

NHRC's Recommendations on Relief and Rehabilitation of Displaced Persons

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National Human Rights Commission

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FOREWORD

In recent times, our country has been witnessing an ever-widening gulf between individuals who have benefited from the economic growth and the vast group of others who seem to have been left out of the process. Displacement of people from their natural habitat resulting in loss of source of livelihood is a manifestation of this ever-widening gulf. Displacement on account of development interventions has led to a lot of controversies and violence in a number of States.

The Commission has been intervening to ensure that human rights are respected, protected during such displacements of persons. Displacement must not be seen in narrow terms as that caused due to development projects alone. Other factors, such as conflicts, natural and man made disasters could also lead to displacement and all of these also involve important human rights issues.

The Government of India has taken some significant measures in this regard. These include enactment of the Disaster Management Act (DMA), 2005 to provide for institutional mechanism to deal with disasters, introduction of two bills in the Parliament, namely, the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007. The Government

has also provided for policy initiatives and institutional mechanisms to deal with displacement management, relief and rehabilitation. For instance, in October 2007, the revised National Rehabilitation and Resettlement Policy came into effect. Bodies like the National Disaster Management Authority and various State Disaster Management Authorities have been constituted. The introduction of these two bills, especially the latter that deals with rehabilitation and resettlement is indeed noteworthy and the Commission welcomes steps to make these issues justiciable.

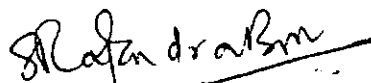
The Rehabilitation and Resettlement Bill treats land as a mere tradable commodity whereas in practice people's attachment to land goes beyond its commercial value. Human beings develop emotional attachments to land, houses and livestock and the whole social structure around it. It is difficult to quantify this. Though the bill provides for social impact assessment, it only envisages the material impact of the project, rather than the social and emotional impact. Furthermore, there is no clarity of norms or principles to be followed in making such social impact assessment. If one understands this, the underlying reasons for resistance, violence and struggles to reclaim their rights become clear. In any development related displacement, the best way is to ensure appropriate resettlement and rehabilitation and in particular giving stakes/ shares in the new enterprise as well as employment, done in consultation with affected persons. This alone will make them partners in development and progress.

Globally, there is now a shift in thinking regarding the provision of services by the Government to the people. From a welfare or needs-based approach that focused on beneficiaries who need a certain type of response which was decided by administrators, now there is a move towards adopting a rights-based approach where the individuals are not regarded as mere beneficiaries who are at the receiving end of doles, but as bearers of rights who are entitled to these services as a matter of right - the rights that are spelled out in our Constitution, laws and related International Human Rights

Conventions to which India is a party. The Commission believes that such a rights-based approach alone can enhance the quality of the services delivered by authorities.

To protect basic human rights of displaced persons, the Commission believes that human rights guarantees for such persons must be incorporated in appropriate legislation. The basic principles, norms etc. on which implemented policies and plans are decided, should also be part of legislation.

The Commission sincerely hopes that this publication containing its recommendations on relief and rehabilitation of displaced persons will not only guide the authorities but ensure that human rights principles underpin their efforts.



(Justice S.Rajendra Babu)

NHRC'S RECOMMENDATIONS ON RELIEF AND REHABILITATION OF DISPLACED PERSONS

The following important recommendations and suggestions have emerged at the National Conference on Relief and Rehabilitation of Displaced Persons organized by the National Human Rights Commission on 24-25 March 2008 in New Delhi.

I. General Recommendations

1. Pre-displacement, displacement, relief and rehabilitation should be viewed from a rights based perspective rather than as an administrative/governance issue that focuses on needs of beneficiaries. For instance, the lexicon of welfare/charity ("gratuitous relief" "beneficiary") should be jettisoned for language that respects human rights of the displaced or to-be-displaced people. In all instances of displacement, there should be minimum non-negotiable human rights standards that should be adhered to for all and especially for vulnerable and marginalized groups such as women, children, elderly and disabled.
2. As part of relief and rehabilitation, authorities provide food, potable water, clothing, shelter, basic health care, education etc. It is important to note that access to these basic minimum services is not a matter of welfare or charity but is a human right. Basic minimum standards for such facilities /services should be defined.

3. There is a need for Central and State Governments to re-examine and amend laws, policies, plans, regulations and practices to mainstream and integrate human rights concerns on issues related to pre-displacement, displacement, relief and rehabilitation. For instance, human rights principles should inform the relief manuals of various states.
4. Authorities concerned with pre-displacement, displacement and post-displacement activities should be sensitized about human rights through capacity building.
5. All affected and displaced persons have the right to be treated with dignity. In particular, no arbitrary decision, without reasoning should be taken in the matters that affect their source of food, shelter and livelihood. Furthermore, before any such decision is taken, they should have right to be heard/consulted. They should also have the right to appeal against such decisions in appropriate forums.
6. All affected and displaced persons have the right to be treated without any discrimination in matters relating to rescue, relief and rehabilitation. In respect of vulnerable groups among them such as women, disabled, elderly persons and children, the appropriate authority shall take special measures to protect their rights. Displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
7. All affected persons and displaced persons have the right to information regarding all aspects related to immediate humanitarian assistance, relief and rehabilitation. This includes, but is not limited to the following:
 - a. Adequate measures to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - b. Proper publicity by the State Government so as to enable the affected people to become aware of their entitlements in the form of relief and compensation;

8. All displaced persons, in particular displaced children, have the right to receive education, which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. Education facilities should be made available as soon as conditions permit. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
9. All displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide displaced persons with and ensure access to:
 - a. Essential food and potable water;
 - b. Basic shelter and housing;
 - c. Appropriate clothing; and
 - d. Essential medical services and sanitation.

(Explanation:- The term "adequate" means that these services are (i) available, (ii) accessible, (iii) acceptable, and (iv) adaptable: (i) Availability means that these goods and services are made available to the affected population in sufficient quantity and quality; (ii) Accessibility requires that these goods and services (a) are granted without discrimination to all in need, (b) are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and (c) are known to the beneficiaries; (iii) Acceptability refers to the need to provide goods and services that are culturally appropriate and sensitive to gender and age; (iv) Adaptability requires that these goods and services be provided in ways flexible enough to adapt to the change of needs in the different phases of emergency relief, reconstruction. During the immediate emergency phase, food, water and sanitation, shelter, clothing, and health services are considered adequate if they ensure survival to all in need of them.

II. Recommendations on development induced displacement

10. The basic principles in the National Relief and Rehabilitation Policy [NRRP] must be incorporated in the Rehabilitation and Resettlement

Bill, 2007 (R&R Bill). {For instance, the five year residence limit (Sections 3(n), 3(d), 3(iii), 21(2)(vi) 35(2) of R&R Bill) is higher than the one in the NRRP, which only specifies three year residence (see Sections 6.4(vi), 3(o), 7.3, 3.1(d), 3.1(b)(iii) of NRRP). Given that inter-state and intra-state migration for work occurs at a large scale in India and that the beneficiaries of these provisions are among the most poor and vulnerable sections of our society, it would be appropriate to lower the limit of number of years to three.}

11. There should be a mechanism to ensure equitable sharing of project benefits with the displaced people. This may be in terms of providing direct or indirect employment or reservation of a quota of shares etc.
12. The conditional availability of certain resettlement provisions in the Relief and Resettlement Bill are a matter of concern (S.36(1) reads “Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, [...] shall be allotted, [...] agricultural land or cultivable wasteland[...] **if Government land is available in the resettlement area..**”. S.41(i) provides, “In case of a project involving land acquisition on behalf of a requiring body – (i) the requiring body shall give preference to the affected families in providing employment in the project, at least one person per family, **subject to the availability of vacancies and suitability of the affected person for the employment;**[...]”. S. 49(4) says, “Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, **if Government land is available in the resettlement area.**) Alternatives should be spelt out if these conditions are not met.
13. The Bill should be in line with other existing legislations such as those related to lands of tribal peoples or forest lands.
14. Time limit should be defined for various stages in the process for acquisition of the land. Besides, where land has been acquired and has not been used for the intended purpose or any other public purpose, then instead of auctioning the land, option should be given to the original owner to take it back on laid down terms. (Section 22 of the Land Acquisition Bill (LA Bill))

15. There shall be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. In particular, public interest should justify any large-scale development project. In all cases of large-scale development projects, authorities should hold public consultation with people likely to be displaced.
16. The concept of "eminent domain" should be in line with constitutional obligations and the proposed amendments to the land acquisition act and the relief and resettlement bill should provide for more scope for consultation/participation of affected people both in the acquisition as well as relief and rehabilitation process. *(According to Section 6(2) of the R&R Bill, "The public hearing undertaken in the project affected area for the environmental impact assessment shall also cover issues relating to social impact assessment." The Bill does not envisage public hearing for social impact assessment where no environment impact assessment is required. Public hearing should be held during all instances of social impact assessment.)*
17. Under the Rehabilitation and Resettlement Bill, 2007, a multiplicity of authorities are sought to be created. In several cases, modalities relating to their operation are "as may be prescribed" by the Government. It is imperative to define their roles so that they are complementary and there is synergy in their functions. *(Sections 9, 11,12,13,14,16 and 19 of the R&R Bill envisage creation of various administrative authorities.)*
18. The guiding principle in cases of development related displacement should be minimal displacement.
19. Where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in a special fund to be created for the purpose of rehabilitation of displaced persons or in the Central Relief and Rehabilitation fund.
20. People who are displaced due to development projects include not only property owners but also others such as tenants, farm labourers or others whose livelihood may be dependent on the land even though they may

not have legal title to it. Therefore protection of their rights must be ensured. (*Reading Section 3(b)(ii), 3(c) and Section 20(i) of R&R Bill it appears agricultural or non-agricultural labourer, landless person, rural artisan, small trader or self-employed person will be covered under this Act only in cases where there is likely to be involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution. An explicit provision to this effect should be provided in the R&R Bill to guarantee the rights of this category of people. LA Bill also should reflect the interest of people who do not have legal title to the land.*)

21. It shall be mandatory for all local bodies to formulate land use plans and building rules so as to minimize and regulate conversion of agricultural lands for other uses. No non-agricultural activity should normally be allowed in areas marked for agriculture unless there are overriding and compelling reasons in public interest.
22. It has been the experience that where infrastructure projects like highways, roads are planned, the land values of the adjoining areas go up. Appropriate legislation should be put in place to charge additional duty/tax for such enhanced value, at least at the time of the subsequent transfers of the land and sums so collected should be transferred to the Central Relief and Rehabilitation Fund or any special fund created for the purpose of rehabilitation of displaced persons.
23. Social impact assessment and understanding local aspirations are best captured through continuous dialogue with local people who are affected and NGOs. Hence while carrying out social or environment impact assessment, local people especially those who are likely to be displaced and/or some expert NGOs may be consulted.
24. Norms of social impact assessment should be laid down and at least three alternatives should be examined in the same or different areas. (*Section 4 of the R&R Bill should be appropriately amended to reflect this.*)
25. Where there is multiple displacement, it is necessary to compensate the displaced people appropriately e.g. by enhancing the solatium amount provided for in the bill or otherwise.

