

**Proposals of Working Group for Consideration of NAC-II<sup>1</sup>:**

**Suggestions for Land Acquisition (Amendment) Bill 2009 & Resettlement and Rehabilitation Bill, 2009<sup>2</sup>**

**Introduction**

Two important and related Bills are under consideration of the Government of India. These are the Land Acquisition (Amendment) Bill, 2009 & Resettlement and Rehabilitation Bill, 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-I had reflected carefully on these issues, and made detailed suggestions for these proposed legislations. A few of its suggestions were incorporated, but what is now being considered by the Government of India falls short of these recommendations on many grounds. There is also new experience and understanding developed since that time, as also interesting new innovations made by some state governments, from which the national policy and law can learn and benefit.

NAC-II therefore feels that it is important that these proposed statutes are reviewed once again with a view to making these more just and humane, and to ensure that the processes of acquisition and involuntary displacement are more transparent and fair, and those affected by the development projects are made partners in development.

This note summarises the major amendments proposed by the Working Group of NAC-II to advance these goals, for recommendation to Government of India. It also takes note under each point, relevant points of divergence or convergence with the Government of India draft statutes, and views of officials and activists with whom we consulted.

**1. Tests for Legislation on Land Acquisition and Rehabilitation**

NAC-II believes that 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, bio-diversity and food security, including discouraging acquisition of agricultural land?
- iii. Does it comprehensively define project affected persons/families?
- iv. 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?
- v. Does it ensure a humane, participatory and transparent process?
- vi. Does it provide for effective implementation?

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<sup>1</sup> The Members of the Working Group are NC Saxena, Aruna Roy and Harsh Mander. Grateful for comments and suggestions of NC Saxena and Aruna Roy

<sup>2</sup> In preparing this Note, grateful for support and suggestions from NC Saxena, Shekhar Singh, Sandeep Chachra, Dhiraj Shrivastava and Nandini Gupta.

In our discussions with state government officials, some of them questioned whether the policy should actually discourage forced displacement. They felt that land is essential for rapid industrialisation and urbanisation; therefore the attempt should be to make the oustees partners in growth rather than discourage forced acquisition. The Haryana policy, for instance, discourages only acquisition of residential areas, but not agricultural lands.

We agree that it must be kept in mind that employment generation per unit of land is higher in non-agricultural uses than in agriculture. Growth through industrialization would not only increase labour productivity but will reduce pressure on farm land by pulling people away from land to non-farming occupations. However the land acquisition law has been quite hostile to the interests of the landowner, as it attempts to coercively make land available to government at a minimal price. So far the practice in most state governments has been to force people to give up their lands by using the legal powers of eminent domain, and in some cases even through the use of force. Thus the model followed has been, 'let some people lose out so that others<sup>3</sup> may gain'. Unfortunately the losers tend to be the poorest with little skills, often tribals, who are unable to negotiate with the market forces and cope with the consequences of their forced expulsion from land, and end up much worse off than before acquisition.

Also since food security will be a growing concern in the coming decades, the NAC-II feels that it is important to balance between policies that promote economic development and those which ensure food security<sup>4</sup>, especially by discouraging the acquisition of arable and fertile agricultural land. Moreover, displacement typically entails great human, social and environmental costs, and this should be avoided or minimised as far as possible.

## **2. Need for a Single Integrated Law**

It is proposed firstly that the 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 possible title **National Development, Acquisition, Displacement and Rehabilitation Act**.

This comprehensive law would define and lay down procedures to establish public purpose and the need to acquire and displace in public interest; evaluate costs and benefits of development projects in public interest; secure land rights and livelihood of the natural resource based communities; ensure protection of those who will be directly or indirectly affected by such projects; through their direct involvement in decision making, and implementation of that project and to settle the rehabilitation and resettlement claims of all the project affected or displaced families as per the provisions of such a law.

The significant reasons for repeal of the Land Acquisition Act 1894, and promulgating one Act can be summarised as:

1. The Parliamentary Standing Committee was of opinion that the old and outdated legislation i.e., 'The Land Acquisition Act, 1894' should be repealed and a new comprehensive legislation brought before the Parliament. It was influenced by the representation from Legislative Department of the Ministry of Law and Justice, that it is

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<sup>3</sup> this includes some enterprising poor too

<sup>4</sup> India exports 7 million tonnes of cereals every year. Assuming a productivity of 2 tonnes per hectare, it means that in effect India has leased out 3.5 million hectares of its precious land to foreign consumers.

not possible to understand the meaning of an amending clause without inserting it properly into the Principal Act. Bringing such exhaustive amendments to such an important legislation without comprehensively amending the Principal Act may create confusion and invite legal complications as well.

2. 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. One Bill provides for compensation, another for a rehabilitation package, which are related closely to one another, and should be part of one law.
4. Having two Bills leaves the possibility of amending one without amending the other, and selective application of provisions of each Act, thereby defeating the purpose of providing justice and relief to those displaced.
5. It is proposed that the Social Impact Assessment and the rehabilitation package are in place before land is acquired, and both are required for Prior Informed consent to be meaningful; therefore it is best if these provisions are all in one Act.
6. Once separate bills are passed, these will set in motion fragmented processes, causing confusion, delays, and therefore avoidable distress and suffering for the people.

NAC-I had also proposed a combined Bill. Most state government officials also agreed with this proposal. But central government officials worried that this may result in further delays.

### **3. Objectives of the Bill**

The objectives of the R and R Bill 2009 have not been defined. Building on the NAC-I proposals, it is proposed that the objectives of the combined Bill should be the following, and this should be incorporated to ensure that affected persons become beneficiaries of all development projects.

- 3.1 To prevent or minimise forced displacement of people by promoting non-displacing or least displacing alternatives; or genuinely voluntary transfer of land, for meeting development objectives of the nation.
- 3.2 To minimise the direct and indirect adverse human and social impacts of coercive land acquisition, and land use changes due to development and commercial projects, activities or policy changes (on land, shelter and livelihood access).
- 3.3 In so far as displacement is essential, to ensure that acquiring authorities follow participatory, transparent and democratic processes, with prior informed consent of affected persons, to ensure that:

(Dr Saxena suggests that 3.3 should instead read:

- 3.3 In so far as displacement is essential, to ensure that acquiring authorities follow participatory, transparent and democratic processes, with prior informed consent of *at least 70% of the affected persons where land is being acquired for a private company* , to ensure that...

