger i eiendomsretten; dette gjelder spesielt for kvinner og fattige.

Telenor erverver hovedsakelig eiendom gjennom minnelig avtale med private grunneiere, grunnervet gjennomføres primært som leasing avtaler på grunn av praktiske årsaker. De største utfordringene som Telenor møter på i akkvisisjonen, er blant annet identifiseringen av den juridiske grunneieren av en eiendom og risiko knyttet til terror og naturkatastrofer i enkelte områder. Telenor har løst mange av de kulturelle og juridiske utfordringene ved å etablere Telenor Pakistan som et selvstendig selskap, mens Telenor selv er involvert på konsulentbasis og forvaltning.

# Contents

Frontpage .....	I
Preface.....	i
Abstract.....	ii
Sammendrag .....	iv
Chapter 1 - Introduction .....	1
1.1 Background and theme for the thesis.....	1
1.2 Research question and sub-Issues.....	3
1.3 Delineation of theme .....	4
Chapter 2 – Method .....	5
2.1 Introduction .....	5
2.2 Choice of method .....	6
2.3 The interviews.....	7
2.3.1 Preparations.....	7
2.3.2 Conducting the interviews.....	8
2.4 Literature study .....	9
2.6 Structure of the thesis.....	10
Chapter 3 – Theoretical framework.....	11
3.1 Legal pluralism.....	11
3.1.1 Customary law.....	11
3.1.2 Islamic law .....	14
3.2 Land acquisition .....	17
3.3.1 Negotiations .....	20
3.3.2 Distributive negotiations .....	20
3.3.3 Integrative negotiations .....	22
3.3.4 Multi-parts negotiations.....	25
3.3.5 Intervention .....	26
3.4 Institutional framework.....	27
3.5 Land administration .....	28
3.6 Land administration in Pakistan.....	33

3.6.1 A brief history .....	33
3.6.2 Current land administration of Pakistan and the administrators role in the system.....	34
3.7 Land records .....	37
3.8 Sources of property rights .....	39
3.8.1 Introduction .....	39
3.8.2 Contracts.....	39
3.8.3 Inheritance .....	40
3.8.4 Will.....	41
3.9 Property legislative framework .....	42
3.9.1 Introduction.....	42
3.9.2 Land Acquisition Act of 1894 .....	42
3.9.3 The Land Revenue Act of 1967.....	44
3.10 Transactions .....	46
3.10.1 Mutation process .....	46
3.10.2 Registration process.....	47
3.10.3 Property taxation and fees .....	48
3.10.4 Rural land .....	49
3.10.5 Urban land.....	50
<b>Chapter 4 - Interview .....</b>	<b>52</b>
4.1 Introduction .....	52
4.2 Issue 1: How does Telenor Pakistan execute a land acquisition?.....	53
4.2.1 What kinds of expectation do you have before beginning on a new acquisition process?... 53	
4.2.2 How do you proceed on the land acquisition process, in terms of deciding who you are going to contact? .....	54
4.2.3 How does Telenor deal with non-professional landowners, in terms of that they do not know the value of their property or how much they should demand in rent? .....	55
4.2.4 Are there any types of a property that Telenor tries to avoid or who is more demanding to acquire than others?.....	56
4.2.5 How would a typical acquisition process in Telenor be executed and what kinds of requirements does the process have to take in consideration? .....	57
4.2.6 Does Telenor buy the properties that they acquire or are the properties acquired for a period of time in a rental agreement? .....	58
4.2.7 How does the local culture affect the acquisition process, in terms of negotiations in the different parts of Pakistan?.....	59



4.2.8 How do you establish business in hostile environments or in areas that are more exposed to natural disaster? .....	60
4.3 Issue 2: What property system does Pakistan have and what's Telenor's relation and experience with the system? .....	62
4.3.1 What kind of property systems are there in Pakistan?.....	62
4.3.2 What do you think about the register system? Is it transparent enough? Can you trust the system and the <i>Patwaries</i> ? .....	63
4.3.3 How does Telenor verify or how can the company be sure of that the persons they are dealing with, in fact are the legal owners of the land that they are claiming of? .....	64
4.3.4 How does the relationship between the public and the private reflect in Telenor's operations?.....	66
4.4 Issue 3: The legal aspects of acquisition and property in Pakistan.....	68
4.4.1 Can you tell me about the court system in Pakistan and how it relates to property? (In general).....	68
4.4.2 What kind of legal issues does Telenor has to deal with, regarding to land acquisition? ....	69
4.4.3 What Kind of legal tools does Telenor have/use? .....	70
4.4.4 How well does the existing property system secure the rights related to property?.....	72
4.4.5 What is the difference between the private and the public law system? .....	72
4.4.6 How has Islam influenced the property law system? .....	73
4.4.7 How does Telenor relate to the international standards and laws, and how are these taken into account as a part of Telenor's business? .....	74
<b>Chapter 5 - Analysis .....</b>	<b>76</b>
5.1 Issue 1: How Telenor Pakistan execute a land acquisition .....	76
5.1.2 The expectation before beginning on a new acquisition process .....	76
5.1.3 The proceeding of the land acquisition process.....	77
5.1.4 Non-professional landowners.....	78
5.1.5 Types of properties that Telenor tries to avoid.....	80
5.1.6 A typical acquisition process .....	82
5.1.7 Buying or renting.....	83
5.1.8 Culture and the acquisition process .....	85
5.1.9 How to establish business in hostile environments or in areas that are more exposed of natural disaster.....	85
5.2 Issue 2: The property system in Pakistan, Telenor's relation and experience with the system .....	87
5.2.1 The property systems of Pakistan .....	87

5.2.2 The registration system and transparency .....	88
5.2.3 Verification of ownership.....	89
5.2.4 The relationship between the public and the private .....	91
<b>5.3 Issue 3: The legal aspects of acquisition and property in Pakistan.....</b>	<b>93</b>
5.3.1 The court system in Pakistan and how it relates to property .....	93
5.3.2 Legal issues that Telenor has to deal with regarding land acquisition .....	95
5.3.3 Legal tools .....	97
5.3.4 The existing property system and security of property .....	98
5.3.5 The difference between the public and private law system.....	98
5.3.6 Islamic influence of the property system.....	99
5.3.7 Relation to international standards and laws .....	101
<b>5.4 Summarizing conclusions .....</b>	<b>102</b>
<b>Chapter 6 - Final reflections .....</b>	<b>104</b>
6.1 Final reflections.....	104
<b>Reference .....</b>	<b>106</b>
<b>Appendix.....</b>	<b>107</b>
Appendix 1: Interview Guide.....	108

# **Chapter 1 - Introduction**

## **1.1 Background and theme for the thesis**

This thesis deals with land acquisition in Pakistan for telecommunications purposes, based on Telenor's operations in the country. It has been written several theses about land acquisition from previous studies, but it is very little that has been written with an international angle on this topic. Many master thesis' that has been written about land acquisition, have mainly dealt with land acquisition in connection with public purposes emphasis on issues related to transport. The world has become more global and there are a lot of opportunities and much development taking place through international cooperation, which has created a greater need for understanding real estate and land acquisition from a global perspective. This globalization process, in relation to land acquisition, has made it very exciting for me to work with this text.

Telecommunication systems has become a central part of the rapid globalization process that we have experienced in recent decades, access to global capital have been an important driving force for international business. This has resulted in the fact that telecom industry has evolved to become an international industry, where companies are constantly searching for new markets to establish their business. Telecommunication companies need to acquire property for their business, both through the creation of base stations and for their administrative activities. Land is thereby an important part of the telecommunication companies' operations, and increased globalization has led to the need to acquire property across national borders.

Telenor has evolved to become the leading telecommunications company in Norway and have established itself as an international company, searching for new foreign markets to operate in. Globalization makes it possible and attractive for large Norwegian companies to invest in developing countries, while investments from international companies contribute to the financing of growth and infrastructure in these countries. Telenor has managed to establish itself successfully in several foreign countries, both in Europe and Asia. One of the foreign countries that Telenor operates in is Pakistan. It was based on my multicultural background from Pakistan and interest in land acquisition, that I first got the idea and motivation to write this thesis on international land acquisition.

I have explained the concept of land acquisition in the thesis, but in general we can say that the term “land acquisition” discusses the various processes related to the acquisition of land rights for various purposes. I have in this thesis chosen to emphasize on how Telenor conducts its land acquisition in Pakistan using amicable agreements; I have in addition highlighted some of the challenges that Telenor may encounter in their work related to land acquisition.

It has also been a key part of the thesis to account for the institutional framework for land acquisition in Pakistan, since international establishments in various parts of the world leads to different frameworks for land acquisition which the companies have to relate to and adapt into their business in a foreign country. Understanding the institutional frameworks in a specific country is essential, as it ensures a profitable business and avoids high transaction costs. There are cultural and legal differences between Norway and Pakistan that has to be taken in consideration in the establishment in a foreign country.

## 1.2 Research question and sub-Issues

On the basis of the theme, I have designed the following question:

*“How does Telenor acquire property in Pakistan and what are the challenges associated with operating in the Pakistani property system”*

Furthermore I have formulated three sub-issues that will help to refine the thesis and to shed light on the key issue.

- 1. How does Telenor Pakistan conduct a land acquisition?*
- 2. What property system does Pakistan have and what is Telenor’s relation and experience with the system?*
- 3. What are the legal aspects of acquisition and property in Pakistan?*

The thesis is not intended to provide an exhaustive description of the regulatory framework for land acquisition in Pakistan, but it aims to provide an introduction to the challenges that Telenor may encounter on in Pakistan, as an international company. Therefore this study should be regarded as a general approach to the Pakistani property system, which allows several possible thesis in the future concerning globalization and property systems. The purpose is to illuminate most of the theme within the established framework of the issues related to the thesis and the given time frames for the thesis.

### **1.3 Delineation of theme**

The purpose of the thesis is to investigate how Telenor, a Norwegian company with operations abroad, conducts its land acquisition in a foreign country and what kind of challenges that Telenor faces in connection with their land acquisition in Pakistan. I have concentrated on how Telenor executes its land acquisition today, in contrast to the early process relating to the establishment phase of the company in Pakistan. For example, what challenges a multinational company may face in an early part of the establishment phase in a foreign country.

I have also on a general basis explained the different institutional framework which is linked to the implementation of land acquisition, in addition to explain the land administration system in Pakistan. With institutional framework, I mean here the laws and the legal basis which Telenor must adhere to in their acquisition process. I have therefore omitted to discuss challenges and opportunities or weaknesses and strength in the different institutional frameworks that has been mentioned, since I am obliged to refine the thesis. I have to some extent chosen to discuss some parts of the other themes which the thesis touches, but without really delve into the material.

This thesis touches many other themes, which have the potential to be discussed in separate studies. It has therefore been a challenge to refine the thesis, but it is clearly been appraised on the basis of Telenor's operations in Pakistan.

## Chapter 2 – Method

### 2.1 Introduction

This thesis intends to explain the challenges that Telenor meets in Pakistan, in relation to the acquisition of property rights. The method used to solve a problem, is an important part of any research project. I will in this chapter go further into the details about the approach/method that I have chosen to use in this study. The main citation I have used in this chapter, is from Skolbekken, 2010 “*Veiledning for Forskningsetisk og Vitenskapelig vurdering av Kvalitative Forskningsprosjekt innen Medisin og Helsefag*”, I have therefore based this chapter on the methodology referred to in this guide.

There are several different methods used to solve various problems related to a scientific research. A method can be considered to be a structured procedure for how to proceed when researching a new knowledge, or in order to falsify/verify existing statements, claims or other hypotheses. A crucial factor related to the choice of method that should be used in a certain research design, is the research question which the method is intended to illuminate. It is primarily distinguished between two main methods in social science; quantitative and qualitative methods.

Quantitative methods are used to collect information that can be quantified or expressed in terms of mathematical concepts, which are often used in statistics. This is a highly structured and system-based method that goes wide in the research question and aims to convey explanations. Quantitative methods are for example used when someone wants to research the breadth of knowledge or when a generalization of certain knowledge is wanted. It may be used in research questions that aim to explore population studies or in studies where the aim is to map the health of a population.

We see here that there is a correlation between quantitative methods and large amounts of data, which in most cases has to be expressed through statistics in order to be manageable. It is common to use structured interviews, surveys and numbers as data, the statistics is used to explain different casual relationships in the analysis.

Unlike the quantitative method, the qualitative method is applied for a narrower field where one goes in depth of the material. Qualitative methods are based on theories of interpretation and human experience. It is a method that usually is based on the experience and feeling, which a person may have in relation to the issues that is to be examined.

The aim of qualitative method is to explore the meaning or structure of various social phenomena's, as they are experienced by the involved parts. Qualitative method puts people in focus and is a much more personal research program than quantitative method, since the researcher has the opportunity to perceive the respondents' personal reactions to specific questions and topics. Qualitative methods are well suited in issues and topics where the existing knowledge is limited. It is common to use participatory interview, unstructured interviews and qualitative analysis of texts in the process of collecting and producing data in qualitative research.

It is further, a clear distinction in the analysis process between the two different approaches. The analytical process in quantitative methods is often characterized by the rule-based tools used to process the data, while qualitative methods are recognized by having an explorative design.

## **2.2 Choice of method**

The research question of this study is about what kind of approaches Telenor has chosen to use in their work of land acquisition, and the challenges they face when operating in the Pakistani property system. It is the business of Telenor which is at the center of this study, and its treatment of the interpersonal relationships that are connected to the acquisition process. It is thereby the people working in the land acquisition department of Telenor and their experience with the Pakistani property system that is in focus. The survey will therefore be composed in a personal nature, where respondents' are supposed to share their experience with how the property system works in practice and what challenges they face with the system.

Qualitative method will in this case be the best alternative to illuminate the issues in this research question, since it allows for in-depth interviews with respondents. This is also considered as the best option, since this research framework allows for further discussion of the collected material. Thus it will become possible to develop new questions and really delve into the answers from the respondents during the interview, by having the opportunity to ask the respondents to elaborate their answers when necessary.

I have chosen to focus on humans' relationship and experience of the Pakistani property system in an acquisition process. It is not a survey which takes to aim neither to arrive at a statistical summary nor to quantify any findings. It is with this background that I have concluded that it will be most appropriate to use qualitative method in this study.



## 2.3 The interviews

### 2.3.1 Preparations

As the thesis is primarily related to Telenor's business in Pakistan and the Pakistani property system, I chose to contact Telenor in order to have the opportunity to interview key employees in the company, who has a central function in the process of land acquisition which Telenor performs in Pakistan. This would constitute a good basis for the thesis, as they have knowledge about the institutional framework related to land acquisition in Pakistan, both theoretical and practical knowledge.

The work began initially when I first got in touch with Richard Groven, who is the CEO (Chief Executive Officer) of Telenor Real Estate. I explained him the purpose of the thesis and received a positive response; this was a study they would be happy to contribute to. I was further referred to Gøran Rudolfsson from Telenor Estate International, who put me in touch with the Project Director of Telenor Pakistan and my contact in the country, Shakeel Ahmed. The entire process of creating contact with a representative from Telenor Pakistan was made via e-mail and by the support of Telenor Real Estate in Norway.

After I and Shakeel had established contact via e-mail, we agreed that I should contact him when I arrived in Pakistan. After a personal meeting with Shakeel at Telenor's headquarter in Islamabad, where I presented myself and the purpose of my fieldwork, I was put in contact with the interviewees for the thesis; A representative from Telenor's land acquisition department and a representative from the legal department. I had already sent a draft of the thesis in advance of my departure to Pakistan, which consisted of information about me, a sketch of potential issues, an description of the work schedule and a draft of the interview guide.

### 2.3.2 Conducting the interviews

Due to the thesis large scope, time limitation and the fact that the fieldwork was conducted abroad, I have chosen to only interview a few key people in Telenor. I have deliberately avoided conducting telephone interviews, since this could have potentially been very difficult because of language and time differences and could potentially have led to unnecessary misunderstanding, poor communication and frustration. In addition, one could get far more detailed and thoughtful answers if one conduct a personal interview. By conducting a personal interview, one will also be able to secure a better overall understanding of the interview by asking follow-up questions, clear up misunderstandings and go deeper into the various themes in the interview (Larsen, 2007).

It is also important to ensure good communication between the interviewer and interviewee, since this could affect the outcome. One must be careful and not ask leading questions, in order to avoid getting incorrect answers and to ensure that the interviewee does not provide answers that he/she believes that interviewer is searching for. Furthermore, it is important to ensure that the interviewee does not give any wrong answers, in order to put themselves or any other in a better light. Such errors can be avoided by asking follow-up questions.

The interviews were conducted as semi-structured interviews, where it was prepared an interview guide in advance of the interviews, cf. appendix 1. By using such a guide, the interviewer succeeds in obtaining a good control and management of the interview. The interview guide works almost like a template, i.e. a starting point. Otherwise, the interview was loosely structured and I let the conversation proceed freely. In this way, the interviewee could steer the conversation and express their views. The interview was conducted in quiet surroundings on Telenor's premises in Islamabad for practical reasons.

It was used an audio recorder in the interview, with permission from the interviewees. The interviewees were made aware that the recording would be depreciated after the interview, along with written notes and then deleted. The reason why I chose to record the interview, was to keep the conversation flowing and thus avoid having to interrupt the interviewee during the conversation. The recordings ensure further, that the chance of forgetting important aspects of the interview decreases significantly. The interviews were written down within a short time frame after the interview, to then be erased.

I had a wish to interview a Patwari, i.e. an official in the Pakistani land administration system, I therefore contacted a local Patwari in Jhelum city and made an appointment for conducting

an interview. By attendance for the interview in the office of the Patwari I was quite surprised, as it was ongoing procedural treatments of land related cases with various landowners. Thus I realized quickly that the Patwari had not taken any consideration of the agreed meeting. This resulted into that the interview became very untidy with poor communication and that I was going to interview the Patwari while he treated other cases simultaneously with the interview.

In addition to this, I experienced skepticism to the interview from the Patwari; there was in general a little interest in conducting the interview from the Patwari. It ended therefore with a brief meeting with the Patwari, which I have chosen to exclude in the thesis, as the participation, interest and response from the Patwari was too superficial.

## **2.4 Literature study**

In connection with the work related to this thesis, I had to undertake a literature study. A literature study may be described as a systematic review of the literature related to the research question and issues in the thesis. I sought primarily in literature concerning land acquisition, legislation, Pakistani land administration system, the relationship between Islam and property, in addition to other relevant material. This query ranged between relevant books, articles and websites.

I have from the beginning been aware of the wide scope of knowledge, information and various topics related to this thesis, which has made the literature study to become a major challenge. The thesis aims to explain a brand foreign property system; it is therefore limited how deeply I can delve into the material of the various topics touched by this thesis. I have therefore been focusing on conducting a general literature study, so that I could acquire myself an overall understanding of the Pakistani property system and thus ensure me a solid basis for my further work.

## 2.6 Structure of the thesis

The thesis is divided in five chapters, of which the first chapter constitutes the introductory chapter of the thesis. In chapter I have accounted for the background and theme of the thesis, as well as the thesis' issues.

Chapter two contains an explanation of the method used in the thesis and how I have gone about obtaining the information.

In chapter three, I have explained the theoretical basis, which in my opinion is necessary to have in order to ensure a good understanding of the thesis' topics and issues. I have begun on this chapter by providing an introduction to the pluralistic legal system of Pakistan, before I have continued to lay out about negotiation theory related to land acquisition, in addition to explaining the Pakistani land administration system. Finally, I have described the institutional framework for land acquisition in Pakistan.

Chapter four consists of a presentation of the fieldwork and the results from the interview that was conducted in Pakistan, in collaboration with Telenor.

In chapter five, I will discuss the collected data from the interview. This will consist of a discussion both in relation to the main and sub-issues, but also in relation to each question asked in the interview. Thus it will be an analysis of each question from the interview. There will be a summary at the end of this chapter, where I answer more directly on the main and sub-issues of the thesis.

There is almost unavoidable that there will be some repetition of chapter 4 in the analysing chapter. The alternative would have been to amalgamate the information in the analysis. After considering the alternatives I found it convenient and in the best interest of the structure of the thesis, to distinguish these chapters and instead run the risk of repetition. The interview and analysis chapters include such essential information in relation to the issue that another option would have led to a poor structure, a disorderly thesis and an unnecessary complication of the thesis.

Finally in the sixth chapter, I will reflect on the work that has been done in relation with this thesis.

## **Chapter 3 – Theoretical framework**

### **3.1 Legal pluralism**

Pakistan is considered to have a legal pluralism in the judicial system, I will now explain how the legal pluralism of Pakistan relates and affects the institution of property, and I am not going to delve into this subject, but only briefly outline some of the consequences of legal pluralism in Pakistan. I will be having a special focus on how this legal pluralism has led to restrictions on women's access to property in Pakistan.

Initially I will clarify the different legal systems that exist, further I will describe the relationship between formal and informal legal system and eventually I will write about the meaning of Islam and its impact on the legal system in Pakistan. However, I am not going to go into the details about the formal legal system, since I have described this legal system in other parts of the paper. In this connection the formal legal system will mainly be used for comparison. This is important in order to understand how the Pakistani judicial system works and how these systems affect property ownership. As I said, I am going to focus especially on women's rights to immovable property, as it usually is women who are affected.

The legal pluralism in the Pakistani judicial system consists of a complex system dealing with the official law, customary rights and the strong influence from Shariah. These are different normative orders that coexists, create limitations and possibilities simultaneously in Pakistan; the legal pluralism is also a great source to the injustices towards women in Pakistan. People do not question whether or not these normative rules are law or not, because in many societies they are the only norm for social control.

#### **3.1.1 Customary law**

The customary law is a result of the various norms that people observe, and are the norms that whole societies believe to have an obligation to follow. In practice the customary law is secured by socially approved sanctions and incentives, it is a form of a social contract of accepted behaviour. While the Shariah is believed to have a divine origin, which people believe they have a religious obligation to follow, and as the official law is necessary in order to organize a country as an entity and to create a just society where all of the people living in a country has the same legal opportunities.

We find the customarily laws in an informal representation limited to certain communities, while the official legislation is on a formal level of representation available for everyone. The Shariah appears as a divine obligation, that has been described and written in the Quran, which basically has no really limitation in its function. Shariah apply across borders and communities for all Muslims. Both, customary laws and the official law, presents different legal cultures, judicial philosophies and different approaches to resolve various types of dispute.

All three sets of systems are products of different historical backgrounds. The official law system of Pakistan, which is functioning today, has mainly been inherited from the British rule. While customary laws have always existed from the very beginning of a society, regulating the accepted behaviour in a community. The Shariah on the other hand came to Pakistan with the spread of Islam. Religion has played an important role in the process of making Pakistan independent from India in 1947. Now the religious laws and customarily laws together appear to provide most of the norms practised in the field of family relations, including property relations within the family. The religious and customary law does to some degree intend to merge, but in many circumstances their coexistence offers a choice between different courses of action or claim for a person (Mehdi, 2001).

An example of a situation where these two sets of systems provide different courses of action is when a father dies and leaves behind a women and an estate of some value. The Shariah gives the women an enforceable entitlement to a piece of the estate, while the customary law of the community gives her no such right, but instead entitles the woman to material and moral support from her brothers or other male family members in the event of problems or marriage.

Research done by Mehdi (2001) concludes that women frequently choose the course of the customary law and surrender her right to inheritance, because this is the course that provides the greater potential of economic security. The situation in most cases, especially for a woman, is that the religious and official law do provide a choice in theory. But economic circumstances, as a result of how the communities has been organised, makes that an empty choice and the customary laws intends to be the choice of most women.

The supporters of customary laws accuse the official state of corruption, long delay and monetary expense, power and control by the lawyers and judges related to the conflict resolution process. While the supporters of the official law accuse the customarily institutions

of resolutions as primitive, lacking modernity and basically not to fulfil the standard justice. Both of these sets of law system can and does to some degree coexist peacefully, legislation and the lawyers' interpretation of the laws are central to the formal judicial system, they create precedence. The institutions of informal dispute resolution are a significant part of the environment and are necessary to understand in order to resolving disputes through compromise (Mehdi, 2001).