26. Regarding service of notice under LA Act, Section 45(3) provides “When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells [...]. The reference to “adult male member’ is in violation of gender equality and autonomy of women. The term “adult male member’ may be replaced with “adult member”.

III. Recommendations on displacement on account of natural and man made disasters including conflicts

27. The Rehabilitation and Resettlement Bill, 2007 must explicitly cover persons displaced due to violence as also due to natural or other man-made disasters. The NRRP as well as the R&R Bill, 2007 have to be comprehensive. The reference to any “involuntary displacement due to any other reason” is very vague. It does not specifically cover conflict induced and disaster induced displacement. Also the definition of disaster has to be widened taking into account the environmental vagaries in different parts of our country. For instance, soil erosion does not fall within the category of natural disaster. (According to Section 2 of the R&R Bill “The provisions of this Act shall apply to the rehabilitation and resettlement of persons affected by acquisition of land under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason.)
28. In disaster related displacement, rehabilitation is the biggest challenge. There is a need to address as to how one rehabilitates displaced persons in locations similar to their former residence. In instances relating to displacement on account of conflicts, there is a need to focus on what assurances would displaced persons require in order to repatriate to former place of residence voluntarily?
29. People displaced on account of conflicts or natural disasters should be able to return to their former places of residence voluntarily in safety and dignity. Authorities should ensure that their property is protected

against destruction and arbitrary and illegal appropriation when they are displaced. When they return to their places of habitual residence, they shall not be discriminated against. Authorities shall assist the returnees to recover, to the extent possible, their property that they left behind or were dispossessed of upon their displacement. Where it is not possible to recover property and possession, then authorities shall be responsible for providing just reparation to them.

30. Temporary Settlement should not be long drawn and there should be a time frame for the completion of relief and resettlement of people displaced on account of conflict and natural disasters.
31. In the case of conflict, natural or human-made disasters, there is a need for a larger vision, which emphasizes the “prevention” aspect of displacement.
32. The Central Relief Fund (CRF) should be renamed as Central Relief and Rehabilitation Fund (CRRF) and funds should be set aside for rehabilitation of displaced individuals.
33. All affected and displaced persons have the right to security for their physical well being and their property. Security agencies functioning under the administrative control of the States / Central Government must be geared towards preventing looting and other anti-social activities, and instilling a sense of security amongst the affected and displaced persons.
34. All affected and displaced persons have the right to immediate humanitarian assistance. In particular, they have right to food, shelter, healthcare (including mental health care) and education. To ensure smooth rescue, relief and rehabilitation, lists of persons dead or missing as also property damaged fully or partially etc should be prepared in a transparent manner at the earliest and authenticated by appropriate authority. Such lists should be given wide publicity so that people can easily have access to the same. Special attention should be given to the vulnerable groups, e.g. disabled persons, women, children and elderly in this regard.

35. All affected persons have right to information about their missing relatives, friends, colleagues etc. Authorities concerned should put in place appropriate arrangements to collect information about missing persons and keep their kin/relatives informed about progress in the matter. Similar efforts should be made and arrangements put in place about identification of dead and dissemination of information about them, and handing over their mortal remains to their kin after following all procedures. Till then, the mortal remains shall be preserved properly. If the dead are not identified within reasonable time, their last rites may be performed after obtaining appropriate orders and with full respect for dignity as per customs of religion to which she/he is believed to belong based on prima facie evidence.
36. The concerned authorities after reasonable verification shall issue to affected and displaced persons all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, death certificates and marriage certificates. Any lack of access to such legal documents or not having such legal documents shall not disentitle them for recompense.

**Two-day Conference on
Relief and Rehabilitation of Displaced Persons**
at Silver Oak, India Habitat Centre, New Delhi

Inaugural Session

10.00 - 11.00 AM

Welcome	Shri A. K. Jain Secretary General, NHRC
NHRC's concerns with regard to rights of displaced persons	Justice Shri Y. Bhaskar Rao Member, NHRC
Address	Justice Shri S. Rajendra Babu Chairperson, NHRC
Address	Shri Shivraj Patil Union:Home Minister
Vote of Thanks	Shri A. K. Jain Secretary General, NHRC

Day - 1 Session - I 11.30- 1.00 PM	
Chair :	Justice Shri D.M. Dharmadhikari, Chairperson, Madhya Pradesh Human Rights Commission
Theme	Human Rights of Displaced Persons - International and Domestic Legal Framework
	Speakers : Prof. B.S. Chimni Centre for International Law JNU

	<p>Shri Narinder Singh, Joint Secretary, Legal & Treaty Division, Ministry of External Affairs, Govt. of India.</p> <p>Prof. Yogesh Tyagi JNU, Followed by discussion</p>
<p>Session - II 11.30- 1.00 PM</p>	
Chair :	<p>Mrs. Jyoti Rao, Member National Disaster Management Authority</p>
Theme	<p>Disaster related Displacement Working of present Government policies; short term relief; long term rehabilitation; sustainability, re-integration etc.</p>
	<p>Speakers :</p> <p>Prof. Santosh Kumar National Institute of Disaster Management</p> <p>Shri Vinay Kumar Additional Secretary Ministry of Home Affairs</p> <p>Shri Mohan Piyare Commissioner (Rehabilitation) Govt. of Tamil Nadu</p> <p>Relief Commissioner Govt. of Orissa</p> <p>Relief Commissioner Govt. of Bihar</p> <p>Relief Commissioner Govt. of Assam</p>

	<p>Relief Commissioner Govt. of Andhra Pradesh</p> <p>Relief Commissioner Govt. of Rajasthan</p> <p>Followed by discussion</p>
<p>Session - III 3.45 - 5.00 PM</p>	
Chair :	Justice Shri Y. Bhaskar Rao Member, NHRC
Theme	Development related Displacement
	<p>Speakers :</p> <p>Smt. Rita Sinha, Secretary, Land Resources</p> <p>Professor Sabyasachi Basu Ray Chaudhury Mahanirban Calcutta Research Group Kolkata</p> <p>Relief Commissioner Govt. of Gujarat</p> <p>Relief Commissioner Govt. of Madhya Pradesh</p> <p>Shri A.K. Agarwal District Magistrate, East Midinapur West Bengal</p> <p>Followed by discussion</p>
<p>Day - II</p> <p>Session - IV 10.00 - 11.30 AM</p>	
Chair :	Shri P.C. Sharma, Member, NHRC
Theme	Role of Civil Society in Relief and Rehabilitation (Govt., NGO, donor agency convergence in relief etc.)

	<p>Speakers :</p> <p>Shri Gagan Sethi Jan Vikas Trust, Ahmedabad</p> <p>Shri Mohan Piyare Commissioner (Rehabilitation) Govt. of Tamil Nadu</p> <p>Relief Commissioner Govt. of Jammu & Kashmir</p> <p>Followed by Discussion</p>
<p>Session - V (Wrap up) 11.45 AM - 1.00 PM</p>	
Chair :	Shri P.C. Sharma Member, NHRC
Theme	Discussion on Draft Guidelines.
	Open discussion with all participants on guidelines.

Valedictory Session
2.00 - 3.00 PM

Welcome and summing up of deliberations	Shri A. K. Jain Secretary General, NHRC
Concluding remarks	Justice Shri S. Rajendra Babu Chairperson, NHRC
Vote of Thanks	Smt. Aruna Sharma Joint Secretary, NHRC

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BACKGROUND PAPER
NATIONAL CONFERENCE ON RELIEF AND REHABILITATION
OF DISPLACED PERSONS
ORGANISED BY
NATIONAL HUMAN RIGHTS COMMISSION
[MARCH 24-25, 2008]

1. INTRODUCTION:

Ever since its establishment, the National Human Rights Commission ("Commission") has been taking cognizance of the plight of people displaced by natural or man-made disasters and development projects. Its importance assumes significance in the light of lacunae in the legal framework in India to deal with the rights of the displaced. The Commission has been receiving complaints about inadequate and insensitive response regarding relief and rehabilitation of displaced persons. It is clear that displacement brings within its wake several human rights concerns - including right to food, right to life, right to livelihood, right to housing, rights against discrimination and so on. Also, proper relief and rehabilitation of displaced persons is a fundamental aspect of good governance.

2. DEFINITIONS:

Section 3(b) of the Rehabilitation and Resettlement Bill, 2007 defines "affected family" as

(i) a family whose primary place of residence or other property or source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement due to any other reason;

(ii) any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the abadi or other property) in the affected area or otherwise, has been involuntarily displaced from such land or other property;

(iii) any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person;

who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason;"

The United Nations Guiding Principles on Internal Displacement defines internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."¹

The National Policies on Internally Displaced Persons, 2007, Nepal provide the following definitions:

- (a) "Internally Displaced Person" means a person who is living somewhere else in the country after having been forced to flee or leave one's home or place of habitual residence due to armed conflict or situation of violence or gross violation of human rights or natural disaster or human-made disaster and situation or with an intention of avoiding the effects of such situations.
- (b) "Person or family displaced by conflict" means a person or family who is displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one's home or place of habitual residence due mainly to armed conflict or situation of violence or the conditions of gross violation of human rights.
- (c) "Person or family displaced by human-made disasters" means a person or family who is displaced internally by compulsion owing to creation of such situation where it is not possible to live in one's home or place of habitual residence due to such activities as development, construction, industry and factory.

¹ E/CN.4/1998/53/Add.2, dated 11 February 1998

- (d) "Person or Family displaced due to natural disasters" means a person or family displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one's home or place of habitual residence due to natural disasters. But if a person who has, from the viewpoint of possible disaster, lived in government-prohibited area is displaced, such a person shall not be deemed to have been internally displaced."²

A perusal of the above three definitions shows that the Rehabilitation and Resettlement Bill, 2007 does not explicitly cover persons displaced due to violence as also due to natural or other man-made disasters. The National Rehabilitation and Resettlement Policy, 2007 as well as the Rehabilitation and Resettlement Bill, 2007 have to be comprehensive and cover all categories of persons displaced whether due to development, natural or man-made disasters.

