

**DRAFT NATIONAL DEVELOPMENT, DISPLACEMENT AND REHABILITATION POLICY  
(January, 2006)**

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**A. OBJECTIVES**

1. To minimize development induced displacement of people by promoting non-displacing or least displacing alternatives for meeting development objectives.
2. To minimize the direct and indirect adverse social impacts of land use changes due to development and commercial projects, activities or policy changes (on land, shelter, livelihood, access).
3. In those rare cases where non-displacing alternatives are not available, to shift from the earlier practice of forced displacement to displacement after prior informed consent<sup>1</sup>.
4. Where displacement is inevitable, to ensure a fair and humane compensation package and process, and timely implementation of rehabilitation.
5. To ensure full transparency and justice in the processes of displacement and land acquisition.
6. To ensure that all those who are displaced are brought above the poverty line and made significantly better off than they were prior to displacement, not just in economic terms, but also in terms of human development and security, in a reasonable time frame, and in accordance with their aspirations.
7. To ensure that benefits to the displaced people are not less, as a ratio to the costs being paid by them, than those that accrue to the people benefiting from that specific project or from the developmental process in general.
8. To integrate rehabilitation concerns into the development planning and implementation process.
9. To ensure that special care is taken for protecting the rights of, and ensuring affirmative state action for, the weaker segments of society, especially members of scheduled castes and scheduled tribes, and to create legal obligations on the state to ensure that they are treated with special concern and sensitivity.

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<sup>1</sup> Wherever the term consent is used, this will mean that the consent of Gram Sabhas of project affected villages will be sought. But, in instances where some of the Gram Sabhas affected do not give consent because their demands are in excess of the provisions of this policy, the project implementation authority (PIA) may go ahead with the project only where the PAPs in such dissenting Gram Sabhas constitute less than 50% of the total number of PAPs. However, the PAPs of these dissenting Gram Sabhas would continue to be entitled to the same rehabilitation benefits as being given to all other PAPs of the same category.. In all such cases, detailed written orders will be passed by the PIA, incorporating in full the views of the Gram Sabha, and reasons why these were not accepted. The procedure for doing so has been detailed at annexure 5, which describes the prescribed procedure for Scheduled Areas. It will be made applicable to all areas.

## **B. GUIDING PRINCIPLES**

1. Displacement, as a rule, should not be forced, and people should be assured that it is their legal entitlement that, despite inevitable losses, they are on the whole going to be better off. Consequently, the prior informed consent of the community should be taken before any project resulting in displacement or loss of livelihood is approved.
2. Forced displacement of people should only be permitted in the 'rarest of rare' cases, and only after it has been established by independent and credible evaluation that the displacing project has the sorts of social benefits that indisputably make it desirable, despite its social costs.
3. Even then, it must be ensured that the number of people displaced is the minimum required, and that no less displacing or non-displacing alternatives are possible. The Policy unambiguously states its preference for those development projects that involve minimum displacement. The burden of proof is on the requiring authority to establish that the proposed project is the best among available alternatives to achieve the given objectives, with minimum displacement.
4. Each large development project (involving transfer or change in land use leading to displacement, of one hundred acres of land or more) must be first subjected to a holistic appraisal as to the desirability and justifiability of the project. The public, and particularly the people likely to be affected, must be given due opportunities of information and hearings, and allowed to examine all aspects of the project, including the 'public purpose' (see Annexure 3), and also the possibilities of achieving the same objectives through non-displacing or less displacing alternatives. The process of such 'social appraisal' of development projects is given in Annexure 4, and this will be legally binding before any new development project is taken up.
5. The Land Acquisition Act must be amended to permit people to challenge the claim of 'public interest' of any acquisition. 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 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 suggested amendments are described in Annexure 6.
6. The 'national interest' and 'public purpose' having been satisfactorily established following this procedure, which should be binding under the law, the project authority would only then initiate the process of formulating plans for the resettlement of all the project affected people.
7. It shall be a compulsory obligation on the part of the project planning and implementation authorities to involve and consult the representatives of the affected communities, including women and members of disadvantaged groups, in all phases of planning, execution and monitoring of the RR Plan. The entire decision-making process regarding RR Plans must be completely transparent. The comprehensive draft plans for resettlement must be made public. It must be proactively brought to the notice and explained to the people likely to be affected, through such channels

like the local language media, local exhibitions, local meetings, etc. It is important that the government and the project authority are under an obligation to take the information to the doorstep of the affected population so as to enable even non-illiterate persons in the most distant area to acquire full knowledge of the plan for their resettlement. It is mandatory and enforceable that the project-affected people must be given the right to participate at this very stage so that they can bring their full weight to bear on the design and content of the plan. Their views must be given full weight, and the plan modified in conformity with their aspirations.

8. All PAPs, and other concerned citizens and people's organizations, would enjoy right to information about all aspects of the project which are of public interest, including the detailed project report, financial plan, economic/financial viability studies, social impact-benchmark and other studies, environmental impact assessment and environment rehabilitation plans and the detailed RR plan. This must be in the language of the people and in a form and manner that they can understand. This would enable PAPs to understand in depth issues critically related to their futures, and if necessary to challenge, in an informed way, all aspects of the proposed project including rehabilitation and the public purpose of the project.
9. While determining compensation, replacement value at the operative market rates must invariably be the basic principle. This must be at the market rates that actually operate, and that too at the time of purchase, and not just those that are officially recorded. Also, paying of depreciated value is manifestly unfair, for it leaves the PAP with even less adequate means to replace a critical need. For example, if a poor person was paid only the depreciated value of his or her house, he or she would be unable to buy or build a new house and would become homeless. The person's house, however old or ramshackle it might be, is providing shelter. When it is forcefully acquired, it must be ensured that the compensation is enough to provide an alternate and equal shelter.
10. Also, not only should lost property and assets be compensated for, but lost livelihoods and lost opportunities should also be compensated for. Communities must be adequately and appropriately compensated for common amenities and assets lost because of the project. Also, all those amenities and assets required for fulfilling basic needs must be provided. This is especially important in order to prevent conflicts with host communities, whose common resources would otherwise be under pressure from the PAPs.
11. However, it is not enough to just pay cash compensation, various other principles must be followed to ensure that social costs are minimised. For one, payment of large sums of cash might not be in the best interests of those PAPs who are unused to handling large amounts of money.
12. The principle of 'land for land' must be followed scrupulously and each PAP in irrigation projects, and SC/ST PAPs in all projects, who lose land must be given at least one standard hectare of irrigated land. In irrigation projects, the principle of giving land to PAPs of dams in the command area should be adopted, as it not only gives those who have paid the major costs a part of the benefits, it also lessens the inequities between the upstream displaced persons and the downstream beneficiaries.

13. Ordinarily the project authorities must also construct or have constructed appropriate replacement housing for the PAPs, of designs and locations that are approved by the PAPs within the allocated resources. However, in cases where the PAPs would prefer to construct their own houses, like among some tribal communities, they must be given the freedom to do so.
14. The process of selecting rehabilitation sites and lands must involve the PAPs and their preferences must be mandatory for the final selection.
15. Agricultural land must be consolidated, as far as possible, and communities invariably kept together, after displacement, so that their social and cultural identities are safeguarded. Communities should be relocated as an organic whole, and not fragmented in the process of relocation.
16. Wherever the people are not willing to shift, it must be assumed that the fault is either in the package being offered, the progress of implementation or in the approach to the displaced communities. Alternatively, it could be because the implementation of resettlement and rehabilitation programmes is so unsatisfactory that the affected people do not feel confident of receiving what they have been promised. In any case, this must be recognised as a failure of the rehabilitation process.
17. The time frame for the displacement process should be sensitively determined and people given enough time to adjust to their new locations and life styles. It should be a mandatory practice to allot agricultural land to the PAPs at least two years before they are to be displaced, so that they can get used to cultivating this land even while they continue to live in their original homes. Likewise, house-sites should be allocated in fully developed colonies at least 2 years before relocation. This makes the process of displacement more gradual and humane. In any case, all compensation must be paid at least two years before a person is displaced. Delays in the rehabilitation process and its various components can cause major hardship. Time frames must, therefore, be finalised well in advance and adhered to. Delays must be looked at very seriously and invite serious consequences for the functionaries responsible. This is also important for ensuring that development projects and activities are completed on time
18. Delays in finalising the details of the policy related to rehabilitation and other aspects of specific projects, and delays in initiating the planning process, can seriously affect the well being of the affected people. Therefore, these activities must also be done according to a pre-determined time frame that statutorily gives adequate time for the concerned persons to give inputs and intervene in the process of policy formulation and planning.
19. Whereas it must be ensured that PAPs are not forced to change their occupations and professions, there must, of course, be the flexibility to allow individual PAPs to choose from among other viable alternatives. Some might not like to go back to the land and might prefer to pursue other professions. They must be helped to do so.

20. The PAPs must also have a first right to get employment in the project. The need for trained and experienced personnel should not be a constraint as training should be organised for interested PAPs even before the project is initiated. The trained PAPs may even be sent to other projects to get the experience they need. In fact, the availability of sufficient trained PAPs should be a precondition to the initiation of the project. Where necessary, even basic literacy lessons must be organised for the PAPs and they should be properly equipped to make the most of the opportunities being presented to them.
21. The PAPs must also have the first right to specific benefits arising out of projects. Apart from livelihood opportunities, they must, for example, have the first right on irrigation waters from irrigation projects and to power from hydro-electric projects, and to both in multi-purpose projects.
22. Rehabilitation packages and processes must be gender sensitive. Land and other assets should be provided in the joint names of both spouses. Consultations with the PAPs must also be done keeping in mind the need to consult both men and women, the aged and the young, and members of all castes and communities.
23. The special needs of particularly vulnerable communities, like isolated tribal groups, dalits, persons with disabilities or other marginalised groups, must be catered for.
24. The compounded plight of those who have been affected by earlier projects must be recognised and they must be properly rehabilitated and compensated on a priority basis before any further dislocation and displacement is effected.
25. The provisions of an enlightened rehabilitation and compensation policy must have legal backing so that not only the concerned agencies of the government but affected and interested citizens can ensure enforcement and legal intervention. The Supreme Court ruling on another matter, that the agency that seeks to intervene has the onus to prove that its intervention is beneficial, needs to be applied to the case of development projects.
26. It is to be ensured that the resettlement site and the resource-base is large enough to accommodate the natural growth in population, over a minimum time perspective of 100 years, and to generate income to provide for a progressive rise in standards of living.
27. For smooth and effective resettlement, the principle of geographical continuity, cultural homogeneity and ready adaptability must be accepted in choosing and planning resettlement units and sites, especially while resettling tribal and dalit communities.
28. Whenever whole villages, slum localities, neighbourhoods and communities are uprooted, there is total disturbance of structure and network of social relationships, which support an ethos and a way of life. Any plan of resettlement must be sensitive to this loss and aim at creating afresh a community ethos and a way of life. It is only such a dynamic living community that can successfully cope with the challenge of mobility and development in the new surroundings.