There are many reasons to why women's right to property gets neglected and why women tend to give up their property rights in favour of security, especially in the village communities in Pakistan. I would like to point out some of these reasons. In basic terms, there are many similarities between women's relationship to property in the urban and rural parts of Pakistan. Both have a tendency to give up their rights in immovable property to the male members of the family.

A major difference is in their access to the official court system in cases of conflict related to property matters. The urban women's has a better access to the court system than the rural women, both because of limitations resulting from lack of roads, communication services and the strong customary laws of the society. In addition, because of the economic difficulties that are related to the process of fighting in the court system; it is expensive and a long process, which can lead to women being ostracized by their local community and/or family and must fend for themselves. Therefore the rural women are closer to the informal dispute resolution methods (Mehdi, 2001)

People in Pakistan do in general have a limited faith to the formal legal system, as an institution to provide justice and therefore mainly rely on the customary and traditional institutions. This distrust in the formal system has its roots from the time when the court system was introduced by the British. Women have more access to movable property than to immovable, and a greater access to usufructuary rights than permanent rights. The formal law has both in theory and practise increased women's right to inherit immovable property, but their opportunities for holding the property is still more limited than of men because of customs and misinterpretations of Islam. The customary law is a result of history and contains a mix content from the Hindu, Arabic, Persian and tribal culture.

### 3.1.2 Islamic law

Founding of Pakistan would not have been possible without the significance role that Islam has played in the Pakistanis struggle for independence. The desire of having an own independent Islamic state among the Muslim population of India, is considered to be one of the main factors that led to independence from India. The dream of a separate Muslim country has been a crucial unifying factor and an important incentive to liberation; therefore it is not strange that Islam has its place in the Pakistani legal system. The place of Islam in Pakistan is also explained by the ethnic population of the country.

However, the founder of Pakistan, Muhammed Ali Jinnah, thought of Pakistan in terms of a nation based on a “cultural community” and not in the terms as of an “Islamic state”. Jinnah and his followers perceived Islam in three broad and interrelated levels (Hussain, 2015):

1. Islam as a faith, a religious and moral system.
2. Islam as a culture, a way of life that would integrate Muslims into a nation state
3. Islam as a political ideological system, whose set of values could socialize Muslims into a viable, separate political community.

Islam consists of many subgroups and different sects, who practise the religion in several of ways. This is also the situation among the population of Pakistan today and is a reason for many types of conflicts between people belonging to the different groups. The 1962 Constitution of Pakistan was the least Islamic constitution Pakistan had seen, but it nevertheless contained a clause stipulating that there should be no contradiction between the state law and Islam.

The conception that Jinnah had of how Islam should be implemented into Pakistan, was in strong contrast to what many of Islamic scholars had envisioned. They wanted an Islamic state, where Shariah would be strictly implemented (Hussain, 2015). Over the years, the Islamic parties had a big impact on the political landscape of Pakistan, which ultimately resulted in the “Islamization” of the institutions by the government. When General Zia Ul-Haq embarked on a policy of Islamization after his *coup d’etat* in 1977, he introduced the Shariah Bill, which stipulated that any court could pass judgement precisely according to Shariah law, without the consideration of the state legislation.

The Pakistani legal system has nevertheless, as in today legal system, continued to be based on English common law, with Islamic law limited to private, family matters, and



accommodation of elements of tribal law as well. Much thanks to a mysterious airplane crash in August 1988 when General Zia died, and to the Musharraf era, who emphasized the promotion of a moderate form of Islam.

Shariah, in relation to property, has not been practised in its purest form in Pakistan. The Shariah practice has evolved to become a part of the customary practice in Pakistan. As a result of this, the Shariah is often misinterpreted and confused with customary practice. Therefore the Shariah is very often used as an argument or excuse to maintain the practice of customary relations, which in some cases are in direct conflict with Shariah.

The informal institutions provide the normative rules, which have been developed through many years after the structure of society and its requirements for its preservation. For example a woman's right to inheritance from a deceased husband, father or brother has been secured by Shariah, but in practice the Shariah is really not a source of ownership to property for women because of the practice of customary rights in certain areas in Pakistan. Under the customary law, the woman does not inherit immovable property at all (Mehdi, 2001).

The Shariah is a very complex legal system and has a pluralistic nature. There are several of interpretations within Islam, creating different approaches to the practice of Sharia. In addition, Shariah recognizes custom as a source of law. This is a result of how Shariah law is represented systematically and formally as derived from two principal sources: The Quran and the *Hadith* (the sayings of the Prophet Muhammed (saw) and precedence from his acts). Therefore Shariah, the Islamic law, accepts customary law as a basis for ruling, as long as the custom does not contradict Islamic values and principles. This has led to creating a diversity and identity of different Muslim societies, where all of the societies use Shariah and "customise" their interpretations as an argument to defend their customs.

Thus, we can affirm that Islam has a significant role in the Pakistani legal system and has been an important driving factor for the partition from India. The religion has served as a unifying factor among the Muslim population. Customary law, on the other hand, has been inherited as a result of the different cultures that have influenced South Asia through history, which has resulted in the survival of several old and primitive traditions that restricts women's access to immovable property in the society of today.

Shariah and the formal law ensures women rights to property through inheritance, but as a result of customary law, women have virtually no access to real estate in some parts of Pakistan, such as in Baluchistan and especially in the rural areas of Pakistan.

Putting it bluntly, I will summarize that Islam has not been practised in its “purest” form and have often been mixed with culture. Moreover, the influence of customary law has led to an unfair normative system, which has limited women’s access to real estate. The official law, however, is too expensive and time consuming to really be considered as a real alternative in many societies. In addition, there can be a large risk of social consequences of using the official law, one can risk to be ostracized by their local community which many depends on.

Family relationships and dynamics are very important in Pakistan and has also been an important reason for the status quo of women’s access to property. So we can affirm that the legal system, with the pluralism, in Pakistan is complex, consisting of social customary law, religious Shariah and state regulation with the official law inherited from the British.

### 3.2 Land acquisition

I will now clarify what land acquisition is and how the process of land acquisition can be performed. Furthermore, I am going to explain the importance of negotiations in the process of land acquisition, then I will enlighten some of the key negotiation types that exist and eventually there will be a discussion related to the significance of the institutional framework related to negotiation.

Land acquisition refers to the process dealing with the acquisition of rights related to property and the acquisition of land for different kinds of purposes. Land acquisition is important for the public, in order to get hold of necessary land for the development of the public services and infrastructure. On the other hand, land acquisition is a key part of the process for the private sector to establish their business. Land has also always been a great source of making investments and a large part of the private household economy. Land acquisition is a basic step for any person, company or society to get access of capital and to establish some business, therefore land acquisition has a great significance at both the national and international economies.

Land acquisition is a process that consists of many various parts that works simultaneously and that are dependent of each other, in order to conduct a land acquisition in an effective manner. Some of these parts that I am referring to are the legislative, negotiation, economical and time aspects of a land acquisition process. If a company or a private person is to acquire a property, then they will have to relate to the rules and regulations, the institutional framework, of property. An institutional framework is a set of rules and norms related to a certain process which acts as a motivational system that controls people's behaviour, "*institutions are the rules of the game in a society or, more formally, are the humanly constraints of that shape human interaction*" (North, 1990).

Further on, you will have to go through a process of negotiations with the judicial character that owns the wanted property. This can either be a very plain and simple process or it can be a very hard and demanding process, depending on many factors; is the property owned by the a public department, by a big international corporation or by a private person. Now of course the economy plays a major role in the acquisition process, primarily because it costs to buy a property.

When I say that the various parts of the land acquisition process has to work in an effective manner, then I mean that the process should be executed in a fast, cheap and smooth process.

It is important to have knowledge about the property system and how to use the institutional framework in such a manner that the transaction costs related to the land acquisition stays on a minimum, or else the expenses will in many occasions exceed the estimated value of the actual property. Therefore in order to be able to acquire property in a feasible way, it is important to have knowledge about the different parts of the acquisition process.

There are different approaches to land acquisition, depending on what type of property that is to be acquired and what kind of institutional framework that exist in the specific situation of the acquisition. If it is the government that intends to acquire a property, then it will be another institutional framework that applies, than if it is a private company that is to acquire a property. I am not going to go very deeply into the actual processes of acquisition, but I will briefly and very generalized explain how the public and a private part may proceed to acquire property.

Let us suppose that a public agency is interested in acquiring a property for public purposes, like for example the development of important infrastructure such as a road, and there are one or multiple persons that have their home established on the wanted property. Then there are mainly two alternatives for the public to proceed, in order to acquire this property; they can either acquire the property by negotiating the terms of sale with the owners or they can use expropriation as a remedy for acquiring the property.

On the other hand, if a private company wishes to acquire property, then they will primarily have to relate to negotiations and agreements. In some cases also the private sector will have access to remedies (authorized by the government) that lets them acquire property from reluctant landowners, but as I mentioned they are primarily dependent on the negotiation and agreement process.

The state or the public department will regardless of their choice of approach get acquired the property at one or the other way. The desired way of acquiring a property from a public view of point, or the point of view for any part that wants to acquire a property for that matter, is by agreement. By negotiating the terms of sale with the landowner and by including the owner in the process, so that he feels that his or hers interests has been considered in the process and that he does not feel like being treated unfairly by the public. This is the ideal approach, but in many cases the owner does not come to any agreement with the public, for various reasons, and therefore refuses to give their property to the public. Now, since the public needs to

obtain the property for public purposes, they have the opportunity to use the remedy of expropriation.

Expropriation is the process where the government takes a property that has a purpose considered to be in the public interest, by force and leaving the landowner with no other option. Normally the landowner, that the government has expropriated the property from, gets compensation to various degrees. There have also been cases in some countries where the public has expropriated properties without giving any compensation, but it is thankfully very few cases where this has happened. The use of expropriation is quite often considered to be the very last solution of requiring a property, since it is such a strong intervention on the ownership of the individual. In addition to that it is a very expensive and time taking process. Therefore the public tries to avoid using expropriation as a part of their land acquisition process.

### 3.3.1 Negotiations

Negotiations is a process that most of us are familiar with and have a relationship to, it is something that has become a part of our everyday life; both in the professional work and in our private homes in an informal setting. There are many ways to define the concept of negotiation, one of the definition is that when *“two or multiple parties with partly conflicting interest are trying to reach a mutual decision, then they negotiate”* (Rongnes, 2008)(Page 13). The citation in this chapter is mainly based on the literature from *“Forhandlinger”* 2008, by Jørn Kjell Rongnes.

Negotiations are a significant part of the land acquisition process, especially when you do not have access to remedies for acquisition and have to make an agreement to acquire the wanted property. One of the prerequisites for negotiation is that there has to be two or multiple parties involved, each negotiating for their interests in the affair. It is not necessarily bound to be conflicting interests for having a situation where negotiating is needed, but negotiations can also take place at the preparation of various factor where two parties has cooperate in order to get the best result. The main requirement for negotiations is that there is a conflict between two parties to be solved.

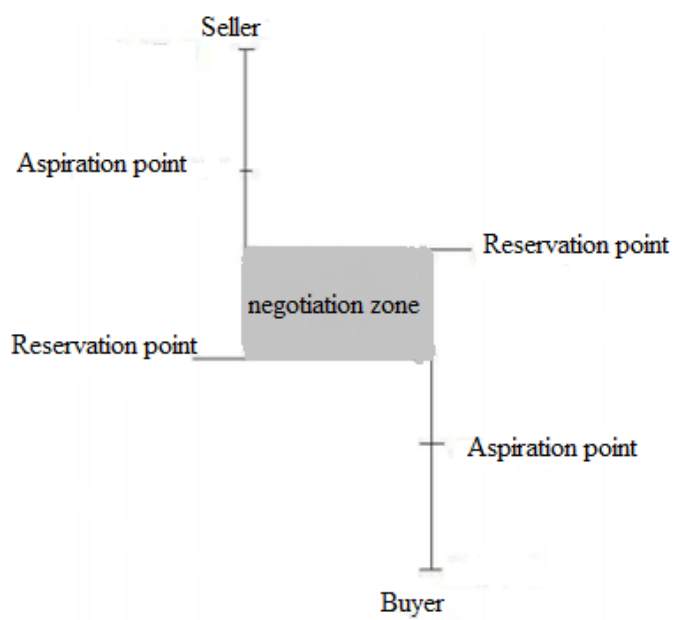
Rongnes (2008) argues that negotiations can mainly be divided into four different types; distributive negotiations, integrative negotiations, multi-parts negotiations and intervention. I will now try to explain these different types of negotiations that we have, in a general manner. By understanding their nature, we will be better prepared when faced with different situations. It will be added little emphasis on the negotiation type of intervention, since this is considered as a "last feasibility" solution.

### 3.3.2 Distributive negotiations

The basis for distributive negotiations is very often the price of an item and it is regarded as the simplest of forms of negotiation that we have. It has only one dimension of conflict which in most cases is the price. It can for example be the haggling over different items in a bazaar abroad or it can deal with large transactions of real estate. It is common for these types of negotiation that there is a conflict about a thing in a case. There is a distributive of a given amount of goods or disadvantages between different parties (Rongnes, 2008). In such a negotiation one part will get more of the good, while the other part receives less after ended negotiations.

The distributive negotiations unfold by that each of the parties occupies their positions in the conflict and further on tries to bargain until a compromise is reached. Let us assume that there is a buying and selling situation between two private individuals who wants to enter into negotiations for the sale of an apartment in the free markets, now the distributive negotiation is very often used in these types of negotiations. In these types of situations neither of the party will particularly be dependent on the conclusion of an agreement, since there are many alternative buyers/sellers in the market. Therefore what happens very often is that both of the parties create their limit level that forms the framework for negotiations. Violations of these limits lead to a break in the negotiations, since the higher sealing for a party is breached.

It is in this context that the respective parties reservation points appear, which is the highest price/upper sealing of what the parties are willing to extend in order to agreeing on an agreement. These reservation point are very often established already before the negotiations begins and functions as the maximum that a buyer think it is worth paying for the object, while it is the minimum price of what the seller is willing to accept from the buyer. Further, both parties have an aspiration point, which is the price that the parties aim to achieve in the negotiations.



**Figur 1 – Distributive analysis (Rongnes 2012 p. 42)**

I am not going into the details regarding how to perform a distributive negotiation; how to begin such negotiations, what kind of advantages the parties have before the negotiations

starts for either of the parts, what kind of thoughts a person should think about during the negotiation or how the “game plan” should be executed.

However it is important to both give and take information throughout the negotiation process, the information is the key in this type of negotiations. The more information an individual have about the counterparty’s reservation point, aspiration point, time constraints, options and other relevant factors, the easier it is to get a solution that fits nearby the counterparts reservation point and that is where you want to be to, in order to get the most out of the negotiations. At the same time you do not wish to give too much information about your own situation, it is therefore important to be selective over the information that you give to the counterpart. It really is a battle of information. It is not necessarily about having the most arguments; the crucial point is how solid and realistic the arguments are. Many, but bad arguments, leads only to counterattacks from the opposite and a weakening of your own credibility. One should therefore limit the arguments to a few solid arguments.

### **3.3.3 Integrative negotiations**

Integrative negotiations are a more demanding type of negotiations, than the distributive negotiation. This type of negotiations presupposes that there is more than one dimension in the conflict and/or that the parties have a long lasting relationship. Unlike distributive negotiation that mainly focuses on the competition, you have to deal with both competition and cooperation in an integrative negotiation. Integrative negotiations make it possible for joint problem solving between the parties, which often leads to better relationships between the parties and creates a better negotiation climate for meetings between the parties in the future.

A primary goal for integrative negotiations is to focus on cooperation to achieve an overall benefit for both of the involved parties. In addition, the parties will increasingly be motivated to comply with previous agreements, because the parties themselves have been active in the conflict resolution process and since they feel like they have been determining a solution that they can live with.

According to Rongnes (2008) there are three conditions that have to be fulfilled in order to make integrative negotiations applicable: potential, motivation and competence. There has to be a potential in negotiating a conflict in order to come forward with better solutions, rather than pure compromise. The problem must have more than one dimension so that the parties are



able to create creative package solutions. Furthermore, the parties have to be motivated to initiate complex and time consuming expertise.

The preparations for an integrative negotiation are quite different from the preparations before initiating a distributive negotiation. Rongnes (2008) points out seven critical phases that has to be dealt with before beginning a integrative negotiation process:

### **1. Interest analysis**

- A prerequisite for success in negotiations is to be able to identify the parties' interests and alternatives to a resolution. The first phase of the preparations is to clarify which interests you have yourself, while trying to uncover the counterparts' interests. The conflicting parties may have separate, common or interests that conflicts with each other. It's easy to forget that we are negotiating to get a better solution or agreement than what already exist. Rongnes (2008: page 22) puts it this way: "*The starting point for negotiations is not conflict and different interests, but dependence and common interests*". It is therefore important to use the common interests, and use these as a basis for further negotiation. Thus, one could achieve a specification of a common goal which will be of use and benefit for both parties. Separate interests can be used as "exchange matters" and create a good negotiation environment for further negotiations.

### **2. Solution opportunities**

- After completing the interest analysis, the next phase of the preparations is to outline some possible solutions with the interest analysis as a basis. Rongnes (2008) has identified four main types of contract opportunities that the interest analysis can uncover: exploit similarities, differences, compromises and it can add new resources. If the analysis shows that the parties have different preferences, they can switch cases instead of compromise. They can thus capitalize on differences. Information is critical when using this way to create a solution, knowledge of the counterparts' preferences is a prerequisite to change matters.

The interest analysis can also reveal common interests and similarities among the parties, which can be used to redefine the conflict and create solution possibilities. The third option for the deal, which is considered to be better than compromise is to develop new relationships with a third party. This method is about involving third parts, which has the resources relating to the conflict, and transmit the risk and liability over to the third party.

Thus disappears the basis for the conflict. The fourth and final type of deal opportunity is compromises. It is important not to focus too heavily on only one of these four possibilities for agreement development, as this can lead to the loss of the ability to interact and deal.

### **3. Packages/sketches**

- The third phase after having completed an interest analysis and an assessment of the potential solution is to create packages/sketches of how the final agreement might look like. You will of course have to create new sketches with the counterparty in the actual negotiations, but doing this in advance of the negotiations secures a better advantage and preparation in the coming negotiations. I will not go in details about the different techniques for creating packages/sketches, but the main point of this phase is to develop an understanding of possible solutions, work creatively with different solution models and to make the packages attractive to the opposite part, so that there is a certain realism in acceptance of the package in the further discussions.

### **4. Alternative to a negotiated solution**

- Working with the various processes during the preparation has led to the acquisition of a relatively good overview of your own interests, and what interests the counterparty wants to safeguard. The next phase in the preparations is to look at what options you have, if the negotiations with the counterparty should collapse. The options vary and depend on the negotiation situation. The starting point for the options that are available depends on how the rest of the market relates to the specific issue.

### **5. Objective criteria**

- In most of the negotiations there will be dimensions where the parties are in direct conflict with each other, in such situations, objective criteria is a tool that can be used. It is very common that the party's takes positions and fights a distributive struggle to resolve such conflict of interest. Using objective criteria, rather than initiate a distribution battle, you can for example use independent experts or professionals with strong expertise to consider alternative workable solutions. Thus, one could achieve a neutral third party who can provide new and creative approaches to the solution possibilities that have not already been considered by the parties in the negotiations.

## **6. Distribution analysis**

- Although integrative negotiations are about searching for the underlying interests in a conflict and considering different solutions that both parties will be satisfied with, there will often be some conflict dimensions that cannot be settled through the method of integrative negotiations; common interests, exchange of matters or objective criteria. These conflict cases have to be solved through traditional distributional strategies and analysis. By preparing for distribution negotiation, regardless the outcome of integrative negotiations, you can get an advantage of being prepared if the counterparty does not accept the integrative solution.

## **7. Process management**

- The last stage of the preparations is to prepare the process management, how the negotiations should take place in a common process characterized by problem solving. This is important to ensure that the parties do not begin the negotiations in the direction of distribution negotiations, which is very common to do. With a good process management, the parties will be able to handle cooperation and competition, case and relation. Information exchange is used to uncover the interests in a conflict, further it requires a joint problem solving to connect the interests and create creative solution opportunities. Ultimately, confidence is an important factor for the parties in order to dare to bet on any of its opportunities and provide information.

### **3.3.4 Multi-parts negotiations**

Multi-parts negotiations consist of negotiations with more than one or two parties. This negotiation type contains a high degree of legal complexity, as a result of the increased number of parties in the negotiations. With more involved parties in a negotiation the number of interests, perceptions and possible solutions increases. Thus, it can be very challenging to clarify what the negotiations are about and define the challenges one faces. For example lawyers, economists and scientists usually seem to have a different starting point and approaches on what is considered to be the most important in a negotiation. The negotiation process does not only get a bigger case complexity, but also a social complexity. The parties may have different expectations of the negotiation process, different ways and different

strategies. This can lead the interaction between the participants to be unpredictable and create frustration between the parties. As a consequence of the high degree of legal and social complexity in this type of negotiations, it does also have an additional procedural complexity which I am not going into details about. To ensure constructive negotiations, it is important to have a good organization of the process and management of the parties and the negotiation process itself.

### **3.3.5 Intervention**

Intervention is applicable when the parties fail to negotiate a solution on their own. Then an outside person comes into the picture, who tries to help the parties to find a common ground and a solution to the conflict. Best known is probably the local mediation boards and various arbitration schemes (Sevatdal and Sky, 2003).

### 3.4 Institutional framework

The institutional framework consists of rules and norms that form frames and interaction between human actions. The framework conditions can consist of legal rule system, such as laws, jurisprudence, contracts and customary law. On the other hand, they can also consist of cultural norms of behaviour, morals, ethics and etiquette (Sevatdal and Sky, 2003).

The framework conditions constitutes thereby rules and norms that set the framework for what is socially and legally acceptable during a negotiation process, it is this framework that gives leeway for our actions when interacting with other people. These framework conditions will of course vary from place to place and situation to situation, but has a great significance for the interaction between people.

It is very important to be aware of the conditions that apply in a negotiation. You have to take into account the cultural framework, this applies both to culture on a global level and internally in an organization. A poor understanding of the regulatory framework may lead to invalid agreements or to breakdown in the process of negotiations. If you are not aware of the cultural framework in a negotiation, you may risk to be perceived as arrogant or simply unprofessional. For example in some countries in South America it's acceptable to be late for a meeting, while punctuality is perceived to very important here in Norway. Thus it is important to be aware of these cultural differences, if you are a representative from Norway who is to negotiate in South America, and the South American party arrives late at the agreed meeting.

It can be perceived that the legal framework serves as a perimeter or as a sort of outer boundary for the process in a negotiation, while the cultural framework forms the standards which are considered to be the acceptable procedure and how a certain person in a certain role should act. For example how an employee from Veivesenet should act and proceed in an expropriation process or how a land consolidation judge should act in their respective roles. The legal framework specifies different rules that you need to act within, they contain procedures for deciding whether rules are broken and its given clear sanctions for rule violations. The sanctions for breaching the normative framework are far more unclear and depend on several "personal" factors. They can, among other things, lead to misperceptions by the parties, the stagnation of the negotiation process, distrust, etc. The sanctions of this framework relates largely to social sanctions between the parties.

It is important to point out that the institutional framework are rules and norms that creates leeway for action, they are thus limits, they do not dictate specifically how to act in any situation. Everyone is free to act inside these limits. The relationship between the parties and the more general framework affects thus the parties' assessment of the negotiation process and their behaviour in the process (Handeland and Helene, 2009).

### **3.5 Land administration**

I will begin by explaining in a general manner what a land administration is and further on I will elucidate the need of making information related to property available through formal systems for property registration, with particular focus on the private economic importance of rights in a land register. de Soto expresses in his book "*The other Path: The Economic Answer to Terrorism*", (2002: preface) that property or land registration is "... *the hidden architecture that organizes the market economy*". In other words I will try to clarify the importance of a well-functioning formal property system for the development of a country. Afterwards I will illuminate the land administration of Pakistan and how the Pakistani property system functions.