3. TYPES OF DISPLACEMENT AND MAGNITUDE:

(a) Disaster Related Displacement:

"India is vulnerable in varying degrees to a large number of natural as well as man-made disasters - 58.6 per cent of the landmass is prone to earthquakes of moderate to very high intensity; over 40 million hectares (12 per cent of land) is prone to floods and river erosion; of the 7,516 km long coastline, close to 5,700 km is prone to cyclones and tsunamis; 68 per cent of the cultivable area is vulnerable to drought and hilly areas are at risk from landslides and avalanches. Further, the vulnerability to Nuclear, Biological and Chemical (NBC) disasters and terrorism has also increased manifold"³. "Fire incidents, industrial accidents and other manmade disasters involving chemical, biological and radioactive materials are additional hazards which have underscored the need for strengthening mitigation, preparedness and response measures."⁴

"Disaster risks in India are further compounded by increasing vulnerabilities. These include the ever-growing population, the vast disparities in income, rapid urbanisation, increasing industrialisation,

² National Policies on Internally Displaced Persons, 2063 (2007), Nepal.

development within high-risk zones, environmental degradation, climate change, etc. Clearly, all these point to a future where disasters seriously threaten India's population, national security, economy and its sustainable development..."⁵ Natural disaster induced displacement has become a major human rights issue in recent times. Such types of displacements precipitate the socio-economic problems of displaced persons and affect their shelter, livelihood, livestock etc. Though these are not consciously planned or instigated, it has been found that inappropriate policies, such as that affecting the environment, at times contribute to natural or man-made disasters.

Following are some of the important cases in which NHRC received complaints of displacement or acted *suo motu* to redress violations of human rights:

1. Super cyclone that struck the coastal districts of Orissa in October 1999.
2. Gujarat earthquake that devastated large areas of Gujarat in January 2001.
3. Tsunami, which hit the coastal India in December 2004.
4. Earth Quake in Jammu & Kashmir in 2005.

(b) Development Related Displacement:

Mega development projects like construction of dams, industries, highways and roads have resulted in forced displacement of the people. It has been found that usually it is the poor people who face the consequence of such projects more because their livelihood, habitat and assets are affected. Where 'involuntary resettlement' has received public attention, either through NGOs or media intervention, the state administration has responded. Otherwise in most of the cases, such displacements have resulted in loss of livelihood and shelter. More than 1.4 million people have been displaced from their ancestral land and deprived of traditional livelihoods in just four states in India in the country's drive for economic growth, according to a study conducted

³ National Disaster Management Guidelines. Preparation of State Disaster Management Plans, July 2007, National Disaster Management Authority.

⁴ Ministry of Home Affairs Annual Report for 2006-07, p.92

by the NGOs Action Aid, the Indian Social Institute, and Laya. The study focuses on the four states of Andhra Pradesh, Chhattisgarh, Jharkhand and Orissa, all rich in natural resources and with a large population of indigenous tribal people⁶.

Following are some important examples in which NHRC received complaints and expressed its concern in cases of displacement as a result of development projects

- i. Bargi Dam oustees in Madhya Pradesh
- ii. Kabini Reservoir Project, Karnataka
- iii. Bandipur National Park- Project Tiger

The Special Economic Zones Act, 2005 has been passed with a view to promote foreign investment, export oriented growth and the need for a level playing field for domestic enterprises and manufacturers so as to be competitive globally. Several civil society groups, activists and organizations have expressed the fear that this process could lead to acquisition of agricultural land causing large-scale displacement of farmers in the name of industrialization. Hence, there is a need to provide suitable relief and rehabilitation package, including giving stakes to the displaced persons whose land has been acquired for setting up of SEZs. In the State of West Bengal, large scale violence took place in March and November 2007 on the issue of proposed land acquisition for setting up a mega-chemical hub and a Special Economic Zone [SEZ] covering about 10,000 acres of land in Nandigram and adjoining areas. The Commission took suo motu cognizance of the case and not only called for reports from the State Government but also sent its own Investigation team. On 8 February 2008, the Commission made important recommendations in this regard.

(c) Conflict Induced Displacement

According to non-governmental organizations, "There are over 6,00,000 conflict induced IDPs [internally displaced persons] in India. This includes "33,362 displaced persons in Kokrajhar district and 74,123 in

⁵ National Disaster Management Guidelines. Preparation of State Disaster Management Plans, July 2007, National Disaster Management Authority.

Gosaigaon district[...] of Assam; 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990;[...] and about 35,000 Brus (also known as Reangs) from Mizoram who were displaced in October 1997 and took shelter in Tripura. As of 31st December 2006, there were 43,740 displaced persons in the *Salwa Judum* camps in Chhattisgarh.”⁷

The Commission intervened in cases relating to relief and rehabilitation of Kashmiri Pandits and victims of Gujarat riots in 2002.

4. EXISTING LEGAL FRAMEWORK:

(a) National legislations/ Policies:⁸

(i) The Disaster Management Act, 2005-A Paradigm Shift

"The Government have enacted the Disaster Management Act (DMA), 2005 on December 26, 2005 to provide for institutional mechanism for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. The Act provides for setting up of a National Disaster Management Authority (NDMA) under the chairmanship of the Prime Minister, State Disaster Management Authorities (SDMAs) under the chairmanship of the Chief Ministers and District Disaster Management Authorities (DDMAs) under the chairmanship of District Magistrates. The Act further provides for constitution of National Executive Committee (NEC), National Institute of Disaster Management (NIDM) and National Disaster Response Force (NDRF). It also provides for the concerned Ministries and Departments to draw up department wise plans in accordance with the National Disaster Management Plan. In addition, the Act contains provisions for constitution of National Disaster Response Fund and National Disaster Mitigation Fund and similar Funds at the State and District levels. The Act also provides for specific role to local bodies including Panchayati Raj Institutions (PRIs)

⁶ "Resource rich tribal poor: Displacing people, destroying identity in India's indigenous heart-land" (ActionAid/Indian Social Institute/Laya, Delhi, 2007).

as well as urban local bodies (ULBs) in disaster management...The NDMA, NEC and NIDM have since been constituted, in accordance with the provisions of the Act, to discharge the powers and functions envisaged for them under the Act."⁹

Thus there is a paradigm shift "from a response and relief-centric approach to a proactive, and comprehensive mindset towards disaster management covering all aspects from prevention, mitigation, preparedness to rehabilitation, reconstruction and recovery. It also provides for:

- The creation of a policy, legal and institutional framework, backed by effective statutory and financial support.
- The mainstreaming of multi-sectoral disaster management concerns into the developmental process and mitigation measures through projects.
- A continuous and integrated process of planning, organising, coordinating and implementing policies and plans in a holistic, community based participatory, inclusive and sustainable manner."¹⁰

(ii) Land Acquisition Act, 1894

The Land Acquisition Act, 1894 is the primary legislation that provides for acquisition of land. S. 3(f) defines public purpose to include carrying out any educational, housing, health or slum clearance scheme, the provision of any premises or building for locating a public office, the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities and so on. It includes provisions for compensation (s.11) and provides for recourse to legal remedies (s.18). The Land Acquisition Act has been criticized "for considering land only as a commodity generating income. However, when a family is settled on a piece of land not only does it earn its livelihood from it but it also has a whole social network[...]"¹¹

⁷ National Network for Human Rights Treaty Monitoring in India, 19 February 2007, Dimensions of Discrimination in India"—a shadow report to the UN CERD Committee

(iii) Land Acquisition (Amendment) Bill, 2007¹² (Annexure-I)

This Bill seeks to amend Land Acquisition Act, 1894. Important aspects of the Bill include a wider definition of “public purpose”, provision of social impact assessment where the acquisition involves displacement of certain number of families, creation of the Land Acquisition Compensation Disputes Settlement Authorities for acquisitions by Central and State governments and so on. The Bill was introduced in the Lok Sabha on 6 December 2007 and has since been referred to the Standing Committee on Rural Development by the Speaker.

(iv) The Rehabilitation and Resettlement Bill, 2007 (Annexure-II)

This Bill sets forth provisions for “rehabilitation and resettlement of persons affected by acquisition of land under the Land Acquisition Act, 1894” or due to any other legislation by the Central or State governments or involuntary displacement due to any other reason (s.2). Though the term “involuntary displacement due to any other reason” may have wide scope, it is not clear that this Bill will apply to the different kinds of displacement discussed in Section 2 above. The Bill provides for social impact assessment of projects (s.4) which is to be conducted simultaneously with any environmental assessment, the appointment of Administrator for Rehabilitation and Resettlement with respect to large projects involving involuntary displacement of large number of people (s.9), appointment of an ombudsman for disposal of grievances arising out of matters covered by the Act and so on. The Bill was also introduced in the Lok Sabha on 6 December 2007 and has since been referred to the Standing Committee on Rural Development by the Speaker of the Lok Sabha.

(iv) National Rehabilitation and Resettlement Policy, 2007 (Annexure-III)

In order to solve issues arising out of policies of economic liberalization/de-regularization, the National Policy on Rehabilitation

⁸ Some state governments (Orissa, Maharashtra, Madhya Pradesh and Karnataka) and parastatal organizations such as National Thermal Power Corporation and National Hydel Power Corporation also have relief and rehabilitation policies. This paper is limited to Central legislations and policies.

and Resettlement, 2003 has been reviewed and revised. The revised National Rehabilitation and Resettlement Policy, 2007 (“NRRP, 2007”) has come into force from Oct. 2007.

The new policy is applicable to all affected persons and families whose land, property or livelihood are adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason. These could be tenants, landless, the agricultural and non-agricultural labourers, artisans, and others dependent on the land.

One of the objectives of the policy is to minimise displacement of people and to promote non-displacing or least-displacing alternatives. It also recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken, and the use of agricultural land for non-agricultural purposes should be kept to the minimum; multi-crop land should be avoided and irrigated land use should be kept to the minimum for such purposes. Projects may preferably be set up on wastelands or un-irrigated lands.

The compensation award shall take into account the market value of the property being acquired, including the location-wise minimum price per unit area fixed (or to be fixed) by the respective State Government or UT Administration.

For the displaced, the policy provides for houses for even the landless, 20% of compensation in the form of shares in the proposed project – which can go upto 50%. There is a provision of life-time monthly pension too for vulnerable sections.