This is related to the debate on public purpose explained at length in Section 4 of this note below.)

- 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, at least four times<sup>5</sup> 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 special care is taken for protecting the rights of, and ensuring affirmative state action for, the weaker sections of society, 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; and to create legal obligations on the state to ensure that they are treated with special concern and sensitivity.

#### **4 Definition of Public Purpose:**

In the 1894 Act, the public purpose included provision of village sites, planned development or improvement of existing village sites, provision of land for town and rural planning, provision of land for residential purpose to the poor or landless, educational and housing schemes etc. The proposed Land Acquisition (Amendment) Bill, 2009 (hereafter described as LA 2009) does not explicitly mention the poor, and incorporates infrastructure and strategic interests. Most contestably, it includes provision for state acquisition of land for private for-profit companies, with the wording: ‘...land for any other purpose useful to the general public for which land has been purchased by a person under lawful contract or is having the land to the extent of 70%, but the remaining 30% of the total area required for the project is yet to be acquired’.

The officials we consulted with suggested that planned urban development is a public good, and should be explicitly added in this definition. Moreover, there was also a suggestion that since the economy is moving away from being predominantly agricultural, to one based to manufacturing and service industry, industrial development should also be included in this definition.

In NAC-II Working Group, this is the only major issue on which there is not agreement, and the full NAC will have to take a considered view:

4.1 Dr Saxena believes that it is appropriate for government to acquire land for private companies. If this is not done, private companies would exploit unorganised, small and particularly tribal cultivators and pay them a pittance. They will also be deprived of benefits of R&R. Dr Saxena therefore feels that public purpose should be defined as follows:

- (i) 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, or safety of the people;

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<sup>5</sup> This includes 100% solatium

## Discussion Paper

- (ii) the provision of land for infrastructure projects of the appropriate Government, including irrigation and power, where the benefits largely accrue to the general public;
- (iii) the provision of village 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
- (iv) the provision of land for any other purpose useful to the general public, including land for companies, for which at least seventy per cent of the project affected people have given their written consent.

*Explanation* - The project affected people will include people who would lose more than 50% of their present income in addition to those who are likely to be displaced as a result of the implementation of the project.

He argues: 'The proposed clause that industry should directly buy 70% of land before govt steps in may help farmers of the developed regions who are aware of the market conditions, but may result in large scale cheating and deception in tribal and remote areas where goondas will be hired by the land mafia and tribals will be forced to sign land transfer deeds to achieve the cutoff figure of 70%. In any case, in many central India states tribal land cannot be sold to non-tribals through market transactions. To get possession over such lands, industry would have to use extra-legal methods of showing sale in the name of some non-existent or compliant tribal. It may also legalise transfer of land that originally belonged to tribals, but is now alienated from them, and has not been restored back to them despite laws to the contrary. Moreover, land records are hopelessly out of date in many states, which will delay private transfer of land. Often, land is cultivated by the poor, especially tribals, but their possession has not been recorded in the official documents. Such people would be compelled to give up their possession without any compensation.'

Further, 70% land purchased under "lawful contract" will not carry the responsibilities of R&R. Reducing the area of land acquired through government will also reduce the responsibility of government to do Social Impact Analysis, which is proposed in the Amendment Bill of 2009, and detailed in this Note. In case government acquires 30% land for private companies, these farmers will get four times their present income, whereas the rest will get only market price, thus leading to dissatisfaction.

4.2 The alternate view, held by the other 2 members of the Working Group Aruna Roy and Harsh Mander, also held by NAC-I, was to explicitly exclude acquisition for a project which has 'as its primary objective the benefit of a private interest'. Instead NAC-I required that the project is directly related to the functions of the government; the project would benefit the community as a body; and the benefits of the land outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred.

Even the 1894 Act contained no such provision, and restrained the eminent domain of the State to projects of manifest public welfare. It would be inappropriate for democratic India to make this change. For-profit private companies must work within the market, and pay enough to land-holders for them to voluntarily sell their lands. This will also prevent unnecessary forced displacement.

There is no doubt that the direct interface of private companies with farmers leaves great scope for their exploitation. But this should be addressed by strict State regulation of this interface and not by the State compulsorily acquiring private land for private companies. Government could, for instance, fix a minimum land price, at prevailing market rates below which no

purchase can be made. Any such purchase below the fixed price would be deemed illegal and this would be justiciable.

<sup>6</sup>Although the Land Acquisition Act, 1894 does not include acquisition of land for a private company as public purpose, this restriction has been bypassed by the state governments (and supported by rulings of the Supreme Court<sup>7</sup>), as the definition of public purpose in law includes acquiring land 'for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned'. Thus in all cases where compensation to the landowners was paid out of government treasury the clause of public purpose was invoked<sup>8</sup>, irrespective of the fact that land was eventually used for making air conditioners or housing colony for the affluent. Though such private enterprise may contribute to direct and indirect employment generation, people's perception of these activities being in 'public interest' is generally negative, and therefore they are less tolerant of being made to leave the area or accept unfair compensation in such cases. Consequently, there has been growing protest and militancy leading to tension, conflict and violence, besides increasing costs involved in delayed acquisition of land.

Low compensation is not the only cause for resistance. It is also because of trust deficit that exists today between government and the peasantry, because the promises accorded to them on earlier occasions for rehabilitation and settlement have not been fulfilled; and the compensation amount has been uncertain and irregular. Thousands of families displaced by various projects are still awaiting compensation payments. In a few cases, those displaced in early 1970's are yet to receive compensation (Sardana 2011). In many cases the true beneficiaries are the absentee landlords and intermediaries, but not the poor peasantry.

It may be noted that in a recent case<sup>9</sup>, the Supreme Court held: "Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose."