### C. SCOPE AND APPLICABILITY

1. All those affected by any of the works or activities related to the project must be treated as PAPs. This policy is applicable to all individuals, families and communities that are either physically displaced from their homes or whose livelihood activities or access to natural and common resources is adversely affected because of the application of policies and laws or the location of development and commercial projects or activities.
2. The definition of PAPs who are entitled to receive compensation must include the landless, those who are tenants, sub-tenants (with or without written agreements), agriculturists, adult unmarried daughters and sons, adult married sons, and widows, divorcees and women abandoned by their families.
3. For the purpose of this policy, 'affected people' would be those who are either displaced or lose 50 per cent or more of their assets, income, shelters or livelihoods (regardless of their legal title).
4. For the purpose of this policy, 'requiring agencies' would be those agencies, including the government, which required the change in land use and the consequent displacement of people.
5. This policy will be applicable for all future and on-going projects and activities where families are affected (where displacement has taken place up to ten years prior to the date of this policy), irrespective of the number.
6. All persons whose source of livelihood, place of residence or other property is affected and also those who are otherwise personally affected, directly or indirectly by projects and activities, notwithstanding the legal status enjoyed by them in relation to the concerned land, livelihood options, access to natural resources, etc. shall be deemed to be project affected persons (PAPs). In particular they shall include:-
  - a. Persons interested in the concerned land as owners, regular or informal tenants and sub-tenants, occupants with or without legal status.
  - b. Persons dependent for their livelihood on other resources undergoing changes in use, including land and water, and the resources found on and in them.
  - c. Persons whose livelihood is dependent, for at least 1 year prior to Section 4 Notification, on the people/community facing displacement. These would typically include agricultural labourers, artisans, petty traders and other goods and services providers.
  - d. Persons living in habitations that are acquired or rendered non-viable.
  - e. For purposes of this policy, every major adult member, along with her or his spouse and minor children below the age of 18 years, would be considered a single family.

- f. For a single adult without spouse or children, all benefits of this policy would become half.
  - g. Adulthood to be determined by the date of displacement or date of payment of compensation, whichever is later.
7. For the identification of projects affected persons (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 notification under Section 4 of the Land Acquisition Act, 1894, or other similar Section indicating the intention of acquisition/change of land use, under any other Act currently in force.
  8. For land and other resources, where compensation, as laid down in this policy, is not fully paid to the PAP for a period of three years after Section 4 Notification, the cut-off date would be advanced to three years prior to the date of full payment of such compensation.

#### **D. REHABILITATION PACKAGE**

1. The rehabilitation package must full comply with the guiding principles outlined earlier, and the detailed facilities listed in Annexure 1.
2. All rights and entitlements of the displaced and project affected people must be **legally enforceable**, through individual contracts entered into by the requiring authority with each PAF, or based on a gazette notification declaring the affected area, families, property and entitlements.
3. Failures to implement the policy and law justly for SCs and STs will additionally attract laws relating to prevention of atrocities against these vulnerable sections.
4. The viability of the rehabilitation package, in terms of the availability of physical and financial resources, should be a mandatory condition of project clearance.
5. In addition to the compensation legally due under an amended Land Acquisition Act (please see next Section), and the guiding principles given earlier, the following are the main features of the rehabilitation package.
  - (i) **Land for all agricultural families** - In all irrigation projects, a PAF would have first claim on land in the command area. If land can be compulsorily acquired for submergence, there is no reason why it cannot similarly be acquired for resettlement. Therefore in all irrigation projects, it is mandatory that displaced people primarily dependent on agriculture (as cultivators, tenants, sub-tenants or wage workers) are settled within the command area of an irrigation project. To make such land available, the requiring authority would acquire up to 50 percent of land in excess of 2 standard hectares of each landholder benefiting from the new command. Consolidation of holdings would have to be undertaken, in such a way as to ensure that PAPs from a village are allotted land in close proximity. The responsibility is of the state, by its own actions, to provide the land to the PAPs, and cannot be shifted to them by requiring the PAPs themselves to find the land by

entering into privately negotiated sale arrangements. The government is entitled to itself attempt to buy land in the command area from voluntary sellers, but the process of land fixation and payment should be transparent to prevent corruption. If voluntary sales are unavailable or inadequate, then compulsory acquisition from the command is inevitable. If land is acquired in the command for rehabilitation, it should be equitably distributed among land owners, and no land owner should be left with less than two standard hectares of agricultural land.

The quantum of agricultural land proposed for resettlement and rehabilitation of displaced families will be equal to one standard hectare of agricultural land. All encroachers of Government land for a period of five years or more before the date of acquisition of land, who are otherwise landless or marginal farmers, primarily dependent on cultivation for their livelihoods, shall be treated as owners of the land for the purpose of resettlement and rehabilitation. Forest dwellers, having encroached upon forest lands prior to 30 September 1990, shall be considered as owners of such land for purposes of compensation for such land and allotment of land in lieu of land. Allotment of agricultural land is mandatory in irrigation projects and for tribals and dalits in all projects, and recommendatory in all other cases. If waste or degraded lands are allotted, the cost of development, reclamation, irrigation etc. is to be borne by the project authority. Cost of cultivation for the first year and loan for cost of cultivation for the next two years is to be provided by the project authority.

- (ii) **Mandatory Employment in non-irrigation projects-** For non-irrigation projects, 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. In such projects, a major responsibility of the project authorities is 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 DPs/PAPs and inflow of employees from outside will be minimal. So a big township would not be required.

All unskilled and semi-skilled direct employment in the project must always go to a PAP, as long as any such positions are available for employment. Those with appropriate qualifications must also be given first priority for skilled positions. A priority list of eligible PAPs must be prepared and published along with criterion and procedure for selection, and objections heard by the District Collector before these are finalised by the Collector. The priority list must begin with those who are most vulnerable, viz. landless labourers and artisans who have lost their livelihood. After that, landholders will be listed on a descending scale, with a lower priority for those with larger holdings. Provision of casual and manual wage employment shall not be considered as a sufficient alternate source of livelihood or employment in the case of affected persons. Moreover, all such employment should be cooperativized so as to instil a sense of dignity



amongst the participants. Accordingly, all possible tasks in the project will be assigned to cooperatives or groups (even unregistered) of workers, which at present are being generally executed through contractors and middlemen. In addition efforts should be made to provide them jobs outside the project. The State Government shall take up intensive rural development programmes to create various employment generation opportunities both in wage employment as well as self-employment sector. The displaced people should be resettled as near as possible to the developmental project sites so that they get multiple access and facilities as well as economic benefits generated out of the developmental projects.

- (iii) **Special Employment Guarantee Programme-** After relocation to the new sites, government must undertake a special employment guarantee programme for a minimum period of 5 years, so that the process of transition for PAPs is relatively painless.
- (iv) **Special Panchayat status-** must be granted to resettlement sites (grouped together, if possible and necessary, depending on the size) at least for the first five years of resettlement, so that such planning becomes feasible. The allocation of such special panchayats under JRY, IAY etc. must be suitably enhanced to cover both the increase in population and their special needs.
- (v) **Homesteads and dwelling houses-** Homestead land has to be provided to all displaced families, but its quantum shall be between 50 sq. mtrs. to 150 sq. mtrs in urban areas and between 100 sq. mtrs. to 250 sq. mtrs in the rural areas, depending on the quantum of homestead land acquired from such families. A minimum of 50 sq. mtrs. in urban areas and 100 sq. mtrs in rural areas shall be provided to each displaced family irrespective of the quantum of homestead land acquired from them. Constructed house shall be provided to all entitled displaced families on such allotted homestead and the type and standard of construction shall not be below what has been prescribed under IAY. A family may request for additional rooms to be added to such constructed house, subject to a maximum number of two additional rooms on payment of full cost. Traders and artisans will get in addition a constructed shop or work shed.
- (vi) **Transportation cost-** Actual cost of transportation/trans-shipment of a family, its domestic animals, moveable properties, moveable building materials and other belongings from the place of displacement to the place of resettlement shall be entirely borne by the project.
- (vii) **Cost realization-** The cost of providing agricultural land, homestead land, constructed house, shop, working sheds, etc. shall be realised from the amount of compensation awarded to the families receiving the aforesaid packages under the following conditions: (a) realisation shall be limited to the maximum quantum of compensation awarded, and if there be a shortfall the same shall be borne by the project authority, (b) the cost of construction of the dwelling houses shall not be adjusted from the compensation payable to a B.P.L. family if such cost is within Rs.20,000/-. Only additional cost above the aforesaid amount, if incurred for allotting a constructed dwelling

house for resettlement of such B.P.L. family, may be adjusted against the compensation payable and (c) in all circumstances, it shall be ensured that cost adjustment is done to such extent from a tribal family that leaves a balance of Rs.15,000/- out of the total compensation payable/paid to such tribal family.

- (viii) **Training and other support services** - The RR Authorities shall provide at project cost necessary training to develop entrepreneurship and assist the adult members of the displaced families to take up economically viable self-employment projects. All projects must systematically ensure full literacy as well as the creation of necessary skills to render the PAPs eligible for employment for semi-skilled positions, and for those with sufficient educational qualifications for skilled positions. Even those private enterprises that benefit from the project would be charged in the same manner with responsibility for providing skills and jobs to such people. This systematic skill development is primarily the responsibility of the project, and district authorities should have written agreements from the project about this before handing them possession of land.
- (ix) **Rehabilitation grant to compensate loss of income/livelihood-** All families, who have not been provided agricultural land or a regular job in the project shall be entitled to a rehabilitation grant equivalent to 750 days' minimum agricultural wages (for rural beneficiaries) and minimum wages for unskilled industrial workers (for urban beneficiaries) prevailing in the concerned State/UT at the relevant point of time.
- (x) **Special provisions for tribals-** Tribals should be resettled close to their natural habitats ensuring continuation of their traditional rights on minor forest produce and common property resources. They shall be compensated for loss of their customary rights/usage on forest produce in case the new site does not provide for such gathering of such forest produces. Such compensation should be calculated @ 10 times the minimum wages which a tribal family would have earned at the rates fixed by the respective State Governments during one single working season of 45 days, i.e. equivalent to 450 days minimum agricultural wages. They should be resettled in a compact block so that they can retain their ethnic, linguistic, religious and cultural identity. As already stated, all tribal families would get mandatory allotment of minimum quantum of land.
- (xi) **Basic amenities infrastructural facilities for en masse resettlement-** Twenty six basic amenities, such as roads, safe drinking water, plantation of inhabited areas, educational facilities, community hall, and basic irrigation facilities have been proposed to be ensured in the resettlement of villages/colonies set up for such resettlement and rehabilitation at project cost. These are listed in Annexure 1.
- (xii) **Some other additional provisions of the packages-** All persons/family shall be given preferential right of allotment of free shares of the projects particularly of the companies, whenever such shares are issued to the public. The amount of free shares and shares at discounts to be allotted to various

categories of fully and partially affected family, may be decided by the concerned project authorities/companies in consultation with State Government.

- (xiii) **Upward revision of RR amounts as per CPI-** Wherever a fixed amount has been mentioned as a part of RR packages, it shall be subjected to automatic upward revision calculated on the basis of increase in the Consumer Price Index over and above the base price on 31<sup>st</sup> March, 1998.
- (xiv) **Multiple displacement** - All benefits to persons and families, if further displaced within a period of 20 years, shall be doubled. Responsibility should be fixed and penal action taken against officials if their neglect has led to the avoidable gross suffering caused by multiple displacement.
- (xv) **Persons not eligible** - Persons satisfying any of the following criterion will not be eligible for RR benefits, as with the amount of compensation they would be capable to organise their rehabilitation and acquire means of reasonable livelihood:-
  - a. Income tax payees and their families;
  - b. Absentee landlords i.e. non-resident holders of agricultural land holding more than 2 standard hectares;
  - c. Persons/families affected/displaced from the urban areas and awarded Rs. 5 lakh as compensation or persons/families affected/displaced from rural areas and awarded a compensation of Rs. 3 lakh or more;
  - d. Persons/families who are partially affected but even after acquisition of land and properties would be having an income 3 times above the B.P.L. level of income.

However, all the aforesaid four categories of persons/families shall be entitled to payment for allocation of specified quantum of homestead land in urban/rural areas.

## **E. CHANGES IN THE LAND ACQUISITION ACT**

1. The above policy would however require full legal support and conformity with a vastly amended Land Acquisition Act. The major problems from a justice and human rights perspective with the Land Acquisition Act are the following :-
  - (i) The LA Act is a 19th century colonial law, incongruous in democratic polity.
  - (ii) The LA Act does not defend the rights of the PAP, but rather facilitates the state acting in alleged 'public interest'.
  - (iii) 'Public interest' is usually not defined, and cannot be challenged legally once declared by the state.
  - (iv) The law as it exists presumes that displacement is inevitable, and at best compensates the deemed monetary value of property to which the PAP holds legal rights.