In case of a project involving land acquisition on behalf of a requiring body, the disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which the acquisition of land is undertaken, and will be outside the purview of the functions of the Ombudsman.

⁹ Ministry of Home Affairs Annual Report for 2006-07, p.92-93.

¹⁰ National Disaster Management Guidelines. Preparation of State Disaster Management Plans, July 2007, National Disaster Management Authority.

Key features of the NRRP, 2007:

- Policy covers all cases of involuntary displacement.
- Social Impact assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas, etc;
- Consultations with Gram Sabhas or public hearing made compulsory;
- Principle of rehabilitation before displacement;
- If possible, land for land as compensation;
- Skill development support and preference in project jobs (one person per nuclear family);
- Rehabilitation Grant in lieu of land/job;
- Option for shares in companies implementing projects to affected families;
- Housing benefits to all affected families including the landless;
- Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls, etc;
- Monetary benefits linked to the Consumer Price Index; also to be revised suitably at periodic intervals;
- Necessary infrastructural facilities and amenities at resettlement areas;
- Periphery development by project authorities;
- Committees for each project, to be headed by Administrator for relief and rehabilitation.
- Ombudsman for grievance redressal;
- National Rehabilitation Commission for external oversight.
- The revised policy covers all projects leading to involuntary displacement of people, and envisages special provisions for Scheduled Tribes and Scheduled Castes, the main features of which are given below: -
- Consultation with the concerned gram sabha or the panchayats at the appropriate level in the Scheduled Areas under Schedule V of the

¹¹ "Capacity Building for Resettlement Risk Management: Handbook on Resettlement for Highway projects in India" (Asian Development Bank, Manila, 2007) Chapter II.

¹² Source: http://164.100.24.209/news/whatsnew/Landacq_Bill.pdf

Constitution in accordance with provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. Each Affected family of Scheduled Tribe followed by Scheduled Caste shall be given allotment of land for land, if Government Land is available in the resettlement Area.

- In case of land being acquired from the members of the Scheduled Tribes, at least one third of the compensation amount be paid at the outset as first installment and rest at the time of taking the possession of the land.
- Additional one time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usage of forest produce.
- Scheduled Tribes to get free of cost land for community and religious gathering, to the extent decided by the appropriate government.
- Scheduled Tribes affected families resettled out of district to get twenty-five percent higher benefits in monetary terms.
- Scheduled Tribes and Scheduled Castes affected families to be given fishing rights in the reservoir areas of the irrigation or hydel projects
- Scheduled Tribes and Scheduled Castes affected families enjoying reservation benefits in the affected areas shall be entitled to get the reservation benefits at the resettlement areas.

(b) International Conventions/ Guidelines:

(i) ILO Indigenous and Tribal Populations Convention, 1957

This Convention (India ratified this Convention in 1958) deals primarily with the protection and integration of indigenous, tribal and semi-tribal groups. S.12 of the Convention provides that where as an exceptional measure tribal groups are removed from their land they should be provided with lands of quality at least equal to that of the lands previously occupied by them. It goes on to provide that they should be compensated for any "resulting injury or loss".

(ii) UN Guiding Principles on Internally Displaced Persons, 1998 [Annexure IV]

The UN Guiding Principles on Internally Displaced Persons, 1998 ("Principles") is meant to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs.

For the purposes of these Principles, "internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."

The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a legally binding instrument, they guide the conduct of States. These Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law. Principle 6(C) of UN Guiding Principles prohibits arbitrary displacement in cases of large-scale development projects.

5. NHRC'S STAND ON RIGHTS OF THE DISPLACED:

While redressing various complaints of rights violations following displacement, the Commission stressed the following:

- i. Full compliance with ILO Convention 107, and other international human rights instrument relevant to displacement, relief and rehabilitation to which India is party.
- ii. The resettlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act.

- iii. The need of State and Central governments to re-examine and amend laws, regulations and practices.
- iv. Adequate rehabilitation packages to those who are adversely affected by mega development projects.
- v. Procedure laid down in the Wild Life Protection Act, 1972 in regard to the rights of the affected people and their rehabilitation has to be followed.
- vi. Improving the preparedness of the country to face earth quakes, especially as a considerable part of the country was in an earthquake-prone zone
- vii. Incorporating policy measures such as maintaining electronic lists of dead and missing, widows, children and young girls, lists of properties partially or fully destroyed or damaged and centralized collection and distribution centres where relief materials could be received from NGOs and private organizations.

6. NEED FOR INTEGRATING HUMAN RIGHTS CONCERNS INTO RELIEF AND REHABILITATION:

In the wake of super cyclone in Orissa and earth quake in Gujarat and J&K and Tsunami, the Commission identified serious human rights issues in the manner of disbursal of relief and rehabilitation. Recently, controversies relating to acquisition of agricultural land for the purpose of SEZs and industrialization have raised serious questions about their human rights implication viz. the right to life and right to livelihood of farmers and landless poor. They underscore the need for integrating human rights concerns into relief and rehabilitation.

7. Some issues of concern:

According to the Statement of Objects and Reasons of the Rehabilitation and Resettlement Bill, 2007, it will be primarily applicable to the rehabilitation and resettlement of persons adversely affected by the acquisition of lands for projects. However, involuntary displacement of people may be caused by other factors also, and the provisions of the Bill may apply to the rehabilitation and resettlement of persons

involuntarily displaced permanently due to any reasons. The Preamble to the Bill also refers to "A Bill to provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, and for matters connected therewith or incidental thereto.

The reference to displacement owing to factors other than acquisition of lands for projects in the above Bill is 'general' and 'vague'. It does not cover different categories of internally displaced persons mentioned in Section 2 of this background paper relating to definitions. In particular, it does not cover conflict-induced displacement or disaster-induced displacement.

In disaster related displacement, rehabilitation is the biggest challenge. How does one rehabilitate displaced persons in their natural habitat? In instances relating to displacement on account of conflicts, what assurances would displaced persons require in order to go back? Recently, the National Human Rights Commission made recommendations stressing the need to prepare an inventory of properties of Kashmiri Pandits and the need to restore their property back to them.

Under the Rehabilitation and Resettlement Bill, 2007, a multiplicity of authorities are sought to be created. They include, among others, independent multi-disciplinary expert group, Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement, Rehabilitation and Resettlement Committee at project level and at District level, Ombudsman, National Monitoring Committee, Oversight Committee and National Rehabilitation Commission. In several cases, modalities relating to their operation are "as may be prescribed" by the Government. It is impetrative to define their roles clearly to avoid duplication and to provide guidance to them.

The resettlement provisions include "land-for-land, to the extent Government land would be available in the resettlement areas [clause 7.4.1]; preference for employment in the project to at least one person from each nuclear family ... subject to the availability of vacancies and suitability of the affected person..[clause 7.13.1]. The above

conditionalities dilute the protective provisions in such important areas as land and employment to displaced persons.

There is a need for a larger vision, which emphasizes the “prevention” aspect of displacement on account of conflict, natural or human-made disasters.

8. FOCUS OF THE CONFERENCE AND ISSUES FOR CONSIDERATION:

The focus of the Conference is on persons who have been displaced temporarily or permanently due to natural disasters, man-made disasters, developmental interventions, conflicts etc.

Is the current domestic legal and institutional framework adequate to address rights implications of displacement? How do State Rehabilitation Acts address this issue? Are human rights concerns mainstreamed in the relief and rehabilitation process? Do the present Disaster Plans and Guidelines drawn up at various levels incorporate human rights concerns? How do we ensure that human rights are better integrated into various legislations, policies, plans drawn at different levels to deal with disaster-related displacement as well as development-related displacement? What would be the most effective strategies to deal with relief and rehabilitation of displaced persons? Do the Land Acquisition Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 integrate human rights concerns to protect rights of displaced persons? If not, what further changes could be made in these Bills from the human rights standpoint to better protect the rights of displaced persons? What recommendations could be made in this regard to the Department-related Standing Committee of the Parliament on Rural Development?

The National Human Rights Commission seeks views of all stakeholders on these important questions.

BILL No. 97 of 2007

THE LAND ACQUISITION (AMENDMENT) BILL, 2007

A

BILL

further to amend the Land Acquisition Act, 1894.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Land Acquisition (Amendment) Act, 2007.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as reference to the coming into force of that provision.

1 of 1894.

2. In the long title to the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act), the words “and for Companies” shall be omitted.

Amendment of long title.

Amendment of preamble.

3. In the principal Act, in the preamble, the words “and for Companies” shall be omitted.

Insertion of new section 1A.

4. After section 1 of the principal Act, the following section shall be inserted, namely:—

Application of Rehabilitation and Resettlement Act, 2007 to persons affected due to land acquisition.

“1A. The provisions of the Rehabilitation and Resettlement Act, 2007 shall apply in respect of acquisition of land by the appropriate Government under this Act.”.

Amendment of section 3.

5. In section 3 of the principal Act,—

(i) for clause (b), the following clause shall be substituted, namely:—

‘(b) the expression “person interested” includes,—

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

2 of 2007

(iii) a person interested in an easement affecting the land; and

(iv) persons having tenancy rights under the relevant State laws;’

(ii) after clause (cc), the following clause shall be inserted, namely :—

‘(ccc) the expression “cost of acquisition” includes—

(i) compensation awarded including the solatium and other amount and interest payable thereupon;

(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

(iii) cost of acquisition of out-project land for settlement of displaced or adversely affected families;

(iv) cost of development of infrastructure and amenities at resettlement sites;

(v) additional cost of resettlement as may be required after admissible adjustment of rehabilitation and resettlement cost against compensation awarded to affected persons or families;

(vi) administrative cost of acquisition of land including both in-project and out-project areas lands; and

(vii) administrative cost involved in planning and implementation of resettlement and rehabilitation packages for providing physical rehabilitation and resettlement to the entitled and interested families, displaced or adversely affected on account of in-project acquisition of land;’;

(iii) clauses (d) and (e) shall be omitted;

(iv) for clause (ce), the following clause shall be substituted, namely:—

‘(ce) the expression “appropriate Government” means,—

(i) in relation to acquisition of land for the purposes of the Union, the Central Government;

(ii) in relation to acquisition of land for the purposes of any infrastructure project in more than one State, the Central Government; and

(iii) in relation to acquisition of land for any other purpose, the State Government;’;

(v) for clause (f), the following clause shall be substituted, namely:—

‘(f) the expression “public purpose” includes,—

(i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State;

(ii) the provision of land for infrastructure projects of the appropriate Government, where the benefits accrue to the general public; and

(iii) the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project as yet to be required.’

