

National Advisory Council

Note of Recommendations on the Land Acquisition and Resettlement & Rehabilitation Bill

Two important and related Bills are under consideration of the Government of India. These are the Land Acquisition (Amendment) Bill, 2009 (hereafter described as LA 2009) & Resettlement and Rehabilitation Bill, 2009 (hereafter described as RR 2009). The first proposes amendments to the Land Acquisition Act 1894, and the latter a statutory framework for Rehabilitation and Resettlement (R&R) of persons displaced and affected by any development project.

Land acquisition and involuntary displacement continue to result in great distress and resistance – and often violence – in many parts of the country. NAC makes the following set of recommendations with a view to making the land acquisition process more just and humane, and those affected by the development projects partners in development.

1. Tests for Legislation on Land Acquisition and Rehabilitation

The test for any such legislation should be on these parameters:

- i. Does it discourage forced displacement?
- ii. Does it minimise adverse impacts on people, habitats, environment and biodiversity?
- iii. Does it minimise adverse impacts on food security by actively discouraging acquisition of agricultural land, and promoting local economies?
- iv. Does it comprehensively define project affected persons/families?
- v. Does it provide for a just compensation and rehabilitation package, sensitive to the aspirations, culture, community, natural resource base and skill base of the affected people?
- vi. Does it ensure a humane, participatory, informed, consultative and transparent process?
- vii. Does it provide for effective implementation?

2. Need for a Single Integrated Law

2.1 The colonial Land Acquisition Act 1894 should be repealed, and the two Bills, namely Land Acquisition (Amendment) Bill 2009 (LAA 2009) and Resettlement and Rehabilitation Bill, 2009 (R&R 2009) should be consolidated under the title “*Land Acquisition, Resettlement and Rehabilitation Act, 2011*”.

2.2 This need for repeal of the old law, rather than proposing amendments, and its replacement by a new law, was supported by the Ministry of Law and Justice and the Parliamentary Standing Committee. There is no legal value in amending a law so extensively that its basic character changes. Both the Bills are intrinsically inter-related, as processes of acquisition are organically linked to those of resettlement and rehabilitation; and a comprehensive Act will remove some of the contradictions and also not cause confusion in implementation.

3. Objectives of the Combined LA & RR Bill, 2011

The objectives are proposed as follows:

- 3.1 To prevent or minimise forced displacement of people by promoting non-displacing or least displacing alternatives for meeting the development aspirations of the people;
- 3.2 To minimise the direct and indirect adverse human and social impacts (on land, shelter and livelihood access) of coercive land acquisition, and land use changes due to development and commercial projects, activities or policy changes.
- 3.3 In so far as displacement is essential, to ensure that acquiring authorities follow participatory, transparent, consultative and democratic processes
to ensure that...
 - a. Each affected family has a standard of living, including access to common property resources, far superior to the one before their displacement, not just in economic terms, but also in terms of human development, essential services and security, in a reasonable time frame and in accordance with their aspirations.
 - b. Each family has a sustainable income, significantly higher than that of their income previous to displacement, and in no case below the poverty line.
 - c. Gains to the displaced should be of the same scale of those that accrue to the people benefitting from the specific project.
 - d. For larger projects, there is a just, time bound and humane process for resettlement and rehabilitation.
 - e. To ensure that legal obligations are created on the state to ensure that special care is taken for protecting the rights of, and ensuring affirmative state action for, the weaker sections of society. These include especially members of Scheduled Castes and Scheduled Tribes, DNTs, agricultural workers, casual workers, fish-workers, forest workers, salt-pan workers, handloom weavers, artisans, etc; and of vulnerable social groups such as orphaned children, women headed households, homeless persons, disabled persons, persons living with HIV AIDS, leprosy and other stigmatised ailments.

4. Definition of Public Purpose:

The definition of public purpose could be:

- a. the provision of land for strategic purposes relating to naval, military, air force and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people;
- b. the provision of land for infrastructure projects of the appropriate Government, including irrigation and power, where the benefits largely accrue to the general public;
- c. the provision of village or urban sites, acquisition of land for the project affected people, planned development or improvement of village sites, provision of land for residential purpose to the poor, educational and health schemes, and

- d. the provision of land for any other purpose useful to the general public, including land for companies, for which at least 70 per cent of the project affected people have given their written consent.