A land administration system is the system used to organize and manage the property of a country's land, it simply is a system to administrate processes related to land; it is a set of institutions in a society that relates and has an impact on property. The land administration system is a part of the process that registers all the property with their specific owner and information about the property; the value of the land, how the land is being used and with the information about the land tenure.

The land administration system secures and regulates the information about the land and is used for many purposes, like in some cases to regulate the development of land, taxation, sales, lease, etc. Land administration functions can be divided into four functions: judicial, fiscal, regulatory and information management. While the three first functions are traditionally organized in an isolated matter, the information management is on the other side organized across the various functions (Steudler, 2004). One thing that all of these functions has in common is that they create capital, in one way or other.

In every successful society there has been developed a reliable and accessible property system, which contains all information about a specific immovable property. This system provides information about many things; if the property has been mortgaged, who the owner is, what kinds of right that are related to the property, the size it and the value of the property. It is with base in this system that hidden capital gets available and useable.

Hernando de Soto has argued in his book, *“The Mystery of Capital: Why Capitalism Triumphs in the West and fails Everywhere else”*, the very importance of having a functioning formal property system in order to extract the potential capital out from a property. A property without satisfactory representation in such a system will be deemed to be *dead* capital according to de Soto. By this he means that these are resources that are being held in a defective form, because the rights to these kinds of properties, that is not adequately enough been registered, are assets that cannot be turned into capital, nor can they be traded outside of limited and relatively small circles where people know and trust each other.

The lack of registration leads to a reduction in the value of the property and its value in the open and more comprehensive market. Further on, the assets cannot be used as collateral for a loan, neither as a share against an investment. There is simply too much risk related to an unregistered property, to make it an attractive object in the market.

de Soto further mentions that what is preventing poor countries and former communist countries to develop from using formal property to create capital, are the poor legal and administrative systems. The formal institutions in these countries are too poor and the only alternative is to live and work outside the formal system and instead rely on their own informal arrangements. For those who live outside the formal property system, the properties are being used and protected through various local events, that means through informal and collective understandings about how conditions around rights is and how the owners with property rights should relate to each other. But outside a formal system it will be rather costly to find information about property relation with a reasonable degree of certainty, thereby the transactions gets limited to the local people, who know and trust each other.

Therefore, the owner of properties that lacks the needed registration in a formal property system has to deal in smaller, local and “closed” markets, where the property is not valued as much as it maybe would have been in a formal property system. The formal property system therefore intends to take care of this information and make it as accessible as possible for the society and to transform death capital into accessible capital, by a proper representation of the

assets through a formal property system. The property system can be seen as a web of information relating to property and land, where the specific property has been connected to its owner and the information has been made available for the society. This information is again used by the land administration system to regulate and manage sustainable development in a society.

This way the information gets gathered and secured in one system, in such a way that the property can be used as mortgage on the owners' house. This way suppressed capital gets free and available. Creating capital requires a conversion process from the immediate physical purposes that a property serves, such as shelter, production of various commodities and as merchandise being bought and sold, to capital outside the physical as a subject of collateral for mortgage. It is the formal property that provides the process, the forms, and the rules that fix assets in a condition that allows us to realize the capital (Soto, 2000).

Thanks to the formal property system people are no longer dependent to rely on their neighborhood relationship or to operate in local markets, because now every individual is linked to their property and businesses that can be easily identified and located. This means that persons that use goods or services without fulfilling their part of the bargain now can be identified and sanctioned financially or legally by for example suspend services.

This possibility of identifying and sanctioning creates a security for transactions and a respect for the law. If a citizen misbehave or misuses the system, then his behavior will be recorded in the system, which will decrease his reputation as a trustworthy party to his neighbors, banks and to anyone that's a part of the network that his property ties him to.

The land administration system, or the formal property system of a society, initially begins the conversion process by describing and organizing the most economically and socially useful aspects about assets, by registering this information in a recording system and then embodying them in a title. This process is governed by a set of detailed and precise legal rules (Soto, 2000).

This is where the potential value is first described and registered, and we can now allow us self to view the house as a living capital and not as dead capital. This is possible because the process to develop a title is not a reproduction of the house, but it is a representation of our concepts about the house. By representing the physical house in the formal property system, we have now made the nonvisible qualities that have a potential to produce value available.



These are the economically and socially meaningful qualities that we ourselves have attributed to the house, for example the ability to use the property in a variety of purposes that can be secured by mortgages, easements and other covenants (Soto, 2000). Thereby we can conclude that land is a basic resource that we human are depending on as a physical commodity, in addition to be an abstract concept that allow us to use it as one of the most basic sources of finance as a result of the formal property system.

The formal property system is the system that is used to represent the assets of property, and to make full use of the potential value that a property may have. The land administration system can be looked as the whole machine of the formal property system, which is the basis for conceptualizing rights, restrictions and responsibilities related to people, policies and places. The land administration systems are an important infrastructure, which facilitate the implementation of land policies both in developed and developing countries. These systems are concerned with the social, legal, economic and technical framework that has to be considered by the persons operating with the system (Enemark, 2009). Thereby, we can say that the formal property system refers specifically to property related information, while the land administration system concerns social, political, legal, economic and technical aspects of property and tries to regulate and manage issues related to property.

Every land administration system must have some form of land registration for recording the ownership to ensure security of tenure, a record of value to ensure fairness in land and property taxation and equity in the compulsory acquisition of land for state purposes and a record over the use of the land to ensure efficient resource management. One of the information systems we have regarding to land is the cadastral system which consists of two parts, the first part is the textual records that describes the attributes of the land and the second part are the maps showing the size and location of all land parcels.

The cadastre can either support the records of property rights, the records regarding taxation of land or the record of land use (UN, 1996). It is focused on the ownership, value or use of land parcels, while a land information system can include other types of information like different types of resources in an area and information about these resources. Unlike land registration where in many occasions a lot of land is not being registered since many citizens either choose not to, or does not know how, to register their land, however the cadaster is used for land taxation and is therefore a more complete registration of a country.

Land registration is not in itself an instrument which will automatically ensure an appropriate development and use of land resources, but it is however a prerequisite to pave for such a desired development. The rights of property are protected through the property registry, which enables other social mechanisms related to property. The cadastral system supplies the properties with a new dimension beyond the purely physical, in that they become functioning capital in economic sense.

The physical property transforms into an object of investment and collateral to obtain credit to the owner. This is because it requires reliable information to make properties object for investment, mortgaging and turnover. The formal property system is not a system that determines how the rights situation *should* be, but it is a system to record the *actual* rights relationships, regardless of how they may be. The formal property system will not “cure” the consequences of inappropriate or unjust ownership; it is a security for the persons that have registered their property information in such a system.

## 3.6 Land administration in Pakistan

### 3.6.1 A brief history

The land administration system in Pakistan is very old, it is claimed that the development of the land revenue system in Pakistan goes as far back as to the thirteenth and fourteenth century and that the Indian ruler, Sultan Ala-uddin Khilji (1255-1316) was the first Indian ruler to introduce a system of land administration. The *Arthashastra* is a book written by Kautilya who is considered to be the Prime Minister of the first ruler of the Mauryan Empire, the Indian emperor Chandragupta (Violatti, 2014), is recognized to be the first book mentioning village officers that were responsible for the preparation of various registers of the village fields, transfers and due taxes known as *Gopa* (Ali and Nasir, 2010).

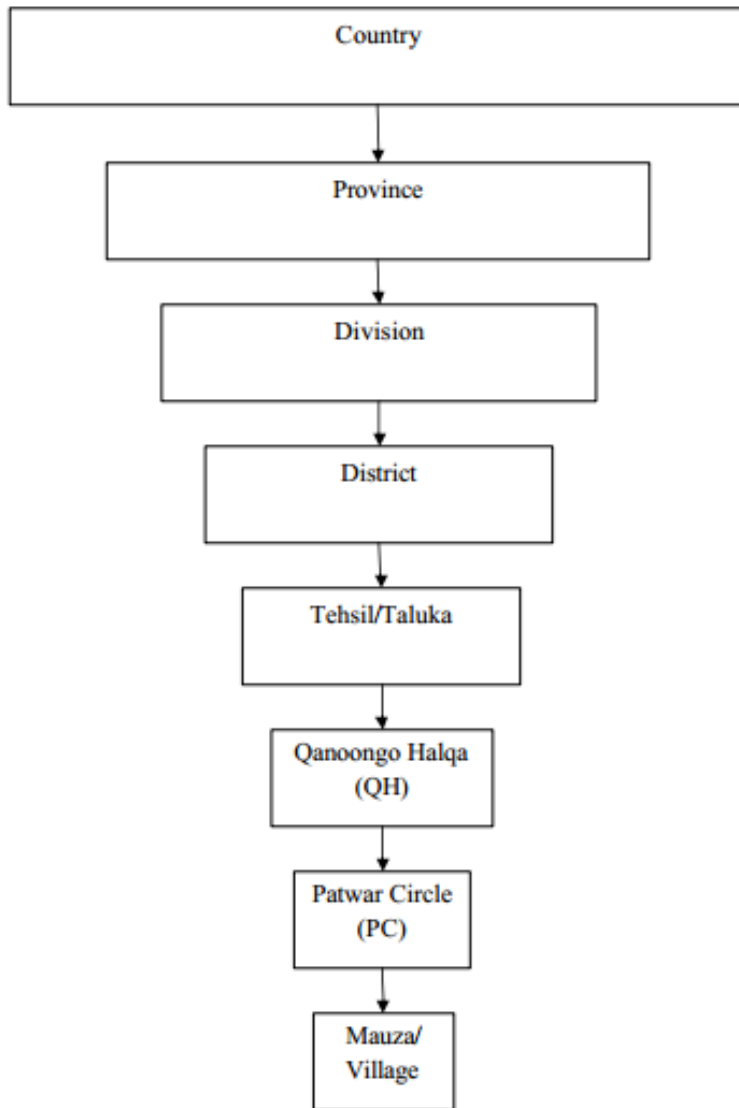
The Patwar system is considered to be introduced during the rule of Sher Shah Suri (1534-1545), as an attempt to reform the previous system of the Mauryan Empire. In this presentation of the Patwari system, the land was now categorized, measured and a schedule of crop rates were fixed. The system was further enhanced during the reign of the Mughal King Akbar (1556-1605). King Akbar's minister for revenue affairs, Todar Mal, has been credited to be the one who has laid the basic foundation of the land revenue and land administration system now prevalent in India, Pakistan and Bangladesh (Pakistan, 2011). Todar Mal initiated the first work of its kind related to the regularization of land record management and devised elaborate method for agricultural tax assessment on rational basis (Ali and Nasir, 2010).

During the British rule in India (1757-1947), the Englishmen improved and formalized the existing system of land administration, introducing the land administration system that still largely exist and functions in today's society, with the modifications that has been done due to the development of technology and society. With the development of the society I'm referring to the minor amendments in the legislation that have been made in order to reflect local customs and tradition. I will come back to the various land related legislations a littler later in the paper. The British introduced legislation associated to the rights and responsibilities of owners of land; the relationship between the public and private owners, owners and their tenants, a system of adjudication of disputes regarding land matters and including the demarcation of boundaries through large scale cadastral surveys. Further the British set up a proper administrative hierarchy, cf. figure 2, and deputed relevant administrator on each administrative zone (Almas et al., 2005).

In summary, we can affirm that Pakistan has from approximately thousand years ago had some kind of organized land administration system, and that the land administration system is a result of many reforms and modifications of the original system through history. The present land administration system has mainly been inherited from the British rule, with the adjustments to fit in the existing land administration system. The British introduced and implemented a new kind of land administration when they colonized India, with new technical approaches on how to structure land administration. In short, the present land administration is a result of the technical, social, political and economic changes introduced by the British in the existing land administrations system.

### **3.6.2 Current land administration of Pakistan and the administrators role in the system**

The British established a proper administrative hierarchy which constitutes the land administration of Pakistan. I will now explain this system and clarify the basic structure of the land administration system in Pakistan, and illuminate the roles and responsibilities of each administrator. I intend to put the greatest emphasis on the role and tasks of the *Patwari*, since it is the *Patwari* that functions as the official link between the private owners and the public.



**Figur 2 - Administrative Hierarchy set by British (Pakistan, 2011) p. 16**

At the top of the hierarchy of the land administration system of Pakistan, we find The Board of Revenue at provincial level, cf. figure 2. The board of Revenue was originally constituted under the provision of West Pakistan Board of Revenue Act, 1957, which later in 1970 became the Board of Revenue (BOR), Punjab. The BOR is mandated with all matters related to the administration of land; land taxation, collection of land revenue, and the preparation, updating and maintenance of records (Punjab, 2015). Further, the BOR also functions as the highest Revenue Court of appeal and revision in revenue cases within the Province (Ali and Nasir, 2010). Even the land that is owned by the Federal Government is also handled by the BOR. The purpose of BOR has from the very beginning been to function as administration to collect land revenue for the Government, but the role as revenue collector has over the years

become secondary for the BOR's role of being the custodian of the records of rights to land. However the business processes of BOR are still dedicated to its traditional role (Unit, 2009).

Pakistan is divided into provinces, where the land matters are given to the Revenue Departments of the provincial department and tribal areas for administrative reasons. There are other administrative arrangements in the tribal areas, where the local customs has a significant importance and influence on the organization of the societies in these areas. I am not going to go any further into these informal systems in the tribal areas. The provinces are divided into division, the province of Punjab is for example divided into nine revenue divisions, the head of these divisions are the Commissioners which are appointed by the BOR (Pakistan, 2011).

The Divisions are again divided into approximately three to six districts, where a district is headed by the Deputy Commissioner or the District Coordination Officer. They are also appointed by the BOR and function as the head of the land administration in a district with many various types of powers (Pakistan, 2011). The districts are divided into three or five Tehsils, where the Tehsildar is a revenue officer and has the responsibility of collecting land revenue and other expenses payable to the government.

The Tehsildar has to keep in touch with subordinate revenue officials, in order to observe the seasonal conditions and the condition of the crops to take note of the current situation of the cultivators. Some of the tasks that the Tehsildar is in charge of, are: draw up reports and recommend remission or suspension of revenue, the maintenance of land records, participate in court to settle disputes regarding tenancy, ejection of tenants, the sale and purchases of land is sanctioned and mutated by the Tehsildar, etc. (Ali and Nasir, 2010) The Tehsildar does also supervises and provide guidance to all the functions of the Patwari.

At the bottom of the land administration hierarchy the Tehsils are divided into Mauzaa, a village, and a group of villages composes a Patwar circle. The Patwari is the lowest functionary of the revenue department, but has in practice the most important function in the hierarchy. The Patwari functions as: 1. the custodian information regarding people's rights to land. 2. He is also responsible for keeping the records of all the changes related to ownership and tenancy in relevant registers of land record. 3. The Patwari is also the responsible custodian of state property, located in a village and reports on any encroachment on state or public roads. The Patwari is basically in charge of maintaining, collect, updating and to provide, both the public and the private, with land related information and registers. Whether

it is information regarding sale of property, revenue matters or for statistical purposes. The Patwari is therefore directly involved in the process of land acquisition, whether it is for purposes related to expropriation by the state or purposes related to pure private land acquisition.

### **3.7 Land records**

The Patwari is in charge of maintaining the land records; I will now try to explain the importance of a land record and what types of land records that the Patwari has to take care of. Land as a natural resource has a major impact on the livelihood of people and in the growth of a nation. Land is a fundamental resource in our civilization and has a great importance in many spheres of our societies. It is the foundation for creating work, the development of infrastructure, the production of food and not at least, among many other things, land is a key factor for our establishment of habitation and taxation. Therefore it is important to have a system to gather, distribute and update the information of land records, and to have a well-functioning land record for private ownership and for taxpaying purposes (Bhat, 2011).

Land records includes many various types of registers, that in total forms a land record. These registers are detailed surveys of land, the gathering of different kinds of information related to land. It can contain geographical information, telling the size, location and what type of land a certain property has. On the other hand, a land record can consist of legal information telling what kinds of judicial constraint there are on a property, who the owner is and what kind of relationship there is between a owner and a tenant is. The land records secure a proper system for measurement, identification, partition and delineation of land holdings (Pakistan, 2011).

I will now present some of the key registers that is used and maintained by the Patwari. Most of the areas in Pakistan have been surveyed where the land holdings has been consolidated, demarcated in various units, soil has been classified and the land revenue has been assessed. There are still some areas that has not yet been surveyed and where the land administration is not regular. The purpose of conducting a survey to register measurements and mapping various parcels of land in a village of an area, including both state and private owned property, is to gather information to the different types of register.

A Patwari has a cadastral map over the villages that he is in charge of, which is called the field map or as in Urdu known as the *Latha* or *Shajra Kishtwar*. The field map shows an overview of all the fields in a village, with corresponding numbering and measurements. This

is basically a surveyed paper map, where every parcel of a village is linked with an identification number that connects the specific parcel to its owner. The parcels are labeled with a unique *Khasra Number* which constitutes as the identification number of the certain parcel. All of the inhabitants of a village are drawn up in this field map on a cloth and is used by the Patwari every day in different kinds of issues related to land (Ali and Nasir, 2010).

The information that we find in the field maps or *Shajra Kistwar* and in the various types of registers related to land rights in a specific area, are developed at the time of settlement in the area. In addition to the field map illustrating the geometrical location and shape of every parcel in a village, the Patwari also has an associated field book which contains area related details, such as measurements of each field; with length, diagonal detail, the total area, in general information related to the size of each parcel.

There are approximately twenty-five to thirty registers which the Patwari has the responsibility of maintaining, but most of these registers do not have any great significance. The most significant registers have been described by Nasir and Zahir (2010). The most important register is the register of rights that is called *Jamabandi*, containing the information about ownership, tenancy, the Khasra number and its classification, source of irrigation, land revenue, etc.

Further on, all of the transactions related to land, is being registered in the *register of Mutation*. The mutations are mainly done on the basis of sale deed, inheritance, will, gift deed, etc. It generally indicates the changes that has to be conducted in order to transfer ownership and title of land between two parties. The transfer of land is initiated by the level of Patwari, but affected by his superiors at the Tehsil level.

Other important registers are the records of cultivation, called *Khasra Girdawari*. This record helps the Patwari to resolve issues relating to ownership of each parcel, it contains details of the inspection of crop grown in each field and all the changes of ownership and tenancy. The *Lal Kitab (Village Note Book)* holds the details about statistics of a village related to land, such as the total area, area sown, assessment of land revenue, number of entered and attested mutations, size of the population of a village, approximate number of livestock, etc. The last significant record mentioned by Nasir and Zahir (2010) is the diary that is called *Rosnamcha Waqiatti*, where all the happenings about land affairs are recorded. It can for example contain information about severe rains, the reports of all transactions of land and encroachment on State land.



All of these registers are currently handled and maintained by the Patwari manually, in paper format. There have been initiated an effort to computerize the various types of registers, but this process is still only at a starting point of the project.

## **3.8 Sources of property rights**

### **3.8.1 Introduction**

There are many ways for a private person to acquire property rights; it can for example be through sale and purchase, inheritance, gift, mortgage, lease, etc. These are relative “mainstream” approaches to acquire a proprietary right which largely follows the same procedures regardless where you are in the world. By that I mean that they can be identified, and is found in virtually all societies and cultures. What make them unique are in the way the different processes gets carried out, with the social, religious and political framework around them. It is for example a difference between acquiring rights to property through inheritance in Norway and Pakistan; these differences are results of different cultures, religious framework, history and other factors that come into play. I will now explain some of these processes to acquire property rights in Pakistan, thus through these “mainstream” approaches.

### **3.8.2 Contracts**

In Norway we have the principle of freedom of contract, both in terms of the agreements written content and the form of the agreement. It is a non-statutory principle that everyone, as a basis, has the freedom to enter into negotiations with whom they want to and that they are free to determine the content of the agreement. In addition, a verbal agreement is as legally as a written agreement.

Pakistan has inherited the principle of freedom of contract from the British Empire and its colonisation of India and Pakistan. Just like many former English colonies, Pakistan has a strong legal link to the English law. The general law of contract in Pakistan is contained in the Contract Act of 1872. Private parties in Pakistan can thereby negotiate and enter into an agreement freely, the agreement will not be considered to be valid if there has been any threats, fear, inducement, coercion, etc. affecting the process of negotiation.

Despite the fact that an oral agreement is just as legal as a written agreement in Pakistan, it is by law preferred to enter into a written agreement. It is in general better and safer if an agreement is written and available for a third party in official records, this secures

transparency and limits the risk of future misunderstandings and conflicts related to the content of the agreement. This is especially important in a country like Pakistan, where the corruption is a widely known problem in the society.

### **3.8.3 Inheritance**

Inheritance is a way of acquiring rights to property through the death of a family member, without having to do anything to “earn” these rights. Inheritance is acquired right after the death of a family or another person, through a will, who owns a property. Such rights gets transferred to the heirs automatically and become effective immediately on death. Until late 1930’s inheritance was regulated by customs and traditions in Pakistan and females’ right to share in the inheritance was not recognized by most of the customary laws. However with the promulgation of the Succession Act of 1925 and various Shariah Application Acts, the law of inheritance of Pakistan now has become different for the different religions. So the inheritance is dependent on the religious background of the deceased.

As a result of this, there are different laws regulating the inheritance of the different religions in Pakistan. The laws regulating the inheritance of Muslims in Pakistan are among others, the Muslims family laws ordinance of 1961. For the Hindu, there is the Hindu Law of Inheritance (Amendment) Act of 1929. The law regulating the inheritance of the Christians is the Succession Act of 1925. Thus there are many laws to deal with, it is a rather complicated system of law relating to inheritance which I do not intend to delve on. I will clarify some of the main consequences related to what happens when a Muslim dies, in relation to property, sine the majority of the population in Pakistan are Muslims.

There are established fixed shares for how an inheritance should be allocated, that are prescribed based on the family system. The relatives are given the highest priority in the Islamic system of inheritance. The meaning of family has been expanded to also include both close and distant relatives, even though the closer relative has been given precedence over the more distant relatives. When it comes to the allocation of an inheritance, the male has been granted twice as much as the females. This is justified by that it’s the male who has the financial burden of the family, since it’s considered to be his duty to supply sustenance for his wife and children.

In situations where the children and parents inherit together, the children’s receives a larger share of the inheritance because child’s life lies in the future. Only focusing on the female’s share of a potential inheritance, the distribution can be described that a widow is entitled to

receive one-quarter or one-eighth depending on whether they inherit with or without children. A daughter receives one-half a share of her father's property, unless there are two or more daughters, in which case they together inherit two-third (Mehdi, 2001).

As I have mentioned, when a Muslim person dies the property has to be divided after the Muslim law of inheritance. It has further significance which direction within Islam the deceased is part of, whether he/she is was a Sunni, Shiite, Wahhabi, Khoja, etc. I will try to clarify in short terms how the apportionment between the Sunni and Shia heirs is.

Under the Sunni law, there are three classes of heirs, which vary and are determined by the principle that the nearer family excludes the more remote. First of all, we have those of the family that are entitled to a prescribed share of the inheritance like parents, son, daughter, wife, etc. called "sharers". Secondly, there are the "residuares". These are the heirs that who does not have a prescribed share, but succeed to the "residue" after claims of the sharers are satisfied, it can be a grandfather or a paternal uncle. The last class is the "distant kindred", who are all the persons related to the deceased by blood and who doesn't belong to either one of the previous classes. While the Shia law divides the legal heirs into mainly two groups; heirs by blood relations and heirs by marriage. A person who is guilty of killing his/her relation will not be entitled to receive any inheritance from the estate, no matter how close the relation between the deceased and the killer is (Pakistan, 2011).

#### **3.8.4 Will**

Every person in Pakistan has the opportunity to distribute their property to their descendants by using a will, as long as they are an adult (over 18 year) and of sound mind. Accordingly to the Islamic law, a person on deathbed is not allowed to make a will. The will can be made either in writing or in a verbal form. The Islamic law of inheritance is based on fixed shares in a family system, this does also affect the process of making a will; an individual can only dispose one-third of his/hers immovable property by will, the rest has to be divided among the legal heirs. "

If a person wants to give whole of his/hers property to one specific heir, at the expense of other potential heirs, then he/she has to get the consent from the other heirs to make the will. If the other heirs do not consent, then the property is to be divided as the fixed shares that have been established in the law. This applies both to Sunnis and Shias.