Explanation.—The word “person” shall include any company or association or body of individuals, whether incorporated or not.’;

(vi) after clause (f), the following clause shall be inserted, namely:—

‘(ff) the expression “infrastructure project” shall include,—

(i) any project relating to generation, transmission or supply of electricity;

(ii) construction of roads, highways, bridges, airports, ports, rail systems or mining activities;

(iii) water supply project, irrigation project, sanitation and sewerage system; or

(iv) any other public facility as may be notified in this regard by the Central Government in the Official Gazette.’.

(vii) in clause (g) for the expression “court”, wherever it occurs, the expression “the Authority for the Centre or, as the case may be, the Authority” shall be substituted;

(viii) after clause (g), the following clauses shall be inserted, namely:—

‘(h) the expression “Authority” means the Land Acquisition Compensation Disputes Settlement Authority established by the State Government under sub-section (1) of section 17A;

(i) the expression “Authority for the Centre” means the Land Acquisition Compensation Disputes Settlement Authority for the Centre established by the Central Government under sub-section (1) of section 17L;

(j) the expression “Member” means a Member of the Authority for the Centre, or as the case may be, the Authority, and includes the Chairperson.’.

6. Throughout the principal Act, the words “or for a company” along with their grammatical variations, shall be omitted.

Omission of the expression “or for a company” throughout the Act.

Substitution of words “Authority for the Centre or the Authority” in place of words “the Court” throughout the Act.

7. Throughout the principal Act except in Explanation to sub-section (1A) section 23, for the words “the Court”, along with their grammatical varieties the words “the Authority for the Centre, or as the case may be, the Authority” shall be substituted.

Insertion of new section 3A.

8. After section 3 of the principal Act, the following section shall be inserted, namely:—

Mandatory social impact assessment prior to acquisition of land under this Act.

‘3A. Whenever the appropriate Government intends to acquire land for public purpose involving physical displacement of—

(i) four hundred or more families *en masse* in plain area; or

(ii) two hundred or more families *en masse* in tribal or hilly areas or Desert sixth Development Programme blocks or areas specified in V Schedule or Schedule VI to the Constitution,

a social impact assessment study shall be carried out in the affected area for the purpose of social impact appraisal, incorporation of Tribal Development Plan, plan for giving emphasis for the Scheduled Castes, the Scheduled Tribes and other vulnerable sections of the society, provision for infrastructural amenities and facilities in the proposed resettlement area in terms of the provisions contained in Chapters II, IV, V and VI of the Rehabilitation and Resettlement Act, 2007, in such manner and within such time as may be prescribed by rules made by the Central Government.”—

Amendment
of section 4.

9. In section 4 of the principal Act,—

(a) in sub-section (1), the following provisos shall be inserted, namely:—

“Provided that where no declaration is made consequent upon the issue of a notification under sub-section (1) within the time-limit specified in sub-section (1) of section 6, no fresh notification under this sub-section shall, subsequent to the expiry of the period aforesaid, be made for a period of one year in respect of the same land:

Provided further that in case a notification issued under sub-section (1) in respect of a particular land lapsed for the second time, no proceeding under sub-section (1) shall be initiated at least for a period of five years from the date of such notification.”;

(b) After sub-section (1), the following sub-sections shall be inserted, namely:—

“(JA) No person shall make any transaction or cause any transaction of land specified in the notice of acquisition to create any encumbrances on such land from the date of publication of such notice under this section till the final declaration under section 6, or the award made and paid under section 16 of the Act, whichever is earlier:

Provided that the Collector may, on the application made by the land owner in respect of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.

(JB) After issuance of notice under sub-section (1), the Collector shall, before issue of declaration under section 6, undertake and complete the exercise of updating of land records, classification of land and its tenure, survey and standardisation of land and property values in respect of the land under acquisition.”.

10. In section 6 of the principal Act, in sub-section (1),—

Amendment
of section 6.

(i) the words “subject to the provisions of Part VII of this Act” shall be omitted;

(ii) the *Explanation* 1 shall be omitted.

11. After section 8 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
8A.

“8A. The damages caused while carrying out works on land such as survey, digging or boring sub-soil, marking boundaries or cutting trenches or clearing away any standing crop, fence or forest or doing such other acts or things which may cause damages while acting under section 4 particularly relating to land which is excluded from acquisition proceeding, shall be evaluated and compensation shall be paid to the persons having interest in that land, within six months from the completion of the said works.”.

Evaluation of
damages
during survey,
measurement,
etc.

12. For section 11A of the principal Act, the following section shall be substituted, namely:—

Substitution of section 11A.

“11A. The Collector shall make an award under section 11 within a period of one year from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Period within which an award shall be made.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 2007, the award shall be made within a period of one year from such commencement:

Provided further that the Collector may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award within an extended period of six months:

Provided also that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five per cent. of the value of the award, for each month of such delay.”

13. After section 11A of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections after section 11A.

“11B.(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land,—

Determination of market value of land.

2 of 1899.

(i) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or

(ii) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years, where higher price has been paid; or

(iii) the average of the sale price, ascertained from the prices paid or agreed to be paid for not less than fifty per cent. of the land already purchased for the project where higher price has been paid, for the purpose of item (iii) of clause (f) of section 3.

whichever is higher.

(2) Where the provisions of sub-section (1) are not applicable for the reason that:

(i) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(ii) the registered sale deeds for similar land as mentioned in clause (i) of sub-section (1) are not available for the preceding three years; or

(iii) the minimum land value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority,

2 of 1899.

the concerned State Government shall specify the floor price per unit area of the said land based on the average higher prices paid for similar type of land situated in the adjoining areas or vicinity, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years where higher price has been paid, and the Collector may calculate the value of the land accordingly.

(3) The Collector shall, before assessing and determining the market value of the land being acquired under this Act,—

(a) ascertain the intended land use category of such land; and

(b) take into account the value of the land of the intended category in the adjoining areas or vicinity,

for the purpose of determination of the market value of the land being acquired.

(4) In determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, the Collector may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the Collector.

(5) The Collector may, for the purpose of determining the value of trees and plants, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(6) For the purpose of assessing the value of the standing crops damaged during the process of land acquisition proceedings, the Collector may utilise the services of experienced persons in the field of agriculture as he considers necessary.

Part payment
of compensa-
tion by shares,
debentures,
etc.

11C. (1) When land is acquired for the purpose of item (iii) of clause (f) of section 3 and the person for whom the land is acquired is a company authorised to issue shares and debentures, such company shall, with the previous approval of the appropriate Government, offer its shares or debentures to the extent of fifty per cent. but in any case not less than twenty per cent. of the compensation amount to be paid to the person whose land has been acquired.

(2) On the acceptance of the offer, a part of the compensation amount shall be adjusted by transfer of shares and debentures to the person to whom such compensation is due and on such transfer the liability of the company in respect of such part of the compensation shall stand discharged.

(3) The allotment of shares and debentures mentioned in this section shall be made by the company in such manner as may be prescribed.

Explanation.—In this section, the expression “shares and debentures” has the same meaning as assigned to it under the Companies Act, 1956.”

1 of 1956.

Amendment
of section 12.

14. In section 12 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act.

(4) For the purposes of sub-section (3), the summary of the entire proceedings shall include the summary of schedule for payment of compensation, dates of taking possession of the land and such other information as may be prescribed.

(5) It shall be the duty of the Collector to ensure that physical possession of the land is taken over and the amount of compensation is paid within a period of sixty days commencing from the date of the award.

(6) The possession of the land acquired shall not be taken unless the compensation due under this Act is paid in full or is tendered to the entitled person.”

15. In section 15 of the principal Act, for the words and figures "sections 23 and 24", the words, figures and letter, "sections 11B, 23 and 24" shall be substituted. Amendment of section 15.

16. In section 17 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely :— Amendment of section 17.

"(5) Without prejudice to the provisions of sub-section (3) and sub-section (3A), an additional compensation of seventy-five per cent. of the market value as determined under section 11B, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section."

17. After Part II of the principal Act, the following Parts shall be inserted, namely:— Insertion of new Parts II A and II B.

PART II A

ESTABLISHMENT OF THE STATE AUTHORITY

17A. (1) The State Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, establish, by notification in the Official Gazette, an Authority for the State to be known as the (name of the State) Land Acquisition Compensation Disputes Settlement Authority to exercise the jurisdiction, powers and authority conferred on it by or under this Act with regard to acquisition of land by the State Government: Establishment of Land Acquisition Compensation Disputes Settlement Authority.

Provided that a State Government may constitute more than one Authority or the benches thereof, for the purposes of this Act, if considers necessary.

(2) The head office of the Authority shall be at such place as the State Government may, by notification, specify.

(3) The Authority shall consist of not more than three but not less than two Members, including the Chairperson to be appointed by the State Government.

(4) The Members of the Authority shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with the problems relating to land acquisition matters, public administration, finance, economics and law.

(5) A person shall not be qualified to be a Member of the Authority unless he is or has been—

(i) a judge of a district court;

(ii) an officer of the State Government not below the rank of District Collector;

(iii) an officer of the State Government in the Law Department not below the rank of Director.

(6) The Members of the Authority shall not hold any other office.

(7) The Authority shall ensure transparency while exercising its powers and discharging its functions.

17B. (1) A Member shall hold office for a term of five years from the date he enters upon his office:

Provided that the Member shall not be eligible for re-appointment in the same capacity in that Authority in which he had earlier held the office:

Term of office and conditions of service of Members.

Provided further that no Member shall hold office as such after he has attained the age of sixty-seven years.

(2) A Member of the Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that the Member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(3) The salary, allowances and other terms and conditions of service of the Members shall be such as may be prescribed by the State Government:

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.

Removal of Member.

17C. (1) No Member shall be removed from office except in accordance with the provisions of this section.

(2) The State Government may by order remove from office any Member, if he—

(a) has been adjudged an insolvent;

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour.

(3) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.

Officers and employees of Authority.

17D. (1) The State Government may specify the numbers, nature and categories of the officers and employees of the Authority.

(2) The salaries and allowances payable to, and other terms and conditions of service of, the officers and employees of the Authority shall be such as may be prescribed by the State Government.

Proceedings of Authority.

17E. The Authority shall have its sittings at the head office or any other place and at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business in its sittings as it may specify.

Filling of a casual vacancy.

17F. A casual vacancy in the office of a Member of the Authority shall be filled by the State Government, by notification in the Official Gazette, as soon as may be, after the occurrence of the vacancy.

5 of 1908.