- (v) The law does not compensate loss of livelihood, loss of shelter, loss of habitat, loss of cultural resources, loss of access to natural resources, and loss of access to basic amenities.
  - (vi) The Act has an 'Emergency' clause without adequate checks and balances that leaves it open to widespread misuse.
  - (vii) The acquired property is usually undervalued because the valuation is based on past sale deeds.
  - (viii) The LA Act is restricted to prescribing processes for involuntary acquisition, valuation and taking possession of private property by public authorities.
  - (ix) Other Acts incorporate similar provisions for property acquisition – these include laws governing petroleum, mining, railways and wildlife.
  - (x) The R & R policy lacks the force of law.
2. It is essential that the new rehabilitation policy is legally enforceable. Therefore, the Land Acquisition Act must also be amended thoroughly, to remove the problems listed above.

## **F. INSTITUTIONAL STRUCTURES**

1. There shall be set up, through an Act of Parliament, a National Rehabilitation Commission. This National Commission must have the statutory responsibility of assessing all projects (and activities, initiatives) that would displace people, and which are referred to it by central or state government. It will be empowered to be a grievance redressal and auditing mechanism for such projects. Details of this Commission are further outlined in Annexure 2.
2. The Commission would also have the power to impose sanctions on the requiring agency for lapses in the process of displacement and rehabilitation, including the imposition of monetary fines. The Commission can, if in their opinion the requiring agency or their designated agents are unfit to take up or complete the process of displacement and/or rehabilitation, nominate another agency of their choice to take up/complete the work at the cost of the requiring agency.
3. The Commission should be set up within three months of the tabling of this policy in Parliament and, pending the setting up of the commission, an interim committee should be set up immediately to look at the problems of displaced persons of ongoing projects. The experience of this interim committee should be fed into the process of formulating the detailed terms of reference for the commission.

## **G. SUMMING UP**

1. It is hoped that the draft Policy when adopted will achieve the following:-
  - (i) It will minimise displacement and prevent state-induced impoverishment of people on account of compulsory acquisition of land, and will search for non-displacing or least displacing alternatives to people displacing projects;
  - (ii) It will ensure that displaced and adversely affected families have a standard of living superior to the one before their displacement and, in any case, have an income above that prescribed as the poverty line;

- (iii) It will compulsorily provide agricultural land to all agricultural families in irrigation projects and for tribals in all projects;
  - (iv) It will address the special needs of the poorest, especially tribals, in the rehabilitation and resettlement measures by improving their skills and knowledge and thus their incomes on a sustainable basis; and
  - (v) It will ensure quick but peaceful acquisition and faster access to land required by large projects for faster economic development.
2. Clearly, these changes both in the Policy and law would be effective if accompanied by a change in the mindset of the implementing authorities. Therefore administrative mechanisms will have to be set up which translate the spirit of the intended Policy and legislation into action.
  3. State Governments would be required to create State level Departments/Directorates, and appoint designated officers for effective planning, implementation and monitoring of RR projects. The Collector of the District, being Land Acquisition Authority, would discharge a very special responsibility in the whole process of resettlement and rehabilitation. The project authorities should create a RR Cell or if the project is of bigger size, appoint a RR authority with requisite financial powers, technical staff to have effective liaison with district authorities in acquiring land, resettling the displaced persons, training, construction of houses, jobs, working sheds, roads, other infrastructures and arrange comprehensive rehabilitation.
  4. As it is absolutely necessary to have an effective participation, cooperation and involvement of NGOs, social activists and local affected people in preparing and executing, it has been recommended that a District Level Implementation and Monitoring Board shall be constituted for the aforesaid purpose. Similarly, a State Level Implementation and Monitoring Board as well as a National Level Implementation and Monitoring Board may also come into existence. PAFs, NGOs and social activists will be represented on these Boards. This will enable the affected communities to assess and react in an informed way about the policy and all other aspects of the project, including ecological impact and the rehabilitation package, and thus ensure their full participation.
  5. While the policy deals with what must be given to those who are displaced, both project authorities and local authorities must consider follow up on long term issues. For this, data needs to be systematically collated on what actually happens to people who are displaced. This would be important for assessing the success of a policy, and for protecting people from sinking further into poverty, by using strategies of intervention even before it happens - what may be termed 'responsible intervention'. Data must also be constantly gathered of those who get edged out of the RR scene even while the process is on, whatever the reason (e.g., where people migrate out because they are not able to cope with the process of displacement, or even where they use displacement as an opportunity to change their lives). Follow up must be a very important part of preventing impoverishment as well as for availing of the accountability of implementing agencies, and assessing the success or failure of the new RR Policy.

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**REHABILITATION PACKAGE**

**Infrastructural Facilities**

1. For *en-masse* resettlement of populations, the following infrastructural facilities and basic minimum amenities are to be provided at the cost of requisitioning authority to ensure that the resettled population in the new village or colony can secure for themselves a reasonable standard of community life and can attempt to minimise the trauma involved in displacement. The new resettlement site must be reasonably habitable or be made reasonably habitable, and the villages or colonies established in new sites should be well planned in all aspects. A reasonably habitable and planned settlement would have, as a minimum, the following facilities and resources, as appropriate:
2. Roads within the resettled villages and an all weather road link to the nearest *pucca* road, passages and easement rights for all the resettled families be adequately arranged.
3. Proper drainage as well as sanitation plans executed before physical resettlement.
4. One or more assured sources of safe drinking water for each 25 families settled in a pocket has to be ensured, capable of yielding enough water to meet the demand of at least six litres per capita per day (lpcd) of safe drinking water and 40 lpcd of water for other purposes
5. Drinking water for cattle through a pond/ borewell/ well with a trough;
6. Grazing land as per proportion acceptable in the state
7. Pattas for abadi plots and recognition as a revenue village or a basti with a panchayat/ local self-government committee;
8. Necessary plantation of inhabited areas must be taken up under social forestry or agro-forestry schemes financed by various Ministries of the Government and environmental aspects of the new rehabilitation site duly taken care of;
9. A reasonable number of Fair Price shops must be set up;
10. Panchayat Ghars, as appropriate, must be established in each newly settled village/ basti;
11. Efforts must be taken to set up one Primary Agricultural Co-operative Credit Society with facility for selling essential consumer articles in every resettled village;
12. Village level Post Offices, as appropriate, with facilities for opening saving accounts must be set up;
13. Appropriate seed-cum-fertilizer storages must be set up;

14. Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some government scheme or special assistance;
15. Institutional arrangements for training under the TRYSEM, easy access to financial institutions for availing of financial assistance from the IRDP or any other government or bankable schemes;
16. Panchayati Raj Institutions (PRIs) must be immediately brought under operation in the newly settled villages/colonies above (Institutions such as schools, supplemental nutrition and health centres and community centres must be controlled and managed through some local organisation which either already exists or is newly formed, like the gram sabha or gram panchayat, or a mahila mandal);
17. All resettlement families living below poverty line receiving land in the resettled area for agricultural purpose shall also get free supply of seeds and irrigation from any public source for cultivation of suitable crops free of cost for the first year, and on loan basis for subsequent two years;
18. All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/urban localities;
19. Burial and/or cremation ground, depending on the caste- communities at the site and their practices;
20. Facilities for sanitation, including individual toilet points;
21. Individual single electric connections (or connection through non-conventional sources of energy like solar energy), for each household and for public lighting;
22. Child and mother supplemental nutritional services;
23. Pre-School and primary school;
24. Sub health centre within two kilometre range;
25. Primary Health Centre for each group of 20,000 population;
26. Playground for children;
27. One community centre for every 500 families;
28. Places of worship and chowpal/ tree platform for every 50 families for community assembly, of numbers and dimensions consonant with the affected area;
29. Separate land must be earmarked for traditional tribal institutions;
30. Grazing ground and nistaar land for food and fodder, especially in the case of biomass dependent communities;

31. The forest dweller families must be provided, where possible, with their traditional rights on non-timber forest produce and common property resources, if available close to the new place of settlement and, in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood;
32. The beneficiaries of resettled areas, irrespective of caste, creed, religion or economic status, must be allowed to construct for themselves all other facilities essential for community life by taking up suitable projects for which finances are available from governmental schemes. In addition, members of a resettled family may be encouraged to undertake suitable self employment schemes for which finances are available under government and/or any bankable scheme;
33. Appropriate security arrangements must be provided for the settlement, if needed.

### **Agricultural Land**

34. Any displaced person/family engaged primarily in agricultural work, either as worker, tenant or owner with or without legal title, subject to those declared ineligible under the policy, must be allotted agricultural land of two standard hectares, if he or she exercises such an option. The title rights will be non-alienable.

*Explanation 1 : One standard hectare shall mean one hectare of agricultural land irrigated out of any public irrigation scheme, 1.25 hectare of agricultural land irrigated/ irrigable from any private source/private or personal irrigation project, 1.5 hectare of agricultural land if the land is non-irrigated and non-irrigable but duly rain-fed, 2 hectares if the land allotted is cultivable but non- irrigable plain land and 3 hectares if the land offered is wasteland, hilly land, forest land, dry land in arid zone which require land development works for initiation of cultivation, but is capable of being made cultivable.*

*Explanation 2 : Every major male adult member, dependent upon the landholding, jointly or separately, and adult female member when unmarried, separated, widowed or divorced, would be considered as a separate family unit for all purposes of land allotment.*

35. **Allotment of irrigated land** : Whether landless or landholding PAP will have the first right to the land in the command. To make such land available, the requiring authority would acquire up to 50 percent of land in excess of 2 standard hectares of each land holder benefiting from the new command. Consolidation of holdings would have to be undertaken, in such a way as to ensure that PAPs from a village are allotted land in close proximity. In case the PAP agriculturist chooses to be allotted land outside the command area, this option must be respected subject to availability, and the cost of land development and irrigation of irrigable land allotted under the scheme would be borne by the requiring authority. Agricultural land for rehabilitation must be allotted in the joint name of husband and wife except in the case of single parent households, or unmarried adult individuals.
36. It may be stressed that irrigated or at least irrigable land must be the rule, and other categories only the exception where irrigated or irrigable land is impossible, the



requiring agency or authority shall bear the cost of organising irrigation in the allotted land. A specific contract must be signed by requiring agencies or authorities with each individual family or groups to provide the same within the prescribed period. The allottee of land in the resettled area shall be provided with proper rights and title on land, free from all encumbrances, following the land demarcation and allotment procedure as per the Land Revenue Code.

37. Obligation of other requiring agencies and authorities to bear the cost of development of culturable wasteland : If land allotted is wasteland, undulated, hilly, rocky, degraded, cost for improvement, development, reclamation of the land including construction of contour bunds or other watershed development schemes shall be borne by the project, and implemented within a period not exceeding two years from the date of allotment of such land, again based on a specific contract.
38. **Allotment of land to displaced allottees of government land** :- The recipients of the government agricultural land or Gram Sabha agricultural land, if displaced, shall be entitled to the same rights as a land-owner, even if such allottee did not have physical possession, appropriate record or document to prove such possession.
39. Requiring agency to bear stamp duty and other fees :- The cost of registration, stamp duty and other fees, if any, for providing legal documents on land to the allottees shall be borne by the requiring agency.
40. Payment of cost for initial cultivation of allotted land: - The requiring agency shall provide cost of ploughing, seeds, and fertilisers in the first year of cultivation of the allotted land, In the second and third year, cost of cultivation must be paid to such allottee of land on the basis of loan from the requiring agency recoverable within next five years on the basis of single installment per annum and free from any interest on the outstanding loan. Provided that the land which requires development in order to become cultivable, the assistance grant must continue until the development work is in progress. In all of these, cash payment must be kept to the minimum. Service centres/guilds must be established, wherever possible.
41. **Non-titled cultivators on forest lands**:- Forest dwellers, cultivating forest lands since any date prior to 2 October 1980, shall be considered as owners of such land for purposes of compensation for such land and allotment of land in lieu of land.
42. **Other encroachers**: - All encroachers of Government land for a period of five years or more before the date of acquisition of land, who are otherwise landless or marginal farmers, primarily dependent on cultivation for their livelihoods, shall be treated as owners of the land for the purpose of resettlement and rehabilitation. They shall also be entitled to allotment of land in lieu of the encroached land surrendered by them.