## **5 Process to Establish Public Purpose for large projects requiring RR:**

NAC-I had suggested that the 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:

1. What is the nature of public interest proposed;
2. What are the financial, social and environmental costs and benefits; and

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<sup>6</sup> Dr Saxena generously assisted in elaborating the arguments *against* his position in these 3 paragraphs

<sup>7</sup> Gonsalves 2010

<sup>8</sup> For instance, in Singrur Government of West Bengal published 13 notifications under Section 4 of the Land Acquisition (LA) Act 1894 in July 2006 declaring its intention to acquire roughly 1,000 acres of land stating "that land is likely to be needed to be taken by Government/Government Undertaking/Development Authorities, at the public expense for a public purpose, viz, employment generation and socio-economic development of the area by setting up of Tata Small Car Project" (Bandyopadhyay 2008).

<sup>9</sup> Hindu 13<sup>th</sup> March 2011

3. Why are less or non-displacing alternatives not technically or geographically available.

Unfortunately section 5 of LA 2009 is silent on these fundamental issues. NAC-I proposed that the Land Acquisition Act must be amended to permit the people to challenge the claim of 'public purpose'. For this to be possible in an informed manner, the provisions of the rights to information must be incorporated into the legal 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 the PAPs through a prescribed process and clear accountability including PRIs. The current procedure of announcements through publications in the gazette and local newspapers may not be adequate. The language of the law should be clear and unambiguous so as to make the entitlements transparent and accessible to the PAPs.

It is critical that public purpose must be transparent and judiciable, to prevent unnecessary displacement. This is also required to uphold the principle of prior informed consent mandated by NAC-I. Therefore NAC-II reiterates these principles, and regards these to be a cornerstone of a just land acquisition law.

## **6 Defining and Listing Project Affected Persons (PAPs)**

### ***6.1 PAPs who lose livelihoods but not land or assets:***

Another basic principle of a fair Land Acquisition Bill enunciated by NAC-I was that government should not only compensate for assets acquired, but also compensate for loss of habitats, livelihoods and opportunities. This principle is central to secure the interests of equity and the most vulnerable segments of those adversely affected by land acquisition, and goes well beyond LAA 1894, which primarily envisaged compensating those who lost assets, not livelihoods and habitats.

The proposed LA 2009 makes a significant advance, by defining 'person interested' in section 5(i) to include tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; a person interested in an easement affecting the land; and persons having tenancy rights under the relevant State laws.

But this definition is not comprehensive enough. It does not include all people who lose their livelihoods, such as agricultural labourers, or cultivators who are in possession of land for more than five years without a formal title or tenancy rights. The definition of 'persons having interest in land' should therefore include sharecroppers, tenants and sub-tenants, encroachers, and agricultural workers. PAPs would also include such persons who are dependent on the common lands, forests or water bodies for their livelihoods, including forest gatherers and hunters, fisher-folk and boatmen. Also affected would be persons whose livelihood is

dependent on the people facing displacement (like daily wage earners, home based workers, artisans and traders).

These categories cannot be shifted only to the R&R Bill. We recognise them to be affected, no less and often more profoundly than people who lose assets like land. Being asset-less but losing their livelihoods, up to now they are eligible for no compensation, even under LAA 2009. It is therefore proposed that they need to be compensated as per the new LA law. This would mean that the asset-less people such as landless labourers, encroachers of Government land, artisans, fisher-folk and gatherers should also be compensated – as we shall observe later - by giving them either land, or a compensation of an annuity for a period of at least 30 years, so that their monthly income after land acquisition becomes at least four times what it was before.

After declaration of public purpose, the acquiring body must undertake a series of public hearings and participatory surveys, involving gram sabhas and affected communities, to undertake a full listing of affected persons in an open and transparent manner. In order to prevent the misuse of this provision by outsiders, for the identification of PAPs the cut off date shall be one year of residence or work opportunities in the acquired area, on the date of publication of the notice under Section 4 of the LA Act 1894. This entire process, on completion, should also be subject to social audit by affected gram sabhas.

### ***6.2 Definition of Family:***

Section 3 (i) of R&R defines family to include spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him for their livelihood. This is unfair to adult women who get clubbed with the head of the household, whereas adult sons become a separate unit in their own right. Similarly it is unfair to old people.

NAC-II therefore suggests family to 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. Adulthood should be determined by the date of displacement or date of payment of compensation, whichever is later. For households headed by single women, the aged, disabled or minor people, or for orphans, full benefits of a family should accrue.

An 'affected family' is defined in R&R 2009 as a family whose land or immovable property has been acquired; or which is involuntarily or permanently is displaced due to a natural calamity; or a family which has been continuously residing (not unauthorisedly) for a period of not less than three years in the affected area and has been deprived of their primary source of livelihood; immediately preceding the date of notification of the affected area.

The bar on unauthorised residence is likely to militate unjustly against those most disadvantaged and poor. How 'unauthorised' residence is defined has not been clarified in the Bill. Are people living in the unauthorised slums or railway tracks or sleeping on roadside, or indeed nomads, not entitled to any benefits? The caveat 'not unauthorisedly' should be deleted from the Bill. The NAC-I proposal is also relevant here, that all encroachers of govt. land for a period of five years or more before the date of acquisition, who are otherwise landless or marginal farmers, shall be treated as owners of the land for the purpose of R&R.



### **6.3 Extent of Loss to be Eligible for R&R Benefits:**

According to section 3(b) (ii) of the Resettlement and Rehabilitation Bill, 2009 (hereafter referred to as R&R 2009), families who have been deprived of their primary source of livelihood would get benefits. It does not specify, deprived to what extent. We reiterate the NAC-I proposal that for the purpose of this policy affected people would be those who are either displaced or lose 50% or more of their assets, incomes, shelters or livelihoods (regardless of legal title).

## **7 Social Impact Assessment for large projects requiring R&R**

LAA 1894 leaves the decision on public purpose and desirability of a project entirely in the hands of the executive – and in practice often to a single bureaucrat. This is a remnant of colonial tradition, unacceptable in a democratic state. The current amendment, in LA 2009, partially corrects this, by introducing the requirement of a Social Impact Assessment (SIA), which is very welcome.

However, the SIA envisaged by LA 2009 would not be undertaken by a body independent of the state government. The committee would be constituted by the state government under the Chairpersonship of the Chief Secretary, consisting of Secretaries of various departments, and three experts appointed by them. Also, beyond ensuring the welcome principles of minimum displacement and minimum acquisition of land, the law also does not contain details about the scope and process of SIA. It does not specify what will be done with this assessment or whether it will in any way play a role in deciding on the project.