17G. (1) The Authority shall, for the purposes of the settlement of disputes relating to land acquisition compensation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

Powers of Authority.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) reviewing its decisions, directions and orders;
- (g) any other matter which may be prescribed;

(2) The Authority shall have the powers to pass such interim order in any proceeding, hearing or matter before it as it may consider appropriate.

45 of 1860. 2 of 1974. 17H. All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. Proceedings before Authority.

17-I. The applications relating to settlement of land acquisition compensation under this Act, shall be decided by the Authority as expeditiously as possible and endeavour shall be made by it to dispose of the disputes finally within a period of six months from the date of receipt of the reference under section 18. Speedy disposal of disputes by Authority.

45 of 1860. 17J. The Members and officers of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Members and officers of Authority to be public servants.

17K. No civil court shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter. Jurisdiction of civil courts barred.

PART IIB

ESTABLISHMENT OF THE AUTHORITY FOR THE CENTRE

17L. (1) The Central Government may, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, by notification, establish one or more Authority to be known as the Land Acquisition Compensation Disputes Settlement Authority for the Centre to exercise jurisdiction, powers and authority conferred on it by or under this Act with regard to the acquisition of land by the Central Government. Establishment of Land Acquisition Compensation Disputes Settlement Authority for the Centre.

(2) The Central Government shall specify in the notification referred to in sub-section (1) the matters and places in relation to which the Authority for the Centre may exercise jurisdiction.

(3) The Authority for the Centre shall consist of a Chairperson and not less than two Members to be appointed by the Central Government.

(4) A person shall not be qualified to be a Member of the Authority for the Centre unless he,—

(i) is or has been a Judge of a High Court; or

(ii) has for at least fifteen years held any Legislative or Legal post of the Union and a post in the Grade II of the Indian Legal Service for at least three years; or

(iii) a person who is or has been a member of the Indian Administrative Service having sufficient knowledge of land acquisition and has held the post of Collector of a district and a post equivalent to a Joint Secretary in the Government of India:

Provided that no appointment of a sitting Judge under clause (i) shall be made except after consultation with the Chief Justice of the High Court concerned.

(5) The Authority for the Centre will have a Secretariat consisting a Secretary-General and such other staff as may be decided by the Central Government.

Application of certain provisions relating to Authority for compensation disputes settlement to Authority for the Centre.

17M. The provisions of sections 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17-I, 17J and 17K shall apply to the Authority for the Centre and shall have effect, subject to the following modifications, namely:—

(a) references to "Authority" shall be construed as references to "Authority for the Centre";

(b) references to "State Government" shall be construed as references to "Central Government";

(c) for the reference "any Member" in sub-section (2) of section 17C, the reference "any Member except a sitting Judge of a High Court" shall be substituted.

Amendment of section 18.

18. In section 18 of the principal Act,-

(i) in sub-section (1), the following provisos shall be inserted, at the end, namely:—

"Provided that the Collector shall, within a period of fifteen days from the date of receipt of application, make a reference to the Authority for the Centre, or as the case may be, the Authority;

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority for the Centre, or as the case may be, the Authority, requesting it to direct the Collector to make the reference to it within a period of thirty days.";

(ii) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

Amendment of section 23.

19. In section 23 of the principal Act,—

(i) in sub-section (1), in item "first", after the words "market value of the land", the words, figures and letter "in terms of section 11B" shall be inserted;

(ii) in sub-section (2), for the words "a sum of thirty per centum on such market-value", the words "a sum of sixty per centum on such market-value" shall be substituted.

20. After section 28A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section after section 28A.

"28B. Where an award is pending or remains unsettled at any stage under the Act, prior to the coming into force of the Land Acquisition (Amendment) Act, 2007, then the amount of compensation payable to the entitled person may be determined on the basis of section 11B as inserted by the said Act."

Determination of amount of compensation in pending or unsettled cases.

21. Part VII of the principal Act relating to “Acquisition of Land for Companies” and sections 38 to 44B (both inclusive) shall be omitted.

Omission of Part VII.

22. After section 54 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 54A and 54B.

“54A. (1) The land acquired under this Act shall not be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the appropriate Government.

Utilisation of land for the purpose it is acquired.

(2) When any land or part thereof, acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall return to the appropriate Government by reversion.

54B. Whenever any land acquired under this Act is transferred to any person for a consideration, eighty per cent. of the difference in the acquisition cost and the consideration received, which in no case shall be less than the acquisition cost, shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired, and for the purpose, a separate fund may be maintained which shall be administered by the Collector in such manner as may be prescribed.”

Sharing with landowners the difference in price of a land when transferred for a higher consideration.

23. In section 55 of the principal Act, in sub-section (1),—

Amendment of section 55.

(i) the first proviso shall be omitted;

(ii) in the second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted;

(iii) in the third proviso, for the words “Provided also”, the words “Provided further” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Land Acquisition Act, 1894 (the Act) has been an affective instrument for the acquisition of land for public purposes and also for companies, yet its provisions have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the state for involuntary acquisition of private land and property.

2. Often, such acquisition of land leads to displacement of people, depriving them of their livelihood and shelter, restricting access to their traditional resource base, and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences for the affected population, which call for protecting their rights, including those of the weaker sections of society, particularly tribals, tenants, etc. Rehabilitation and resettlement of the persons and families affected by involuntary acquisition of private land and immovable property is of paramount importance. Thus, it is necessary to extend the provisions of the extant policies or statutes for rehabilitation and resettlement of those affected by the acquisition of land under the Act.

3. Also, the ambit of the expression "person interested" under the Act is proposed to be expanded so as to include tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognitions of Forest Rights) Act, 2006 (2 of 2007). Moreover, it is necessary to ensure that persons having tenancy rights under the relevant State laws are included under the scope of "person interested".

4. Although the Land Acquisition Act provides for acquisition of land for public purpose, the expression "public purpose" has not been defined. Hence, the necessity of defining "public purpose", so as to restrict the scope of land acquisition under the Act to provision of land for strategic purposes vital to the state, and for infrastructure projects where the benefits accrue to the general public is essential.

5. The provision of the Act are also used to acquire private lands for companies. This frequently raises a question mark on the desirability of such state intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a more fear arrangement from the point of view of the land owner. In view of this it is desirable to omit the provisions for the acquisition of land for companies under the Act. However, under certain circumstances, it may be necessary to acquire some land through statutory mechanism to the extent of a limited portion of the total area of the land required when the "person" has already purchased the rest of the land through private negotiations and the purpose is useful to the general public. Such "person" may include any company or association or body of individuals, whether incorporated or not.

6. Further, it has been the experience that a large number of disputes relating to land acquisition compensation are brought before the courts of law. Quite often these cases remain pending for long periods of time in the courts. Such cases also add to the workload of the courts, which are generally over-burdened with cases other than land acquisition matters. Thus, it would be desirable that the jurisdiction of civil courts is barred for the purposes of the land acquisition compensation disputes and other alternate mechanisms created for disposal of such disputes in a time-bound manner.

7. Also, it is desirable to make the various steps of the land acquisition process time-bound, so that the entire process can be completed within a reasonable period of time. This will be in the interest of the land owners and farmers whose lands are acquired as well as the projects and requiring bodies.

8. Another area of concern in the application of the Act, so far, has been the requirement of providing a fair compensation at market value commensurate with the purpose for which the acquired land would be used. Certain provisions need to be introduced accordingly in the Act. In addition, in view of the involuntary nature of the acquisition, adequate solatium amount should be offered to the land owners, and the amount may be higher in cases of acquisition under urgency.

9. Often it is seen that the possession of land acquired is not taken over in time, and also there are delays in the payment of the compensation amount. Therefore, it is necessary to make a provision to ensure that physical possession of the land is taken over and the amount of compensation is paid within a defined period from the date of the compensation award under the Act.

10. Issues around the utilisation of the land acquired and their transfer are also areas of concern. Here, provision are proposed to be made so that the land acquired is not transferred to any other purpose except for a public purpose, and that too, not without prior approval of the appropriate Government. When any land or part thereof, acquired under the Act remains unutilized for a defined period from the date of taking over possession, the same will return to the appropriate Government. Further, whenever any land acquired under the Act is transferred to any person for a consideration, a part of the net unearned income so accruing to the transferor, will be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired.

11. Bringing in suitable amendments to the Land Acquisition Act, 1894 on these lines will go a long way in striking a balance between the need for land for development and other public purposes and protecting the interests of the persons whose lands are statutorily acquired.

12. The Bill seeks to achieve the above objectives.

New Delhi;
The 30th November, 2007.

RAGHUVANSH PRASAD SINGH,

FINANCIAL MEMORANDUM

Clause 17 of the Bill proposes to insert a new section 17L in the Act under which it is proposed that the Central Government may, by notification, establish one or more Authority to be known as the Land Acquisition Compensation Disputes Settlement Authority for the Centre to exercise jurisdiction, powers and authority conferred on it by or under this Act with regard to the acquisition of land by the Central Government, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation. The Authority for the Centre shall consist of a Chairperson and not less than two members to be appointed by the Central Government. It will have a Secretariat consisting of a Secretary-General and other staff as may be decided by the Central Government. The terms and conditions subject to which the Chairperson and other members of the Authority, will be appointed and the procedure of transaction of business of the Authority for the Centre shall be such as may be prescribed by the Central Government.

This will involve expenditure of a recurring as well as non-recurring nature, which would be a part of the administrative expenditure of the Ministry.

The exact expenditure which will be involved under the proposed Bill will depend upon the composition of the above-mentioned Authority, which will be decided after the Bill is passed. Hence, it is not practicable to make an exact estimate of the recurring and non-recurring expenditure for the purpose at this stage.

NOTES ON CLAUSES

Clause 2 and 3 seek to omit the words "and for companies" from the long title and the preamble.

Clause 4 seeks to insert new section 1A to provide for application of the provisions of the Rehabilitation and Resettlement Act, 2007 for land acquisition under this Act.

Clause 5 seeks to amend section 3 relating to definitions of certain expressions, insert definitions of new expressions, etc. as a consequence of the amendment to the Act.

Clause 6 seeks to amend the Act to omit the words "or for a Company" (wherever they occur in the Act) along with grammatical variations.

Clause 7 seeks to amend the Act to substitute the words "the Court" (along with grammatical variations), with the words "the Authority for the Centre, or as the case may be, the Authority".

Clause 8 seeks to insert new section 3A relating to mandatory social impact assessment prior to acquisition of land under the Act in cases of displacement of a certain number of families.