### **Employment Opportunities**

43. At least one person from every project affected family will be given employment by the project.
44. In the first place, all unskilled and semi-skilled direct employment in the project must always go to a PAP with a mandatory preference, as long as any such positions are

available for employment. Those with appropriate qualifications must also be given first priority for skilled positions. A priority list of eligible PAPs must be prepared and published along with criterion and procedure for selection, and objections heard before these are finalised by the District Collector. The priority list must begin with those who are most vulnerable, viz. landless labourers and artisans who have lost their livelihood. After that, landholders will be listed on a descending scale, with a lower priority for those with larger holdings. In recruitment to regular jobs in the project preference shall be given to those losing their source of livelihood, residents of the zone, of the district and of the state in that order.

45. Many projects, including public sector units in the past, have attempted to evade this responsibility by giving even many such on-going unskilled or semiskilled tasks (eg. horticulture) to contractors, which could adequately be implemented by PAPs. This must not be permitted as long as there are any eligible PAPs seeking employment.
46. A second problem frequently encountered is that PAPs are rejected because they are said to lack the skills required. Since all such projects have long gestation periods, therefore the project with the assistance for local DRDAs and DUDAs and the state government must systematically ensure full literacy as well as the creation of necessary skills to render the PAPs eligible for employment for semi-skilled positions, and for those with sufficient educational qualifications for skilled positions. Even those private enterprises which benefit from the project would be charged in the same manner with responsibility for providing skills and jobs to such people. This systematic skill development is primarily the responsibility of the project, with assistance where available from DRDAs and DUDAs.
47. For this to be operationalised, from the conceptualisation of the project plan itself, the government and the requiring agencies must plan multidimensional literacy, educational and training programmes and institutions for the people likely to be affected. The training must focus also on developing such traditional occupations/skills which can be carried to, and useful in, the areas of resettlement. New skills for new occupations in the resettlement areas must be the core of the effort. The entire objective would be to enable the project-affected people to have preferential access to the employment opportunities likely to be generated by the project.
48. The entire programme must be planned with high professionalism well in advance, and must be based upon prior studies of the existing skills, experience, training, competence and aptitudes of the people likely to be affected so that they can easily switch over or be absorbed in new employment. Even after displacement and resettlement, there must be major efforts to run training programmes to provide modern skills to the resettled people to ready them for their new employment. This training programme is not meant merely for preparing for jobs or services, but also for self-employment. Provision of casual and manual wage employment shall not be considered as an alternate source of livelihood or employment in the case of affected persons. Moreover, all such employment shall be co-operativised so as to instill a sense of dignity amongst the participants. Accordingly, all possible tasks in the project will be assigned to cooperatives or groups (even unregistered) of workers, which at present are being generally executed through contractors and middlemen.

49. In all mining projects, preference in grant of lease etc., will be given to corporate bodies comprising (i) the *gram sabhas* of the likely zone of influence; (ii) persons owning mineral bearing lands; (iii) workers; and (iv) entrepreneurs providing capital and technical know how. The share of concerned *gram sabhas* in each shall not be less than fifty percent. The requiring agencies will also prepare a broad outline of a perspective plan reclamation of the mining areas, and for land use and development after the mining operations are over. All such lands after development will belong to the community comprising the concerned *gram sabhas*. The same must be assigned to the erstwhile land owners or landless labourers, subject to the condition that the economic activity thereon will be exclusively through personal labour of the assignee and his family and that the land shall not be transferable except through inheritance. A detailed scheme on the above lines will be prepared by the requiring agencies in consultation with the *gram sabhas* at least two years in advance of the closure of a mine area or any part thereof.

### **Allotment of Shares**

50. Allotment of shares from the project will be made according to the recommendations laid down by the Bhuria Committee Report. As per Bhuria Committee Report, 50 % of the shares of the mining and other industries should go to the community, 10% to the people who are directly affected and 10% to the workers.

### **One Time Grant**

51. A one-time rehabilitation grant for loss of livelihood will be provided to every adult member of the eligible displaced family, equivalent to 750 days of minimum wages admissible for unskilled workers. This is provided to cover a gestation period of around three years to enable the family to establish a new livelihood. This amount will be placed in a bank account in fixed deposit in the joint name of male and female heads of household. The interest may be freely used for consumption purposes, but the capital can only be used for purchase of productive assets or in other ways connected with the establishment of secure livelihoods. This will be ensured by the Collector or any NOO nominated by the Collector for this purpose, who would be a joint signatory (along with male and female heads of families) of the account.

### **Homesteads**

52. Subject to the eligibility criteria prescribed in the Policy, all displaced families shall be provided with the following benefits of resettlement and rehabilitation packages :-
53. The rehabilitation package will include allotment of homestead land of the quantum specified, as well as constructed dwelling of such standard and with such number of rooms as has been specified separately for rural and urban households, as per stipulations provided below. In addition, allotment of funds for construction of cattle-sheds, transportation cost for shifting of building materials, persons, and their belongings including cattle is to be provided by the requiring agencies, by such number of trips as must be mutually decided by the RR authorities in consultation with individual families. Those PAPs who are given the land for land option, but voluntarily do not opt for land, will be eligible to opt for assistance available to displaced persons from urban areas.

54. Allotment of homestead land in rural areas: - All eligible displaced families from the rural areas shall be settled in areas selected by the PAP from among a range of real choices (at least three), including sites as close as possible to the place of displacement, as well as sites as close as possible to new livelihoods such as the command area or new factory and the new township. If such families are settled in the rural areas, they shall be allotted a homestead land, which must not be less than the homestead land acquired, submerged or otherwise lost on account of the project, subject to a minimum of 150 sq. mtrs.
55. Allotment of constructed houses and standard/floor area thereof :- In addition to allotment of homestead land each family settled in a rural area shall be provided with a constructed house of the standard prescribed under the Indira Aawas Yojana (IAY) with one living room for the nucleus family of husband, wife and two minor children; but for every two additional adult members living in such family one additional dwelling room of at least 10'x10' floor area is to be added to such constructed house, subject to a maximum number of three additional rooms per family. If the displaced families are willing to and capable of getting their houses constructed, they are to be given financial assistance equivalent to the rate prescribed in IAY, based on the replacement value at the market rates for the house acquired. Such families may, however, on their own, construct additional rooms or make necessary extension of the constructed houses out of the funds received as compensation as well as by using building materials allowed to be transported at the cost provided by the requiring agencies.
56. Allotment of funds for construction of cattle-sheds: - The requiring agencies shall provide necessary financial assistance as may be required for construction of cattle-sheds or poultry farms in the place of their resettlement of the same size and standard as was owned by any displaced family. The exact quantum of amount shall be decided for each individual family separately on the basis of number of cattle or birds owned and transported to the new place of settlement.
57. Allotment of homestead land in urban areas :- For allotment of homestead in urban centre a family must be allotted homestead land to the extent acquired and up to a minimum of 50 sq. mtrs. and a maximum of 150 sq. mtrs. However, the number of rooms to be constructed for a single family or a joint family shall be determined on the basis of total number of adult members in the family. At least one living room for the nucleus family of husband, wife and two minor children; but for every two additional adult members living in such family one additional dwelling room of at least 10'x10' floor area must be added to such constructed house, subject to a maximum number of two additional rooms per family. No allotment of constructed houses in the rural areas. If the displaced family is willing to construct their house, financial assistant given them should be equivalent to rate prescribed in IAY of equivalent to the replacement value whichever is higher.
58. Independent plot for every adult of the family, preferable readymade construction avoided. Allotment of homestead land to homeless families;- No displaced family shall be left shelterless in the area of their resettlement. A displaced family, which had a dwelling house on unauthorised land, or a *kuchha* house on authorised land, or did not have either authorised homestead or appropriate dwelling house, shall be entitled to

allotment of the minimum homestead land (i.e. 50 sq. mtrs in the urban area or 150 sq. mtrs in the rural areas) and constructed dwelling house of such standard and with such number of rooms as separately prescribed for resettlement of various sizes of displaced families to be resettled in the rural as well as urban habitations.

59. Construction cost of new houses to be borne by requiring agencies:- The construction cost to be borne by the requiring agencies, in the form of construction grant, shall not be less than the amount specified from time to time for construction of IAY houses, if such houses are constructed in the rural areas. As far as possible, cash payment must be avoided, and substituted by provision of materials/supplies through contracted sellers. For construction of houses in the urban areas, the amount to be given as construction grant shall be 50 per cent more than what is allocable for construction of houses in the rural areas in the same tehsil. An option is to provide the replacement value of the house acquisitioned. Limitation to adjustment of the cost of construction of dwelling housing against compensation awarded: - The cost of construction of the dwelling houses shall not be adjusted from the compensation payable to a B.P.L. family.

### **Self-employed Persons**

60. For all self-employed persons in the project-affected areas who can transfer their self-employment to the new area, all the incentive schemes, subsidies, material and financial assistance on the basis of priority, would be made available so as to enable them to resettle in the new area. It is recognised here that some small agriculturists or landless workers are also self-employed, therefore for purposes of this Section, only those persons will be regarded as self-employed who derive more than 66 per cent of their family income from this source. Also in order to exclude large traders who would not require special consideration and assistance, the assistance mentioned in this Section would not be available to self-employed persons with a capitalised value of trade and business which is 25 lakh rupees or more at 1998 prices.
61. In the cases of self- employed persons who cannot or do not wish to transfer their self-employment to the new area, they would be provided with opportunities for similar or alternative self-employment in the new area, and with similar facilities in the form of incentives, subsidies, material and financial assistance. DRDAs, District Panchayats etc. must be given additional grants for various relevant schemes, so that they do not have to eat into the rightful quota of the host communities and conflict is avoided. If it is not possible to do so, they must be paid compensation on the basis of the capitalised value of their trade or business. This will be calculated by the Collector on the basis of a speaking order which would be appealable. They must also be provided with jobs, as indicated below, subject to the willingness of the PAP.

### **Allotment of constructed shops or working sheds**

62. In addition to what is admissible to all the displaced families under this policy, all nonagricultural displaced families, including artisans, shop-keepers, small traders, etc. shall be provided with necessary assistance to resume the traditional/family trade, occupation, vocation and productive activities in their new place of settlement. The allotment would be of a constructed shop or working shed along with the land required for such construction to resume trade. The allottee would also be given transport cost for shifting the goods, materials, moveable properties to the place of resettlement. An

artisan, like a potter, blacksmith, carpenter, metal-worker, weaver, shoe-maker, etc. would also be given constructed sheds along with necessary land for resuming his or her productive activities. In case a shop owner has rented out his or her shop or run it through paid employees, an equitable RR Policy which centres around restoring livelihoods would give separate allotments of shops in the new township to the former shop owner and tenant/employee. This will also be applicable to urban areas.

### **Interim financial assistance**

63. In case of displacement preceding the allotment of constructed sheds and land, all resident adult members of the family of displaced artisans shop keepers, small-traders etc. shall be given a monthly subsistence allowance of not less than 25 days minimum wages, for each adult member of the family and for a period of six months after the constructed shed and transportation allowance are availed to by such a displaced family of artisans. The district authorities and requiring body are also responsible to actively assist with regard to improvements in technology, markets, access to credit and raw materials etc. Displacement of self-employed persons is permitted only where an alternative sustainable source of livelihood is established at least one year prior to the displacement.