## 3.9 Property legislative framework

### 3.9.1 Introduction

I have already mentioned many different kinds of legislation that, somehow, regulates affects and influence people's relation to their property. Some of the legislations that I have mentioned are the Constitution of the Islamic Republic of Pakistan and customary laws, to mention some. I will now highlight some of the most important and relevant legislation related to property, I will be focusing on the Land acquisition Act of 184 and the Land Revenue Act of 1967. This work will consist of a general statement of the purpose and content of these laws.

### 3.9.2 Land Acquisition Act of 1894

The purpose of this act has been described initially in the law, it is "*an act to amend the law for the acquisition of land for public purposes and for Companies*". It is thus in this law that we find the legal basis for the government to acquire private land for public purposes, in addition to the provision of legal access to companies for purposes relating to land acquisition. It also provides the determination of the amount compensation that should be given in situations where the act is being used.

The act is organized in eight different parts; I will not go through the various parts of the legislation, I intend to highlight some of the most important sections relating to the process of land acquisition for public purposes, leaving out any emphasis on chapter three and eight of the law. These chapters of the Act, addresses respectively on how to deal with the court and miscellaneous relation to property.

The first chapter of this Act contains a preliminary that has a function of preparing the user/reader of the Act with various definitions of expressions used in the Act. For example "land" has been defined to include "*benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:*". This is important in order to create a mutual understanding of the law and to prevent misunderstandings.

It appears from section 4 that whenever any land is needed or likely to be needed for public purposes or for a Company, there has to be given a notification of the planned intervention in the official Gazette and the Collector<sup>1</sup> has to *cause public notice of the substance of such*

---

<sup>1</sup> "Collector" means the Collector of a district, and includes District Revenue Officer and any officer specially appointed by the Board of Revenue to perform the functions of a Collector under this Act, cf. §3 c).

*notification to be given at convenient places in the said locality.* This way, the law ensure that the owner of private property receives a warning about a planned purchase. This is important, considering how important ownership is for most people. Any landowner that receives such a notice has the right to give their objections; the objection has to be delivered in writing and within thirty days after the issued notification.

Now we have come so far in the land acquisition process, that all of the stakeholders of the potential object of property has been notified and has been given a chance to give their objections. The next step is to present the declaration of intended acquisition. This declaration has to be published in the Official Gazette, stating the location, purpose and the plan of the acquisition. Then the Collector has to give notice to persons interested, stating that the government is to take possession of the land and that claims to compensation for all interests in the actual acquisition should be made to him.

The persons interested have to give their pursuant to the notice given after section 9, measurements made under section 8 and into the value of the land. Thus he is bound to precede the enquiry of the objections, if there is any objection that has been made. It is further on in section 11 described how the Collector is to proceed, regarding the process of enquiry and awards. When such award has been given, the Collector now has the power to take possession of the land which shall be free from all encumbrances, cf. §16.

In such land acquisition it is vindicated in the law that it should be given compensation. This compensation is mainly provided by awarding money compensation in respect of any land, but the law allows for other forms of compensation. Alternative compensation can be given as a remission of land revenue on other lands held under the same title, by granting other land in exchange or in such other way as may be equitable having regard to the interests of the parties concerned, cf. §31 (3).

In cases where the rightful compensation has not been paid or deposited before the possession of the land, the landowner has a right to the same compensation with interest at the rate of eight per centum, cf. §34.

### 3.9.3 The Land Revenue Act of 1967

The purpose of this Act has been defined in the preamble, “*it is expedient to consolidate and amend the law relating to the making and maintenance of records-of-rights, the assessment and collection of land revenue, the appointment and functions of Revenue Officers and other matter connected with the Land Revenue Administration in the Province of Punjab...*”. It is thus a very comprehensive law, which governs the land administration system of the country and that sets the guidelines for the business related to the Patwari and all the other associated functions of the Board of Revenue. I will be focusing on the organization of the Act and the Act’s relationship and regulation of the business of the Patwari.

First and foremost, the law is organized throughout in fifteen chapters and is thus very extensive. I will therefore briefly outline the main contents of some of the most important chapters in this Act.

The first chapter of the law consist basically of the content as described previous in the Land Acquisition Act of 1894, initially with a preliminary that contains various definition of expressions used in the Act. Further, the Act describes certain types of land that can be excluded and power to except any area from provisions unsuited thereto according to the law.

Chapter two of the law is a description of how the Provinces are to be organized into administrative divisions and districts. Chapter three is about the appointment and powers of revenue officers, while chapter four discusses the procedures of revenue officers. Here it emerges from §30 that the revenue officers has been granted the power to enter upon any lands or premises for the purposes of measurements, demarcation, classification of soil, etc.

This does directly relate to the work of the Patwari and secures the Patwari access to any land for survey. Any person who has been summoned by a revenue officer and who does not show up at the agreed time and place, can in accordance with §35 be held liable and fined up to 500 rupees. This tells us something about how important it is to meet up at the request of a revenue officer. The revenue officers have been given quite a lot of power and administration responsibility.

Chapter five relates to the village officer, while chapter six is about the records-of-rights and periodical record and is highly related to the business of the Patwari. It is in this chapter that it has been decided that there shall be a record-of-rights for each estate and what kinds of documentation shall be included in these records, some of these are documents such as a map

of the estate and statements showing the person who are landowners or entitled to occupy land, cf. §39. The procedure of making records is described in §42; here it is determined that any landowner who has acquired any right in an estate, is obliged to notify such acquisition within three months from the date that the acquisition took place, cf. §42.

A key condition that repeatedly is expressed in order to register an acquired right to property in chapter five, is that the right has to be undisputed when it is recorded. It appears from §41 (2) a), that in cases the Revenue Officer is unsure in a dispute of which party is entitled to the possession of a property, he has to give the respective parties chance of being heard and adducing evidence of the entitlement to the property. After such inquiry, the Revenue Officer has been given the authority to determine who is to be recorded with the entitlement to the property with a justification of his choice. All private landowners has an obligation to furnish information necessary for the preparation of records, cf. §47. §§ 49 to 55 concern the rights of the Government and presumptions with respect thereto and to other matters.

Chapter seven of the law describes the processes related to the assessment of land revenue, §56 Assessment of land revenue states that “*All land, to whatever purpose applied and wherever situate, is liable to the payment of land revenue to Government...*”. The exemptions to the land revenue have been defined further on in the paragraph. The basis of assessment emerges from §57, while the limit of the assessments is described in §58. The procedures related to the collection of land revenue have been illuminated in chapter eight of the Act. §§ 92 to 112 elucidate the procedure in sale of immovable and movable property, according to §107 after the sale of an immovable property the Collector shall grant the purchaser a certificate. This certificate of evidence regarding to the purchase of an immovable property, is defined in the same section.

Now chapter nine is about the recovery of other demands by Revenue Officers, while chapter ten relates to the processes of surveys and boundaries. This chapter allows the Revenue Officer, among other things, to define boundaries of real estate. Chapter eleven consist of Acts that deals with terms of partition of any joint land or inheritance. Chapter twelve covers the Revenue Officers power to refer to arbitration; nothing in the Arbitration Act of 1940 shall apply to any arbitration under this mention chapter, cf. 160. Chapter thirteen deals with appeal, review and revision under this Act, the law of appeal under this Act is very simple; a person, who is a party in a case, can file appeal. Sections 161 and 162 are relevant provisions.

Chapter fourteen consist of supplemental provision, while chapter fifteen addresses to miscellaneous circumstances.

### **3.10 Transactions**

#### **3.10.1 Mutation process**

Every person who owns a property has a right to transfer the ownership in Pakistan, he/she can either transfer property rights through sale, mortgage, gift, inheritance, etc. as long as they are at least eighteen years old. This is an important mechanism of immovable property and finance, as it creates finances, investments and development in a society. The UN-Habitat Pakistan (2011) describes four modes of transfer. First of all, there is the mutation of a right, secondly we have the registration of the transfer, thirdly there is a process combined by the two previous modes and the last mode consists of the agreement. I will now go through the different modes of how property rights are to be transferred in Pakistan and point out some of the main challenges with the system.

There are different laws governing the procedure of transferring ownership rights in Pakistan, the three main acts are the Land Revenue Act of 1967, the Registration Act of 1908 and the Transfer of Property Act of 1881. In addition to different the local and special laws, concerning transfer of rights. I am not going into the details of the various laws right now, but I will get back to some of the main acts related land acquisition in Pakistan later in the paper.

If a person is interested in transferring his/her property to another person, then the person has to contact the Patwari. The business of Patwari is mainly regulated by the Land Revenue Act of 1967 and it is also this act that regulates the transfer of property rights in rural areas. A mutation is a change in any entry in the revenue records, when a person acquires a right in a property by inheritance, mortgage, purchase or gift, or in any rights related to property as a land owner or a tenant for a fixed period of time for more than one year.

It is the Patwari who is responsible for the maintenance of different types of registers related to land, this also includes the register of mutation. The Patwari has to report to the Revenue Officer of the concerned district. The entries in the register of mutation has a evidential value and the Patwari changes the old name of the owner and registers the new name in the register in a ending mutation process. The mutation is not considered as a deed of title, but function primarily as a collection of revenue by the government.



The Patwari has to make a report of the transfer in his daily diary and provide a copy to the Revenue Officer. The transfer can either be in oral or in writing, but related to the Revenue Officers duty to verify the correctness of all new mutations entered in the register, the report has to be in writing. The Revenue Officer has to attest the mutation in the presence of the person who is transferring his rights to a new person; there are however some few exceptions where this can be done without the presence of the previous owner. The Revenue Officer does also have to acquire the signature or the thumb print (because of illiteracy) in the mutation register of the concerned parts (Pakistan, 2011).

There are many purposes related to the process of mutation. The process of mutation secures that the revenue records are up to date and maintained. It also makes sure that the right of the owner is well protected and available. It provides a better administration for the revenue authorities, function as a recovery for arrears of the land revenue and finally functions as a presumptive piece of evidence for persons with property rights.

### **3.10.2 Registration process**

According to the process of transferring property rights, it is important to register the transfer in records in order to secure transparency and verification. Not all documents or transfers has to be registered by the law, some are voluntary. For example the registration of rural land transfer is voluntary in most parts of Pakistan, while it is an obligation in urban areas for purposes of taxation and official property records. In a case where an individual wants to register a transfer of property right, they will have to contact the Sub-Registrar.

The Sub-Registrar is the authority that is liable to check the entitlement of the transfer, identification of the persons involved in the transaction and make sure that the fees related to the process has been paid for. In situations where a transfer should have been registered, but has not, then these transfer will not be considered as valid transfers in judicial proceedings of ownership in disputes (Pakistan, 2011).

The USAID (2010) describes in their report that a process of registering a land transaction in Pakistan, involves six procedures, requires 50 days and costs approximately 5.3 % of the total property value. This is of course related to the formal procedure of registering a land transaction. There are cases where the registration process has been conducted in other various ways, in order to achieve a faster and cheaper process. I will not go further into this problem. The process of registering a transfer of property rights initially begins with the draft of the transaction document on a required stamp paper, with either the help of a lawyer or a

deed writer. Further on, the document of the transaction has to be presented to the Sub-Registrar, who has to verify the identity of the involved parties, and their respective authority to enter into the transaction and enter certain endorsements. Finally the owner brings the document to the Patwari, who conducts the process of mutation. When the process is done, the Patwari issues a document as evidence of the ownership of the land, called *fard* (USAID, 2010).

In general, people do not really understand the nature of their land registration papers, in many cases women's names are registered in the transfer documents on inheritance. But as I have said earlier women do not get their share of inheritance of property in practice. The transfer documents related to property is often written in the name of a woman as the owner, but with the understanding that a male individual of the family will take the ownership of the land and the woman will receive a share of the harvest or some gift in return. In some cases a male individual makes an understanding with the Patwari, without any protest from the female. In some areas women reports difficulties when they are dealing with a Patwari, who is reluctant to deal with women or to record women as the land owner (Mehdi, 2001).

### **3.10.3 Property taxation and fees**

Immovable property has always through the history been an important object for tax collection and as a source of income for the state. Various types of taxes and fees has been connected to almost every transaction related to property by the government, such as taxes from the purchase of a property in urban areas or the taxation of rural land income. I will now clarify some of the fees and taxes related to property in Pakistan. I will be focusing on some of the most significant taxes and fees on real estate in Punjab, since property tax is a provincial tax levied on the value of the property. All of the tax rates mentioned in this paper are derived from 2013 and must be considered only as illustrative. The only tax exemptions in Pakistan, considering immovable property, are transfer by inheritance or as gifts.

There are many legislations that has been developed especially for the purpose of regulating the collection of property related taxes for each province, some of the most important Acts related to the taxation of property in Punjab, is the; Urban Immoveable Property Tax Act of 1958, The Stamp Act of 1899, the Land Revenue Act of 1967 and Agricultural Income Tax Act of 1997.

By now we can understand that there is a distinction between the taxation of rural and urban property, this distinction is related to the different functions, use and relations that people and

the market has to them. Rural property has for example through the history mainly functioned as an object for agricultural production and self-sufficiency, while urban property has functioned as an object for financial and long-term investments. The tax in Pakistan varies, depending on which province the property is located in, and if it is a rural or urban property.

### 3.10.4 Rural land

In the rural areas of Pakistan there are mainly two types of taxes related to property by the government, first of all there is the land revenue tax governed by the Land Revenue Act of 1967 and then there is the Local Rate governed by the Punjab Local Rate (Assessment & Collection) Rules of 1980. These are two separate types of taxes. The rate of land revenue is determined for each revenue circle at the time of settlement and it is a maximum of 25 % of the “net assets”. The net assets are calculated as the value of gross produce minus the average cost of cultivation of crops in the case of owner-cultivators or the land rent received by landowners minus the charge of collecting the rent from tenants. The settlement period consists of minimum ten years and maximum twenty years. The land revenue is determined on the basis of the information about the average crop area matured, crop yield and prices, and is classified after the soil type (Khan and Khan, 1998).

The Local Rate tax is levied on a per acre basis twice a year on each crop season of Rabi<sup>2</sup> and Kharif<sup>3</sup>. The tax is levied at a flat rate of 2 rupees per acre/crop season of irrigated land from Jama Bandi<sup>4</sup>, whereas the Local Rate is half of this amount for non-irrigated land. These rates have not been changed for many years. There are however some exemptions in types of agricultural land, who do not are subjects of paying Local Rate; these are categorised as Gher Mumkin<sup>5</sup>, Banjar Kadim<sup>6</sup> or agricultural plots with a size lower than 12.5 acres (Daniyal Aziz et al., 2014).

There are mainly two more taxes related to rural properties levied by the government, the Ushr and a compulsory water rate. In 1982/83 the ruling military government implemented a religious form of tax, called “Ushr”. This was a part of their policy of Islamizing the economy, the “ushr” levy on Muslim landholders instead of land revenue. However, the “ushr” never became a part of the government’s budget; instead it has become a tax that the landowners are paying to the community and becomes a part of public economy that can be

---

<sup>2</sup> Winter crops, sowing beginning in April and harvest between October-December

<sup>3</sup> Rainy season, beginning in October season and ending in May-April

<sup>4</sup> Records of rights maintained by the Patwari

<sup>5</sup> Land that cannot be cultivated

<sup>6</sup> The piece of the land which will continue to be uncultivated for next four harvests

used for the welfare of the local community. The ushr rate is up to a maximum of ten percent of the price of its production. The water rate is a fee that represents the service of supplying water to the irrigation facilities which is well subsidized by the state (Khan and Khan, 1998).

### 3.10.5 Urban land

It is the Punjab Urban Immovable Property Tax Act of 1958 who regulates the taxation of urban property in the province of Punjab. The tax is levied under §3 which states that property tax is assessed and collected in rating areas, that only includes urban areas. One urban area can either be divided into two or more rating areas, or several urban areas can be grouped as one rating area. Further on, in the sub-section (2) of the paragraph, the law states that “*there shall be levied, charged and paid, a tax on the annual value of building and lands in a rating area at the rate of five percent of such annual value*”.

This means that it is the property’s annual rental value that is the base of the property tax. It is levied at 20 % with a 5 % surcharge on properties over Rs. 20, 000 annual rental value, comparable to international practices (Daniyal Aziz et al., 2014). The properties that has not been considered as objects for such taxation, but are seen as exemptions, has been listed up in §4 of the Punjab Immovable Property Tax Act of 1958.

Some of the other taxes related to property transfers are the stamp duty, the registration fee and capital value tax, to mention some of the more central taxes.

The stamp duty is a significant source of revenue based on various types of financial and legal transactions, such as leases, mortgages, conveyance, transfer, etc. The stamp duty is related to all of the chargeable instruments and documents that have been mentioned in the schedule 1 attached in the Stamp Act of 1899, cf. Stamp Act of 1899 §3. The stamp duty is also provincial, just like the taxation of immovable property and in the provincial of Punjab. There is a stamp duty on instruments mentioned in the schedule 1 of the Stamp Act of 1899, but the stamp duty related to the conveyance of property is currently at 3<sup>7</sup> % of the value of the property value (immovable property).

The registration is regulated by the Registration Act of 1908 and has currently a rate of 1% of the property value, the documents that are considered as compulsory of registration has been mentioned in §17. The registration fee is in general a service charge for recording the transaction in the official record.

---

<sup>7</sup> cf. Schedule 1, Stamp-Duty on instruments, sr. nr. 23 a, Stamp Act of 1899

The capital value tax is related to the purchase of Modaraba certificates and instruments of redeemable capital, including shares of listed companies. “Modaraba” is a kind of partnership where one party provides finance to other party for the purpose of carrying on business. The Modaraba is one of the prime modes of Islamic Financial System and is a result of the process relating to the Islamization of the Pakistani economy in the eighties (SECP). The capital value tax does also apply to the real estate sector with different rates, depending on the nature and location of the property (KPMG, 2014).

## Chapter 4 - Interview

### 4.1 Introduction

As a part of the field work for my thesis writing, I have conducted interviews with Telenor Pakistan employees in different departments of the company, relating to property issues. I started my field work by reaching out to my main contact in Telenor Pakistan, Shakeel Ahmed, who I already had sent information about my intentions and purpose for the visit before departing from Norway. When I arrived in Pakistan, I reached out to Shakeel in Islamabad and I initially had a brief meeting with him. Further on, he reached out to his contacts in Telenor Pakistan and set up meetings for me with different employees in the company who work with property related issues on a daily basis. I have decided to organize the chapter by making it logical, by first presenting questions related to the land acquisition process and afterward present issues relating to the Pakistani property system and finally issues related to legal matters, thus by Telenor Pakistan's site acquisition and legal department.

The interviews were conducted in a casual setting and it was arranged so that I could visit the interviewees at their office at work. The conversations were recorded on tape, with the permission of each respective interviewee. They were also made aware that the information would only be used to academically purposes and that they would be kept anonymous in the thesis, since the thesis is meant to be in a general manner and there is no point to relate the statements to each interviewee. The anonymisation also enables the participants to speak more freely. The interview concentrates on the acquisition process related to BTS (Base transceiver station) towers, since this is what the interviewees deal with in their work.

The main participant is an employee from the land acquisition department of Telenor Pakistan, who works with site acquisition all over Pakistan and specifically with site acquisition relating to BTS towers. He is also responsible for looking after the site acquisition coordination. He used to work for Mobilink Ltd. and has a long experience in land acquisition for telecommunication purposes; he's been working for Telenor Pakistan for the last eight years.

The other participant works for the legal department of Telenor Pakistan and deals with legal issues relating to property, both issues that appear during an acquisition process and after a completed agreement. He has been working for Telenor Pakistan the last 6-7 months, but has gained experience from previous work in Mobilink Ltd.

## **4.2 Issue 1: How does Telenor Pakistan execute a land acquisition?**

### **4.2.1 What kinds of expectation do you have before beginning on a new acquisition process?**

The participant in the site acquisition department told that before continuing the actual acquisition process, Telenor has a tactical team who locates suitable areas for establishing the BTS towers. Whatever sites that are planned by the tactical teams, the site acquisition team gets an idea of what kind of plot it is and in general what kinds of surroundings the plot is located in; Meaning what kinds of challenges and obstacles that they may face at the actual site.

The actual scenario and status of the situation, they first get to know when they go and visit the location in person. So speaking in general, they initiate the process by locating the plot that they want to acquire and then they get an idea of that specific location. Further on, they coordinate all the relevant tactical teams and have a joint visit to the location which is wanted required. Then they make an assessment of that location after the requirements that are required for the acquisition of the plot, for example the distance to the road or how much of the area that is being covered by setting up a BTS tower at the current plot.

The variety of land is quite huge, there are land related to different authorities and geographical differences, such as cantonment land (permanent military stations) or the variety of the country's landscape. Authority land meaning: big housing authorities, for example the Defence Housing Authority or other smaller private housing authorities. These kinds of land administrated by various authorities are commonly find in Pakistan, they provide an extent of security measures and other facility services for private house holdings. For acquisition in these areas, Telenor only have to deal with the site authority. The cantonment processes are very slow and demands a lot of time and patience.

However in non-cantonment land, the acquisition is easier and a more straight forward process. Here Telenor does only have to deal with one single authority, which is the town village administration. The process related to this kinds of land, does not require a lot of time, the site information is easy accessible and it is not a problem to get in contact with the landowner and negotiate for a lease agreement. After negotiating an agreement with the landowner, they only have to apply to the concerned authority and get permission for the BTS tower (the construction of the actual building). There is also a distinction between private and

public owned land in Pakistan, which I will get back to later in the thesis and the approach of acquiring such types of properties.

#### **4.2.2 How do you proceed on the land acquisition process, in terms of deciding who you are going to contact?**

Telenor has actually outsourced their site acquisition activities (mainly the building and equipment activities); this work is done by their subcontractors. Telenor's main subcontractor is ZTE Corporation, who is a provider of telecommunications equipment and network solutions, who again has hired subcontractors working for them. So when the site acquisition coordination team plans to visit a specific location, the tactical teams comes along, everyone visits the site together and practically locate the actual plot that they have the coordinates for. After getting feedback in front of all the stakeholders at the specific plot and if the location is verified as good to go, then the subcontractors tries to identify the owner of that property.

The problem in Pakistan is that it does not exist a proper record of all the owners of a property in an accessible system. Therefore you have to search for this kind of information manually. This is usually done by asking the local owners of the adjoining properties or from asking anyone in the neighbourhood. After questioning, they find out who owns the property and try to get their contact details. After established contact with the landowner, Telenor present itself for the owner and inform that they have an interest in the property. That they have planned to build and operate a BTS site on the actual property and that they would like to have a meeting with the site owner.

Before the parties meets up in the meeting, Telenor has already given their requirements in advance to the owner. The requirements could for example be the size of the plot that they will need from the owner, that the plot can only be used BTS tower purposes and that the acquisition will be on lease base with annual payment. In general Telenor informs the owner about their terms and use of the plot.



### **4.2.3 How does Telenor deal with non-professional landowners, in terms of that they do not know the value of their property or how much they should demand in rent?**

Telenor Pakistan has actually already internally estimated and set the value of property, where the value differs from one area to another. For example in a specific area of Islamabad, a sector (Islamabad is divided in different sectors) is estimated to be worth x amount in rent on lease. Telenor has by estimated this value, set a maximum value of what a property has in a rental value. That is Telenor Pakistan's reservation point in a negotiation, which is the maximum price that they are willing to pay for a property in a certain area. So in other words, Telenor has given these directions to every employee involved in the negotiating process dealing with payment agreement. Then they have to do their work, finding options and negotiate within these limits, and follow these guidelines

Most of the time the site owners demands much more money, than what the actual property has in rental value. They start very high in the negotiation process, since they know that Telenor is a big foreign company. Therefore, Telenor give the owners information about what the property market value is for their property. If the owner does not agree to the price that Telenor are willing to pay, the maximum amount; but instead wants an unreasonable high rental price, then Telenor tells the owner that they will move on to the next property and negotiate with the adjoining property.

