

TWO POLICY DRAFTS AND A REPORT

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About one year back, early in the year 2006, the National Advisory Council (NAC) had prepared a draft National Development, Displacement and Rehabilitation (NAC policy) draft and forwarded it to the Govt. of India. This had many progressive features, although there is always room for some improvement. It was hoped that after incorporating some improvements the Govt. of India will finalise its rehabilitation policy soon as displacement is fast becoming a major cause of impoverishment and discontent among people, particularly villagers.

However when the Ministry of Rural Development, Government of India, came out with its draft National Rehabilitation Policy (GOI policy draft), it turned out to be an altogether different document - a much weaker and altogether a very unsatisfactory policy document. Meanwhile, towards the end of July (year 2006) the Report of the Working Group on Land Relations for Formulation of 11th Five Year Plan document was also submitted (the WGLREP Report).

Unfortunately in its very preamble the GOI policy draft asserts the state's so-called 'eminent domain'. While defining displaced people this document emphasises 'substantially' affected people but this word can be interpreted arbitrarily by officials. This draft acknowledges as displaced only those who have resided, worked or owned assets etc. in an area for at least three years prior to the declaration of this area as affected zone. This draft excludes unmarried adult daughters from being treated as a family.

The GOI policy draft provides land to displaced families but only if government land is available. In the same vein the GOI policy says that the land requiring body should provide jobs to one member of each of the displaced families "...subject to availability of vacancies and suitability of the affected person." Moreover in some cases (that do not require environmental clearance) the requiring agency would on its own appoint a committee to assess and clear project that requires land.

On the other hand the NAC policy draft is a much better document in several respects. This policy draft includes 'social appraisals' which give the affected people a right to assess the project and its 'public interest' credentials. The NAC policy draft provides for prior informed consent of at least 50 percent of the gram sabhas affected by the project. The NAC draft policy also makes it obligatory for the land requiring body to provide at least one job to one member of each displaced family, and to provide the necessary training for this purpose.

Perhaps the most significant provision in the NAC policy draft is for setting up a National Rehabilitation Commission with the responsibility of verifying necessity of displacement and assessing each project to ensure it adopts the least displacing alternative. This important suggestion to constitute, by an act of Parliament, an independent and statutory Rehabilitation Commission, with the exclusive responsibilities of ensuring that displacement is kept to the minimum, should be accepted as early as possible.

The WGLREP report has made some recommendations for all people facing displacement, and some only for tribal people. To take up its general recommendations first, this report says, “Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of agricultural land to non-agricultural use should be checked.”

“All medium to large-scale transfer of land from agricultural to non-agricultural use should be subject to an environmental protection clause and its strict implementation”.

In a section ‘key recommendation on company and Government land acquisitions’ the WGLREP report says -

- a) “For land acquisition by a company there should be clearly laid-out procedures and transparency. The company should provide facts and figures to those losing land on how the project will help them and community in terms of full package of rehabilitation and resettlement.
- b) In case the company purchases land directly in the market, the Government should fix a floor price below which farmers would not sell the land to any company.
- c) In case the company is unable to use all the land it has acquired, the unutilized part should be returned to the government for distribution to the landless.
- d) Government land acquisition in the name of “public purpose” should be properly defined to include mainly the public utilities.
- e) As far as possible, fertile agricultural land should not be acquired for or by any company. The industrial units should be located in areas where wasteland is available.
- f) The Land Acquisition Act should be amended to incorporate compensation not only for the landed individuals but also for those who are landless and dependent on the land for livelihoods, for homes and items obtained from local common property resources. In other words, landless labourers, artisans, tenants, etc. should also be compensated with housing and livelihood security.
- g) All compensation should follow the principle of gender equity.
- h) Where possible resettlement should be such that an entire community or family network is not split up but settled in the same site so that support networks continue to exist.
- i) While determining compensation, the basic principle must be replacement value at market rates of the land cost. This must be at the market rates that actually operate at the time of purchase and not those that are officially recorded. A suitable and credible mechanism must be evolved to arrive at operative market rates.”

This report has expressed special concern at the alienation of tribal land. To quote—
“In the past few years, rural unrest has increased in most tribal areas. While displacement caused due to development projects have resulted in confrontation between authorities and local tribals, there are other factors such as growing indebtedness, forcible eviction of tribals from their land by non-tribals, conversion of land from community ownership to individual ownership, increasing urbanisation, treating tribals as encroachers in traditionally occupied forest land and lack of substantive possession by tribals of government land allotted to them and so on. In order to prevent further deterioration in the situation, there is an urgent need to look into the ownership of resources by tribals, especially the resources on which they depend for livelihood, such as land, forest and water.

In the special context of land acquisition for development projects this report makes the following recommendations for tribal land -

- i) "At present PESA is applicable only to the scheduled areas but a large part of the tribal population lives outside scheduled areas. Therefore, the provisions of PESA should be applicable mutatis mutandis to villages/areas where there is a sizable tribal population/where majority of the population consists of scheduled tribes.
- ii) It is necessary that, whenever land is acquired for industrial or mining projects, the exact extent of land required for the projects assessed by the concerned project authorities should be reassessed by a neutral agency/expert body consisting of experts, with the representatives of tribal community.
- iii) The Central Land Acquisition Act of 1894 and the Central Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in the line of the provisions of PESA.
- iv) The Land Acquisition Act should be amended to incorporate R & R policy for all projects. Rehabilitation should be undertaken in such a manner that the displaced tribals have a clearly improved standard of living after resettlement. Their ecology, culture and ethos will have to be given due consideration in the Resettlement Plan.
- v) The tribals who are displaced, should preferably be resettled in a zone adjacent to the affected area in consonance with their social, ecological, linguistic and economic affinity.
- vi) Resettlement and rehabilitation should be completed prior to the commencement of the project. The package should be approved by gram sabha in the PESA Area and by such other representative institutions in non-PESA tribal areas.
- vii) Unmarried daughters/sisters, physically challenged persons, orphans, widows and women divorcees should be treated as separate families in the R & R policy.
- viii) All tribal communities must be rehabilitated strictly in compliance with ILO convention No. 107.
- ix) Efforts should be made to ensure that all tribal families are resettled together to the extent possible. The minimum unit for relocation must be a hamlet or clan.
- x) Compensation should be calculated and given on the basis of calculation of a 20-year prospective income stream to the tribal families for loss of customary rights over forests.
- xi) Pending amendments to the Central Act on land acquisition and incorporating the provisions of PESA, the State Governments with scheduled areas should utilize the flexibility provided for in the Vth Schedule of the Constitution and modify the Land Acquisition Act to provide for consent of the gram sabha prior to the acquisition of land". □□□