5. Acquisition of land by Government for private companies for public purpose

5.1 On the question of acquisition for the private companies NAC disagrees with the proposal that a private company should first purchase minimum of 70% of the land directly from the land owners through private negotiations and approach government to invoke the Land Acquisition Act for acquiring the balance land. Such an arrangement would create irrational differences between land owners, as some may get a different price and the R&R package being government acquired land, while their neighbours would be deprived of R&R benefits as the provisions of the Act would not apply to the direct purchase by a private company.

5.2 Therefore NAC is convinced that if it is legally feasible, then it would be in the best interest of affected families - especially the socially disadvantaged and poor - if for all larger requirements of land by private companies which alter the local economy and affect large populations, these transactions are brought under the protections to be built into the Land Acquisition, Resettlement and Rehabilitation Act.

5.3 This would be possible if beyond a defined threshold (projects which affect 400 families in plain areas, and 200 families in hilly and tribal areas), private companies would be required to approach the state government with their requirements. The state government would verify through processes mandated under the new Act, that a) the acquisition serves a public purpose, b) that non-displacing and less displacing alternatives are not available, c) that it is approved by an independent committee established for the Social Impact Assessment, and d) that it has the Prior Informed Consent of at least 70% of all affected families and gram sabhas/ward sabhas. In such circumstances, the state government would acquire the land, instead of allowing private companies to directly interface with the land-owners. Only this would ensure that compensation would be given to those who are not land-owners like labourers, tenants and artisans, and all rehabilitation such as employment and house would flow as a legal right. The legal feasibility of this course would need to be further ratified.

6. Process to Establish Public Purpose for large projects requiring RR:

6.1 Public purpose of the proposed acquisition must be established by a well defined informed and transparent process, which enables concerned citizens and potentially affected people to legally challenge this. The establishment of the public purpose is a pre-requisite for moving ahead with any compulsory acquisition. The law must require the State to explain the following with reasons:

- i. What is the nature of public interest proposed;
- ii. What are the financial, social and environmental costs and benefits; and
- iii. Why are less or non-displacing alternatives not technically or geographically available.

6.2 The Act should permit people to challenge the claim of 'public purpose'. It is critical that public purpose must be transparent, to prevent unnecessary displacement. This shall be a cornerstone of a just land acquisition law.

7. Defining and Listing Project Affected Families (PAFs)

7.1 Project Affected Family (PAF) shall be defined as a family which a) comprises persons who are ordinarily resident in the project affected area/village to be acquired for at least three years prior to the initiation of acquisition process, irrespective of the status of legal title; and b) which has lost at least 50% of its assets including land, or its livelihood, or its home, or has to be relocated because of the acquisition or changes in land-use.

7.1.1 *Definition of Family:* Family shall be defined as a nuclear family, which means every major adult member, her (his) spouse, along with minor children below the age of 18 years. For a single adult of either gender without spouse or children, all benefits of this policy would become half. For households headed by single women, the aged, disabled or minor people, or for orphans, full benefits of a family should accrue.

7.1.2 *PAFs who lose livelihoods but not land or assets:* A basic principle recommended is that government should not only compensate for assets acquired, but also for loss of livelihoods and shelter.

7.2 But this definition should include all people who lose their livelihoods, such as: a) sharecroppers, tenants and sub-tenants under various state land laws; b) agricultural workers and labourers who have worked on the lands for at least three years prior to the initiation of land acquisition process; c) families which are dependent on the common lands, forests or water bodies for their livelihoods, including forest gatherers and hunters, fisher-folk and boatmen; and d) families whose livelihood was dependent on the people facing displacement (like daily wage earners, home based workers, artisans and traders) for at least three years prior to initiation of the acquisition process.

8. Payment and Calculation of Compensation for Land for PAFs (Project Affected Families)

8.1 *PAFs (Project Affected Families) with Land:* Compensation under LA 2009 is determined on the basis of sale deeds registered during the preceding three years, or stamp duty. Since the sale deeds are always under-valued, compensation should be computed by tripling the registered sale price of the land. Adding 100% solatium, this would mean a compensation of at least 6 times the average registered price in sale deeds.

8.2 *Annuities:* Since rural people often do not have the experience to handle large sums of cash in ways that ensures long-term income, the option of significant annuities and small initial down-payment should also be offered. The PAF should have a choice of receiving all or part of its compensation in the form of monthly payments, at 12% per annum, adjusted for inflation by 10% every year, to extend for 33 years. This builds on a good practice launched by Haryana.