The awareness about Telenor Pakistan's BTS tower sites is very good among the Pakistani population and almost every landowner is interested in having a Telenor tower on their land. Therefore the owners, in most of the cases, don't want Telenor to approach their neighbours and instead decides to agree on the rent that was proposed initially. So Telenor knows that they have an advantage in the negotiation process, even before the negotiations have begun.

Then the owners usually have other expectations regarding the conditions for the lease, but Telenor explains to the owner that these conditions are non-negotiable requirements and the owners slowly agree to the requirements of the lease. It happens that some of the landholders that Telenor negotiate with still want a higher price than what Telenor's reservation point is. Telenor then have to evaluate their options and if there is any other close-by site that fulfils the same requirements, then they make an effort to acquire the alternative site.

In some cases a specific location can be very important for Telenor's business in a certain area, therefore Telenor sometimes agree to pay lease fee that is over the estimated reservation

point for an area. So this is an evaluation that Telenor has to do, since they have their base site requirements to follow and not all property has the wanted functions to comply with these requirements. They have to consider paying more money to retain a property that fulfils their requirements. If a property doesn't meet these requirements or if it is not worth to pay more for a specific location, the teams re-locate the site and try to search for other alternatives.

#### **4.2.4 Are there any types of a property that Telenor tries to avoid or who is more demanding to acquire than others?**

Telenor often experience to find out that a site is already in litigation; therefore they cannot go forward with the acquisition of these kinds of site. In other cases, Telenor finds out that the site is a joint property that can't be leased out, because the owners have not divided the land amongst themselves. It happens that certain owners in a joint property tries to make a deal, without the blessing of the other owners, but we do have a good overview and are able to reveal this kind of fraud quite easily. Telenor tries actively to avoid joint properties, simply because it is easier to deal with one owner instead of multiples. It does still happen sometimes, that Telenor tries to make it work with joint properties as well.

In some other cases the tactical teams locate sites on government land and Telenor tries to acquire the land from the government. After concluding that the technical site that has been visited is on state land, the acquisition work initiates with Telenor contacting the appropriate government department and with a formal request in writing. Then if the department agrees to the request, they will depute some official with Telenor to visit the site. The deputed official will then visit the site and give Telenor some feedback in writing, and secure that everything is good to go.

Afterwards, the department sends their terms and conditions to Telenor, while Telenor will send their conditions back to the department in writing. Normally the liable department in this process does not accept Telenor Pakistan's requirements; instead they send their own requirements back to Telenor, which Telenor has to accept and follow to, in order to be able to acquire the property. As a result, Telenor does an evaluation on top-level, if its commercial worthwhile to go further on with this option or not. If the top administration concludes with yes, then the negotiations of lease will continue and if it is not considered to be worthwhile, then Telenor simply refuse and close that chapter. Telenor faces different types of situations

and have to evaluate whether it is worthwhile to use a certain amount of resources and energy in a specific location. The question is how important the site is for the business in an area.

In general, Telenor has a quite good relationship with the government. It's not bad at all, but there are still a few obstacles when negotiating or dealing with the government, like the bureaucracy and some other issues. So the formal process is still quite slow and expensive, because they do not have that much of interest in Telenor's work. Therefore the government responds very slowly and the work related to a site normally goes beyond Telenor's targeted time. For example, if Telenor has planned to acquire a site owned by a private landowner, then it is approximated to take two months. While a governmental land, on the other hand, is scheduled to demand at least ten month.

#### **4.2.5 How would a typical acquisition process in Telenor be executed and what kinds of requirements does the process have to take in consideration?**

First of all, the tactical team search for suitable plots and then they present the technical details to Telenor Pakistan. Then after initial scrutiny, the technical team of Telenor Pakistan issues coordinates of required location. After the initial property hunt by the site acquisition team, the same technical team verifies the plot/property selected for a BTS tower. The site acquisition teams then makes a deal with the site owner on rental negotiations, general terms and conditions of lease agreement draft.

The site acquisition team put forth the requirement of ownership documents to the site owner, in whatever category the property is falling under. Upon provision of ownership documents from site owner, the site acquisition team gets it verified by the legal expert. After a green signal from legal, the advisor prepares a lease agreement draft for signatures from the site owner.

Once the lease agreement is signed, Telenor Pakistan processes the lease internally and also the rental payment as per lease agreement, and side by side Telenor applies for the NOC (No Objection Certificate) for BTS tower construction from the local building authority. Upon getting NOC, Telenor Pakistan kicks off the site construction. Telenor Pakistan pays annual advance rents to site owner as per policy. This must be done according to public regulation.

There are many factors that the tactical teams have to take in consideration when they are searching for suitable properties for BTS acquisition. The site acquisition follows some basic

principles, first of all the property must be undisputed and free of litigation. Secondly the property must have an ownership record of at least six months old. Thirdly the proposed property cannot be restricted by governmental agencies for any kind of tower construction. These are the *make it or break it* points of the acquisition process, but there are also other criteria's that the tactical teams has to evaluate while planning a site. These can be divided in different stages of the acquisition process; RF planning, site acquisition, implementation and TXN planning.

In the RF planning, radio frequency planning, the site must be planned in a way that it covers most of the target coverage area. There can neither be any blockade to the RF antennas, so called depression site (plots/pieces of land that is below general ground level) and the site should preferably be on zero/pin point coordinates.

The factors that have to be considered in the acquisition process are first of all, that it is preferable with a property that has a single ownership and that the property is free of litigation with clear ownership documents. Further on the site should have a general public passage in present, preferably with an access to a road. Telenor Pakistan wants to avoid government authority land and the commercial power provision has to be ok.

With regard to the implementation process the tactical teams tries to avoid properties with hard rocks, plots that involves retaining walls and low/plots in depression. There has to clear line of sight, due to the TXN planning (transmission planning).

#### **4.2.6 Does Telenor buy the properties that they acquire or are the properties acquired for a period of time in a rental agreement?**

It is Telenor Pakistan's policy to acquire the properties used for BTS tower purposes on a lease base, this has been decided. On lease bases, Telenor either has to lease private property or a public property. For private properties Telenor only deals with the private owner, but while dealing with public property, Telenor has to contact the department who holds the property. By acquiring property through leasing, Telenor does not acquire the ownership rights of the property, but receives instead the rights related to the use of a site for a determined period of time. I will come back to the benefits associated with leasing rather than purchasing in chapter 5.1.7.

In both cases Telenor have to obtain the property ownership documents, to be able to establish a transfer of ownership of that property before continuing the process. But when dealing with a governmental property you are not going to be able to get any ownership document of that property, because the document will only state that it is the property of the holding department. So the deciding part of the process, who decides to lease the property to Pakistan Telenor, rest with that department. If both parties agrees to the terms of condition, then Telenor has the opportunity to lease the property. If the answer is no, then Telenor has to search for some other options.

The transaction is that Telenor pays the owners annually and with advanced end, with certain escalation each year. This is a price which has been negotiated initially as a part of the acquisition process, were its decided that Telenor will pay x much rent with x percent annual escalation. The rent is fixed and does not follow changes in the market. All of Telenor's lease agreements are for ten years, which is the standard period of time for a lease. So once Telenor gets the leased property in writing with the landholder's signature, the rent is set with an annual increase and this will not change for ten years. First after ten years, the landholder has the opportunity to re-negotiate the rent and the conditions of the agreement.

It happens that some of the owners want to change the written agreement before the period of ten years and Telenor ends up being in litigations with these individuals. But approximately 95 percent of the other parties, does not back track from the contract that has been agreed to. The agreement is of course binding for both parties, Telenor has to fulfil their responsibilities and the other part has to fulfil their responsibilities to honour the agreement.

#### **4.2.7 How does the local culture affect the acquisition process, in terms of negotiations in the different parts of Pakistan?**

Telenor mainly have a standard way of approach relating to land acquisition, regardless if it is in the city, a village or any other place in the country. But the company has experienced to have certain limitations, mainly in the northern parts of Pakistan, like for example in Peshawar where Telenor keeps on meeting resistance. The resistance that the company faces is mainly because of the towers and the related issues like *parda*. *Parda* means that the owners in the urban areas of Khyber Pakhtunkhwa (KPK) does not like the towers, because setting up a BTS tower means the area will be more attractive to others and therefore a lot of people are going to want to move near the tower. So it is a reaction against to the decrease of

the areas privacy, which these people value a lot. Most of the cases that Telenor get from KPK related to land acquisition are about these issues.

But these are very rare issues, but still some typical issues that Telenor faces in these areas. Telenor normally follows the standard SOPs (Standard Operating Procedure), which they have made for their site acquisition teams.

#### **4.2.8 How do you establish business in hostile environments or in areas that are more exposed to natural disaster?**

Telenor does not restrict itself to specific areas, but there are certain areas where Telenor tries to acquire some land but ultimately cannot. These are areas such as army sensitive areas or other areas near for example the airfield or airports. Telenor does still make an effort on these areas, because they have to fulfil their commercial requirements, even when they know that they are going to get a straight *no* from the authorities. Telenor does not straight away refuse to try to acquire these kinds of site, even when they know that they're going to be rejected.

Since the KPK region of Pakistan is quite vulnerable to terrorism, Telenor has some few areas that are considered as non-accessible. Telenor Pakistan cannot go to these areas, neither their operational teams, field teams nor their subcontractors, because of the danger of attacks in the area. However, Telenor is managing this threat by using local vendors and establishing business there. Taliban has destroyed Telenor's BTS tower, by blowing them up, three times in a year. The Taliban has quite an influence in that area, but ultimately it is a business and Telenor has to try to reach out to as many people as possible and try to operate also in these areas.

Before going to a new area, Telenor Pakistan has to take their precautions. Before sending any technical or site acquisition teams, they send their network security team who gives advice about the safety of an area; if it is safe or not, to operate in a specific area. Telenor are only able to precede the acquisition process if the area is checked clear, or else they put the site on hold until it gets safe to operate in the area. The terrorism is obviously a big challenge in the northern regions and in the regions of Baluchistan, and Telenor cannot move freely to these places.

Regarding the aspect of conducting business that is prone to natural disasters, like floods and earthquakes, there is really not much to do. The land in, for instance, Punjab is very flat and

there are five rivers in Punjab. So the flood is an example of a phenomenon that comes every two-three year in the Punjab. When you get excessive rains, then obviously the flood will be a reality and it will destroy all the properties and buildings along the river. For Telenor this affects the access to the sites and in general the access to a larger area. Therefore Telenor either tries to repair the damaged sites after a flood or they try to acquire a new site nearby. So geographical, Telenor gets cut off from a flood affected area for a period of time, until the roads are rebuilt and open.

Back in 2005 Pakistan experienced a massive earthquake in the northern regions of the country, where most of the property were destroyed and approximately 70 000 humans lost their life as a result. All the companies rushed to these areas after the earthquake to help and try to establish network and try to give their help. Telenor planned, acquired and rebuilt up sites in the affected area, since it is critical to have a functioning network established in these kinds of event, so the relief efforts can be coordinated in the best possible way. As a result of the work related to this horrible disaster, Telenor has now achieved to establish a good coverage in the area, even in the Azad Jammu Kashmir (AJK) which is an all military area. These scenarios are very hard to predict and therefore difficult to establish some kinds of precautions against, but Telenor tries to do what they can and move out and help in these situations.

## 4.3 Issue 2: What property system does Pakistan have and what's Telenor's relation and experience with the system?

### 4.3.1 What kind of property systems are there in Pakistan?

There is one property system in Pakistan, which is called the *Patwar system*. The responsibility for the property register lies with the district revenue officers (DRO), the supervision of the *Patwaries*. The *Patwari* is the lowest functionary in the Revenue department; he maintains and updates the records pertaining to his *Patwar* circle. The *Patwar* or the *Patwari* is the main person who knows the details of the property borders, all the legal rights tied to a certain property and he is governmental applied. He keeps registers of all the property in the country. The system is legally divided in four provinces, then in districts, then in *tehsils* and then last in councils. So this *Patwari system* applies to all the different districts, tehsils and councils, except in the areas of *Patha*, also known as the *agencies*, the *Patwaries* doesn't have registers of these areas.

These are not military areas, but the *agencies* are areas where the *Patwar system* does not exist. These are the only areas that are not included in this property system, all the other areas in Pakistan are included or covered by the *Patwar system*. *Patha* consist of seven agencies and you will find these areas in KPK and in the northern parts of Pakistan. As already mentioned, these areas do not exist in the *Patwar system* but it is still possible to get documents of the properties in these areas with all information, regarding to property matters from the administrator of these areas. There is in a way, an own property system in these areas. Most of the areas in Pakistan have been covered by the *Patwar system*, though not the areas of *Patha* and the unsettled areas.

The *Patwar system* does not differ from one province to another or from one region to another region in Pakistan; therefore the procedure for acquiring property is, mainly, the same in Sindh, Punjab, KPK, etc. The standard way of getting hold on needed documents, is to approach the *Patwari*. Telenor gets in contact with the *Patwari* of the relevant area, gets hold of the documents and then leases the wanted property from the site owner.

However on governmental land, Telenor does not approach the *Patwari*, because governmental properties do not have a specific ownership documents. There is no point of asking the government to provide these kinds of documents, because once they say it is their



property, then it is as a common rule accepted as their property by everyone involved without any further questioning.

Instead of an ownership document of the property, you will only get a document that states that the property belongs to the holding department. That's how governmental land functions in Pakistan, the deciding part of the process rest with the department. Once Telenor gets an agreement to lease a governmental property, then there is no need to ask for ownership documents. No one objects and no one asks, therefore Telenor immediately asks the governmental authority for their requirements, which varies between the different departments. Telenor accepts the requirements as long as they are not in direct conflict to Telenor's own requirements.

#### **4.3.2 What do you think about the register system? Is it transparent enough? Can you trust the system and the *Patwaries*?**

The responsibility for maintaining and updating the property system lies with the *Patwaries* and we believe that the system is functioning to an extent. There is a lot of fraud in the system, which is done by the *Patwaries*. Millions of acres land has been wrongful transferred from one landowner to another. It is a typical problem that the rightful owner of a property does have the knowledge about his property's boundaries, speaking about boundaries in a physical manner, but the owner does not know for sure when his property is being transferred in the documents or not. The owner does not have an overview of these transactions, only the *Patwari* knows. Therefore, a *Patwari* has the opportunity to transfer the property in the legal documents, however they would like to, both in theoretical manner and also done in many cases in practice.

There is no form of warning before these kinds of transaction is being done, unless the owner approaches the department, gets hold of the ownership documents and re-verifies that the boundaries of his plot still is "*intact*". There are many landlords in Pakistan who has huge amounts of acres of land, without really having a good control over their property boundaries. The landlords have the knowledge in general, but not in a legal and specific manner. The *Patwari* has the overview of this matter and they commit a lot of frauds and embezzlement, since the register is handled manually and only the *Patwaries* has the access. The *Patwaries* manages, operates and are able to do anything with the documents in the register. They are

controlled by the district revenue officers, but there is limit to how much data they can control and how effective.

There are so many weaknesses in the Pakistani property system; the biggest weakness of the system has to be the lack of transparency. As mentioned earlier, there is a lot of fraud in transactions related to land. So unless a person is a hundred percent sure of the ownership document itself, you cannot in practice rely on the person who has the document. Therefore Telenor has to verify these documents; one way of verification is to personally go to the office of issue and verify the ownership document.

This is the main weakness of the property system of Pakistan. The government has initiated the work of computerizing the land records, in order to increase the transparency and to secure an effective use of the register system, but it is only in the very beginning of the process and it will take time. For the work related to the verification of the ownership documents and these kinds of legal documents, Telenor has hired legal councils.

Telenor, and almost every other person who has to deal with the Pakistani property system, believes that this is the weaker point of the real estate system in Pakistan, the non-presence of a computerized land record. Once a society computerizes the information related to land, all the owners of property would get easy access to the information of their property and no one would question the information, since it then would become transparent and available for every owner to check whenever they feel like it, and it makes it easier to control the information. But since such a system is not available today, the system is therefore vulnerable for manipulation.

#### **4.3.3 How does Telenor verify or how can the company be sure of that the persons they are dealing with, in fact are the legal owners of the land that they are claiming of?**

When Telenor finalize its requirements in an acquisition process, the internal requirements of a property has to be fulfilled, they thoroughly check the potential property in terms of documents that they have received from the owner. Afterward Telenor sends back all of their requirements to the owner and if the owner agrees to the conditions that has been given to him, he has to bring the property documents back to Telenor which states that he is the actual owner of property. Then Telenor makes a deal were the owner has to follow these requirements on the leasing base.

Once the owner goes to the revenue record of the concerned district, to get hold of the property document that he received originally from the office and bring it to Telenor, he has to bring two-three other documents in addition that verifies that he in fact is the legal owner of the property. Then Telenor evaluates all of the documents that the owner has brought to them, to make sure that the documents are free and fair, that there is no litigation associated and that the documents are free of claims from a third part, etc.

After this evaluation, all of the documents and preparation related to the current landholder is gathered into one file and sent over to the legal counsel. The legal counsel verifies the information and looks into the legalities of the documents and is responsible for the final verification of the documents. The function of the legal input is for the authentication of the documents and the verification that the claimer is the rightful owner of the actual property. To ensure that *this* property belongs to *this* person, to secure that the land acquisition is done with the right person. This is a very expensive part of the land acquisition process, thus the job to verify the prevailing owner of a property. It takes approximately 15-30 days to verify one site owner.

It is a very extensive and important part of the process that has to be done in a thoroughly manner, because in Pakistan you can get all the transfer and ownership documents from the Patwari, but all off a sudden you can get a legal notice from a third part claiming that the documents are fake and that he has the right documents for the property. In general that it is his property and that he has proof of it. Then Telenor has to reach out to their legal department and tell them to secure the documents from the owner, before the allegations and litigation begins. The litigation will then normally go on for several months and sometimes many years, until it is ultimately decided in the favour of one of the parts. Telenor has to terminate the lease if the court decides that the claiming part has the rights and instead create a case against the part that initially claimed to be the owner of the property. The litigations are many.

The main documents that Telenor needs in an acquisition process is the (1) *FARD* document, which is an ownership document issued by the Patwari. Then they'll need (2) an *Aks Shajra*, which is a sketch of piece of land under acquisition. Finally you'll need (3) an *Intiqal* or a mutation document, which is a proof of land transferred form ancestors or previous owner in case of sale. All these documents are applicable in rural/sub rural area of the country and managed by the District Revenue Officers (DRO) through the Patwari. Telenor does also in

addition need to get hold of (4) a registry document issued by the *sub registrar* of relevant district, mostly in the urban area properties. Examples of various certificates that is needed in various areas in Pakistan:

Plot allotment certificate, for example in CDA (Capital Development Authority), Capital of Pakistan or planned housing societies like DHA, Askari housing, etc. NEC, Non Encumbrance Certificate in areas where no formal land record is available. Telenor's aim is to confirm the ownership of a property, whether it's done by one way or the other. One way, like mentioned, is that Telenor uses FIRD to confirm the ownership of a property in the rural areas. That suffices Telenor's purposes.

Telenor tries to get properties that are close to the main access road and that is owned by preferably a single owner. Then Telenor gets the documentation from the alleged owner for verification, there's a part of the ownership document that Telenor verifies twice. This document is given by the Patwari and it's the specific plot that Telenor wants to lease.

For example if Telenor wants to acquire eight *marlas* (approximately 272 square foot) out of a big piece of land, they have to document this. The Patwari knows the boundaries best and the exact position of the plot that Telenor wants to acquire, therefore the Patwari marks eight marlas that Telenor has the papers for and marks it up in a map with a red square. Then it is marked that this plot is leased by Telenor on the map, further on the Patwari sends the map with the plot information back to Telenor and Telenor re-verifies that it's the right location that has been marked.

#### **4.3.4 How does the relationship between the public and the private reflect in Telenor's operations?**

On a private property Telenor will be dealing with either a single or multiple owners of a property, on public land Telenor has to contact the public holding department. The public department in Pakistan has a long process, connected to get in touch with the actual person who is able to decide whether or not the property can be leased out or not to Telenor. They have not set or developed a process in the public department for BTS acquisition.

In private regulated property, Telenor gets in directly contact with the landowner and then the negotiating can begin. Telenor can negotiate what kinds of lease fee they are prepared to offer and then the owner can sign an agreement after the negotiations. After Telenor has achieved

to gain a successful agreement, they can apply for the NOC (No Objection Certificate) from the concerned building authority and then start the kick off.

When it comes to public property, you really do not have a specific procedure or a standard way of approach. It is on the department's good will if they want to grant permission or not, it is totally their decision.

In addition, the starting point for negotiating varies in the public and the private. Where as in the private it is Telenor who has the strongest basis for negotiations, but as mentioned earlier, in the public the decision is fully up to the responsible department. In the private market you will to some extent have a reciprocal relationship between both parties, where both parties have something to gain from the negotiations. While in the public sector, the departments usually do not recognize the benefits of a potential acquisition and they therefore do not experience to have any incentive to focus on such acquisition.

However the public law of the four provinces of Pakistan supports site acquisition activities, thus acquisition for telecommunication purposes. This is more of an obligation from the PTA (Pakistan Telecom Authority), who has issued license to Telenor Pakistan and all the other telecom operators in the country; telling the operators that they have to provide service in each and every place in Pakistan. Telenor is, by license, bound to provide service in each part of the country and in order to fulfil this obligation Telenor has to acquire sites for their BTS towers. Telenor has a department who helps the company with the formulation of the BTS policy's from the government, so the policies from the government exist and Telenor has to follow them.

There are some certain difficult policies and some straight forward policies. As it has been mentioned, in cantonment/army land Telenor has to follow the army procedure and their requirements, which are in addition to the standard requirements. Telenor has to get FAB NOC (Frequency Allocation Board No Objection Certificate) before going to a cantonment land and set up a tower in these areas. The FAB is a sub-department of the PTA, who issues the special NOC, which is needed in order to proceed with the acquisition process in cantonment land.

In non-cantonment land Telenor only needs to identify the location, lease the application and apply to the concerned administration. This is a matter of 15-30 days. However in cantonment land Telenor first has to apply for the NOCs, one of these is the cantonment NOC. For the

cantonment NOC, it is crucial to have a FAB NOC, so the FAB NOC has to be processed and that takes officially only two months, but in practice this process requires 6-8 months. So once Telenor gets the FAB NOC, they will need a cantonment NOC and the process does really take up to ten months.

## **4.4 Issue 3: The legal aspects of acquisition and property in Pakistan**

### **4.4.1 Can you tell me about the court system in Pakistan and how it relates to property? (In general)**

The court system in Pakistan consists of three types of courts in the lower court system; there is the Civil Court, the District Court and the Cession Court. Whenever there is a conflict or a legal issue related to property, you will have to approach the Civil Court. The Civil Court deals with the civil matters; this is the first platform where a case begins. The Civil Courts do not have the jurisdiction to entertain any cases that is related to criminal activity, they only have the jurisdiction to treat civil suits which are related to property. For example if you have a property and it occurs an issue that you want the court to make a decision of, then you have to approach the Civil Court and deliver a civil sue.

What happens when a person reaches out to the Civil Court and file a sue against someone, is that the court sends a person to the other part. Let us suppose if Telenor is the complainer and files a case against you, then the court will ask you to appear for the court. Then you will have to rebirth the contentions that Telenor has made before the court. That is how a case initiates. If the court's decision goes against Telenor's favour, then the next remedy for Telenor is to approach the District Court and reach out for an appeal.

In the District Court, the same procedure as in the Civil Court will happen. Both parties will appear for the District Court and give their statement. Now if the District Court comes to the same conclusion as the Civil Court before, that Telenor is not entitled to get any thought of remedy and that the decision goes against Telenor yet another time, then the next remedy is to approach the High Court.

There are five High Courts of Pakistan, because there are four provinces in the country, there is in addition a High Court for the capital city Islamabad. So each province has their own High Court, since we are in Punjab now we will have to approach to the High Court of

Punjab. If the decision of the High Court goes against Telenor again, then the last remedy is to approach the Supreme Court in Islamabad. The decision of the Supreme Court is final and nothing can change the decision made by the Supreme Court.