Clause 9 seeks to amend section 4 providing that no fresh notification to be issued for a period of one year in respect of the same land and no proceedings to be initiated for five years if the notification issued under sub-section (1) lapses for the second time. It also seeks to bar any person from making any transaction of land specified in the notice of acquisition till final declaration, etc.

Clause 10 seeks to amend sub-section (1) of section 6 so as not to make this sub-section "subject to the provision of Part VII of the Act.". It also seeks to omit Explanation 1 regarding computation of the period referred to in the first proviso.

Clause 11 seeks to insert new section 8A for the purpose of evaluation of damages during survey, measurement, etc.

Clause 12 seeks to substitute new section 11A to provide that the award shall be made within one year; for delay due to unavoidable circumstances and reasons to be recorded, the award to be made within an extended period of 6 months, and for such extended period additional compensation shall be paid.

Clause 13 seeks to insert new sections 11B and 11C. The proposed new section 11B provides the criteria for assessing and determining the market value, such as the minimum land value if any specified in the Stamp Act, average sale price of similar type of land or average sale price paid for already land purchased for the same project; the State Government may specify floor price per unit area, etc. The proposed new section 11C provides for part payment of compensation by shares, debentures etc. where a company is authorized to issue shares.

Clause 14 seeks to amend section 12 casting upon the Collector a duty to keep open and display summary of the entire proceedings, such summary to include schedule of payment of compensation, date of taking possession, etc.; to ensure physical possession of the land and payment of compensation within 60 days from the date of award etc.

Clause 15 seeks to amend section 15 to include therein reference to new section 11B.

Clause 16 seeks to amend section 17 as a consequence of new section 11B, for the purpose of additional compensation.

Clause 17 seeks to insert Part IIA and Part IIB. The proposed Part IIA relates to Establishment of the State Authority and contains the proposed new section 17A to section 17K. These deal with establishment of the Land Acquisition Compensation Disputes Settlement Authority by the State, number of Members of the authority, qualifications of the Members; terms and conditions of service of the Members, removal of a Member, officers and employees of the Authority, proceedings of the Authority, filling of casual vacancies, powers of the Authority, speedy disposal of disputes, members and officers to be public servants; and barring of jurisdiction of civil courts.

The proposed Part IIB relates to establishment of Authority for the Centre, and contains section 17L and section 17M. These deal with Land Acquisition Compensation, Disputes Settlement Authority by the Centre, constitution of the Authority, qualifications of the members etc.; and application of the provisions of sections 17B to 17K (both inclusive to the Authority for the Centre with necessary modifications to references to "Authority" and "State Government" to be read as "Authority for the Centre" and "Central Government" respectively, and reference to "any Member" in section 17C to be read as "any member except a sitting Judge of a High Court".

Clause 18 seeks to amend section 18 for the purpose of making reference to the Authority for the Centre by the Collector, etc.

Clause 19 seeks to amend section 23 as a consequence of new section 11B, etc.

Clause 20 seeks to insert new section 28B for determination of amount of compensation in cases which are pending or unsettled at any stage under the Act prior to the coming into force of this Act.

Clause 21 seeks to omit Part VII of the Act relating to Land Acquisition Act and sections 38 to 44B (both inclusive).

Clause 22 seeks to insert new sections 54A and 54B providing for utilization of land for the purpose for which it is required; and sharing with land owners difference in price of land where the land is transferred for higher consideration.

Clause 23 seeks to omit the first proviso to sub-section (1) of section 55 of the Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill seeks to insert a new section 3A in the Land Acquisition Act, 1894 which relates to mandatory social impact assessment prior to acquisition of land under the said Act. The new section 3A seeks to empower the Central Government to prescribe, by rules, the manner and time in which social impact assessment study and other matters enumerated in the new section shall be carried out. Clause 13 seeks to insert new section 11C in the Land Acquisition Act, 1894 to provide for allotment of shares and debentures in such manner as may be prescribed. Clause 14 seeks to amend section 12 of the Act to provide for payment of compensation and other related matters by framing the rules.

2. Sub-section (3) of section 17B and sub-section (2) of section 17D, which has been proposed to be inserted by clause 17 of the Bill in the 1894 Act seeks to provide that the State Government may by rules prescribe the salaries and allowances payable to, and other terms and conditions of service of Members of the Authority and the officers and employees of the said Authority. In respect of the Authority for the Centre, similar rules can be framed by the Central Government under section 17M.

3. Clause 22 of the Bill seeks to insert a new section 54B in the 1894 Act which provides sharing with landowners the difference in price of a land when transferred for a higher consideration and provides for making rules for maintaining and administering the fund for the purposes of new section 54B.

4. As per the provisions contained in sub-section (1) of section 55 to the Land Acquisition Act, 1894, the rules made under the Act are required to be laid before Parliament or State Legislature, as the case may be.

The aforesaid matters in respect of which rules may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE LAND ACQUISITION ACT, 1894

(1 OF 1894)

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition.

It is hereby enacted as follows:—

PART I

PRELIMINARY

Definitions.

1. (1)	*	*	*	*	*
(2)	*	*	*	*	*
(3)	*	*	*	*	*
	*	*	*	*	*

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

* * * * *

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act;

(e) the expression "company" means—

(i) a company as defined in section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc); 1 of 1956.

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc); 21 of 1860.

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc);

(ee) the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;

(f) the expression "public purpose" includes—

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in State, or a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies;

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interests in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

21 of 1860.

5 of 1908.

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II

ACQUISITION

Preliminary investigation

Publication of preliminary notification and powers of officers thereupon

4. (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

* * * *

Declaration of intended acquisition

Declaration that land is required for a public purpose—

6. (1) Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2) that any particular land is needed for a public purpose or for a Company a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify his orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or Ord. 1 of 1967.

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification: 68 of 1984.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.—In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

* * * *

Enquiry into measurements value and claims and award by the Collector

Enquiry and award by Collector.

11. (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

BACKGROUND MATERIALS
OF
NATIONAL CONFERENCE ON RELIEF AND
REHABILITATION OF DISPLACED PERSONS

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1) if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

16 to 1908.

(4) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act.

11A. (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Period within which an award shall be made.

68 to 1984.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.— In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

* * * *

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Matters to be considered and neglected.

* * * *

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

Reference to Court.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector

under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Collector's statement to the Court.

19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reasons to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement, shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested, respectively.

Service of notice.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determining the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) in the objection is in regard to the area of the land or to the amount of compensation, the Collector.

* * * *

Matters to be considered in determining compensation.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1);

* * * *

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1); or

eighthly, any increase to the value of the land on account of its being part to any use which is forbidden by law or opposed to public policy.

25. The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11.

Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.

* * * * *

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

Costs.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Collector may be directed to pay interest on excess compensation.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.

28A. (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Re-determination of the amount of compensation on the basis of the award of the Court.

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

PART IV
APPORTIONMENT OF COMPENSATION

Dispute as to apportionment.

* * * * *

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

PART V
PAYMENT

Payment of compensation or deposit of same in Court.

* * * * *

31. (1)*

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

* * * * *

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited, was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereon, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Investment of money deposited in other cases.

* * * * *

PART VI

TEMPORARY OCCUPATION OF LAND

35. (1)

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Temporary occupation of waste or arable land, procedure when difference as to compensation exists.

* * * * *

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to, the decision of the Court.

Difference as to condition of land.

PART VII

ACQUISITION OF LAND FOR COMPANIES

* * * * *

38A. An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling-houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 4, 5A, 6, 7 and 50 shall be interpreted as references also to such concern.

Industrial concern to be deemed Company for certain purposes.

39. The provisions of sections 6 to 16 (both inclusive) and sections 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company under this part, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous consent of appropriate Government and execution of agreement necessary.

40. (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided—

Previous enquiry.

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith; or

(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or

(b) that such acquisition is needed for the construction of some work and that such, work, is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 in the case of Civil Court. 5 of 1908.

Agreement with appropriate Government.

41. If the appropriate Government is satisfied after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40, it shall require the Company to enter into an agreement with the appropriate Government providing to the satisfaction of the appropriate Government for the following matters, namely:—

(1) the payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

(4) where the acquisition is for the purpose of erecting dwelling-houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling-houses or amenities shall be erected or provided;

(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which and the conditions on which, the building or work shall be constructed or executed; and

(5) where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette, and thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Sections 39 to 42 not to apply where Government bound by agreement.

43. The provisions of section 39 to 42, both inclusive, shall not apply and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land of any Railway or other Company, for the purposes of which, under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, the Central Government or any State Government is or was bound to provide land. 10 of 1870.

How agreement with railway Company may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

Restriction on transfer, etc.

44A. No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government.

Land not to be acquired under this Part except for certain purposes for private companies other than Government Companies.

44B. Notwithstanding anything contained in the Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private company which is not a Government company.

Explanation.—“Private company” and “Government company” shall have the meanings respectively assigned to them in the Companies Act, 1956. 1 of 1956.

PART VIII
MISCELLANEOUS

* * * * *
49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Acquisition of part of house or building.

* * * * *
Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

* * * * *
50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of land at cost of local authority or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

5 of 1908 * * * * *
53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act.

Code of Civil Procedure to apply to proceedings before Court.

5 of 1908 * * * * *
54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof.

Appeals in proceedings before Court.

55. (1) The appropriate Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made:

Power to make rules.

Provided that the power to make rules for carrying out the purposes of Part VII of this Act shall be exercisable by the Central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Governments:

Provided further that every such rule made by the Central Government shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive

sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule:

Provided also that every such rule made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature.

* * * * *

LOK SABHA

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Bill

further to amend the Land Acquisition Act, 1894.

(Shri Raghuvansh Prasad Singh, Minister of Rural Development)

MGIPMRND—5103LS(S-5)—01-12-2007.

THE REHABILITATION AND RESETTLEMENT
BILL, 2007

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Act to apply to all cases of land acquisition or other involuntary displacement of people.
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CHAPTER II

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Bill No. 98 of 2007

THE REHABILITATION AND RESETTLEMENT BILL, 2007

A

BILL

to provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Rehabilitation and Resettlement Act, 2007.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.

Act to apply
cases of land
acquisition or
other
involuntary
displacement
of people.

2. The provisions of this Act shall apply to the rehabilitation and resettlement of persons affected by acquisition of land under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason.

1 of 1894.

Definitions.

3. In this Act, unless the context otherwise requires,—

(a) “Administrator for Rehabilitation and Resettlement” means an officer appointed for the purpose of rehabilitation and resettlement of affected persons under sub-section (1) of section 9.