### **Tribals**

64. It is empirically established that tribals bear a highly disproportionate burden of displacement. Because of their especial vulnerability when uprooted from their traditional habitats. Therefore, to the maximum extent possible large scale projects in tribal areas must be reconsidered carefully as to whether they can be located elsewhere so as to avoid or at least minimise tribal displacement. The first policy option should be an option that would save adivasis from displacement and alienate them from their lands and livelihood. The next preference should be a technology and project with minimum displacement, which should be accepted even if the costs are greater and the benefits are less than the greater displacement option.
65. It is common experience that displaced tribal communities are not able to settle and strike roots in regions that are very different socio-culturally, and with different resource-base and social institutions from their original habitat. Hence, whenever a project displaces such communities, they must preferably be resettled in a zone adjacent to the affected area, consonant with the socio-cultural, ecological, linguistic and economic characteristics of the community. All adivasi communities must be rehabilitated strictly in compliance with ILO 107 convention, and in strict compliance with the policy of 'prior informed consent'. Efforts must be made to ensure that all tribal families of the ousted villages are resettled together in a particular area, to the extent possible. The minimum unit for relocation must be a hamlet or a clan. In no case must such tribal families be so segregated in providing settlement with house-sites, that they lose the contact within their linguistic group and ethnic group, unless any of such family had expressed its willingness/no objection in writing, to such segregated rehabilitation.
66. For settlement of tribal families in a new locality, common property land for religious and community gathering must be allotted free of cost. Prior to the acquisition of land for any project in any tribal area, all land rights due but not settled will be settled

through a special drive ending before land acquisition commences. An inquiry must be made by the competent revenue authorities in collaboration with reputed voluntary organisations to determine whether any tribal lands have been transferred in violation of the law on the subject. Urgent measures must be taken to cancel such transfers and restore the right and title of the tribals on their alienated land, before acquisition proceedings are started, so that the tribal families are not deprived of their legal rights and benefits of allotment of fresh land.

67. Measures must also be taken to record the rights of tribals in land allotted to them. All forest land under occupation of the tribal families before 1990 shall be deemed for purposes of compensation and RR to have been allotted or owned by the concerned tribal families, and while dispossessing from such land such families shall be treated as par with land-owners with legal title (with joint ownership of husband and wife). This will ensure that the compensation and rehabilitation package is made available also to such tribals who occupied forest lands in the past, but were unable to secure legal rights.
68. The displaced tribal families shall also be compensated for loss of their customary rights/usage on forest produce, fish in case the new site does not provide for such gathering of such forest produces. Such compensation must be calculated at 10 times the minimum wages which a tribal would have earned at the rates fixed by the respective State Government during one single working season of 45 days, i.e. equivalent to 450 days minimum agricultural wages, in addition to normal packages like one-time rehabilitation grant for loss of livelihood. This must however be treated only as an interim measure. Project and state government authorities must ensure within 5 years of the displacement, the development of alternate fuel, fodder and NTFP resources on non forest lands sufficient to meet the needs of the relocated tribal community.

#### **Persons Not Adequately Rehabilitated in Earlier Projects**

69. In the majority of projects executed since Independence, resettlement and rehabilitation were not done systematically to enable displaced and affected people to regain their livelihoods and rebuild their lives. This has dispersed the displaced and affected people to a wider geographical area, and empirical studies have established that the trauma of their destitution has left them living in enhanced poverty and in several cases in stark destitution. These disempowered people, pauperised by the development process itself, must be provided even belatedly with rehabilitation benefits to enable them to regain and if possible improve upon their existing livelihoods. This must be in the nature of a national commitment.
70. This Rehabilitation policy provides for tracing and enumeration of the people displaced and affected by projects since Independence. For displacement between 1947 and 1995, the state governments, with the assistance of reputed academic institutions and NGOs, must undertake this exercise, especially an assessment of their shelter and livelihood needs. It is recognised that especially for older projects, the tracing of displaced persons can be highly daunting task, but it must be pursued with commitment and will to the extent feasible.

71. The central government, on the basis of such studies, would assist the state governments to enable the older PAPs to satisfy their needs, mainly through special allotments under existing governmental programmes: for provision of houseplots and title deeds, construction or repair of house through IAY and the National Slum Development Programme, acquiring employable skills and initiation of self-employment activities through TRYSEM, IRDP, PMRY, Swarn Jayanti Shahri Rozgar Yojana, and other schemes. The displaced/affected women could be facilitated to enhance their income earning potential through resources from programmes like DWCRA, and financial institutions. Such assistance must be based on special additional allocations, and should not be at the expense of the share of the host community.
72. In those cases where, in the absence of a satisfactory alternative acceptable to the people or the person concerned, they may have changed their habitation and established a new one on their own; or a person after losing her or his resource base may have occupied a piece of land and may be subsisting on the same through family labour, and not hired labourers, no coercive process shall be instituted against the people under any law whatsoever. The new habitation shall be deemed to have acquired the status of a regular *abadi* after lapse of five years irrespective of the status of the land, private, common, community, or revenue, on which it is situated.
73. In case of private lands the persons, interested shall be eligible for compensation as per the provision of the Land Acquisition Act. In the case of forest lands, special cases would be made for exemption under the Forest Conservation Act. For those PAPs displaced in the last ten years, or currently under displacement, surveys would be conducted (such surveys already exist in several places) of the kind mentioned in paragraph 41 by the requiring agencies themselves, with the assistance of reputed NGOs and academic institutions. It would be the legally enforceable duty of the government, jointly with the requiring agencies, to ensure that the identified persons receive the full complement of benefits as stipulated in this policy.

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**NATIONAL REHABILITATION COMMISSION**

1. A National Rehabilitation Commission (NRC) shall be set up by an Act of Parliament. The NRC shall consist of : One Chairperson, 4 Deputy Chairpersons (representing four regional clusterings), and Members. Their term shall be for a period of 5 years. The NRC shall, for projects referred to it by government,
  - (i) verify the necessity of displacement, and the extent of displacement that is likely to occur;
  - (ii) assess each referred project that involves displacement to ensure it adopts the least displacing alternative;
  - (iii) ascertain that the rehabilitation policy is capable of being implemented, for eg., by verification that, where the policy of allocation of land as rehabilitation is recommended, land for such rehabilitation is available.

*Explanation :* Wherever the term ‘project’ is used in this document, it would include other initiatives and activities that result in displacement.

2. The project authority in every project that is likely to result in displacement shall draw up a plan for giving effect to the Rehabilitation Policy that is extant. Where the Commission proposes an improved plan of rehabilitation, the project authority shall draw up such improved plan. Project authorities shall submit the proposed plan of rehabilitation to the NRC. The NRC shall act as set out in ‘A’ above, and give its recommendations to government and this report shall be made public.
3. The NRC shall periodically review the implementation of the rehabilitation policy.

*Explanation:* The term ‘project authority’ includes the person-in-charge of other initiatives or activities that result in displacement.

4. The NRC may act *suo motu*. The NRC shall act on the complaint of any person displaced by the project. Movements or collectives of persons working with the displaced, or NGOs, shall have the right to represent before, and be heard by, the NRC.
5. The NRC shall ensure that the right to be heard of the project authorities, the community facing displacement and any other person interested in the proceedings be respected.
6. The NRC shall monitor that those falling within the zone of displacement are given information at all stages of the project are consulted, and their concurrence taken, in accordance with the law and the rehabilitation policy or revised policy, if any, and that they are not displaced without the rehabilitation being carried out.
7. The NRC may, inter alia, direct restoration of land, habitat and livelihood where rehabilitation is not done as required by the rehabilitation policy, or improved policy. The NRC may also direct restoration of land in the event of more displacement than the minimum required for the purposes of the project.

8. Where project authorities default in the implementation of the Rehabilitation Policy, or improved policy, and displacement occurs, the NRC may impose sanctions on the project authorities, or launch a prosecution according to the law. Where the project authorities default in implementation of the rehabilitation policy, or improved policy, and restoration is not possible, the NRC may require an alternative agency to carry out the task of implementing the Rehabilitation Policy, or improved policy, and recover the costs of the exercise from the project authorities.
9. While rules are being framed relating to the functioning of the NRC, an additional authority may be appointed under s.3 of the Environment Protection Act, 1986, which will function according to the rules made under that Act.
10. An interim committee shall be set up pending the enactment of a law establishing the NRC, and the experience of the NRC could be drawn upon in setting out the terms of reference of the NRC.

### **Auditor General Of Displacement And Rehabilitation**

11. There shall be appointed an authority to be known as the Auditor General of Displacement and Rehabilitation (AG-DR), which will function under the Commission. The AG-DR shall
  - (i) maintain a record of the projects that result in displacement,
  - (ii) maintain a record of the policies of rehabilitation,
  - (iii) maintain a register of the rehabilitation work done,
  - (iv) maintain a record of unfinished rehabilitation,
  - (v) maintain a record of all lands that have been taken over resulting in displacement.
12. Every project authority shall furnish to the AG-DR information regarding (a) displacement that is likely to result from their projects, (b) the actual extent of displacement, (c) policies and schemes for displacement, (d) the lands taken over for the purposes of the project (e) the rehabilitation effected Every displaced person, family and community shall be entitled to furnish information of the displacement in a register maintained by the AG-DR. Every displaced person, family and community shall be entitled to the information maintained by the AG-DR.

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**PUBLIC PURPOSE AND PUBLIC INTEREST**

1. A project serves a public purpose when it is intended to be used by people and is open to the community/public at large. This however may not necessarily serve public interest for e.g. an amusement park may be open to the public but is it in public interest? Public interest will have to be determined not by who or how many have access to it but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used.
2. Present use of land may already be in public interest : It is important to emphasize that the land and everything attached to it that is acquired under the LA Act in the name of public interest is very often already serving a public interest. For instance forests acquired for a reservoir are also serving a public interest. The LA Act to the contrary treats everything acquired as if it were serving only the limited, individual private interests. The fact that the land proposed to be acquired may already be serving a public interest is significant and merits recognition in law. It also merits recognition in the cost-benefit analysis of the project in terms of for instance the marginal utility of the new public interest the project espouses vis-à-vis its present public interest value of the land use. In several countries (for instance the USA) there is an established practice that determination of public purpose/interest occurs through legislative action rather than executive discretion. And in all cases it is also subject to judicial review.
3. Securing the substance through process :
  - (i) Given the challenges of defining public purpose and particularly public interest it is also worth considering a processual rather than a substantive definition.
  - (ii) A project fulfils a public purpose and is in public interest when through a participatory and transparent process it is determined that:
  - (iii) The project will benefit the community as a body.
  - (iv) The project is directly related to functions of government.
  - (v) The project does not have as its primary objective the benefit of a private interest.
  - (vi) The benefits of the project option outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred, and
  - (vii) The public interest thus created outweighs any public interest value accruing from the existing use of the land and everything attached to it.

**SOCIAL APPRAISAL, PROJECT PLANNING AND PEOPLE'S PARTICIPATION**

1. The planning process must be initiated through a needs assessment involving a participatory process by which the needs of the community / society / area / are determined. This includes the prioritisation of the needs.
2. This is to be followed by a similar participatory process to identify the strategies available to meet a specific social and/or economic needs, the costs and impacts associated with these strategies, and to identify the optimum strategy within this. The selection of the optimum strategy will be guided by a set of criteria emphasising the economic, financial, social and environmental aspects. In particular, objective (1) – identification of the non-displacing or least-displacing options will be a critical criterion.
3. Once this optimum strategy has been identified, then the alternatives available within the strategy (for example, alternate locations, alternate designs, or alternate technologies) are assessed, in a participatory manner, for determining optimality and viability, and *public purpose/ public interest*.
4. At some point in this process, as the strategy / options start to take shape, the people/ groups of people likely to be affected/displaced will emerge. *As and when this group becomes known, without further loss of time, this group should have the decisive say in the decision making on the strategy / options.*
5. The public purpose / interest of the potential alternative must be established by a well defined informed and transparent process, which has provision for concerned citizens and potentially affected people to legally challenge the same. The establishment of the public purpose / interest of the project is a pre-requisite for moving ahead with the particular alternative.
6. The final decision to go ahead with a specific option is taken only on the basis of *Prior Informed Consent*.
7. The final decision to go ahead with the project will be conditional to the clear and demonstrated establishment of the *feasibility of the approved R&R plan* prepared as per the provisions of this policy given elsewhere.
8. This complete process has to be fully transparent with obligation to reach information to all concerned in a manner and form that is comprehensible to them, including, but not restricted to making all information available in local languages.
9. The promoter/developer will submit the proposal along with the pre-feasibility study indicating the needs and objectives of the project to the NRC. The study will specifically address the possible nature and extent of social and environmental impacts from the project and specify the steps being planned to address the same.