Every case has a potential to proceed to the Supreme Court, as long as the parts are willing to take the appeal from the High Court, whether it concerns legal issues or the factual issues. The question about if the case has strong enough strength to appeal to a higher court, is a different question, but everyone has a fundamental right to appeal to the High Court and the Supreme Court. If it is on a factual ground, then the court has a right to dismiss the case, because in High Court you cannot plead your case on the basis of facts. It has to be very critical on the legal points of the case. You have to be very clear about what you are going to talk about, regarding to the legal points of the case.

#### **4.4.2 What kind of legal issues does Telenor has to deal with, regarding to land acquisition?**

The main acts that Telenor Pakistan deals with in their land acquisition business, are *The Land Acquisition Act (1894)* and *The Land Revenue Act (1967)*. Let us now go through the process of what happens in practice when Telenor gets a case, how Telenor as a multinational company handles these cases. What happens, is that whenever Telenor acquires any land to install a BTS tower is that they initially reaches out to the land owner and make a request to lease their land to Telenor for a specific period of time. Then Telenor tries to develop an agreement and the negotiations begin.

Now suppose that Telenor has come to an agreement with an owner and that the person passes away. If an owner passes away, then the next step will be to contact his legal heirs. As a result, the heirs come in the picture and Telenor now has to make an agreement with the legal heirs. But first Telenor has to see the original lease agreement as abolished or terminated, since the previous owner now is dead. Therefore, Telenor now has to work out a new lease agreement with the heirs; it mostly is a case of transfer of the original lease agreement with some moderations in such cases.

Then Telenor also has a condition in their lease agreements, that if any person who claims to be a legal heir and who was not currently in the picture of the ongoing negotiations at the time, comes after 2-3 years and tells Telenor that he is the legal heir and that Telenor is paying rent to a party that is committing fraud. That he has not received his “rightful” share of

the payments as the legal heir of the deceased owner. Then Telenor has already written a condition in the lease agreement, that say such a scenario should happen, then Telenor will not be responsible for any damages nor any law suit. Then, that party has to suffer and have to pay a potential compensation. Basically, Telenor disclaims themselves from all responsibilities in such cases, and it is up to the legal heirs to contact Telenor as soon as they become familiar with the original owner's death.

Normally the implicated parties in such cases do not want to settle down among themselves, but instead they go to the court and file a case against Telenor Pakistan and then they engage external council. Sometimes they file a sue against each other, without involving Telenor which would have been the right way of approach, since Telenor has fulfilled its duties during the whole process and basically cannot be blamed. But the easy way for the claimers is to make Telenor a part in the case, then Telenor has to get involved and fight the case since they really do not have any other options. These are the main issues that Telenor encounter on; especially after the land acquisition process has been completed.

#### **4.4.3 What Kind of legal tools does Telenor have/use?**

Let us go in to what kind of legal documents Telenor look into, when Telenor is going against another party in a case. Firstly, in Pakistan the land is divided into two categories; rural and urban land. Even in the urban areas, there are many areas which are not organized in the formal system, but let us focus on the organized urban areas.

In the urban areas the plotting system is very precise; it is very accurate and very systematically organized. On the other hand, if you were to approach the rural areas, then you would experience that there is no good organizing of the land. In the urban areas, if you buy a plot, a land or a property, you will be given an allotment letter or a transfer letter in your name. When you receive an allotment letter, then it means that you are the judicial owner of that property.

However in the rural areas, this is not the case. There is no allotment of land in the rural areas of Pakistan, since the land has not been divided into proper categories. This has only been done in a proper manner in the urban areas, because in the rural areas the farmers that have estate in the fields have such huge lands, that you cannot put a clear mark of the boundaries, as you can in the urban areas. As a result of this, in Pakistan the system has difficult technical



names that are used by the Patwari such as *khatouni*,  *khasra*, *khevat*, etc., which a very small and limited percent of the Pakistani population understands or have a relation to.

The *Khasra nr*, *khata nr*, *khevat nr* and so on, are the concepts used by the Patwari to systematically categorize and divide one land type from one to another. As mentioned, these are the legal technical terms used by the Patwaries for demarcation, the Patwaries are responsible for maintaining the record of all the land that is connected to a Patwar Circle. A Patwar Circle consists of a group of villages, which are administrated by the Patwari. Let's suppose that for example the patwari is based in the F-11, which is a rural area. The Patwari will be responsible for maintaining the record of F-11, F-10, F-9, F-8, etc. All the area that comes in under his domain. The Patwari is responsible for the demarcation; he draws a line, the legal, binding and dividing line between owners of adjoining properties.

Let us suppose that we have a situation between Mr. A and Mr. B, were Mr. A installs a tube well in the middle of both parts properties. Half of it is in Mr. A's property and half of it is on Mr. B's. These are the basic issues, which were the disputes starts from. Then they have to ask the responsible Patwari to come in the picture and draw a new line and properly demarcate the two properties. In order to solve the dispute, the conflicting parts have to know where their respective property is and handle further on the basic of this information. These are very complicated processes and it's not always easy to approach the court.

Therefore instead of approaching the court, people often choose to pay the Patwari and tell him what *they* want to do. As long as the parts are paying the right amount, the Patwari will in many cases do as he has been asked of. This is a result of the few other opportunities that the landowners have. They either have to go through a very lengthy and expensive process in the court or use the alternative, which is to pay some money to the Patwari and then he will make the decision for the conflicted parties. Every civil suit that goes in the civil court takes about minimum seven to eight years before the court gives its decision; this is the normal practice. If the decision happens to come in a year or two, then it is considered to be a big achievement. Therefore a minimum eight to ten years is the expected time for solving an issue in the courts, it is very rare that the issues are so important that it makes it worth to go through a process in the court.

If Telenor comes in a situation where they have to go against a Patwari in the court, they would most likely use sections in the land revenue act against him. As it has been mentioned, *khata nr*, *khasrouni nr*, and so on, are all defined in the land revenue act. The land revenue act

is basically a document that tells that if your land has been violated, by any, then what kinds of remedies that are available for use. This is the document that is being used, and the issues will obviously be something related to property. Even if the Patwari has done some kind of bribery, it will become a criminal case, but that has sprung out from a civil case in the first place. Thereby you will have to file a suit in the civil court and a suit in the criminal court; the Session Court. These are two cases of different nature that are being filed against the same person.

#### **4.4.4 How well does the existing property system secure the rights related to property?**

The law definitely secures every person's rights very well, it is formulated in a manner that any person who is not entitled to any compensation or remedy, will never get any remedy nor be compensated in any matter. If someone offends your rights, then you should reach out to the court; firstly with clean hands. Secondly by duration of time that has been mentioned in the law. Let us suppose that B has offended A's rights today, and A goes to the court two years after asking for a remedy that B has offended A's right two years back in time. Then the court will not entertain A's case. A has to approach the court in a very specific duration of time after being offended, because the evidence gets old/cold. Thirdly it is depending on the parties as well. If they are not efficient, then obviously they will lose the case even if it is their right that has been violated. If they come to court being more efficient, active and responsive in the court, then they have a greater possibility to win the case, as long as they are on the right direction.

#### **4.4.5 What is the difference between the private and the public law system?**

Whenever I see public and private law, it always reminds me of common and civil law. The difference between common law and civil law, as far as I have understood it, is that the common law has precedence. The common law drives from precedence, there are different cases that go back for 100 years. Then the laws are formulated on the basis of precedence that already has happened in the past, that is how it is in common law system and it is still being practiced the same way today. Now the civil law system on the other hand does not follow precedence, because it is primarily a new law; it formulates itself on the bases of the need of society and not on base of precedence.

I would argue that the common law is more powerful than the civil law, because the common law is based on precedence. It formulates itself on the basis of past cases and whenever you approach any court; the Civil Court, the High Court or the Supreme Court, you will always bring precedence with you, and always refer to past cases that strengthen your own case. Let us suppose that A say that this *glass* should be in this certain position, then B will tell A that the Supreme Court gave their verdict back in 1947 that the glass is supposed to stand in this position. Now B is referring to precedence, reference to past cases dealing with the same issue that we are facing in actual time; that's strengthen B's argument against A.

#### **4.4.6 How has Islam influenced the property law system?**

Islam has definitely had a strong impact on the property law system, especially when it comes to law of inheritance. This is where Islam comes in the picture, regarding to property. Islam says that if a property is owned by a father, who has three daughters and three sons and the father passes away. Then the property is automatically transferred to the legal heirs, there is of course a proper procedure for this transfer. The legal heirs have to file a suit for succession certificate and a file for a declaration certificate. Thereby there are two kinds of certificates that the heirs have to apply for, succession and declaration. The succession certificate is for the movable properties, while the declaration certificate is for immovable property.

As mentioned, the legal heirs have to file a suit for both succession and declaration certificate, then the decision comes in either ones favour and the property is divided. However the property is not divided equally amongst the heirs. It is divided equally between the sons, but the daughters are only given half of what was given to the brothers, and the mother gets half of what the daughters has received. This is what Islam says, half of the share will be given the sons  $\frac{1}{2}$ ,  $\frac{1}{4}$  or a quarter of share of the property to the daughters and the wife gets  $\frac{1}{8}$ .

This is where Islam comes in and makes an impact on the property system. This is practiced very strictly by the courts of Pakistan, but it's definitely for every person's best interest. Let us suppose that a father gives more to her daughter rather to his son, which is his decision to make, as long as it is happening during his life of time. After the death of the father, the sons cannot claim more than what's already been given to them by their father while the father still was alive.

It happens in many cases that people claim that a person already has passed away and that the deceased had written a will in their favour. The person will simply claim that a piece of land

belongs to him. A will/testament is something that is challengeable; it can either be fake or real. Let us suppose that there are two brothers, and brother A claims that their father wrote the will in his favour and that all the property belongs to him after the death of the father. Now, brother B was not in the picture when the will allegedly was decided. Then why and how should B believe A, that OK fine, the will that my brother has brought in front of me is real and actually belongs to A, and that in fact it was given to him by their father.

A will can be categorized in two types of will, it can either be a registered will or a non-registered will. If you have a registered will, then it has some legal standing. If it is not a registered will, then it does not have any legal standing, and most of the wills are unfortunately non-registered wills; because they are fake. The parties approach the court and ask the court to transfer the property to their name, where as if it was real, then why did not the father transfer the property when he still was alive?

Therefore, people make up fake claims and when people makes up claims, it becomes *fishy* and then it becomes challengeable in the court. If a father transfers a property in any party's favour, let us suppose that the father has three sons and he transfers the property while he still is alive in Mr. A's favour. Then Mr. B and Mr. C do not have any rights to claim that property, since the transition letter has already been given to Mr. A and it is not challengeable, then it is complete.

#### **4.4.7 How does Telenor relate to the international standards and laws, and how are these taken into account as a part of Telenor's business?**

Personally I have been working for Telenor approximately seven months now, also hearing from common people I meet out in the Pakistani community, I have concluded that Telenor is a law abiding citizen. It is very concerned about following the law and regulations in a strict manner. Telenor are paying their taxes very regularly, there are many companies here in Pakistan who are not paying their taxes as regulated and who tries to instead actively search for different kinds of ways to avoid paying their taxes. This is something that never has been seen as an opportunity by Telenor Pakistan and that hasn't been done by the company ever.

A couple of days ago, I was talking to some random people and they asked me who I was working for. I told them that I currently was employed by Telenor Pakistan and they told me that they were very impressed, since the organization had been so good. Telenor Pakistan has not only followed the laws and regulations in Pakistan, but they are also doing a lot of work

for the society in other matters than telecommunications. This is very important for Telenor and they have an own department for corporal social responsibility, who keeps giving tasks to employees of Telenor every few week. Then the employees get together and visit certain areas and help the local people by either clean the streets or by arranging activities for the communities.

Telenor keep on taking their employees for these kinds of tasks, all of the employees working in the organization are bound to perform this kind of work through their goals. It is not necessarily something that everyone does out of their own good will, but it is something that they have to do. Not by contract, but by the goals that has been defined by the responsible line manager. If someone isn't fulfilling their social duties, then this kind of attitude will obviously lead to a decrease of the chances to receive good marks from the line manager. This will again, have a negative effect on the chances for getting promoted for an individual.

Therefore the work related to the corporal social awareness is very good; both for the employees and the communities that receives something in return. This kind of work in Telenor, is giving awareness to other people and companies, both socially and in some cases legally.

Telenor Pakistan is a very responsible organization, because they are following the rules, regulation and standards in the telecommunication business, they are paying their taxes, taking social responsibility to the local communities were they have their business activities and they are leading in the work of creating new solutions. Telenor has for example developed a biometrical system to verify who a specific SIM belongs to, which concerns Pakistan's national security because of the terrorism acts that is done in the country.

## Chapter 5 - Analysis

In this chapter, the three sub-issues in the paper, as presented in chapter 1.2, will now be discussed and analysed in order to elucidate the main research question of this thesis: *How does Telenor acquire property in Pakistan and what are the challenges relating to operating in the Pakistani property system.* The three sub-issues will be discussed separately, organized so that each sub-issue will be discussed in relation to the questions asked during the interview with the interviewees from Telenor. Finally, there is made an overall conclusion which will illuminate the results in relation to the main question.

### 5.1 Issue 1: How Telenor Pakistan execute a land acquisition

#### 5.1.2 The expectation before beginning on a new acquisition process

There are many aspects related to the initiating of a land acquisition process, one of these aspects are the expectations that is connected with land acquisition. What type of land is it? Where is it located? Which parties must be involved in the process, public or governmental or maybe both? What kinds of challenges and obstacles one may have to face at the actual site that is to be required.

There is a lot of work and costs related to answering these questions; Telenor has solved these expectations by establishing a professional tactical team for this purpose. The tactical teams are in charge of locating suitable areas to lay out the BTS towers for Telenor's business. In this way Telenor has secured a cost effective and a well-planned process for the further acquisition of a plot. The tactical team reports about alternative suitable plots for the site acquisition team to acquire, this way the site acquisition team has an idea of what kind of work they are facing at the relevant plot and are better prepared. Both, the tactical team and site acquisition teams, then executes a joint visit to the location and make an assessment of the location according to the requirements that are required for the acquisition of the plot.

As a result of the fact that Pakistan has a quite huge variety of land and ownership, the work of the tactical team is very important in order to prepare the acquisition of the site. Their survey of alternative plots provides a direction to the site acquisition teams on how they should engage and behave in the process of acquisition of a specific location. Interviewees report that there are different approaches and requirements for different types of land, the difference between situations may be geographical or at an administrative level. The geographic attributes of any relevant location determines whether the property is at all

suitable for Telenor's operations, while the administrative regulation of the property provide indications of how much work and challenges that are associated with executing the land acquisition.

It emerges from interviews of Telenor that they mainly distinguish between cantonment land, authority land and non-cantonment land. The organization of the land administration Pakistan, cf. Chapter 3.6.2 about the current land administration in Pakistan, has led to the fact that various parties in the acquisition process has to relate to different site authorities in different areas. Only this illustrates how much bureaucracy that is associated with land acquisition in Pakistan. Acquisition of land in cantonment land has been described as slow, time-taking, expensive and demanding. While land acquisition in non-cantonment land has been characterized as a straighter process, which in general can be compared to the acquisition process in Norway; relatively fast, with easy access to site information and where one is essentially bound to deal with a part and not multiple parties.

### **5.1.3 The proceeding of the land acquisition process**

The interviewees then explain that Telenor has outsourced parts of their site acquisition activities to a subcontractor. The main parts of the outsourced work is connected to the equipment and network solutions that Telenor uses on their BTS sites, but it appears that Telenor has also given the subcontractor the responsibility of identifying the legal owner of a potential site property as an initial part of the process. It's only after the identification of the subcontractor that Telenor presents itself and their interests in the property.

To outsource this part of the acquisition can be perceived as a disclaimer from Telenor and may seem like an unnecessary measure to do. There can be many advantages to outsource the technical aspects of the creation of the building itself, i.e. the material, but it will be in favour of Telenor to take full responsibility for the whole acquisition process instead of outsourcing a small part of the process to a third party. This would seem resource-saving, since they then would not any longer have the need to re-verify the work of the subcontractor, internally, later in the process. This way Telenor will be able to achieve a higher quality on their work related to the land acquisition, since then they'll have the whole responsibility of the process. It is clear that Telenor cannot be held responsible for errors committed by the subcontractor, but an error in the identification of the owner of a plot, can lead to conflicts and delay later in the

process that may affect Telenor. In addition, greater responsibility of the process at Telenor, could lead to an improved risk and reputation management.

The lack of a proper registry that connects a registered property to a specific owner in an accessible system was pointed out by the interviewees. This means that Telenor is forced to search for the ownership information manually, which in turn requires a lot of work and time. They have solved this problem by using other unofficial networks, like for instant the knowledge of neighbours or the local community. A challenge in this context will be to assess to what extent one can rely on the received information, how one ensures that the information given by a neighbour is correct. This problematic will be discussed later in the analysis, cf. chapter 5.2.3 about how does Telenor verify the owner that they are dealing with.

However, after the owner has been identified and it has been established contact with the landowner, Telenor then present themselves and appoint a meeting for further discussions with the landowner. This is a very transparent process, where Telenor explains to the owner what requirements they have, what the owner can expect and the owner is given an opportunity to present their views and suggestions, regarding the terms of the acquisition. Some of Telenor's requirements are non-negotiable, while others are open for discussion. Telenor does not, further on, make any difference between negotiating parties and follows roughly the same procedure. No matter if the party is represented by a public agency or whether it is a private owner, neither if a party is illiterate. Telenor considers it to be their responsibility to ensure that the process is as fair as possible.

#### **5.1.4 Non-professional landowners**

When it comes to the negotiation process itself, the part of the process where rent lease and the conditions of the lease is being discussed, Telenor has already before going into the negotiation process estimated their maximum and minimum sets of conditions and rental prices. These estimations differ from area to area and from one rental market to another. In another words, both of the parties in these types of negotiations have set their predefined positions. Telenor by estimating the rental value of the object that is to be required, and the owner by his expectations regarding to how much he thinks that he should get paid.

We can say that Telenor is using a mix of distributive and integrative negotiation in their acquisition process, since the negotiations they are dealing with can be characterized with more than one dimension and has distributive features, cf. chapter 3.3.1 about negotiations.



It seems as Telenor enjoys a great respect from the Pakistani community, by being considered as a large foreign company who is known for their honest work in the society. As a result of this social perception of Telenor and their work, Telenor has achieved to gain advantage in their negotiation process. When Telenor initially begin their negotiations with the private owner, they quite often experience that the other party has a relatively high expectation regarding to the rental value of their property. In order to direct the private owners to a more realistic perception of their property value, Telenor has decided to give the owners information about the market value of their property.

This way the opposite party gets a better understanding of their property value, in addition to create a better basic for further discussions between the parties. This is a good way to create a mutual and realistic foundation, which the negotiations can be based on. The further discussion can be based on the attributes of the property and on how important a specific property is for Telenor's operation. For example, the more important the property is for Telenor's operations in the area, the higher the price the owner will be able to achieve. Telenor has regardless, fulfilled their duties to inform the owner about the market value of the concerned property, instead of trying to misguide or exploit a non-professional landowner.

This is a good and ethically correct negotiation approach, which contributes to create a positive reputation for the company's operations in Pakistan among the local people. If there is a situation in the negotiations where a private owner and Telenor do not get to a mutual agreement, Telenor responds by ending the negotiations and instead contact an adjoining property. As indicated in the interview, the awareness about Telenor's BTS tower sites are very good in Pakistan and most of the landowner's desires to make a deal with Telenor, therefore Telenor enjoys having a lot of alternatives when they require a property for BTS towers.

As it appears from the interview, there really is not any negotiation related to the conditions of the lease agreement. The conditions are non-negotiable requirements which the owners have to accept as a part of the deal. There are some advantages and disadvantages of having such non-negotiable requirements. The advantages are many; technical requirements are absolute, the terms may identify early in the process if there is any point in continuing the negotiations or not, the owner can easy understand what is expected from him and it can be resource-efficient, since it avoids the need to adapt the conditions for each individual situation and property.

There is a disadvantage in non-negotiable conditions, in that there is no room for negotiations. If the owner does not accept the conditions or if there are any other flaws in the conditions, Telenor has to use their resources to search for other alternatives. To summarize, the rental value is negotiable, while the conditions are non-negotiable requirements related to technical and security aspects of a site.

### **5.1.5 Types of properties that Telenor tries to avoid**

The interviewees confirm that there are certain types of properties that they actively try to avoid in their acquisition for BTS tower sites. Telenor does preferably desire to acquire property with a single or maybe two legal owners, simply because it is easier to relate to one or two owners. Properties that already are in litigation, before the acquisition takes place are not considered to be real alternatives and are easily ignored. Telenor does not make any further effort on trying to clarify the circumstances surrounding the litigated property, whether it is the reason, length or type of litigation. Property in litigation are basically not an option to require, which is a good decision considering any future claims or other undiscovered circumstances related to properties in litigations.

Joint property is another type of property that Telenor tries to avoid in their land acquisition. This has been explained with the fact that there is a very resource demanding process to acquire property whose ownership is structured as a joint property. In order to acquire such property, Telenor has to get the consent of every single owner of a joint property. If one of the owners refuses to give their blessings, then this decision will affect and prevent the whole acquisition. In addition it happens quite often than some of the owners commit fraud, by trying to make a deal with Telenor, without the knowing of the other parts. Fortunately, Telenor has good routines in their acquisition process and are able to easily reveal this kind of fraud.

Regardless, there is a risk related to the acquisition of joint properties, in addition to it being resource demanding. Still it happens that Telenor tries to work out the obstacles in a joint property and acquire such structured properties as well. In such cases Telenor usually make an independent evaluation of a joint property, whether or not it is worth to acquire a joint property; how many owners does the joint property consist of, what kind of relationship the owners have with each other, what purpose does the actual property serve, has there been any litigations connected to the property, etc.

Pakistan has a quite huge variety of ownership to land, which includes various types of administrative properties. It happens that Telenor's tactical teams locates site on governmental land and therefore has to deal with the appropriate and responsible departments. The relation between Telenor and the official department concerning purposes of acquisition have been described to be a very bureaucratic process, where the formal process is very expensive and slow.

The problem with doing business with the official Pakistan, is that they in general do not have any interest in the work and it is in practice the money that does the "talking". Pakistan is known for being one of the most corrupt countries in the world. I am not going to go any further in this discussion; it is enough in this context to only point out this fact. This can be seen as one of the explanations to why the processes associated with the public very often is characterized for being slow, resource demanding and expensive.

This does also include the business related to the Patwari, which I will come back later to in chapter 5.3.3 about legal tools. This is confirmed by the interview; when Telenor plans to acquire a site owned by a private landowner, then it's estimated to take two months. However, acquiring a site from the government is expected to demand at least ten months.

Nevertheless, Telenor expresses that they have a good relationship with the government, despite a few obstacles dealing with state authorities. Telenor enjoys having an advantage in the negotiation process with private landowners; this is not the case with the public.

Negotiations with the government are little characterized by the negotiation types described earlier, cf. Chapter 3.3.1 about negotiation, since the government possess a lot of power and occupy a special position in the negotiations. They are in a position where they don't have anything to lose if the negotiations break down, because it is Telenor who has to use resources to convince the government to approve their wanted site acquisition.

One of the interviewees' expresses that Telenor initially try to send their requirements to the liable department, but very often experience that the department reject their requirements and instead send their own to Telenor. This tells something about the power relationship between the public and private in Pakistan.

Then why should Telenor bother to use their resources to try to acquire property from public administrated areas, simply because sometimes there is a commercial worthwhile to go further on with such options. The returns may be higher than the costs, if one achieves such

acquisition. This decision is made on a top level in Telenor. The advantage by dealing with the government is that the whole process is formal and documented, but again in the other hand it is expensive and slow.

### **5.1.6 A typical acquisition process**

As indicated by the interview, the acquisition process in Telenor is well organized with different teams responsible for various part of the process. The tactical teams are responsible for locating relevant areas, the site acquisition teams have the responsibility of negotiating the contract, the legal department has the task of checking the validity of legal documents, etc. This way of organizing the acquisition process in different parts, enables the various departments to work independently. But of course it is a chain-like organization, thus the departments will have a relationship with each other's work and be dependent on the fact that the individual department has executed its work in a satisfactory manner.