NAC-I had envisaged a process initiated through a needs assessment, involving participatory identification of the list of PAPs, and the needs and aspirations of the community and all PAPs. The SIA would be undertaken by an independent body ‘mutually agreed’ to by the state government and the National Commission for Land Acquisition, Relief and Rehabilitation (NCLRR) to be established under this Act. The NCLRR would also be responsible to ensure immediately that all potentially affected people in the area are fully informed. The SIA would assess specifically the possible nature and extent of 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.

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

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;

## Discussion Paper

- b) Full enumeration of PAPs, in accordance with Section 6 of this note
- c) Preparation of an R&R plan for all PAPs, 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.

Officials we consulted with regard to SIA argued that since we are a federal structure, it was not appropriate for a Committee appointed by the National Commission to conduct a SIA, excluding the duly elected state government. They said that the state government should be trusted to appoint the Committee. NAC members argued that the state governments, in the last 60 years, have not handled this issue adequately and there was no reason to trust them to protect the best interests of PAPs in all situations. It was reiterated that this was a way to ensure checks and balances in the system and so could not be left to the government as it is an interested party. There is already a precedent of independent Commissions undertaking Environment clearances.

Dr Saxena felt that for smaller projects affecting less than 1000 families, but still requiring RR, powers can be delegated to the state governments. The other 2 members felt that the NAC-I position should be upheld and all projects which qualify for R&R should also be subject to SIA by the Committee appointed by the National Commission, while also including the state government in the process. It is proposed by NAC-II that the SIA must:

- 7.1 Take place under a committee consisting of independent experts appointed by the National Commission under this Act (*with the leadership of one of its 4 members for the relevant zone*), and representatives of the gram sabhas and the panchayats, representatives of civil society organisations if any who work with the affected communities, representative of the Chief Secretary of the State, representatives of the elected MLAs of the area, with no representatives of the requiring body;
- 7.2 Be paid for purely by the proposed National Commission out of independent funds, which would be subsequently be chargeable to the project;
- 7.3 Cover all lands and livelihood activities, including on biodiversities, forests, wastelands, water bodies, agriculture, trade, etc.;
- 7.4 Examine the proposal to see if it is least displacing and biodiversity depleting, satisfies a public purpose and its socioeconomic and distributional benefits exceed its costs;
- 7.5 Be based in design on final listing of Project Affected Persons and that such a listing shall be carried out, by the Officer appointed for the project under the National Commission, in consultation with the Gram Sabha with use of participatory practices, and in consonance with the definitions of PAPs, as well as adopted definitions of who constitutes a 'family'.
- 7.6 Ensure that the rehabilitation plan must be made in consultation with the affected families, on a village-by-village basis, and the final plan must be approved after consultation with the concerned gram sabhas by a two thirds majority.
- 7.7 Review details of R&R Plan, and confirm that this is in conformity with this law, and the best interests of the displaced communities and persons
- 7.8 Be made public in local languages and local public places for a period of two months; comments received on it should either be incorporated or rejected for

reasons stated in writing, and all must be placed before the National Commission established under this Act.

- 7.9 There should be mandatory public hearings where all interested people should be invited. The public hearing should be consulted by an independent and credible group of people/institution and based on prior circulation of relevant material and informed participation.
- 7.10 The suggestions and issues emanating out of a public hearing must be taken into consideration by all concerned authorities, agencies and parties and where any of them is not adhered to or acted upon, detailed reasons for this must be placed in the public domain.
- 7.11 It must also ensure that the rights that accrue to Scheduled Tribes and other forest dwelling communities under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 must be recognized and settled before any acquisition and their rights and interests must be specifically safeguarded under the Act.
- 7.12 At the completion of this process, and completion of successful consultation on R&R Plan, a Social Impact Clearance Certificate is issued by the independent committee constituted under the National Commission under this Act. The Social Impact Assessment Clearance Certificate forms the basis for notification for actual Land Acquisition and an Agreement to proceed to the next stage of the process.

## **8 Prior Informed Consent**

Whereas NAC-I regarded 'prior informed consent' of affected communities before the acquisition could be undertaken, as a central principle of the proposed law, it did not elaborate the process by which this would be obtained and ascertained. This principle is already also mandated for Schedule V Areas under the Panchayats (Extension to Scheduled Areas) Act 1996. Section 4(i) of the Act requires consultation with gram sabhas before any land acquisition is undertaken. But once again, no process is prescribed.

Most officials from the states consulted by us felt that compulsory acquisition only after obtaining consent from the Gram Sabhas for land acquisition projects is impractical and would add to substantial delays in project implementation, citing also instances of organized agitations to disrupt the Gram Sabhas. Moreover, it was claimed that people who indulge in agitations and dharnas are not the actual land owners but 'somebody' else. One suggestion was that the projects be bifurcated based on their importance and purpose into those requiring and not requiring consent. For example- infrastructure projects like roads, schools etc. should not require consent, whereas economic activity based projects especially for-profit private sector projects should. Ministry representatives informed that under the PESA Act, affected Gram Sabhas were to be consulted, but consent from them was not required legally. It was suggested that a similar pattern be followed.

Dr Saxena is of the view that prior consent of 70% affected families is needed for such cases where land is being acquired for companies, and not in other cases. However, Aruna Roy and

## Discussion Paper

Harsh Mander feel that the law must establish a democratic process, not only for ensuring public purpose and consideration of less and non-displacing alternatives, but also for a genuinely informed prior consent of the majority of persons adverse affected by any project, for all acquisition which qualifies for R&R under this Act. Only this will ensure checks on the executive to not displace people lightly, and to ensure that people affected are also beneficiaries of the development project.

The following steps are proposed for establishment of public purpose and Prior Informed consent of the Project Affected Persons and Gram Sabhas (whether for all acquisitions or when land is acquired for private companies):

8.1 Declaration of Public Purpose by the requiring authority of the government, including justification of a need for displacement and resettlement. Such a proposal explains the nature of public interest; and financial, social and environmental costs and benefits; and why are non displacing alternatives not viable.