8.3 *PAFs (Project Affected Families) without Land:* As already stated, PAFs without land who lose their livelihoods (such as landless labourers, encroachers of Government land, artisans, fisherfolk and gatherers) should also be compensated as a legal entitlement.

They would be entitled to the equivalent of 10 days of minimum wages per month for 33 years.

8.4 Benefits from Future Purchases: The land owner feels further short-changed because real-estate builders often sell the land at tens or even hundreds of times the price at which they bought the land from the farmer. The land owner should therefore also get 20 percent of the appreciated value of the land every time the land is resold for 10 years after acquisition.

8.5 Solatium: A solatium of 100% need to be considered for computing the compensation.

8.6 Women's Rights: The resettlement and rehabilitation package would be gendered and guarantee women's rights. Land and other assets need to be provided in joint names of women and men. All cash, both lump-sum and annuity, will be paid into joint accounts which must include all adult women of the household.

9. Social Impact Assessment for large projects requiring R&R

9.1 An independent body 'mutually agreed' to by the state government and the National Commission for Land Acquisition, Resettlement and Rehabilitation (NCLRR) need to be established under this Act. There is a need for an independent Social Impact Assessment (SIA) of large projects which affect 1000 families or more. For smaller projects which affect 400 to 1000 families in plain areas, and 200 to 1000 families in hilly and tribal areas, SIA would be undertaken by a Committee including independent experts appointed by the state government. It would not be required for projects smaller than this.

9.2 The SIA would assess the social and environmental impacts from the project, and the nature and cost of addressing them and their impact on the project's overall costs and benefits; and also the R&R plan.

9.3 For SIA to be conducted in an informed manner, the provisions of the right to information must be incorporated into the proceedings. Specifically, the detailed cost benefit analysis, and the proposed rehabilitation package as per the norms of this policy should be spelled out at the stage of the Section 4 Notification itself, and people should have the right to interrogate this. The Bill should require mandatory disclosures at every stage of the process of acquisition and rehabilitation under Section 4 of the Right to Information Act, 2005; and that this information must be actively shared with affected people and gram sabhas, in a language and format which they can easily comprehend, and where necessary challenge. All this information should be proactively shared with every PAF through a prescribed process and clear accountability including PRIs.

9.4 The independent committee would undertake a comprehensive assessment of options, involving an examination of the benefits of each of the project options vis-a-vis the social and environmental costs, and with a view to minimize displacement. A participatory process would be undertaken to decide on the option that receives widest public acceptance involving the least social costs and largest benefits through public hearings.

9.5 The consultations with the concerned communities would take place in two stages - 1) evaluating public purpose i.e. the project itself; and 2) the approval for R&R. The process of selecting rehabilitation sites and lands must involve PAFs and their preference must be mandatory for selection.

9.6 This would require before the SIA process is undertaken, the following steps to be taken:

- a) Declaration of public purpose, including by non-displacing or less displacing alternatives are not available;
- b) Full enumeration of PAFs, in accordance with Section 6 of this note
- c) Preparation of an R&R plan for all PAFs, in accordance with the principles of this Act
- d) Declaration of the possible nature and extent of social and environmental impacts from the project and specify the steps being planned to address the same.

10. Prior Informed Consent and Consultation

Prior informed consent of affected families and communities is needed for such cases where land is being acquired for companies for public purposes. The Prior Informed Consent would require at least 70% of Gram Sabhas/area ward sabhas *and* 70% of people likely to be affected from each Gram Sabha, to agree after duly being informed, to the following: a) that the proposed acquisition is necessary in public interest; b) listing of PAFs is correct; and c) agreement to R&R plan, including site of relocation and resettlement.

In cases where government is acquiring land directly for government use for public purposes, only consultation would be required. This would be a check on the executive to not displace people lightly, and to ensure that people affected are also beneficiaries of the development project.

11. Urgency Clause

'Urgency' should be permitted only in cases involving acquisition of land for purposes such as defence, national security and safety of lives.

12. Return of Land in case of Failure of Project or Transfer to Other Purposes

Any land which is acquired but remains unused for the project will be returned back or offered to the displaced families, with a nominal cost recovery. By allowing that purpose of acquisition can be later changed, LA 2009 in effect is the opposite of the NAC proposal, defeating the objective of proving public purpose. It opens the door to unnecessary land acquisition, which goes against the objective of minimizing acquisition.