Such an organization may be considered to be resource-efficient, in that a department does not begin its work until they have been given clear signal on the basis of the work of the preceding section. This ensures quality throughout the acquisition process; in addition to that it is not invested a lot of resources on a project before much of the uncertainty is resolved.

Some of the disadvantages of such an organization is if it is done a major error in the process that are not detected, then the error could be pursued in the chain and cause significant costs after the completion of the project. This can lead to negative publicity of Telenor's operations. It may also be inconvenient if it proves to be a mistake being discovered quite late in the acquisition process, this can lead to additional costs or to a point where the project is no longer considered to be viable and that time and resources that already is invested has been lost.

Telenor has organized the various departments of the organization so that each department has its speciality, thus the risk of errors has been minimized significantly in the way that the process is handled by experienced and professional workers within their respective field. The lawyers will take of the legal, technicians will take care of the technical, planners will take of the planning and site acquisition department will take care of the process related to acquisition itself.

The various departments have received clear guidance on requirements that must be fulfilled on a satisfying manner, in order to continue their work. Some of the mentioned *make it or break it* points are all related to the security of the information about the object that is to be acquired. The property cannot be in any litigation, there has to be an ownership record of the property for at least six month and the property can neither be restricted by the government for any tower constructions.

There has been developed requirements regarding the ownership documents between the property and the site owner, the application for NOC in order to have a legally permission to build the BTS tower, requirements related to the conditions of a lease agreement between the owner and Telenor. These requirements secure, in addition to provide clear guidance, a certain degree of equality in terms of how acquisition projects are implemented in the company. It thus ensures equal treatment of all private landowners, which indicates that Telenor has an ethical correct approach to owners who is subject to their acquisition.

### **5.1.7 Buying or renting**

Telenor has chosen to mainly lease the properties that they have acquired, without any or very few exceptions, there are certain advantages and disadvantages to use such a type of ownership to acquire the rights to operate their BTS towers.

The advantage of buying a property on the other hand, among many things, is that there is no relationship to a landowner. One does not have to deal with another party and may predispose the property freely. Another advantage of buying is the increase in value as you may find the property gets over a certain time, property perceived as an investment object. This is, however, not relevant for Telenor's activities, as they are interested in making money on the telecom business and not from the property itself.

Some of the advantages of leasing property are that the costs get spread over a longer period, which can help maintain the company's cash flow. Leasing does also make it easier to anticipate future costs, since the lease agreement is based on a fixed contract. This makes it additionally easier to work out these expenses in the budget. Further on, a leasing agreement also makes it possible to pay the annual rent from the future cash flows. In other words, future income that Telenor acquires through its activities on the basis of the agreement. There are several other advantages in using leases, such as flexibility and tax benefit, but I will not go

into detail of these topics, because of the complexity and lack of needed information at this point.

So it is decided that properties used for BTS towers purposes shall be acquired on a lease base, as a part of Telenor's policy. There's really no point in buying a property to be used for BTs purposes, since this is an activity that is constantly changing and which often are developed/discontinued at several locations. There is no guarantee that Telenor shall use a specific location over a long period over the standard ten years of a lease agreement, this depends on many factors, but usually this depends on the market and general in development of telecommunications equipment.

For example, the stronger the BTS tower is, the less need there is for many stations within an area. Therefore, a leasing agreement is a favourable form of agreement for Telenor as it ensures good flexibility for their operations. There are many transaction costs associated with the purchase of a property and if Telenor where to sell and buy the property for all their BTS stations, this would have resulted in a very heavy, expensive and time consuming process.

The risk of terror in Pakistan is another factor that speaks for the use of leases, rather than purchases. It happens sometimes in certain areas that Telenor related activities are highly susceptible to terror, since they are a foreign company operating in a country with areas containing Taliban activity. Therefore it would be in favour of Telenor to rent, instead of owning. An ownership does also lead to a stronger affiliation to an object, which in turn has the potential to lead to an increased risk of a purchase. By leasing, Telenor has the ability to transfer some of the risk and responsibility to the landowner, in addition to the ability to relatively easy relocate their activities in an area.

A standard lease agreement from Telenor will consist of duration of ten years; the rental price has been negotiated and decided with the landowner. Hence the landowner is also included in the process relating to the provision of rental price, which is a fixed amount with a certain percent of escalation each year.

Moreover, it is so that Telenor acquires property from the public and as the situation is in Pakistan today, where the public is often associated with great power, it is quite difficult or maybe even impossible to acquire ownership documents from the government. The ownership documents are necessary to have in order to purchase property, so we see again that leases are a very practical form of possession. Thus avoiding the risk of ending up in a potential

ownership conflict with the authorities, as they would in any event had a very small chance of winning.

### **5.1.8 Culture and the acquisition process**

As I have described it earlier in the chapter 3.1 about pluralism, Pakistan has a very pluralistic society with many different directions within the same religion and culture. An important part of the negotiation process in land acquisition is to understand the counterpart to determine which positions he has, in order to be well prepared for negotiations, cf. chapter 3.3.1 about negotiations. Surprisingly, the interviewee expressed that they do not really take such differences in consideration when they approach a landowner in a certain area. Telenor has developed a standard way of approach in their acquisition and negotiations, which applies for the whole country, of course with some modifications from area to area.

One way to explain this lack of need to prepare for the negotiation process is the great confidence that Telenor enjoys in the society. The site acquisition teams have no need to prepare as much, as they are holding a lot of power in the negotiations. If it should turn out that a negotiation with a landowner is locked, then Telenor has the option to turn to the nearest neighbour since it is considered relatively attractive to have a BTS station from Telenor on the property. The landowners know that they will get a fair price and that Telenor will honour its commitments in the agreement, since reputation is very important for Telenor.

### **5.1.9 How to establish business in hostile environments or in areas that are more exposed of natural disaster**

When it comes to limitations regarding to Telenor's acquisition, these limitations has been defined by the society and not Telenor. By this, I mean that Telenor does basically not restrict their business from any types of areas, whether there is a lot of risk related to the area nor if the probability for a successful acquisition is close to zero percent. Telenor does, as it appears from the interview, even try to acquire sites in army sensitive areas and near airfields. The interviewee explained that Telenor tries to make an effort on these areas, in order to fulfil their commercial requirements.

Therefore Telenor uses resources to try to acquire such sites, even when they expect to be refused. This can on the one hand be considered to be a waste of time and money, but if they were to succeed with such acquisition then they will likely be the only commercial operator in

the area and thus succeeding in securing a part of an untouched commercially market share in the area. Telenor has for instance successfully achieved to establish sites for BTS towers in Azad Jammu Kashmir, which is an all military area.

One explanation to why the military sometimes may allow commercial companies to operate in sensitive areas can be explained by the lack of infrastructure in an area. Telecommunication is an essential part of the infrastructure of an area and can be very expensive, which is something that Telenor and other telecom companies can provide both the military and civil society in an area. In case of such permission from the authorities, it is obvious that there will be given directions and demands regarding the business of a commercial company in such areas.

Another explanation can be that Pakistan is quite prone to natural disaster, especially by flood in some areas, which requires much maintenance of equipment and substantial investments. Since the government mainly does not operate in the commercial market and don't enjoy any income from such markets, they may rather have the private companies to bear the expenses and provide financial consideration in exchange of permission to operate in the area. In that way, the public saves expenses related to the establishment and operations of telecommunications.

There are some areas in Pakistan that are quite affected and vulnerable by terrorism, especially in the of the area northern regions with KPK. Telenor has evaluated the risk on some areas of the KPK region to be so high that they're considered as non-accessible. These are areas with a significant influence from the Taliban. Even though these areas are being considered to be too dangerous for Telenor teams to operate in, Telenor does still have a desire to operate in these areas and have solved this problem by operating through local vendors.

There is an ethical aspect of such "outsourcing", how much risk would be prudent for Telenor to transfer to these local vendors? This illustrates Telenor's goal of providing telecom solutions to the whole country, without restricting their operations due to terrorist threats or risk to other natural disasters that could occur. These are basically incidents which are difficult to predict and that could theoretically frame anywhere at any time, because of the unstable situation in Pakistan. It is all about planning, taking precautions and preparing in the best possible way, before establishing business in such areas.



## **5.2 Issue 2: The property system in Pakistan, Telenor's relation and experience with the system**

### **5.2.1 The property systems of Pakistan**

It is confirmed by the interview that the most significant part of the Pakistani property system is the Patwar system and that it's the Patwari that has the responsibility to maintain and supervise the system. I have already explained the property system in chapter 3.6.2 about the current land administration system in Pakistan; therefore I am not intending to elaborate any further about the system itself. There is one thing that's worth to be pointed out from the interview, which is the fact that property system in Pakistan is connected to the Patwari and their functions. This indicates how important the Patwari is and the important role that the Patwari has in the society. Further on, it shows how much bureaucracy that exists in this property system, since the Patwari is the lowest functionary of the Revenue Department. Bureaucracy leads to a high and expensive transaction cost, which can make the system ineffective.

Telenor has a standard way of approach regarding the process of land acquisition in Pakistan. The procedures of acquisition are the same from region to region, one explanation to how this is possible in such a plural society as Pakistan is the position that Telenor has in Pakistan, as I have discussed earlier in the analysis cf. chapter 5.1.8. Another explanation for why Telenor has the same approach on the acquisition throughout the country, this can be explained by focusing on the Patwar system.

The Patwari is the custodian of property related records and the one who has the overview of rights connected to a property. Thus, anyone who wishes to acquire property has to contact the local Patwari and follow the processes related to the Patwari. Further on, the Patwari system has the same functions in the whole country and functions as one system. There are no differences in the way the Patwari operates its functions from region to region, thus it is natural that Telenor also performs their acquisition with a common procedure throughout the country. We can thus say that Telenor's acquisition is, in many ways, connected to the procedures related to the Patwaries work. The most important for Telenor, regarding the acquisition, is to identify the legal owner of the site that they want to require for their operations.

The Patwari system does, however, not apply in cooperating housing societies, such as DHA (Defence Housing Authority) or Bahria Town (private housing society in Islamabad). People in these housing societies do not have to involve the Patwari in order to deal with property transfers and other related issues. These issues are handled by the local office of the housing authority, which is a society with its own jurisdiction. A property transaction in such housing societies are recorded through an allotment letter, which function as the final and conclusive proof of that the property has been transferred from seller to buyer in a legitimate approach.

### **5.2.2 The registration system and transparency**

One gets a pretty fair and unambiguous feedback on what people think about the Patwaris and their activities if you are searching for the opinions of the public and private sector in the Pakistani Society. It is a well-known problem that the Patwari is involved in a lot of fraud in the property system. As a result of the fact that it is the Patwari that function as the custodian of the property system and that the system is totally handled by the Patwari manually, the Patwari sits on very valuable information which in practice only he has the access to.

Thus the Patwari has the ability and opportunity to transfer land between different landowner, even without the consent and knowledge of the owner. This has been a very common source of litigation related to property in Pakistan. There are many stories told in Pakistan, where the Patwari has transferred a property, partly or whole, from one owner to another without any form of notice about the transaction to the party that has lost property.

The explanation of how the Patwari has the opportunity to complete such transfers is because it is the Patwari who possess all the legal information about the characteristics of a certain property. No one except the Patwari has this information available. Another problem in Pakistan is that illiteracy is quite common and widespread among the population in Pakistan. If we put these two problems together, the illiteracy and limited access of property related information, then it becomes easy to understand that there is a great room for corruption in the system.

A wealthy and educated landowner can contact a Patwari with a request of acquiring the property of an ignorant part, in exchange for financial compensation. The ignorant part will neither receive a notice of the transaction nor have the knowledge to use the appropriate channels to fight for his rights; instead he is more likely to either accept defeat and receive a symbolic compensation which is not equivalent to the real value of the transaction, or to be

involved in an litigation process which is considered to be expensive and time-taking. Very few have the resources to be involved in a litigation process.

The general opinion of the Patwaries is that they cannot be trusted, in other words the lack of transparency in the Patwar system. The activities of the Patwari is supposed to be controlled by the revenue officers, but because of the large amount of information that the Patwari is the custodian of, there are limitations on how much the revenue officers can control and the quality of their control of the Patwaries. The interviewee pointed out that as the lack of transparency is the biggest weakness of the Pakistani property system, computerizing the property records is perceived as the solution of this problem.

There are many advantages related to computerizing the property registers; it makes it easier to record, update and maintain the records and can provide access to a larger proportion of the population. However, the answer to the problems related to property and transparency is not as simple as to computerizing the system. The illiteracy in Pakistan is widespread, this means that a large part of the population will in practice not know how to use such a computerized system.

Of course, the system will become more transparent for those who has the knowledge and resources to use computers, but in a country like Pakistan, this only means that the technology will result in a greater difference between the poor and the richer. Therefore, education is a prerequisite that has to be emphasized to a much greater extent. Digitalisation is a useful and important measure in order to provide a better, just and efficient property system, but ultimately the state of the system will very much remain as it is without the necessary education that has to be included in the implementation of a new system.

It is generally a prerequisite for transparent systems that knowledge and information connected to a system, or an institution for that matter, is not reserved for only a proportion of the users, but that it should be accessible and understandable for everyone involved in the system. This must be ensured through education; therefore it should be an equal focus on digitalisation and education of the property system in Pakistan.

### **5.2.3 Verification of ownership**

There are mainly two approaches on how Telenor begin their initial work, regarding to the verification of the ownership documents. One approach would be to take the received

information to a Patwari for verification, or you can ask a bigger variety of people in the area where the property is located. Unfortunately, it is possible to experience errors in the information from either of the alternatives. If you relate to a community, then it may be a danger that everyone has the same incorrect information. On the other hand, the Patwari is known for being a subject of corruption.

The Patwari has a lot of power and equally many duties, being the custodian of multiple of property related registers, cf. chapter 3.7 about land records. In addition, the Patwari has a proportionate low income. As a result of the great responsibility and low income, the Patwari is simply prone to commit corruption. This makes him increasingly willing to manipulate the registers he is responsible for, in exchange of economic benefits. This helps to increase Telenor's need to have an extensive internal process in relation to the verification of ownership rights to a property.

Basically it should be enough to rely on the information that comes from a Patwari or any other authority that has issued the ownership related information to Telenor in an acquisition, but as mentioned, the system is not as transparent as it should have been and thus there is much litigation with property. Therefore Telenor has secured itself from potential future conflicts, by establishing their own documentation of the acquisition process in order to ensure that every consideration has been followed and that everything has been executed accordingly to the law.

When Telenor receives the ownership documentation from the putative owner, they conduct an internal and thorough check of the received information. Telenor demands several documents, Cf. chapter 4.3.3, that confirm the ownership of a property, in order to get hold of these documents the owner has to contact the revenue record of the concerned district, the Patwari. Telenor checks if the documentation is legit and if there are any claims or litigations associated to the documents. This work is done by the legal department of Telenor, which has the legal knowledge to evaluate the validity of such documents. So this is a check that is done by Telenor in addition to the responsibility that has been imposed to the Patwari, i.e. to maintain and update these records.

After Telenor has checked the documentation in regards of any litigations and claims, the documents are further processed by an external legal counsel, who verifies the legality of the documents and is responsible for the final verification of the documents. As we can see, this is a very heavy and important process of the acquisition and is central in the efforts to prevent

any future conflicts, which could lead to delays and large expenses during and after the completion of the acquisition process.

The Pakistani property system has no guarantee that the information in the registers are correct or not, as they have in the Norwegian registration system. The Norwegian registration system is said to have both a positive and negative credibility. The positive credibility means that the information registered in the system shall be applied. The negative credibility means that there cannot invoke rights against a gullible acquirer about information that does not exist in the register. In other words, in Norway, the state may be liable in cases where information in the land register is incomplete or inaccurate, due to mistakes (errors) made by the register. Such liability does not exist in the Pakistani property system; therefore it's very important to make a thorough check of the property related information in an acquisition.

It has occurred that Telenor has experienced to receive a legal notice from a third unknown party, who claims to be the rightful owner of the property and that the documents that have been used in the original transaction are fake. A result of such claims lead to litigation, which normally will go on for several months sometimes several years. As described in chapter 3.6.1 the land administration in Pakistan is very old, which eventually has led to multiple flaws in the system exposing innocent buyers to possible fraud and deception.

It's in order to prevent the likelihood of ending up in such situations, where there is a possibility that Telenor gets involved in extensive litigations related to frauds, that Telenor has established their procedures of checking the property title of the seller. One way to ensure if the ownership documents are legitimate or not, is by checking the ownership title of the current seller and also by checking the ownership of the previous owners.

#### **5.2.4 The relationship between the public and the private**

Telenor's relationship with the public and the private is reflected mainly by how they have to behave to each respective sector, with regards to the negotiation process and in relation to regulations and procedures.

Telenor's relationship to the private property market is characterized by direct contact with landowner, free negotiations and consists in general of a situation where both parties have an interest and objectives in the negotiations. The whole process of making an agreement is dependent on whether or not the inflicted parties come to a mutual understanding. Telenor

does normally experience to have a quite good control over the negotiation process with private landowners, as a result of alternative solutions that can be implemented if a negotiation with a party leads to a break down. Telenor has also developed standard procedure or guides on how to approach and execute the acquisition of a privately owned property. An example of such guides are the pre calculated rental prices for specific area, which Telenor has estimated with a maximum and minimum sets of conditions as already discussed in chapter 4.2.3.

When Telenor are dealing with public owned land, there are certain procedures and standards from the government that Telenor has to follow. Thus, this process is characterized by the fact that it's the government which significantly sets the framework for how the acquisition will take place. Telenor will have a much smaller influence on the process, and the negotiation process will be very controlled and with little freedom.

These negotiations will in general be characterized by the fact that the authorities has a lot of power and that it is up to Telenor to argue their need to acquire the site, since the authorities does not have any significant interest in Telenor's operation as it emerges from the interview. It's further so, that it is the governmental requirements that are the essential in the process and that Telenor is forced to accept these requirements in order to obtain permission to acquire their property, either by adapting their claims with the governmental claims or by making an overall assessment and take a decision accordingly.

Another distinction between the activities of Telenor in the public and private sector is the need for verification of documents related to ownership rights. As I have already explained in the previous chapter 5.2.3, there is a comprehensive process relating to the verification of ownership of private properties. However, this is not the case at acquisition of governmentally owned property. Here it is enough that the government claims to be the owner of the property, there is no questioning regarding ownership claims related to the government.

Thus the relationship between the private and public is that Telenor by acquisition of public land are forced to spend a lot of resources on the process relating to getting the necessary permission, in order to continue their operations on the premises of the government. Unlike private acquisitions, where Telenor uses a relatively large amount of resources on the whole process, i.e. both at the localisation of the property, the process of negotiations and the process of identifying the judicial owner of the wanted properties.

The relationship between the public and private is also reflected in the different permissions and certifications that have to be obtained, in order to acquire property. Dealing with private owned property, Telenor does mainly have to provide a NOC (No Objection Certificate) from the concerned building authority. This NOC functions as permission for Telenor from the authorities, that enables Telenor to begin their work related to the establishment of a BTS tower and site building. When dealing with governmental owned property, Telenor is obliged to acquire various types of permits, depending on what type of property that is involved. The government does however support site acquisition for purposes relating to telecommunication, but there's a lot of bureaucracy connected to such acquisitions that makes it a heavy process.

### **5.3 Issue 3: The legal aspects of acquisition and property in Pakistan**

#### **5.3.1 The court system in Pakistan and how it relates to property**

In connection with this question it is enough, in relation to the main issue of the thesis, to only make a general account of how the Pakistani judicial system is structured and how a person has to deal with cases involving property. This section will therefore largely be a statement and not a discussion about the Pakistani legal system.

As it has been described in the chapter 3.1 about legal pluralism, the judicial system of Pakistan has roots from several different kinds of periods through history; it's mainly distinguished between the Hindu, Muslim and British period. I will not go into detail on how the various periods have affected the Pakistani judicial system, but will confine myself to mentioning these key periods.

As it appears from the interview, the court system of Pakistan consist of three types of courts in the lower system, it is here that we find the Civil Court which is the first instance of the court that handles matters relating to property and ownership. There is a distinction between civil and criminal cases in Pakistan, as we are familiar from the judicial system of Norway. The Civil Court does not have the jurisdiction to process criminal cases.

Property conflicts can cover both civil issues and disagreements or cases with a criminal character. There may be a conflict about property boundaries between two neighbours or there may be cases relating to theft or destruction of someone else's property. Whether or not a case relating to property conflicts ends up in a civil court or not, depends on the case and the

person bringing the case to the court. However, the Civil Courts are the first judicial instance where property related matters normally are being processed.

If the Civil Courts decision goes against a complainants favour, then the next remedy will be to approach the District Court. The distinction between the District and Session Court is that the District Court relates mainly to the civil cases, while the Session Courts relates largely to criminal cases. The Session Court has however the jurisdiction to process civil suits with lesser value. If the decision goes against the prosecutor or the other part, the next remedy is to approach the High Court.

The final authority of the law and the Constitution is the Supreme Court. The Supreme Court has exclusive jurisdiction over disputes between and among provincial governments and appellate jurisdiction over High Court decisions. The Supreme Court of Pakistan deals with a huge amount of cases compared to the practice elsewhere in the world. In addition to entertain civil and criminal appeals from the High Courts, the Court also hears appeals from the judgments against the Federal Sharia Court, Service Tribunals and some other special courts. The Supreme Court does also entertain cases of violation of fundamental rights under its original jurisdiction (Hussein, 2011).

A very important part of the judicial system, in general, is to provide an effective and relatively quick process in the court. The lack of an efficient or a slow conflict resolution may hinder commercial activity and investments in a country. As it is mentioned in the previous section, the Pakistani judicial system experiences to have a workload over their capacity. This creates an uncertainty among many investors, who may become sceptical of entering into business transactions, as they are unable to rely on the judicial system to provide them with efficient help and security. Even where they are reasonably confident about economic return on their investment, the investors have to consider the probability of frauds, breaches of contracts, negligence, etc. There have been various approved amendments which make the High Court the first court of appeal for resolving disputes related to foreign investments, while the time for adjudication has been limited to six months.

This is a good example of that Pakistan want to be a country for future investment from international companies and that they make an effort to improve the judicial system, in order to create security in investments. Pakistan has further on signed the New York Convention 1958 on the recognition and enforcement of foreign arbitral awards, which seeks to provide common legislative standards for the recognition of arbitration agreements and court



recognition and enforcement of foreign and non-domestic arbitral awards. There are many advantages related to arbitration, businesses choose arbitration over litigation because of its neutrality, finality, enforceability, procedural flexibility, etc. The International Court of Arbitration has developed resolution mechanisms specially conceived for business disputes in an international context. This is an alternative that is considered to be very valuable for international companies operating in foreign countries, such as Telenor (Commerce, 2015).

### **5.3.2 Legal issues that Telenor has to deal with regarding land acquisition**

The most common legal issue that Telenor has to deal with in their land acquisition process, are the issues related to legal agreements after the death of the initial landowner. What happens when the landowner that Telenor has made their original lease agreement with dies? Does the original lease agreement continue without any changes or modifications, until the lease contract expires? Does Telenor have to make a new lease agreement with the new owner? Do the conditions of the lease agreement change? There are many factors which Telenor have to take into account in these kinds of situations.

Telenor handle their legal cases by mainly using the Land Acquisition Act and the Land Revenue Act cf. chapter 3.9.2 and 3.9.3, in addition to the fact that Telenor has already taken into account that such situations can occur in the original lease agreement. Thus, we can confirm that these situations, where a person is deceased, are primarily handled by the rules of free agreement. The Land Acquisition Act and the Land Revenue Act are used in situations where these acts apply, thus the acts are used depending on the nature of the specific cases, for example in issues relating to the identification of a property or if there has been made an error in a process relating to the Patwari.