8.2 Public Purpose notification is actively communicated by the Government and explained to Project Affected Persons and Gram Sabhas, under Sec 4 of the Right to Information Act.

8.3 Project Affected Persons and Gram Sabhas can challenge possible within 60 days to National Commission for Land Acquisition, Resettlement and Rehabilitation, on grounds that are spelt out.

8.4 Redress by National Commission for Land Acquisition, Resettlement and Rehabilitation within 60 days and issuance of speaking order

8.5 Publication of R&R Plan including list of PAPs on which the Gram Sabhas/area Ward Sabhas are consulted.

8.6 Establishment of Prior Informed Consent on a) proposed acquisition being necessary in public interest; b) listing of PAPs; c) agreement to R&R plan, including site of relocation and resettlement, by at least 70% of Gram Sabhas/area ward sabhas and 70% of people likely to be affected from each Gram Sabha

## **8 Urgency Clause**

Section 17(1) of LAA 1894 provides that in case of any 'urgency', land can be acquired by the Government within 15 days of publication of notice. 'Urgency' has however not been defined in the Act. This provision effectively sanctions the by-passing of all procedural mechanisms laid down in the Act, and has been routinely grossly misused precisely with such intent.

LA 2009 does not correct this anomaly, but contains welcome safeguards to protect affected persons. It provides that if the land is acquired in cases of emergency, each affected family shall be provided with transit and temporary accommodation, pending the R&R plan, in addition to the payment of a monthly subsistence allowance and other R&R benefits due to them.

In our meeting with officials, they widely acknowledged that the urgency clause is a generally misused and so the recommendations made by the NAC are perfectly valid.

In order to prevent such misuse, NAC-II proposes that 'urgency' should be defined as a contingency which could not have been reasonably anticipated, and because of which there

would be significant harm or losses to the community if acquisition is not immediately undertaken. The Acquiring Authority would be required to notify in writing i) the reasons for urgency; ii) why the Acquiring authority could not have anticipated the urgent requirement; and iii) how if urgent acquisition didn't happen then there will be significant consequences and losses to wider public. Any acquisition under this clause should be legally actionable and the alleged urgency could be challenged in appeal. Lastly, the urgency clause can only be used in rarest of rare cases, and in no case for any acquisition for private company.

## **9 Payment and Calculation of Compensation for Land for PAPs (Project Affected Persons)**

### **9.1 PAPs with Land**

Compensation under LA 2009 is determined on the basis of sale deeds registered during the preceding three years, or stamp duty. However, as NAC-I laid down, while determining compensation, replacement value at operative market rates must invariably be the basic principle. This must be at the market rates that actually operate, and at the time of purchase and not just those that are officially recorded. Any compensation must be based on the actual market value of the land in question, as opposed to its registered value; replacement value or the cost of replacing such land with new land (or house with house, without applying depreciation for an old house); the rise in the value of the land as a result of the new project and accompanying change of land use; the gross output of the land, as calculated as 20 times the gross annual output or 20 times gross annual income whichever is higher, for the next 20 years based on highest year output over the past decade. The highest of these four should be taken to be the acquisition price.

The PAP should have a choice of receiving part of her or his compensation in the form of monthly payments of at least four times the present income (adjusted for inflation and potential interest) to extend for at least twenty years and the rest to be paid in lump sum (*on the lines of the Haryana Scheme: This provides for payment of annuity in the form of royalty for a period of 33 years for the land owners whose land is acquired after 5th March, 2005 under the Land Acquisition Act, 1894. The annuity shall be paid for a period of 33 years over a period of the usual one-time land compensation @ Rs.15,000 per acre per annum which will be increased @ Rs.500 per year per acre. In respect of land acquired for setting up of SEZ/ Technology cities or Technology Parks in addition to the R&R package, the rate of annuity will be Rs.30,000 per acre per annum for a period of 33 years, payable by private developers, to be increased @ Rs.1,000 every year per acre.*) 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 much larger annuities and small initial down-payment should also be offered.

Tenants and sharecroppers should receive compensation (and solatium) for the parcels of land that they are losing, on an 80%:20% basis with the landowner being given 20%, which should not be less than four times their current income. Tenants and sharecroppers should be fully entitled to the resettlement and rehabilitation package, in addition to land-owners.

There is a provision in Section 24 of the present Land Acquisition Act that future value of land would not be taken into consideration while determining compensation. As the completion of projects vastly increases the market value of land not acquired in that area, people who are forced to sell land feel cheated as the compensation that they get is sometimes not even one-

tenth of the market value after a few years of acquisition. Section 24 should therefore be deleted. Instead, there should be a provision that whenever land acquired for public purpose is transferred to an individual or a company for a consideration, 25 per cent of the difference between such consideration and the compensation will be given to the original land owner. For future transactions too, there should be a capital gains tax on land value, a part of it to be shared with the people who lost land, so that they too benefit from the increases in future value of land<sup>10</sup>. Fundamentally, the problem is one of guaranteeing to the original owner of land a fair share in the augmented value of the land in future for at least twenty years, as the value can really shoot up once the land is put to non-agricultural use.

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

## ***9.2 PAPs without Land***

As already stated, PAPs without land who lose their livelihoods (such as landless labourers, encroachers of Government land, artisans, fisherfolk and gatherers) should also be compensated. This should be a legal entitlement under the Land Acquisition Act, if government decides to have separate Acts for Land Acquisition and R&R.

The proposed compensation for those who lose livelihoods but do not own agricultural land, is by giving them either land (under the land-for-land provision detailed below), or a compensation of an annuity of at least 10 days of minimum wage per month for a period of at least 30 years, which should not be less than four times their current income.

In addition, there would be provisions for homestead land, training and employment rehabilitation in the R&R package (detailed in later sections). There would also be a provision of 20% reservation in the allotment of plots on the acquired land to the Economically Weaker Sections in the event of any land acquisition by the Development Authority for its housing schemes. If land is being acquired under any 'Land for Development Scheme', the non EWS affected farmers shall be allotted 7% of the acquired land for residential purposes.

As for PAPs with land, land allocation would be in the name of women, and monthly cash compensation in joint accounts.