13. Enforceability of R&R Entitlements

13.1 Rehabilitation is defined as ' Stage of development that is achieved when the income of the affected people has been brought above the poverty line and above their previous income, as well as restored or improved their access to all social services, in accordance with their aspirations'. This is missing from the Bill, and should be restored, adding the word 'significantly' before 'above their previous income'.

13.2 The R&R Policy must be legally enforceable. The formulation and approval of the R&R package must be notified along with the Section 6 notice under the LAA, and

subject to transparency, public consulting, and prior informed consent in cases described earlier.

13.3 LA Bill should provide for individual contracts to be signed with a bank guarantee between the acquiring authority and each PAF, listing all their entitlements. This should be available as a public document. Informed individual or community consent can be withdrawn in case of infringement of contract obligations by the authority.

14. Onus of Resettlement and Rehabilitation

If government acquires land, the onus for ensuring complete R&R including timely and just payment of compensation should be with government, which must make the requiring body perform its duties. Government must also recover the cost from the requiring body on a bilateral arrangement, but without leaving the displaced people to the mercy of the company needing land.

15. Numerical Bench Mark for Application of R&R Plan

The question arises as to after which threshold of acquisition, if any, will entitlements to R&R, beyond monetary compensation, kick in. In the proposed R&R 2009, an R&R plan is required only in the case of the displacement of 400 or more families in plain areas or 200 or more families in tribal or hilly areas, DPP (drought-prone) blocks or areas mentioned in the Fifth and Sixth Schedule of the Constitution. NAC supports this threshold (when it includes not just families which lose lands, but also those who lose livelihoods but do not own land), with the proviso that all individual entitlements (such as compensation, annuities, employment, land or house wherever these apply) should flow to all PAFs, irrespective of size of acquisition.

16. Land for Land and Alternative Livelihood Based Rehabilitation

For all farmers and others dependent on agricultural land, no amount of money can replace agricultural land or their land-based livelihoods. Therefore, in all irrigation projects, and for STs and SCs in all other projects, agricultural land should be given compulsorily as a legal right, without any exceptions. Irrigation projects are land augmenting in nature, therefore small pieces of land could be acquired from rich farmers in the command area, and offered to affected families; and all would still be far better-off than before the acquisition.

17. Employment for PAFs

At least one person from affected family to be given employment by the project, subject to the proviso that employment should be available. In case such a job is not available, the family will be entitled to a lumpsum grant of Rs five lakhs.

Large projects typically have long gestations, therefore this would be feasible, but only if Government develops and implements a time-bound programme to improve skills in the region where the large project is likely to come up.

18. Provision of Homestead

Every displaced PAF is given a house and homestead land title, not requiring BPL status or homelessness.

19. Amenities at Resettlement Sites

According to section 30 of the R&R 2009 Bill, Government would notify what amenities are to be provided in resettlement sites. The basic amenities, with minimum standards provided shall be mandatorily provided at the new site. These include roads, safe drinking water, hygiene, educational facilities, community hall, and basic irrigation facilities at project cost.

20. National Commission for Land Acquisition, Resettlement and Rehabilitation (NCLRR)

20.1 A National Commission for Land Acquisition, Resettlement and Rehabilitation (NCLRR) should be set up, with powers to supervise, and exercise oversight over land acquisition, resettlement and rehabilitation. It will do this in 4 main ways:

- (i) By promoting public accountability and ensuring compliance with legally established policies, procedures and practices;
- (ii) By mediating and responding to complaints and disputes in the capacity of ombudsperson;
- (iii) By fixing accountability of public officials for lapses and awarding fines; and
- (iv) By providing strategic advice to the Government of India.

20.2 The NCLRR shall have a Chairperson, and four Members of relevant skills and experience, and independence, at least two of whom should be women, and at least one of them SC and one ST. Their appointment would be by a process similar to the Central Information Commission under the Right to Information Act, 2005.

21. Penalty for violations

Nothing contained in the provisions of R&R 2009 or LA 2009 makes violations of the provisions by public officials a punishable offence. As a result, the cost of compliance continues to be higher than the cost of violation. This has been the fundamental problem with most social legislations, which makes them ineffective. Penal provisions for violations, in the form of fines imposed on public officials who fail based on their job charts issued by the state government, must be included in the statute.