When a person passes away, the first step for Telenor is to contact his/hers legal heirs. As it is explained by the interviewee, before proceeding any further in cases where a party has died, Telenor has to consider the original lease agreement as abolished or exterminated. This means in general that Telenor have to participate in new negotiations with the legal heirs and are obliged to negotiate new conditions and requirements of the lease agreement. This should, theoretically, put the legal heirs in a much better negotiating position, sine Telenor has already invested money and resources to establish a BTS tower on the plot. In addition to the fact that the business from the BTS tower has been initiated and the tower is generating money for the company and service for the area which it's covering.

Moreover, a part of the original agreement period may already have lasted for several years, before a person passes away, so that Telenor in some cases may only be interested in renewing the agreement for a short time period. This in turn could lead the heirs to have an even stronger position in the negotiations with Telenor. It can however, also lead to a weaker bargaining position, since a potential new lease agreement applies to only a few years and it will not be considered economical for Telenor to renegotiate the agreement.

However, for some various reasons, the legal heirs does not recognize how strong their position in the process of renegotiating the lease agreement may potentially be, therefore it is mostly a case of transfer of the original lease agreement with some moderations. An explanation to maybe why the legal heirs quite not understand their new position in the negotiation process, can possibly, be explained by the lack of education and poverty among the general population in Pakistan. Therefore many settle down with the same original deal, instead of initiating a negotiating process with Telenor.

When Telenor executes their land acquisition, a part of this process is to identify the legal owner of the specific property and to make a lease agreement with the owner. I have already mentioned the importance of this work in chapter 5.2.3, the identification of potential legal heirs is not a part of this work. In situations where the original lessor passes away Telenor, as it's been described earlier, has to contact and make a new lease agreement with the legal owners.

One of the issues that Telenor faces after they have made a new lease agreement with the alleged heirs, is that a third party sometimes come to the picture after two-three years and claim to be the legal heir and entitled to the lease agreement with Telenor. Simply that one of the party's has committed fraud and that the lease agreement is not valid. To prevent Telenor from being implicated in such situations and litigation, Telenor has a condition in their lease agreement that they will not be responsible for any damages nor any law suit.

Another potential way to prevent such situations to occur, where a third party claims to be the legal heir after an accepted lease agreement with the alleged heirs, could be to identify the legal heirs of a landowner as a part of the initial process of identifying the landowner. This way, Telenor would be able to conduct an internal survey of who the legal heirs are, in addition to have the possibility to ask the legal owner of the property who his/her heirs are and involve the legal heirs in the original lease agreement. This could be done in situations where it's relatively likely that the landowner may pass away during the period of the lease

agreement, but of course there are ethical and legislative consideration/aspects that have to be evaluated before doing such.

### 5.3.3 Legal tools

This depend on what kind of property that has been involved, there is a distinction between rural and urban property. The distinction between urban and property, can be made on the foundation of how well the information about property is surveyed and secured. As it appears from the interview most of the urban areas have been surveyed very systematically and the information about urban property is quite accurate, while rural areas don't have a good systematic sorting of the land. This means that Telenor has to use greater resources on the acquisition of rural land, than by the acquisition of urban land. In addition to the fact, that it's considered safer to acquire urban land than rural land.

In general, one of the legal documents that Telenor uses to identify the legal owner of a property is the allotment letter, which an owner receives after he/she has purchased a property. When a person purchases land in the urban areas of Pakistan, he/she will receive an allotment letter. A proof of ownership. However, this is not always the case when buying land in rural areas. The land is not divided properly in the rural areas; therefore there is no allotment of land in these areas. Telenor has to contact a Patwari, in order to secure the ownership information in rural land. Thus, the Patwari can be perceived as tool for Telenor in their process of acquiring property.

The Patwari is the custodian of property related records. Therefore people choose to contact the Patwari in cases related to property, it's the Patwari who knows the complicated processes of demarcation of property. As a result of that, it is only the Patwari who really knows the boundaries between two properties; people contact the Patwari instead of approaching the court. This does also apply to Telenor.

There are several advantages of involving the Patwari, instead of the court; the treatment time is shorter, it is cheaper and the information should be safe. But this is not always the case, since the Patwari is known for fraud. This is the main problem that is considered by many to be the weakest point of the land administrations system in Pakistan. It's perceived as to be too expensive and long-taking to even consider the court as an alternative in many cases, therefore people choose to involve the Patwari and pay him some extra money to support in their favour.

The legal tools that Telenor uses against the Patwari or anyone else for that matter, is depended on the nature of the case. Telenor has experienced to be involved in litigations with a Patwari and does in these cases use the Land Revenue Act. The Land Revenue Act consists of sections that tell what kinds of remedies that are available to use in a specific case, also against mistakes done by the Patwari. To summarize what kind of legal tools Telenor uses in their business; different types of acts depending on the nature of the case, information from the Patwari (with caution), allotment letter and other legal documents.

#### **5.3.4 The existing property system and security of property**

The interviewee has the impression of that the law secures the rights of every person, in a satisfactory way to any person who is entitled to receive any compensation or remedy by the law. Further on the interviewee clarifies that if a person's rights has been offended, the law states that the person should approach the court. This is true to a certain extent, there is a big difference in how the system operates in practice and how it is established principally.

The legal system is too slow and expensive in many cases, which leads to that many are reluctant to use the court and instead turn to the Patwari and assorted ways to get decisions in their favour. Many Pakistanis will claim that it is a good system from a theoretical point of view, but that the practice of the system is too bad and that the court system is too overloaded.

#### **5.3.5 The difference between the public and private law system**

The main difference between public and private law is that public law regulates the relationships between state authorities and private citizens, while the private law regulates the relationships between private citizens. There is also a marked difference between private and public law system described by the interviewee where the public law is based on precedence and it formulates itself on the basis of past cases.

The private law on the other hand, formulates itself on the bases of the need of the society and not from precedence. The private law restricts itself to a specific law area and business, while public law applies to the entire community. One might say that private law has to operate within the framework of public law, of course with certain exceptions. In other words, that the public, to a certain extent, regulates the private business.

### 5.3.6 Islamic influence of the property system

As pointed out in chapter 3.1.2, the Pakistani law system, both in general and especially related to property, is quite influenced by Islam and Shariah. Pakistan is a relatively new state with strong roots in history, which has been influenced by multiple of religions and cultures. This has resulted to the pluralistic legal system that exist in Pakistan today and which also has had a great impact on the property system, mainly in regards of inheritance of property. This was also verified by the interviewee from Telenor Pakistan.

It appears from the interview that there is a distinction made between movable and immovable property when a person passes away and that the legacies shall be distributed among the heirs. This distinction vindicates through the procedure for transactions related to inheritance. In case of a transaction related to the inheritance of immovable property, the successors have to apply for a declaration certificate. Such an application has to contain a copy of the death certificate of the deceased individual with a title document of the subject property and with proper identification of the legal heirs, filing the application. The application has to be made in the civil court, where the estate is situated. Afterwards, if the decision comes in favour of the applicants, the property is properly divided between the heirs.

The main influence of Islam on the law of inheritance is related to the distribution of the property among the heirs. The main principle of Islam is, as described in chapter 3.1.2 and by the interviewee in chapter 4.4.6, is that the sons of a deceased is entitled to inherit half of the share. The daughters are entitled to inherit a quarter of the share and the mother is entitled to inherit eights of the property.

There are both advantages and disadvantages with such a distribution of property as inheritance and is debatable whether the system is fair or unfair. Many persons, particularly in the West, will say that this is an unfair system and that Islam has a negative impact on the law of inheritance, especially considering the unequal distribution between the male and female members of the family and that women's right are being discriminated. Of course this is very easy for people in the West to say, since they are living in well-established societies where equal rights are perceived as to be almost a matter of course.

However, it is important to think about the bigger picture, where the importance of social norms and rules are very different from one society to another. We can for example compare the Norwegian society with the Pakistani society; this is of course only a general approach to

illustrate the difference between the two societies and must not be considered as final truths about the societies.

In the Norwegian society the social norms and rules are strongly related to how one should behave in everyday situations, while there are several laws and regulations that govern how a person should behave in relation to the rest of the society. The Norwegians are very aware of their rights and are not concerned to assert their rights, as there are established strong institutions in the society that takes care of these rights. The formal legal institutions are stronger than the cultural and social influence on the society. Thus there is a clear distinction between culture and social conditions on the one hand, and the legal system on the other side.

In the Pakistani society the social norms and rules are a significant part of people's life, with strong sanctions for violations of these cultural and social norms and rules. Situations that in Norway will not have any particular response, will in some cases in Pakistan lead to extreme reactions and sanctions. In some cases, at many Pakistani societies, the social frames will have a greater significance than the legal, therefore it is not so straight forward to say that Islam has a negative impact on women's right. The legal institutions that are supposed to take care of women's rights to inheritance of property are weak, which can be explained by many factors; legal pluralism, corruption, perception of the man as the dominating sex, etc.

There is a problem in Pakistan that Islam is often mixed with culture, which in turn causes that women's rights are strongly suppressed. The biggest problem in Pakistan, in regards of inheritance and property, is that the customary laws are considered as valid by the courts to decide issues related to inheritance of agricultural land and therefore also the discrimination of women and the limitations of rights to ownership for a women during her lifetime (2014).

The case of Pakistan and the discrimination of women in relation to property and inheritance is that, despite the fact the formal legal system acknowledges and implements Islam as a part of the formal legal system, the system has also considered the customary rights as valid. Thus it arises a legal situation where both the formal legal system and Islam ensures women's rights to property, but where the customary rights in practice leads to a clear limitation of women's access to property. I will not go into the details about to what extent the customary rights has limited women's access to property, but I will instead refer to Ruby Mehdi and her book "*Gender and property law in Pakistan, resources and discourses*"(2002), who treats this theme.

Real estate in Pakistan, just like anywhere else in the world, constitutes a substantial part of people's economy. There is a lot of conflict around the inheritance of property in Pakistan, where people file suits and goes against their family to acquire property. A big problem in Pakistan is connected to false claim to property after a person has passed away, as a result of poor registers, corruption, dishonesty, greed, etc. A normal way of transferring property by the wish of a deceased person is by creating a will.

As it appears from the interviewee, there are two types of wills in Pakistan, cf. chapter 4.4.6, and neither of them is perceived as satisfactory evidence for which person the property should be transferred to. I.e. that both types; official and unofficial are considered to be challengeable. If for example a father wants to transfer a property to his daughter, the safest way to secure that such a transfer does in fact happen, is to make the transaction while the father still is alive. This way there is no question or doubts about the transactions and any claims by a male or any other part of the family can be sorted out with the father still alive.

### **5.3.7 Relation to international standards and laws**

As a part of the field work that I conducted in Pakistan, I took a personal initiative to ask local people about their perceptions of Telenor as a foreign company operating in Pakistan. I made contact with random people in the street, six people in total, and ask them informally about their thoughts on Telenor's business. The response that I received was very much corresponding with the information and opinion of the interviewee. Telenor has invested substantial resources in marketing themselves as a company for and with the Pakistani community, by operating their business in a law abiding manner. This has resulted to a very positive reputation of Telenor in Pakistan, which makes Telenor an attractive partner; both for other multinational companies, other countries and of course for the population of Pakistan.

A good reputation is very important for Telenor's business, at a national and international level. A good reputation on a national level makes it easier for Telenor to do business with the government and private actors, both professional and unprofessional. While a good reputation on an international level turns Telenor into an attractive multinational company in other foreign countries, in addition to be perceived as a safe company to do business with. This will again create bigger chances for Telenor to operate in new markets and other foreign countries.

The good reputation of Telenor gets reflected by their work related to the acquisition process. At most of the cases where Telenor contacts the landowner, in order to acquire property, the

landowners already has a good impression of the company and is therefore quite positive to Telenor's acquisition, further on the landowners in certain areas are familiar with the social work that Telenor has done in their communities. All these factors are a part of creating very a favourable and advantageous framework for the negotiations carried by the company's acquisition teams in their fieldwork.

#### **5.4 Summarizing conclusions**

In this chapter I will try to summarize the analysis, in order to make a short review of answers to the main research question of the thesis: *How does Telenor acquire property in Pakistan and what are the challenges associated with operating in the Pakistani property system.*

Based on the analysis of the information collected from the interview, we can affirm that Telenor primarily use leasing agreements to acquire land rights rather than buying. This applies mainly to land used to operate the telecommunications business of the company, while other administrative buildings and sites are being purchased on a permanent basis. This can be easily explained by the fact that the operational property portfolio of Telenor is dependent on being flexible, so the company does not bind themselves and their business to a specific area through a permanent contract. Unforeseen events such as terrorist attacks or natural disasters in areas where Telenor has operations are real risks that could lead to Telenor being forced to relocate their operations to other alternative areas. Therefore Telenor is dependent on having a flexible ownership of the real property that is linked to their base stations.

The general land acquisition process that Telenor conducts in order to acquire property, is not very different from the general approach to the process related to land acquisition that is used in Norway. The land acquisition process begins when Telenor has to locate suitable areas for establishing their base stations, generally try to locate land and properties that are economically and legally appropriate to establish their business on. Telenor has requirements, both internal and external, that the acquisition process has to follow.

Then Telenor conducts all feasibility studies and surveys of the area being assessed as potential entry areas, further on Telenor identifies and contacts each individual landowner before the negotiations are initiated with the legal owner of the property. After the negotiations are completed and Telenor has reached an agreement with the landowner, Telenor will have to obtain the necessary permissions to establish their business from the government, such as permission to construct a BTS tower on the acquired property. After all



the permissions and transactions are completed, Telenor can finally start to build and operate the BTS tower and their business on the acquired property.

There are many challenges that Telenor faces in the acquisition process and in order to solve these challenges, in the best possible and effective way, Telenor has organized their acquisition process so that there is a specialized department that each takes care of its part of the process. The legal department has the responsibility of identifying the legal owner of the acquired property, while the acquisition teams have the responsibility of identifying the challenges and obstacles of the actual site.

There are major challenges relating to land acquisition in a country like Pakistan, such as corruption, fraud and the problems and costs related to the identification of the legal owner of a property. Further on, there are also challenges related to the public sector. Some of the challenges connected to the acquisition of public owned properties are the high requirements from the government in order to receive permission to operate on their property. In addition, there are major security challenges, technical and practical, related to operating a BTS tower on state property. There is no sure guarantee that the government has intentions of keeping its part of the agreement, they have in principle the opportunity and the power to change the terms of an agreement or to terminate an agreement at any point if they wish to do so.

All these challenges results ultimately into uncertainty and relatively high transaction costs for Telenor, but because of the good reputation and the social work of the company in the communities, it has become easier for Telenor to create good will and to reduce the risk related to the government as being an obstacle, of course only to a certain extent.

## Chapter 6 - Final reflections

### 6.1 Final reflections

In master thesis, there has traditionally been customary to deal with issues related to the Norwegian property system, I therefore decided to go outside my comfort zone and study a foreign property system, based on the business of an international corporation. I have always had a personal, professional interest in the theme land acquisition and negotiation. In addition to this interest, we are facing an increasing globalization process that has gained in significance for cooperation and business across national borders. This meant that it seemed natural for me to have an international perspective on these topics in my thesis.

The development of telecommunication systems and electronic solutions has been a key driving force, to gather people around the world in a global society. Nevertheless, proprietary rights have managed to remain an important and distinctive part of the national system society, despite the increasing globalization. The property rights tend to have such a strong position in a society that it will not let itself be affected by a globalisation process, at least not considering property rights related to immovable property. Therefore, it is crucial for any company or organization operating in a foreign property system, to understand how the property system functions in a foreign country and how one has to adapt its activities to ensure the most efficient establishment.

Not least, to ensure that a property acquired in a foreign country, is acquired through transparent transactions that secures a satisfying security of the acquisition and that the company does not run the risk of being involved in any kind of controversial transactions, which could cause negative reputation either in a national or international context, both in Norway and Pakistan. If Telenor were to be involved in any illegal business in their international business, then it would have a direct impact on the company's reputation in Norway. As, among other things, the Norwegian state is the largest shareholder of the company.

One of the reasons why it is so interesting with such a thesis, which focuses on traditional disciplines in the study of property and land, seen from an international perspective, is precisely the opportunity to study how cultural, sociological and religious frameworks affects the relationships with property right in various societies and what this mean for companies with international operations. It has previously been few papers that have dealt with a foreign

property system related to the operations of an international company, and this has probably affected the work of this thesis.

I realized quite early in the work that the biggest challenge would be attached to the delimitation. The thesis touches some major themes and scrapes them only on the surface, such as the relationship between property rights and religion, the cultural influence on ownership and property, women's access to property rights, marriage, inheritance, etc. In addition, there are many issues that have not been treated in this thesis, such as expropriation and the stipulation of compensation.

This can be justified by the limited time frame that has been linked to the work of the thesis, and that it therefore makes sense to prioritize certain themes over others. I believe that this thesis provides a good introduction to, and an understanding of the Pakistani property system, in addition to that it has managed to shed light on some of the weaknesses in the system. The thesis opens for many alternative topics for future papers, which can allow them to go into more depth of their research and make it easier to refine their thesis, than it has been the case for me.

After completing this thesis, I will allow myself to argue that the biggest challenge an international company faces in their establishment in a foreign country, e.g. in relation to the acquisition of property, are the cultural differences that affect the proprietary rights. The legal and religious influence on property rights is easier to deal with, than the great diversity in proprietary rights related to culture, within various societies and different countries. By working with this thesis, I found that culture in some areas has a greater impact than formal ownership and formal law. That culture overrules ownership rights, in decisions related to property.

Finally, I hope that this thesis will be an inspiration and will come in handy for future papers, who may wish to have an international approach to their thesis.

## Reference

2014. Summary Land Rights for Muslim Women: Review of law and policy. Available: [http://www.sdpi.org/research\\_programme/uploads/Summary-law\\_and\\_Policy\\_final.pdf](http://www.sdpi.org/research_programme/uploads/Summary-law_and_Policy_final.pdf).
- ALI, Z. & NASIR, A. 2010. Land Administration System in Pakistan - Current Situation and Stakeholders' Perception. *Facing the Challenges - Building the Capacity* [Online]. Available: [http://www.fig.net/pub/fig2010/papers/fs03f%5Cfs03f\\_ali\\_nasir\\_3901.pdf](http://www.fig.net/pub/fig2010/papers/fs03f%5Cfs03f_ali_nasir_3901.pdf).
- ALMAS, M., AHMED, K. & RAZA, S. F. 2005. "Land Records Information Management System". Available: <http://proceedings.esri.com/library/userconf/proc05/papers/pap1279.pdf>.
- BHAT, V. 2011. Building Land Record Information and Management System. 9. Available: <http://www.infosys.com/infosys-labs/publications/Documents/e-governance/building-land-record.pdf>.
- COMMERCE, I. C. O. 2015. *Arbitration* [Online]. Available: <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/>.
- DANIYAL AZIZ, SABIEH HAIDER & RAJA, M. N. K. 2014. How Much Do You Love Pakistan: A Property Tax Revenue Simulation for a Municipal Revolution in Punjab. Available: <http://www.ifpri.org/sites/default/files/publications/psspwp18.pdf>.
- DE SOTO, H. 2002. *The Other Path: The Economic Answer to Terrorism*, Basic Books.
- HANDELAND & HELENE, B. 2009. *Forhandlinger - Teori anvendt på case*. UMB.
- HUSSAIN, R. 2015. Pakistan. Available: <http://www.oxfordislamicstudies.com/article/opr/t236/e0616>.
- HUSSEIN, F. 2011. The Judicial System of Pakistan. Available: [http://www.supremecourt.gov.pk/web/user\\_files/File/thejudicialsystemofPakistan.pdf](http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf).
- KHAN, M. H. & KHAN, M. S. 1998. *Taxing Agriculture in Pakistan*. Washington DC: International Monetary Fund.
- KPMG. 2014. Pakistan Tax Profile. Available: <http://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/asia-pacific-tax-centre/Documents/CountryProfiles/pakistan-2014.pdf>.
- LARSEN, A. K. 2007. *En enklere metode: veiledning i samfunnsvitenskapelig forskningsmetode*, Fagbokforl.
- MEHDI, R. 2001. *Gender and Property Law in Pakistan, resources and discourses*, Copenhagen, DJØF
- NORTH, D. C. 1990. *Institutions, institutional change and economic performance*, Cambridge University Press.
- PAKISTAN, U.-H. 2011. *A Guide on Land and Property Rights in Pakistan* [Online]. [www.unhabitat.org.pk](http://www.unhabitat.org.pk): UN-HABITAT Pakistan. Available: [www.unhabitat.org.pk](http://www.unhabitat.org.pk).
- PUNJAB, G. O. 2015. *Board of Revenue* [Online]. Punjab Portal: Government of Punjab. Available: [http://www.punjab.gov.pk/board\\_of\\_revenue](http://www.punjab.gov.pk/board_of_revenue).
- RONGNES, J. K. 2008. *Forhandlinger*, Universitetsforlaget.
- SECP. *Investors Guide - Modarabas*. Available: <http://secp.gov.pk/Guides/Promoters-Guide-Modaraba-Companies.pdf>.
- SEVATDAL, H. & SKY, P. K. 2003. Egedomsteori - Innføring i samfunnsvitenskapelig teoritilfang for utøving av egedomsfag. Serie D ed.: ILP, NLH.
- SKOLBEKKEN, J.-A., SONGE-MØLLER, V., RUYTER, K. & HOVLAND, B. I. 2010. Veiledning for Forskningsetisk og Vitenskapelig vurdering av Kvalitative Forskningsprosjekt innen Medisin og Helsefag. Available: <https://www.etikkom.no/forskningsetiske-retningslinjer/Medisin-og-helse/Kvalitativ-forskning/1-Kvalitative-og-kvantitative-forskningsmetoder--likheter-og-forskjeller/>.
- SOTO, H. D. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York Basic Books, A Member of the Perseus Books Grup.
- UNIT, P. M. 2009. LRMIS Background. In: REVENUE, B. O. (ed.). <http://www.punjab-zameen.gov.pk/details.php?menuid=2&submenuid=8>: Government of Punjab.

USAID. 2010. *Pakistan Land Tenure Profile* [Online]. <http://usaidlandtenure.net/pakistan>: USAID.  
Available: <http://usaidlandtenure.net/pakistan>.

## **Appendix**

### Appendix 1: Interview Guide

## Appendix 1: Interview Guide

### Interview Guide – International land acquisition

#### **Part 1 - Information about the interviewee (for my own reference / use)**

- Name, workplace
- Work area, specific areas
- Example of affairs, literature, etc. That can support

#### **Part 2 - Foreign land acquisition**

- How do you go proceed on the land acquisition process, in terms of, when you should decide who you would contact and how these were to be contacted?
- How do you deal with the unprofessional private landowners?
- How did the local culture affect the acquisition process? Did you take some special consideration to this in the acquisition process, thus in relation to cultural differences?
- Have you acquired land throughout the whole country or did you concentrate the acquisition activities to an limited area/-s?
- How have you used external consultants in the land acquisition process? And what kind of consultants have you used?
- What kind of legal differences and challenges does exist between the different regions of Pakistan, and how does this affect Telenors business development?

#### **Part 3 - About estate systems**

- What kind of property systems exist in Pakistan? One or more? Different system from province to province, what system applies to the Islamabad area?
- What do you think is the systems' weaknesses and / or strength?
- How does the current property system work? Is there any differences in how it works in the public and private?
- (If multiple property system) Which property system have Telenor used? Did you chose to use it yourselves or did you get a recommendation?
- How does Telenor relate to (if) that there are different property system from province to province? Have you chosen to use the local system, or maybe developed an internal superior system for your property acquisition?

#### **Part 4 - About the Property Register**

- What kind of property register are there? Are there more?
- How does it work to find out who owns a property?
- What kind of information can be found in these records?
- Is the registry transparent and how secure are these?
- Is the register available to the public or does one have to pay to get access?
- How well does the system secure the property rights?

### **Part 5 - The relationship between public and private ownership**

- What is the relationship between private law and public law conditions in Pakistan? In short, main differences.

### **Part 6 - About Islam's influence on property rights**

- What role does Islam have in the Pakistani property system?
- How does Islam influence on Telenor's operations?



Norwegian University  
of Life Sciences

Postboks5003  
NO-1432Ås, Norway  
+4767 2300 00  
[www.nmbu.no](http://www.nmbu.no)