## ***9.3 Shares and Debentures***

Section 11 C of the LA 2009 provides that part of the compensation due under the Act can be paid by company through its shares and debentures. Eligible companies are 'authorized' to issue shares and debentures to the affected families to the extent of 50% but not less than 20% in any case, after obtaining Government approval.

But NAC-I had held that if land is acquired for a commercial undertaking, 10% shares to be given to PAPs free and equitably. The Standing Committee had recommended that a minimum

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<sup>10</sup> Sugata 2010

20% option should be provided to companies. Officials felt that this practice should not be encouraged. It was believed that shares are a risky proposition and for illiterate farmers this would not hold any value.

NAC-II proposes that a minimum of 5% shares should be distributed (equitably) free of cost to PAPs (increased by 5% for every additional 100 acres acquired). Any such provisions should be *in addition* to the general compensation for land and livelihood and not from the overall compensation amount due to the affected families. If this is *in addition* and not in lieu of other compensation, it can only possibly benefit, but not cause any loss to affected persons.

#### **9.4 Solatium**

The word solatium derives from 'solace', to compensate for the suffering of displacement. The Bill LAA 2009 restricts it to 60%. We propose a solatium of 100% in not-for-profit acquisitions, and 200% in for-profit acquisitions, if they are permitted under the Act. However, officials felt that increasing the solatium to 100% was excessive.

### **10 Return of Land in case of Failure of Project or Transfer to Other Purposes**

NAC-I had proposed that 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; and that it cannot be transferred to another public or private interest without the consent of the PAPs. Also, if land is sold in the project area, 25% of incremental value should go to the original owner.

Officials deemed it infeasible to return the unused land to its owners, as they felt no one would be able to return all the money and it would not be possible for the government to return the land. They felt that the only way of disposing the land in such cases is through public auction, and the profit should go to the government coffers.

Section 54A of LA 2009 Bill in effect is the opposite of the NAC-I proposal, defeating the objective of proving public purpose, by allowing that purpose of acquisition can be later changed. The government acquires property as a trustee, not as a private purchaser, and if it subsequently fails to fulfil the trust on the basis of which it acquired the land, we believe that acquisition should be invalid. Moreover, to permit the government to acquire lands and then retain them unused – as both the Act and the amended section 54A permit – is effectively to open the door to unnecessary land acquisition, which goes against the objective of minimizing acquisition. Thus, no change of public purpose should be permitted, unless the same process of establishing a public purpose, as laid out in this Act, is followed once again.

We recommend that if land is acquired for a public purpose and not used within five years, private property that was acquired should be returned to its original owners, subject to their returning a fraction (around 33%) of the money and benefits that accrued to them (since rest of the compensation can be for the sufferings borne). It is only after the original PAPs refuse to reclaim the land that it could be put to public auction, or transferred to another public purpose after due process as prescribed. Common property and government lands should revert to their previous land use status.

Further, the land allotted for public purposes, shall return to State, once the said purpose ceases to exist, this will mean automatic transfer of unutilised land and land occupied by sick or closed down industries, which shall be redistributed (to families and for common property resources) in line of the needs at that time.

## **11 Justiciability of R&R Entitlements**

NAC-I defined rehabilitation as 'having been achieved when the income of the affected people has been brought above the poverty line and above their previous income<sup>11</sup>, 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.

The R&R Policy must be justiciable. This should be done by linking it with LA Act. In case Government does not agree to one common Bill, 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 described earlier. The compensation and other rights of PAPs who do not lose properties, and the land for land principle, must be incorporated within the LA Act.

NAC-I suggested that the LA Bill should provide for individual contracts to be signed with a bank guarantee between the acquiring authority and each PAP, 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. This has not been accepted by the Ministry, and is critical for protecting individual rights. NAC-II must reiterate strongly this proposal.

The Resettlement and Rehabilitation Bill, 2009 (R&R 2009) specifically debar civil courts from jurisdiction to entertain any suit or proceeding in this respect. The PAPs should have a right to appeal, on the first appeal to the Collector and the second to the concerned officials of the National Commission. The legal right of PAPs to challenge the entitlement cannot be withdrawn.

Section 11 further needs to be amended to include that once it has been determined that some land is to be acquired for a public purpose, then all compensation must be paid and R&R for all affected persons must be completed in all aspects at least 6 months before possession is taken. No transfer of possession without compensation and fulfilling all R&R requirements should be permitted.

Officials agreed that R&R should be justiciable. They also agreed that it was desirable that all the compensation be provided before the acquisition but there were some reservations as to if this would be feasible.

## **12 Onus of Resettlement and Rehabilitation**

R&R 2009 states that compensation to displaced families should be borne by the requiring body (body which needs the land for its projects). This dilutes the responsibility of government.

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<sup>11</sup> NAC-II recommends not less than four times their current income



NAC-I held that in case where the project is promoted by a corporate entity/profit making body, the work of R&R of the affected families would be the joint responsibility of the govt. and that body. The entire cost would be borne by the corporate entity/profit making body. Officials agreed that the ultimate responsibility for all R&R should be that of the government. But there is need to increase the responsibility of the private sector as well.

NAC-II believes that if government acquires land, the onus for ensuring complete R&R including timely and just payment of compensation should be with government, which may 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.

### **13 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.

NAPM holds that legal entitlements that follow from State's responsibility towards those being displaced should be based on the concept of citizenship and not on numerical strength of those likely to be displaced. Rehabilitation and resettlement benefits should be applicable to each and every affected family irrespective of the total number of families affected. NAC-I also wanted the policy to be applicable for all future and on-going projects where families are affected, irrespective of the number.

NAC-II proposes that all individual entitlements should flow to all PAPs, irrespective of size of acquisition, but for collective entitlements like new townships, the required number of the displaced should be reduced to 100 and 50 respectively, to cover most displaced families and communities. This reduced size was accepted by most officials we consulted with.

### **14 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. Among the most significant proposals of NAC-I was therefore that 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.

R&R 2009 recognizes this, but in a token way. Its biggest loop-hole is the use of non-binding language. Take for example Clause 36(1) states that land for land 'shall be allotted...if Government land is available.' The government could effectively get away with not providing land for land to land-based PAPs.