10. The NRC will immediately ensure that all potentially affected people in the area are informed.
11. The NRC will appoint a mutually agreed independent body (consultant) to facilitate a process of participatory comprehensive assessment of needs and monitor the development of a range of project options to meet those needs. The Consultant's report will specifically discuss the social and environmental risks from the project and the nature and costs of addressing them and their impact on the project's overall costs and benefits.
12. The comprehensive assessment of options will involve an examination of the benefits of each of the project option vis-à-vis the short and long term social and environmental costs with a view to minimizing displacement.
13. A participatory process to decide on the option that receives widest public acceptance involving the least social and environmental cost and benefits the largest number of people especially the marginalized communities and the project affected people: Public Hearing
14. Principles of participation: Participation involves (a) full prior information, (b) consultation and deliberation and (c) consent/veto.
15. Specifically, consultation with the concerned communities should be held in two stages, (I) seeking approval for public purpose, that is, for the project itself and (II) the approval for the rehabilitation plan with all details.
16. Stage (I) should take place at least one year before the acquisition begins for a major project and six months for other projects. A *public hearing* should be held at the level of each affected community and the project affected zone both,<sup>1</sup> at least three months after the following information is placed before them : records and maps, a report on assessment of various options with respective social, environmental and economic costs/ impacts and benefits, as also selection and justification for the project, and Maximum possible information pertaining to policy and plan for rehabilitation of PAPs.

### **Public Hearings**

17. Size of community for public hearing can be 500 families if social composition is mixed and 200 families if it is dalit or adivasi community.
18. Public hearing must be held by a panel consisting of a retired high court judge and 2 prominent citizens acceptable to both parties (PAP's & acquiring authority).
19. The acquiring authority should be present at the public hearing to address the objections, clarifications and suggestions raised by the PAP's. Discussion of objections, suggestions on options and other aspects of the project by PAPs and dialogue based on written rejoinder to the same by the project authorities should be held to reach a consensus.

20. After such hearing, the panel should try to evolve a consensus, failing which they should pass a 'reasoned order'. Such public hearing shall not debar the PAP's from taking legal recourse.
21. The quorum for this public hearing should not be less than 60% of all the PAP's.
22. The PAP's shall have the liberty to appoint counsel on their behalf.
23. For stage (II) of the consultation, the procedure of declaring project-affected zones and people and approving the rehabilitation plan, would consist of five steps:
  - (i) Declaration (at community level and also through general notification) of the intention to start the project;
  - (ii) Furnishing of detailed records and maps, and a comprehensive plan for resettlement and rehabilitation of all categories of PAPs, inviting objections and suggestions if any. The former should include a list of PAPs with their property and resources and expected impact on the same, and their entitlements;
  - (iii) Organizing a public hearing at the level of each affected community;
  - (iv) Consideration of objections and suggestions of the affected people and initiating a dialogue for finalization of the plan;
  - (v) Final declaration. *Such final declaration cannot debar the PAP's of any legal remedy.*

### **Planning and Implementation Processes**

24. As already stated earlier, wherever the people are not willing to shift, the fault is either in the package being offered or in the approach to the displaced communities. Alternatively, it could be because the implementation of resettlement and rehabilitation programmes is so unsatisfactory that the affected people do not feel confident of receiving what they have been promised. In any case, this must be recognised as a failure of the rehabilitation process.
25. The process of selecting rehabilitation sites and lands must involve the PAPs and their preferences must have the final say in selection. The plan of project formation and the R & R policy must be coterminous and concurrent. The entire expenditure related to R&R process should be part of the project cost. A full settlement of all rights of PAP's must be addressed as part of planning process.
26. The time frame for the displacement process should be sensitively determined and people given enough time to adjust to their new locations and life styles.
27. It should be a mandatory practice to allot land to the PAPs at least two years before they are to be displaced so that they can get used to cultivating this land even while they continue to live in their original homes.
28. Likewise, house-sites should be allocated in 'fully developed colonies' at least 1 year before relocation. This makes the process of displacement more gradual and humane.
29. In any case, all compensation must be paid at least one year before a person is displaced. Delays in the rehabilitation process and its various components can cause

major hardship. Time frames must, therefore, be finalised well in advance and adhered to.

30. Delays must be looked at very seriously and invite serious consequences for the functionaries responsible. If the R&R policy is not proceeding as per schedule, then work on the project should be immediately stopped. The 'politics of inevitability' has got to stop.
31. People affected by auxiliary projects associated with the main project must be also considered as PAP's. In fact, provisions for auxiliary projects must be incorporated as part of the main plan itself.
32. Even delays in finalising the policy related to rehabilitation and other aspects of projects, and delays in initiating the planning process, can seriously affect the well being of the affected people. These must also be done according to a pre-determined time frame that statutorily gives adequate time for the concerned persons to give inputs and intervene in the process of policy formulation and planning.
33. The Planning Process must be with the full participation of the PAPs and other concerned people and based on their informed participation. As already specified earlier, special panchayat status must be granted to resettlement sites (grouped together, if possible and necessary, depending on the size) at least for the first five years of resettlement, so that such planning becomes feasible
34. The provisions of this policy must have appropriate legal backing, so that not only the concerned agencies of the government but affected and interested citizens can ensure enforcement and legal intervention. Towards this end, the Land Acquisition Act of and other concerned acts should be suitably amended.
35. A detailed bench-mark survey (household and communities) by an independent (academic) agency must be completed at least one year before Section 4 Notification is issued. This must include listing of PAPs who were residing in the affected area, and deriving their livelihoods from the affected resource base at least one year prior to the date of notification. Six months before Section 4 Notification is issued, the survey must be completed and made public in understandable local language, both in writing and orally, at each panchayat, tehsil and district headquarters.
36. The PAPs must be given due opportunity to raise objections; and the hearing into the arguments must be completed before finalisation of the project. This process must be treated on par with the economic, financial and technical aspects of planning.
37. The benchmark survey must be conducted in the villages and not in the Tehsil or Taluka office i.e. the authorities should reach out to the PAP's and not the other way round.

### **Relocation Planning**

38. Communities should be relocated as an organic whole, and not fragmented in the process of relocation. Communities invariably kept together, after displacement, so that their social and cultural identities are safeguarded.

39. Communities should be relocated *in-situ* i.e. in similar agro-climatic and bio-geographic zones.
40. Indigenous people and forest dwellers must be relocated within an ecological niche that corresponds their original habitation. They must also be so relocated so as to ensure continued access to the forest and related resources.

#### **Land for land.**

41. The principle of 'land for land' must be followed scrupulously and each PAP in irrigation projects, and SC/ST PAPs in all projects, who lose land must be given at least one standard hectare of irrigated land. In irrigation projects, the principle of giving land to PAPs of dams in the command area should be adopted, as it not only gives those who have paid the major costs a part of the benefits, it also lessens the inequities between the upstream displaced persons and the downstream beneficiaries.
42. The PAP's should not be asked to acquire land for themselves through means of cash compensation. Prior to clearance the NRC must be assured of the physical availability of land for the project affected persons. The Agricultural land must be consolidated. Precaution should be taken to ensure that the rights and entitlements over common property resources are not in conflict with other communities in the vicinity.
43. The land for the project affected must be granted from government revenue land only or from purchases and must not be (a) common property resources, grazing lands or wastelands (b) ecologically sensitive. In case people are displaced in order to find land for project affected persons they will also be eligible for all the benefits of this policy.

#### **Institutional Mechanisms**

44. Once the rehabilitation plan has been approved by the requisite bodies and the project is cleared to proceed, each village gram sabha will elect a body, to be called the People's Rehabilitation Implementation and Monitoring Committee (PRIMC).
45. At least half the PRIMC's members must be women; adivasis, dalits, landless workers and other marginalised groups must be represented in proportion to their proportion of the population.
46. The PRIMC's functions and powers will be as follows: The PRIMC will monitor the implementation of the rehabilitation package for villagers from their area. This could include, for instance, verifying official surveys and allocation of compensation. The PRIMC will have the power to request documents, official responses or other information that it will require for its task.
47. Each PRIMC will also choose some of its members to be a Monitoring Cell for the purpose of the annual certification process (see below). The gram sabha will review the progress of implementation on a quarterly basis.



48. At the level of the project, two further bodies will be constituted: A Project PRIMC will be constituted and will consist of elected representatives from village level PRIMC's.
49. A Relief and Rehabilitation Implementation Board, consisting of senior officials from the departments concerned with implementing the rehabilitation package, will also be formed.
50. The Project PRIMC will monitor the work of the officials in the Implementation Board on a regular basis and will be granted the necessary legal powers to do so. The Project PRIMC will also form a Project Monitoring Committee for the purpose of annual certification.

### **Sequence of Clearances**

51. The NRC will be required to evaluate the project at three points during and after the implementation phase. *Financial and Resource Clearance:* The NRC will grant this clearance once the requiring agency demonstrates that it has received the requisite financial and resource guarantees for implementing the rehabilitation package.
52. *Relief and Rehabilitation Completion Certificate:* The NRC will grant this certificate once the implementation of the rehabilitation package is verified to be complete on the basis of the reports of the PRIMC's and other local information.
53. *Retrospective Evaluation:* The NRC will appoint evaluators to conduct an independent public evaluation of the rehabilitation package a number of years (to be specified) after the implementation is complete. The evaluation will cover whether the package has achieved the goals specified in this policy. Should the package have failed to do so, the civil and penal sanctions specified in this policy will be invoked against the public officials in question.
54. Should the project fail to receive any of these clearances, work on the project will be suspended until the required clearance is received.
55. *Certification Process :* On an annual basis, the following steps will be undertaken. The individual Monitoring Cells of the village PRIMC's, as well as the Project PRIMC, will certify whether the implementation of the rehabilitation project is satisfactory up to that point. The manner in which these certifications will be aggregated is to be determined.
56. The NRC will hold a public hearing into the status of the project. The reports of the PRIMC's will be part of the information discussed at this hearing.
57. The NRC will grant clearance only if all the PRIMC's certify that implementation is satisfactory and if no gram sabha has objected. Subject to this condition, the NRC will then decide whether or not to renew the clearance granted to the project on the basis of the opinions of the PRIMC's and the consent of the public hearing.
58. Should clearance not be granted, work on the project will be suspended until the above conditions are complied with.