NAC-II however, reiterates that mandatory provisions for land for land are non-negotiable, and central and critical for a just and humane rehabilitation law. Such provisions are recommended for all, but compulsory in case of all tribal and dalit families (to discourage acquisition of tribal and dalit land) and all irrigation projects (which are land augmenting in nature, therefore land should be acquired from rich farmers in the command area). For non-irrigation projects, it

## *Discussion Paper*

proposed that compensatory land for tribals and dalits could be provided by making wastelands (which are plenty in tribal regions) productive for crop agriculture, before land acquisition. Large projects always have several years of gestation period before they require land, and therefore making wasteland productive through better soil and water management is always possible. If waste or degraded land is allotted, the cost of development, reclamation, irrigation etc. is to be borne by the project authority. Payment of initial cultivation costs of allotted land shall be borne by the requiring body in all cases.

Further, it is proposed that in case of land for land, agricultural land must be consolidated and communities must be kept together after relocation so that their social and cultural identities are safeguarded. Collective rehabilitation is to be done at based on the aspirations and sensitivities of the PAPs. In the command of irrigation projects, consolidation of land would have to be undertaken in such a way as to ensure that PAPs from a village are allotted land in close proximity. In the best case, this land would be bought from voluntary sale by the land-owners. However, if required, government will have to acquire land as well from the larger farmers of the command who have benefited from the irrigation project, and therefore can part with a fraction of their lands and still be far better off than before the project. But they would also thereby contribute to ensuring that those displaced by the project also benefit from the irrigated land. The revised ceilings on irrigated land holdings would also yield land for distribution to PAPs. The responsibility for finding this compensatory land, and making it cultivable, is of the state, and cannot be shifted to them by requiring the PAPs themselves to find the land. There should also be no provision for replacing this requirement with cash transfers to PAPs, even if these are notionally voluntary, because there is evidence of pressure and subterfuge to 'persuade' the powerless PAPs to 'voluntarily consent' to cash instead of land.

All land titles will be given in the name of the oldest woman adult in the nuclear family, except when the household has no living adult woman member.

All forest dwellers, cultivating forest land since any date prior to 13 December 2005 (as per Forest rights Act, 2005), shall be considered as owners of such land for purposes of compensation for such land and allotment of land in lieu of land. All encroachers of govt. land for a period of five years or more before the date of acquisition, who are otherwise landless or marginal farmers, shall be treated as owners of the land for the purpose of R&R.

### **15 Employment for PAPs**

NAC-I had proposed: 'At least one person from affected family to be given employment by the project'. 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.

However, Section 41 of the R&R 2009 provides only for giving preference in employment if a vacancy available and the person is suitable, thus making employment subject to many conditions that it is unlikely to happen for most of the impoverished PAPs. To give an example, although the site for the Vedanta Bauxite plant was settled in Kalahandi district way back as 2000, Dr Saxena found in 2010 that the primitive tribes living in uplands just five kilometres away from the plant could neither understand the local language (Oriya) nor could they sign

## Discussion Paper

their names. No effort was made by the state government or the project authorities in 10 years to educate the tribe and improve their skills.

In line with NAC-I ideas, it is proposed to reiterate that PAPs have the *first legal right* of employment and to the benefits of the project (e.g. irrigation waters). All semiskilled and unskilled employment must go the PAPs as a first preference, if available for employment. But more than this, specific advance provisions must be made for training and giving employment to at least one adult member of each PAP family (subject to their aspirations). In such projects, a major responsibility of the project authorities should be training and capacity building of PAPs. In between decision and displacement, there is always a significant time gap. During this period, every PAP who consents must be made literate, and trained for semiskilled or skilled jobs as per the choice and educational qualifications. If this policy is faithfully executed, it will reduce displacement because most jobs will then be taken up by the PAPs and inflow of employees from outside will be minimal. So a big township would not be required.

For the displaced people, the new settlement must be as close to the factory site and new township as possible so as to ensure maximum access to the newly created economic opportunities.

All families who have not been provided regular job or land (*such may be the case for non tribal families, in non irrigation projects, where acquisition is not for a project which makes profits*) shall be entitled to a one-time rehabilitation grant for loss of livelihood equivalent to 750 days of minimum agricultural wages (for rural beneficiaries) and minimum wages for unskilled industrial workers prevailing in the concerned state.

Under NAC-I's proposed draft, following persons are excluded from R&R benefits:

1. Income tax payees and their families
2. Absentee landlords
3. Non-resident holders of agricultural land holding more than 2 hectares
4. Persons/families in urban areas awarded compensation of more than Rs. 5 lakhs and in rural areas more than Rs. 3 lakhs
5. Persons/families partially affected but even after acquisition would be having income three times the poverty line level of income.

It is proposed that clause no 3 and 4 above be dropped. Holding more than 2 hectares in arid and semi arid areas, especially where families are in drought prone areas or hold low productivity land, would not constitute a fair exclusion criterion. Alternately, it could be persons with one hectare of irrigated land. Also one time compensation of 5 lakhs (in urban) and 3 lakhs (in rural) rupees is not of the same significance as the R&R package.

### **16 Provision of Homestead**

Clause 35 (2) of RR 2009 provides that each BPL family without homestead land would be provided a house, thus imposing two conditions for getting a constructed house; whereas NAC-I had recommended grant of a constructed house to all who lose their house or are displaced. In the Bill, the non-BPL households owning a house get only land, but no house for house. It should be borne in mind that there are 60% errors of exclusion and inclusion in the

## Discussion Paper

present BPL list, and therefore it is unfair to restrict any facility only to BPL. In the Bill non-BPL households without a house get neither land nor a house, which is grossly unfair.

In line with the NAC-I proposal, it is recommended that *every* PAP family is given a house and homestead land title. Its quantum shall be between 50 sq metres to 150 sq metres in urban areas and between 100 sq metres to 250 sq metres in rural areas, depending upon the quantum of homestead land acquired from such families. A minimum of 50 sq metres (urban) and 100 sq metres (rural) shall be provided to all displaced families irrespective of the quantum of homestead land lost.