## **Liabilities and Sanctions**

59. The concerned officials will be held personally liable in the event that the provisions of this policy or the agreed rehabilitation package are violated. This includes, among others, officials whose role is to assess needs, implement the package and monitor implementation. In case the acquisition is on behalf of a private party, that party will also be held liable.
60. The NRC will have the power to hear grievances against officials, pass orders requiring payment of restitution to victims of violations and recover the required amounts (as well as additional fines) from the officials concerned.
61. Failure to fulfill the requirements of this policy and/or the agreed implementation package will also attract penal sanctions as under existing laws for non-performance of official duties, particularly the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act, 1989. Any action taken on a project in violation of this policy will be illegal.
62. The Implementation Board will work under the supervision and control of the People's Rehabilitation Implementation Committee and will comprise of government officials legally responsible for the rehabilitation of the affected people.
63. While the government officials will be responsible for undertaking the major tasks of rehabilitation and the preparation of the resettlement sites, certain tasks will be done by the concerned officials jointly with the Gram Sabha or Ward such as identification of Project affected families, assessment of resources, properties, assets and livelihoods that will be affected, ascertainment and fixation of rates and identification of agricultural land, house sites and other resources required for rehabilitation and resettlement.
64. For public projects, the implementing Board in all cases will comprise of public officials who will be legally liable. For projects promoted by corporate and profit making bodies, the government will be legally liable.
65. In case where the Project is promoted by a corporate entity/profit making body, the work of Resettlement and Rehabilitation (R&R) of the project affected families of the project will be the joint responsibility of the corporate entity/profit making body and the government. The entire expenditure incurred on this account will be borne by the corporate entity/profit making body.
66. In all cases, the work of land acquisition, rate determination and determination of property rights will vest with the revenue authorities of the state and should not be alienated or transferred to corporate entities.
67. The Project PRIMC will be responsible for ongoing monitoring of the overall rehabilitation process of Project. The Gram Sabha along with the village level PRIMC will also undertake monitoring of the rehabilitation tasks and milestones on a quarterly basis or more often as they deem fit at the village level and report to the Project PRIMC.

68. The work of monitoring rehabilitation will be done by multiple bodies such as the Gram Sabha, the PRIMC, the Ministry of Environment and Forests and the National Rehabilitation Commission.
69. In order to ensure inter-institutional cohesion, the Project PRIMC People's Monitoring Committee will undertake an annual evaluation of the rehabilitation process with the assistance of the Gram Sabhas, and issue a certificate regarding the same to the National Rehabilitation Commission. This will form one of the bases of the annual clearance to be given to the Project by the National Rehabilitation Commission. Targets need to be set and implementation parameters put down. If these are not met, the clearance will be withheld.

### **Evaluation**

70. It will be required to undertake the evaluation of the rehabilitation and resettlement at various stages. The evaluation at all these stages will be based on the initial base-line survey of the affected area. In addition to the ongoing monitoring, and annual evaluations described above, there will be three other significant evaluation benchmarks for R&R of the Project. The first will be the *rehabilitation closure* of the project that will ensure that the project agency establish that agricultural land and all other resources required for R&R are available. This will have to be established before a clearance if given by the National Rehabilitation Commission.
71. The second benchmark or the rehabilitation completion certificate will be undertaken at the end of the rehabilitation process in order to ensure that all entitlements and provisions have been given to the affected population within the required time-frames and their rehabilitation completed. The actual work of production on the project or commercial operations can start only after the rehabilitation completion certificate is granted.
72. The third benchmark of the evaluation process will be a retrospective evaluation undertaken after a period of five years in order to evaluate policy and whether the affected population have actually benefited or been pauperised by the project.

### **Sequences and Rules**

73. Certain mandatory sequences and time-frames will have to be followed. The resettlement plan and package must have been agreed to and finalised with the participation of the PAPs (as described above) at least one or two years before the starting of any action for land acquisition or resettlement.
74. Identity cards must be distributed to the PAPs within three months of their identification to eliminate subsequent entry of unauthorised persons claiming the benefits of RR packages.
75. In no event, can there be any physical displacement without prior implementation of the rehabilitation package for the affected family, with regard to alternate livelihood and assets, including alternative agricultural land (where applicable), cash compensation (where applicable), and alternative dwelling accommodation with related infrastructure

- and amenities, as per the agreed rehabilitation package. Nor can the use of force be a mechanism for ensuring displacement or eviction.
76. The task of providing all the required resources and amenities shall be accomplished at least one year before the families are physically displaced from their traditional homesteads or one year before the resources becomes unusable or the property becomes uninhabitable, whichever is earlier.
  77. Facilities such as clean drinking water, pre-school and primary school facilities and basic health care facilities must be in position and fully functioning even if a small number of families are initially resettled. Access to both original and rehabilitation sites must be guaranteed for at least one year to facilitate the transition to the new habitat.
  78. The actual work of production on the project or commercial operations can start only after the rehabilitation completion certificate is granted as referred to above. Survey of PAF must be completed a year before enforcement of Section 4 of LA Act and a tentative rehabilitation plan and other relevant information will be publicized and made available to the affected people.
  79. No enforcement of Section 6 of the LA Act may be undertaken, unless joint survey with PAFs is completed, land records are updated, land rights settled, and alienated land restored.
  80. Land acquisition cannot be completed before the offer of suitable replacement land. Offer of land must precede the award of compensation under Section 12 of the Act.
  81. The community, not individuals or families, has to be the basic unit for resettlement. Community and kinship relationships (particularly in tribal areas) must be fully respected.
  82. Many communities in India have social and economic differences within them. In such communities, rehabilitation of all segments must be attempted, with a bias in favour of the more disadvantaged and vulnerable segments. Such resettlement must be comprehensive in the sense that the implementing agencies responsibility to ensure that the affected community does not end with mere rehabilitation. The community must be made partners in development. They must share equitably the fruits of the project that has displaced them.
  83. Except for major capital investments, development and welfare services in the affected areas must continue as normal, as long as families continue to live in those areas. In fact, the families likely to be affected should be given highest priority in all beneficiary-oriented programmes even in the affected areas.
  84. 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 (since the rest of the compensation can be for the sufferings borne) and cannot be transferred to another public or private interest without consent of the oustees.

### **Accountability and penalties**

85. Any violation of these provisions will imply an initial fine and award of damages to be recovered from the responsible public officials and representatives of the corporate body. This will be followed by punitive action treating this delay as a criminal liability under the Section 217 of the IPC and also under the concerned SC-ST Act.
86. Assessors, Promoters, Implementors and the Monitors will also be legally liable.
87. Concealing factual data or submission of false, misleading data/reports, decisions or recommendations would lead to the project being rejected. Approval, if granted earlier on the basis of false data, would also be revoked. Misleading and wrong information will cover the following: False information, False data Engineered reports, Concealing of factual data, False recommendations or decisions

### **Other Issues**

88. No recovery of dues by government or private creditors, for 2 years after displacement.
89. Emergency clause to be used only when public safety is involved.
90. Enable projects to take land on 99 year lease, by paying an annual lease rent of twice the gross annual produce.
91. Review Telegraph Act and other such Laws, and practices which prescribe procedures which are not in conformity with this Policy. For instance, the Telegraph Act enables the Electricity Board to erect poles on farm lands without giving them any compensation. Such laws need to be changed and made non-coercive and people-friendly.

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**PROCEDURE TO BE FOLLOWED FOR ACQUISITION OF LAND AND ARRANGEMENT  
FOR RR IN VTH SCHEDULE AREAS**

**(vide Section 4, clause (i) of the Provisions of the  
Panchayat (Extension of Scheduled Areas) Act, 1996)**

**PART - I**

**PROCEDURE TO BE FOLLOWED BY THE REQUIRING BODY FOR INITIATING LA  
PROPOSAL IN THE VTH SCHEDULE AREA**

- 1.1 All requiring bodies initiating any Land Acquisition proposal for acquiring any land in the Vth schedule area, shall require to enclose with their LA proposals, inter-alia, the following:-
- (i) Gram Panchayat-wise schedule of land proposed to be acquired, (separate sheet for separate Gram-Panchayat).
  - (ii) A separate letter of consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land, with or without modifications, as the case may be. Such letter of consent shall be specifically enclosed with the LA proposal, before sending it to appropriate authority or LA Collector. It is further clarified that such letter of consent may be obtained in the form of a written resolution of the Gram Sabha, containing the full text of the resolutions consenting with or without modification and the date on which such Gram Sabha meeting was held shall be duly referred in the consent letter.
  - (iii) In case, any of the Gram Sabha expressed its disagreement to the land acquisition proposal pertaining to any land falling within the jurisdiction of the concerned Gram Panchayat, through a resolution of that Gram Sabha, a statement of the requiring body containing date(s) of consultation(s) by the requiring body with the concerned Gram Panchayat and a copy of the resolution of the Gram Sabha showing the reasons for disagreement including alternative suggestions of the Gram Sabha, if any, shall be enclosed with the LA proposal.

**PART - II**

**PROCEDURE TO BE FOLLOWED BY THE LAND ACQUISITION AUTHORITIES,  
(COLLECTOR, LA COLLECTOR, LA OFFICER, AS THE CASE MAY BE)**

- 2.1 The collector shall, on receipt of any land acquisition proposal concerning any land falling within the Vth schedule areas, examine whether requisite letter(s) of consent of the concerned Gram Sabha(s) of the Panchayati Raj Institutions consenting to such acquisition proposal is/ are enclosed or not. In the absence of such letter of consent, Collector shall examine the statement(s) submitted by the requiring body regarding the date(s) of consultation(s) and the nature of objection(s) of the Gram Sabha to the proposed acquisition. The Collector shall, before issuance of any notice u/s 4, make a reference to the objecting Gram Panchayat concerned and arrange a joint meeting of the requiring body, land acquisition authorities and the concerned Gram Panchayat objecting to such acquisition and attempt, through such consultative meetings, to arrive at a consensus for selecting specified land agreed for acquisition.

Provided, however, that in the absence of any eventual non-cooperation or lack of response from the concerned Gram Panchayat/ Gram Sabha to hold such meetings or to arrive

- at any consensus within a period of two months from the date of making such a reference to such Gram Panchayat, the Collector may issue notice u/s 4 of the LA Act giving a copy of such notification to all the Gram Panchayat including those which objected to such acquisition inviting formal objections in writing, within the time-frame specified u/s 5-A of the Land Acquisition Act, 1894.
- 2.2 In addition to disposal of individual objections received against notification u/s 4, the Collector shall also hear the objections submitted by any Gram Panchayat concerned and dispose of such objections keeping a summary proceedings thereof.
- 2.3 In the event of the Collector agreeing to the genuineness of difficulties or validity of the grounds for objecting to the acquisition proposal projected by any Gram Panchayat through written resolution of the Gram Sabha, he shall make a reference to the appropriate Government giving his observations/ suggestions and recommendations relating to acquisition proposal and seek specific order of the appropriate Government to proceed further in this regard or order of the appropriate Govt. shall be treated as final.
- 2.4 In case, the Collector finds the objections raised by any Gram Panchayat to be frivolous or in case he can settle down the objections through negotiations or by partial amendment of the LA proposal acceptable by the RB, he may proceed for acquisition of land without further reference to the appropriate Government.

### **PART - III**

#### **PROCEDURE TO BE FOLLOWED BY RR AUTHORITIES/ PROJECT AUTHORITIES FOR ARRANGING RE-SETTLEMENT AND REHABILITATION IN LAND FALLING WITHIN VTH SCHEDULE AREA**

- 3.1 It shall be obligatory on the part of any RR authorities organizing re-settlement and rehabilitation of displaced families on any land falling within the Vth Schedule Areas, to follow the procedure mentioned below:-
- (i) In case such RR authorities require "acquisition of land" for such re-settlement and rehabilitation within the fifth schedule area, the procedures to be followed are as prescribed under Part I & II above.
  - (ii) In case such re-settlement and rehabilitation does not require Acquisition of land, but requires purchase of land under "willing seller/ willing buyer scheme" in any Vth schedule area, the consent of the Panchayati Raj institution to the proposed RR Plans should be obtained in the manner prescribed in Part I & II before taking up any RR Schemes. It is hereby clarified that such willing-seller-willing-buyer scheme shall strictly follow the legislations of the concerned States on restrictions to alienation of tribal land to the non-tribals. In the event of such consent not being available, the matter to be referred by the RR authorities/ project authorities or concerned NGOs by the RR to the Collector for initiating necessary steps for reconciliation.
  - (iii) To take up due steps for reconciliation, the Collector shall organize a meeting of the concerned parties i.e. objecting Panchayati Raj Institution, project authorities/ RR authorities, representatives of the people to be re-settled/ rehabilitated, NGOs etc. by giving formal notices in this regard and keeping the proceedings of such meetings for reconciliation.