Constructed houses shall be provided to all entitled displaced families not below the standards of IAY houses. A family may request for additional rooms to be added to such constructed houses at the payment of full cost. Traders and artisans would be provided shops or work sheds. Full Transportation cost for the family, domestic animals, moveable properties and materials to the place of displacement shall also be provided at prevalent market rates.

### **17 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. This is unsatisfactory, because rehabilitation legislation without the articulation of minimum standards is meaningless. Leaving the choice to official discretion accords no rights, and the danger of minimal facilities provided by state governments is great, especially because this has been the experience with most major displacement in the past. Further, R&R does not only mean merely provision of a house; it has to be supplemented with amenities and livelihood options, and this should be the responsibility of the Government. NAC-I had identified twenty six basic amenities in its draft, and it had proposed that these be mandatorily provided at the new site. These included roads, safe drinking water, hygiene, educational facilities, community hall, and basic irrigation facilities at project cost.

### **18. National Commission and Auditor General of Displacement and Rehabilitation (NCLRR)**

Government's current draft laws envisage several oversight bodies. The Land Acquisition Amendment Bill 2009 mandates the establishment of National Rehabilitation Commission (Chapter 3, Clause 19 (i) & (ii) of the Bill), but its roles and functions are not clarified. Sections 17A and 17L of LA 2009 and 14 of R&R 2009 mandate setting up of a Land Acquisition Compensation Dispute Settlement Authority at Centre or State level; and Section 15 of R&R 2009 talks about an Administrator of R&R, Commissioner of R&R and Ombudsman; along with a National Monitoring Committee in Section 16 and Oversight Committee in Section 18 of R&R Bill. The functioning of all these different agencies and actors need to be made more clear and rationale and accountable to the National Rehabilitation Commission as proposed under Section 19 R&R 2009. A better alternative would be to combine the two Commissions into one.

NAC-II therefore proposes that a National Commission for Land Acquisition, Resettlement and Rehabilitation (NCLRR) be set up, with powers to supervise, and exercise oversight over land acquisition, resettlement and rehabilitation. It will do this in 3 main ways:

## *Discussion Paper*

- (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; and
- (iii) By providing strategic advice to the Government of India.

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.

As per NAC-I, the NCLRR shall be a statutory body with the following powers and functions:

- (i) appoint Members of the SIA
- (ii) hear appeals against the SIA, or challenges to public purpose
- (iii) assess extent of displacement based on the SIA, EIA and finalise R&R plan
- (iv) give R&R clearance
- (v) monitor, and in case of failure or non- implementation, stop or order review of any project
- (vi) hear grievances against officials, pass orders requiring payment of fines, and restitution to victim of violations etc.

The members would have zonal (regional- geographical) responsibilities for oversight and review, for east, west, north and south zones. The NCLRR and each zonal member would be empowered to appoint one or more Compliance Commissioners for each major project involving major displacement, to report to it compliance with various provisions of this Act.

NAC-I had also proposed an authority to be known as the Auditor General of Displacement and Rehabilitation (AG-DR), which shall maintain records with regard to the displacement of persons and policies of rehabilitation as well as maintain record of all land that have been taken over resulting in displacement. Studies have shown that in the past only 20 to 25% people benefited after displacement, the rest were left worse-off. Hence it is essential that there is an authority to find out after 5 or 10 years of displacement as to what is the present condition of those displaced, and why they could not come up the poverty line and improve their livelihoods. Without such a record it is likely that our intentions will remain only on paper.

### **19. Penalty for violations**

Nothing contained in the provisions of R&R 2009 Bill or LA 2009 Bills makes violations of the provisions a punishable offence. (R&R 2009 only contains punishment for persons who furnish false information, likely to be used against affected persons without strong documentary evidence for their claims).

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. This is especially true in the case of Rehabilitation and Resettlement, where innumerable instances can be quoted in which obligations and promises to the affected communities and

individuals have been violated and forgotten. Violations are the norm rather than the exception in large projects.

Penal provisions for violations must be included in the statute if the Government is serious about ensuring the proper implementation and effectiveness of the legislation as mandated by NAC - I Draft. It had recommended that the concerned officials will be held personally liable in the event that the provisions of this policy or agreed rehabilitation package are violated. The NCLRR will have the power to hear grievances against officials, pass orders requiring payment of fines, restitution to victim of violations etc. Failure to fulfil the requirements of this policy and/or the agreement package would also attract penal sanctions as under existing laws and administrative orders. Concealing facts or submission of false, misleading reports/data would lead to the project being rejected or revoked if already granted.

There was a general consensus even among the officials we consulted with on the need for stringent punishment for the offenders; but there was no agreement on the mechanism for meting out the punishments. It was suggested that there needs to be thorough investigation at each level of non-compliance and punishment meted out accordingly.

## **20. Persons not Adequately Rehabilitated in Earlier Projects**

As recommended by NAC-I, and also recommended by Parliamentary Standing Committee Report the R&R Act must provide relief to those who have suffered due to various development projects once or multiple times.

R&R 2009 contains a welcome provision that the affected ST families, who were in possession of forest lands in the affected area prior to the 13<sup>th</sup> day of December, 2005, shall be eligible for the benefits of R&R under this Act. The 2007 LAA Bill contained section 28B which should be retained. According to this, 'Where an award is pending or remains unsettled at any stage under the Act, prior to the coming into force of the Land Acquisition (Amendment) Act, 2007, then the amount of compensation payable to the entitled person may be determined on the basis of section 11B as inserted by the said Act.' However with regard to other benefits provided in the Land Acquisition legislation and Rehabilitation and Resettlement legislation like the higher rate of solatium, rehabilitation package etc. nothing has been mentioned about the retrospective applicability in the pending cases and they should be made applicable as mentioned in the NAC- I proposal.

NAC -I 's proposed Rehabilitation Policy provided also for tracing and enumeration of the people displaced and affected by projects since Independence. It observed that 'Majority of projects executed since Independence, resettlement and rehabilitation was not done systematically.... Must be in the nature of a national commitment'. It suggested that for displacement after 1947, the state governments with assistance from reputed academic institutions should assess shelter and livelihood needs, recognizing that it is a 'daunting task but it must be pursued with commitment'. The Central government, on the basis to studies would assist the state governments to enable older PAPs to achieve more satisfactory livelihoods and habitats through special additional allocations.

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