Provided further that even if the re-settlement in the Vth Schedule Area is taken up by any department of the State Government or the Directorate

for RR or Commissioner/ Collector/ Tehsildar or any other revenue officer, the procedure for obtaining consent, if necessary, through consultative meetings with recorded notices, shall be necessary in the interest of harmonious re-settlement with cordial relations with the host community. In case of any unsettled differences even after initiatives taken up by the Collector for reconciliation, the Collector shall refer the matter to appropriate Government and the order of the appropriate Government shall be final in this matter.

#### **PART - IV**

#### **THE RESPONSIBILITY OF THE STATE GOVERNMENT FOR CO-ORDINATION AND MONITORING OF LA AND RR SCHEMES IN THE VTH SCHEDULE AREA**

- 4.1 It will be obligatory on the part of the Department of RR/ Directorate of RR and in the absence of such Directorate/ Department, the Revenue Department of the State Government, to monitor the progress of implementation of the LA proceedings as well as RR schemes in the Vth Schedule Area. Such monitoring should include keeping of a Register showing year-wise quantum of land acquired in the Vth Schedule Area for the purpose of re-settlement as well as for rehabilitation.
- 4.2 State Government may constitute an Inter-Ministerial Co-ordination Committee in this matter under the Chairmanship of the Principal Secretary Revenue, and members thereof being the Secretaries/ Principal Secretaries to the Departments of Panchayat, SC/ ST Welfare, Forest & Environment and RR (Rehabilitation), if there be any. The said State Level Co-ordination Committee may publish an annual report containing district-wise land acquired for public purpose as well as for RR in the Vth Schedule Areas and send the same to this Ministry including the Union Ministries of Forest & Environment, Social Justice and Empowerment.

#### **PROPOSED AMENDMENTS TO THE LAND ACQUISITION ACT**

The following are the **main amendments proposed** in this Act :-

1. Change the name to Land Acquisition and Rehabilitation Act.
2. This law would prescribe the minimum legal entitlements of PAPs listed in the R&R policy, and would override all laws, policies and administrative instructions that give lesser entitlements than those prescribed under this law.
3. The law should derive from Article 21 because the Right to Life implies the Right to means to sustain life, including livelihoods, shelter and habitat. The law may further derive legitimacy from relevant international covenants.
4. The law therefore would transform into one that principally defends the fundamental and other legal rights of the citizens, rather than one that facilitates the exercise of the eminent domain of the state.
5. The language of the law should be clear and unambiguous so as to make the entitlements transparent and accessible to PAPs.
6. The law must require the state to explain the following with reasons: what is the nature of public interest proposed; what are the financial, social and environmental costs and



benefits; why are less or non – displacing alternatives not technically or geographically available.

7. This and all other relevant information (discussed below) should be proactively shared with PAPs through a prescribed process and clear accountability including PRIs. The current procedure of announcements through publication in the gazette and local newspapers may not be adequate.
8. PAPs should have the legal right to challenge the public purpose and other declarations.
9. The detailed rehabilitation plan under the provisions of this Act should be spelt out, the community informed and objections invited before any decisions are made about the project.
10. Compensation should be for loss of livelihood, loss of shelter, loss of habitat, loss of cultural resources, loss of access to natural resources, and loss of access to basic amenities.
11. Compensation should be in the form of monthly payments to extend for at least ten years, and predominantly non-monetary and based on the informed choices of the PAP.
12. Compensation should be based not on market values but on replacement costs.
13. In irrigation projects, land for compensation should be acquired compulsorily and equitably from the command area of the same project.
14. Institutional mechanisms for oversight, monitoring and grievance redressal are to be prescribed in the law.
15. Individual contracts are to be signed (with possibly a bank guarantee) between the acquiring authority and each PAP, listing all their entitlements. This should be available as a public document.
16. Informed individual or community consent can be withdrawn in case of infringement of contract obligations by the authority.
17. The law must create personal duties and liabilities for public servants. Failure to fulfill these duties should invite personal penalties for these public servants. In addition, if the failures relate to persons belong to scheduled castes or tribes, the provisions of the Atrocities Act should automatically apply.
18. No state action for compulsory acquisition should contravene constitutional protection for STs under Schedules V and VI of the Constitution and laws preventing tribal land alienation.
19. Define public purpose as ‘public good’ which must include welfare of the affected people.
20. ‘Public good’ can never include acquiring land for private companies, or even for public sector units that are not producing public goods.

21. 'Public good' as well as why acquisition is necessary to achieve this alleged public good, should be explained, and can be challenged by affected people and others.
22. No land shall be acquired under the Act unless the process of land acquisition is accompanied with rehabilitation of affected people, according to this policy which should have the force of law.
23. 'Affected people' are to be defined as 'those who are either displaced or who lose 50 per cent or more of their assets or income'.
24. 'Rehabilitation' is defined as 'having been 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'.
25. The definition of 'persons having interest in land' in sec 9 of the Act should be amended, in lines with this policy to include sharecroppers, tenants and sub-tenants, encroachers, and attached agricultural workers.
26. The principle of market value as laid down in Section 23 (1) should be substituted by replacement value Replacement value – inclusive of both land and other habitat entitlements
27. There should be a public enquiry both at the stage of sec 5A as well as sec 9 of the Act.
28. The 'emergency clause', which gives the collector extraordinary powers to acquire land can only be invoked in the rarest of rare cases.
29. The Collector, while making public enquiry under Section 5(a) of the Act, shall satisfy himself that the least displacement option has been followed by the requiring body.
30. There should be no physical displacement unless full compensation has been disbursed, complete RR package has been fully implemented, and the rehabilitation site completed in all respects, at least one year before the displacement is planned.
31. The law must compensate people displaced from their homes or from their sources of livelihoods for the many types of deprivations and losses they tend to suffer, including:
  - (i) Deprivation of property-including land and everything attached to it (with water sources, wells and trees) and houses either owned, occupied with tenancy rights or in de facto possession;
  - (ii) Deprivation of economic, social and cultural opportunities, including but not restricted to means of livelihood, due to (i) stagnation of developmental activity soon after a project is proposed; (ii) loss of property; (iii) loss of access clientele; (iv) loss of jobs due to physical relocation; (v) loss of gainful employment due to loss of lands, fish, forests, etc; and (vi) loss of rights access to income-generating resources due to degradation of forests and other resources.
  - (iii) Deprivation of common property resources such as grazing lands, forests and rivers; sources of timber. Fuel wood and other non-timber forest produce.
  - (iv) Adverse impacts on both physical and mental health.

- (v) Loss of security especially for women, children and the aged.
  - (vi) Losses because of suspension of development/maintenance activities in affected areas.
  - (vii) Losses because of changes in property prices and of saleability of immovable property.
  - (viii) Loss of cultural heritage sites and monuments.
  - (ix) Loss of familiar social and geographical surrounds.
  - (x) Loss of preferred or familiar sources of livelihood k. Loss of markets.
  - (xi) Loss of social and political leadership.
  - (xii) Loss of communications and transport facilities.
  - (xiii) Loss of access to government schemes which were available or applicable.
  - (xiv) Trauma, uncertainties and insecurities
  - (xv) Impacts of social alienation from, and conflicts with, host communities.
  - (xvi) Adverse impacts on life and property due to project construction activities (like dust pollution, noise pollution, diseases, reservoir induced seismicity etc.).
  - (xvii) Adverse impacts of changes in climate.
32. While determining compensation, replacement value at the 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.
33. The rates must also be set by consulting with the Gram Sabha (in rural areas) and Ward Sabhas (urban areas) Also, paying of depreciated value is manifestly unfair for it often leaves the PAP without adequate means to replace a critical need. For example, if a poor person was paid only the depreciated value of his or her house, he or she would be unable to buy or build a new house and would become homeless. The person's house, however old or ramshackle it might be, is providing shelter. When it is forcefully acquired, it must be ensured that the compensation is enough to provide an alternate and equal shelter.
34. Also, not only should lost property and assets be compensated for, but lost livelihoods and lost opportunities should also be compensated for.
35. Communities must be adequately and appropriately compensated for common amenities and assets lost because of the project. Also, all those amenities and assets required for fulfilling basic needs must be provided. This is especially important in order to prevent conflicts with host communities, whose common resources would otherwise be under pressure from the PAPs.
36. Principle of land for land for tribals in all projects and for all agricultural families in the irrigation projects should be incorporated in the Act itself.
37. Minimum 10% of the project cost should be spent on RR, not including compensation.
38. The Land Acquisition Bill should not only compensate for assets acquired, but also compensate for loss of livelihoods. This would mean that the assetless people such as landless labourers, encroachers of Government land, artisans and gatherers should also be compensated by giving them either land or a compensation of at least two years of minimum wage. The definition of 'persons having interest in land' in sec 9 of the Act

would include sharecroppers, tenants and sub-tenants, encroachers, and attached agricultural workers.

39. In the interest of transparency, the RR Plan should be published along with the notification under Section 6 so that people may be able to take an informed decision about the project.
40. The principle of market value as laid down in Section 23 (1) should be substituted by replacement value.
41. In order to ensure that land in excess of the project requirement is not acquired, Collector should have the authority to decide the total land requirement of the project in consultation with Panchayati Raj Institutions, NGOs as well as the project authorities. The concurrence of the project authorities should not be necessary.
42. 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. This provision should be deleted.
43. For determining the market value of land the Collector will take recourse to three different modes of assessment. Firstly, on the basis of existing sale deeds as has been done in most cases so far. Secondly, the Collector may take into account the scheduled rates for that category of land fixed under the Indian Stamps Act for registration of sale deeds. Thirdly, the Collector may calculate the gross annual production from each plot and fix the compensation as 20 times the gross value of annual production. The final market value for assessment will be the highest among the three amounts arrived at by these three methods.
44. Consent award would be the primary mode of settling the amount of compensation, which should not be less than the value calculated on the basis of the principle enunciated in the above para.
45. There should be a provision in law that projects should be able to take land on lease from the farmers by paying an annual lease rent of twice the gross annual produce. This will obviate the need for land acquisition.
46. Consultation with the gram sabha/panchayat should be mandatory both for scheduled and non-scheduled areas.
47. Possession of land should be taken by the Requiring Body only after full payment in normal cases and 80% in emergency cases has been made.
48. There should be a public enquiry both at the stage of sec 5A as well as sec 9 of the Act.
49. The time period for completion of the process from Section 4 to Section 6 and Section 6 to the Declaration of Award, will be one year each, and the time given to the public for filing objections will be increased from 30 days to 90 days.
50. It should be possible for the Collector to give a monthly or a quarterly stipend in place of lump sum payment for the amount of compensation that can be put in the bank, in a joint account.

51. In addition to publicity through newspapers, etc., individual registered notices will be served to all the affected population.
52. Whenever land acquired for a 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 owners.
53. The requiring agencies should deposit 10% of total project cost (or an appropriate amount in instances of change in land use without projects) in a bank account and pay out of the interest a life time monthly pension to all PAPs above 50 years, disabled, and widows (unless provided with stable livelihood option). This pension should be a minimum of Rs. 500 pm at 2004 prices.
54. If land acquired for a commercial undertaking, 10% shares to be given to PAFs free and equitably.
55. Surplus interest should be used for improving education, health and nutrition facilities of the PAPs.
56. If land is sold in the project area, 10% of incremental value should go to the original owner.
57. It must be ensured that no individual family is displaced more than once, within 2 decades, on account of any developmental project or acquisition of land for public purpose. In case such displacement is absolutely necessary, the entitlement of benefits under all packages shall be doubled.

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