(b) “affected family” means—

(i) a family whose primary place of residence or other property or source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement due to any other reason;

(ii) any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the *abadi* or other property) in the affected area or otherwise, has been involuntarily displaced from such land or other property;

(iii) any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person; who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason;

(c) "affected area" means area of village or locality notified by the appropriate Government under sub-section (1) of section 20;

(d) "agricultural labourer" means a person primarily resident in the affected area for a period of not less than five years immediately before the declaration of the affected area, who does not hold any land in the affected area but who earns his livelihood mainly by manual labour on agricultural land therein immediately before such declaration and who has been deprived of his livelihood;

(e) "agricultural land" means lands being used for the purpose of—

(i) agriculture or horticulture;

(ii) dairy farming, poultry farming, pisciculture, sericulture, breeding of livestock or nursery growing medicinal herbs;

(iii) raising of crops, grass or garden produce; and

(iv) land used by an agriculturist for the grazing of cattle, but does not include land used for cutting of wood only;

(f) "appropriate Government" means—

(i) in relation to acquisition of land for the purposes of the Union, the Central Government;

(ii) in relation to a project which is executed by a Central Government agency or undertaking or by any other agency on the orders or directions of the Central Government, the Central Government;

(iii) in relation to acquisition of land for purposes other than (i) and (ii) above, the State Government; and

(iv) in relation to rehabilitation of persons displaced due to any other reason, the State Government;

(g) "below poverty line or BPL Family" means below poverty line families as defined by the Planning Commission of India, from time to time, and those included in a BPL list for the time-being in force;

(h) "Commissioner for Rehabilitation and Resettlement" means the Commissioner for Rehabilitation and Resettlement appointed by the State Government under sub-section (1) of section 11;

(i) "DDP block" means a block identified under the Desert Development Programme of the Government of India;

(j) "family" includes a person, his or her spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother and other relatives residing with him or her and dependent on him or her for their livelihood; and includes "nuclear family" consisting of a person, his or her spouse and minor children;

(k) "holding" means the total land held by a person as an occupant or tenant or as both;

(l) "land acquisition" or "acquisition of land" means acquisition of land under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force;

(m) "marginal farmer" means a cultivator with an unirrigated land holding up to one hectare or irrigated land holding up to half hectare;

(n) "non-agricultural labourer" means a person who is not an agricultural labourer but is primarily residing in the affected area for a period of not less than five years immediately before the declaration of the affected area and who does not hold any land under the affected area but who earns his livelihood mainly by manual labour or as a rural artisan immediately before such declaration and who has been deprived of earning his livelihood mainly by manual labour or as such artisan in the affected area;

(o) "notification" means a notification published in the Gazette of India, or as the case may be, the Gazette of a State;

(p) "occupier" means a member of a Scheduled Tribes community in possession of forest land prior to the 13th day of December, 2005;

(q) "Ombudsman" means the person appointed under section 14 for redressal of grievances;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "project" means a project involving involuntary displacement of people, irrespective of the number of persons affected;

(t) "requiring body" means a company, a body corporate, an institution, or any other organisation for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to a company, body corporate, an institution, or any other organisation, as the case may be, under lease, licence or through any other mode of transfer of land;

(u) "resettlement area" means an area so declared under section 25 by the appropriate Government;

(v) "small farmer" means a cultivator with an un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal farmer.

CHAPTER II

SOCIAL IMPACT ASSESSMENT OF PROJECTS

Social impact assessment study in certain cases.

4. (1) Whenever, it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, the appropriate Government shall ensure that a social impact assessment study is carried out in the proposed affected areas in the manner as may be prescribed.

(2) While undertaking a social impact assessment under sub-section (1), the appropriate Government shall, *inter alia*, take into consideration the impact that the project will have on public and community properties, assets and infrastructure; particularly, roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities, such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds.

(3) The appropriate Government may specify that the ameliorative measures, which will need to be undertaken for addressing the said impact for a specific component, may not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be the State Government.

Independent multi-disciplinary expert group to examine the social impact assessment report.

5. (1) The social impact assessment report shall be submitted to the appropriate Government for its examination by an independent multi-disciplinary expert group, as may be notified by the appropriate Government.

(2) The expert group shall consist of the following persons, namely—

(a) two non-official social scientist and rehabilitation experts, to be nominated by the appropriate Government;

(b) the Secretary of the departments of the appropriate Government concerned with the welfare of the Scheduled Castes and the Scheduled Tribes or his nominee, *ex officio*; and

(c) a representative of the requiring body, to be nominated by the appropriate Government.

Concurrent social impact assessment study in cases requiring environmental impact assessment study.

6. (1) Wherever it is required, as per the provisions of any law, rules and guidelines issued thereunder, to undertake environmental impact assessment, the social impact assessment study shall be carried out simultaneously with the Environmental Impact Assessment study.

(2) The public hearing undertaken in the project affected area for the environmental impact assessment shall also cover issues relating to social impact assessment.

(3) A copy of the social impact assessment report shall be made available to the Impact Assessment Agency authorised in respect of environmental impact assessment by the Central Government in the Ministry of Environment and Forests, and a copy of the environmental impact assessment report shall be shared with the expert group notified under section 5.

Social impact assessment clearance.

7. (1) The social impact assessment clearance shall be granted in such manner and within such time as may be prescribed.

(2) The conditions laid down in the social impact assessment clearance shall be followed by all concerned, including the Administrator for Rehabilitation and Resettlement while preparing and implementing the rehabilitation and resettlement plan.

(3) The concealment of any factual data or submission of false or misleading data or reports, may lead to the social impact assessment clearance being rejected and clearance, if any granted on the basis of data which subsequently found to be false, may be revoked.

8. The projects involving emergency acquisition of minimum area of land by the Central Government in for the purpose of defence or national security shall be exempted from the provisions of this Chapter, subject to such institutional safeguards as may be prescribed for protecting the interests of the affected families.

Exemption from social impact assessment.

CHAPTER III

AUTHORITIES FOR REHABILITATION AND RESETTLEMENT

9. (1) Where the appropriate Government is satisfied that there is likely to be involuntary displacement of large number of persons due to acquisition of land for any project or due to any other reason, and where there is likely to be displacement of—

Administrator
for
Rehabilitation
and
Resettlement.

(a) four hundred or more families *en masse* in plain areas; or

(b) two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution,

then the State Government shall, by notification, appoint in respect of that project, an officer not below the rank of District Collector to be the Administrator for Rehabilitation and Resettlement:

Provided that if the appropriate Government in respect of such project is the Central Government, the appointment shall be made in consultation with the Central Government:

Provided further that in case of projects involving displacement of less than four hundred families *en masse* in plain areas, or less than two hundred families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, the State Government may, by notification, appoint in respect of that project, an officer not below the rank of Deputy Collector or Sub-Divisional Officer to be the Administrator for Rehabilitation and Resettlement.

(2) The Administrator for Rehabilitation and Resettlement shall be assisted by such officers and employees as the State Government may decide.

10. (1) Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the Administrator for Rehabilitation and Resettlement shall take all measures for the rehabilitation and resettlement of the affected families.

Powers and
functions of
Administrator.

(2) The formulation, execution and monitoring of the rehabilitation and resettlement plan shall vest in the Administrator for Rehabilitation and Resettlement.

(3) Subject to any general or special order of the appropriate Government, the Administrator for Rehabilitation and Resettlement shall perform the following functions, namely:—

(i) minimise displacement of persons and to identify non-displacing or least displacing alternatives in consultation with the requiring body;

(ii) hold consultation with the affected persons while formulating a rehabilitation and resettlement scheme or plan;

(iii) ensure that the interests of the adversely affected persons of the Scheduled Tribes and weaker sections are protected while formulating the rehabilitation and resettlement scheme or plan;

(iv) prepare a scheme or plan of rehabilitation and resettlement as required under Chapter V;

(v) prepare a budget including estimated expenditure of various components of acquisition of land, rehabilitation and resettlement activities or programmes in consultation with representatives of the affected families and the requiring body;

(vi) arrange land for rehabilitation and resettlement of the affected families;

(vii) allot land and ensure providing of benefits to the affected families; and

(viii) perform such other functions as the appropriate Government may, from time to time, by order in writing, assign.

(4) The Administrator for Rehabilitation and Resettlement may, by order in writing, delegate such of the functions conferred on him by or under this Act to any officer not below the rank of *Tehsildar* or equivalent as he may consider appropriate for smooth implementation of the rehabilitation and resettlement scheme or plan.

(5) All officers and staff appointed by the State Government under this Chapter to assist the Administrator for Rehabilitation and Resettlement shall be subordinate to him.

Commissioner
for
Rehabilitation
and
Resettlement.

11. (1) The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families under this Act, to be called the Commissioner for Rehabilitation and Resettlement.

(2) The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans.

Rehabilitation
and
Resettlement
Committee at
project level.

12. (1) For each project which involves involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the the Fifth Schedule or Sixth Schedule to the Constitution, the appropriate Government shall constitute a Committee under the chairpersonship of the Administrator for Rehabilitation and Resettlement, to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of scheme or plan of rehabilitation and resettlement of the affected families, and to carry out post-implementation social audits.

(2) The Rehabilitation and Resettlement Committee constituted under sub-section (1) shall include, apart from officers of the appropriate Government, the following members, namely:—

- (i) a representative of women residing in the affected area;
- (ii) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;
- (iii) a representative of a voluntary organisation working in the area;
- (iv) a representative of a nationalised bank;
- (v) the Land Acquisition Officer of the project;
- (vi) the Chairpersons of the *panchayats* or municipalities located in the affected area, or their nominees;
- (vii) the Member of Parliament and Member of the Legislative Assembly of the concerned area; and
- (viii) a representative of the requiring body.

(3) The procedure regulating the business of the Rehabilitation and Resettlement Committee, its meetings and other matters connected thereto shall be such as may be prescribed.

13. (1) The State Government shall in every district constitute a standing Rehabilitation and Resettlement Committee under the chairpersonship of the District Collector or, as the case may be, Deputy Commissioner of the district, to monitor and review the progress of rehabilitation and resettlement of the affected families in the district excluding those covered by the Rehabilitation and Resettlement Committee at the project level as specified in section 12.

Rehabilitation
and
Resettlement
Committee at
district level.

(2) The composition, powers, functions and other matters relating to the functioning of the Rehabilitation and Resettlement Committee at the district level shall be such as may be prescribed by the State Government.

14. (1) *The appropriate Government shall appoint, in such manner as may be prescribed, an ombudsman for time-bound disposal of the grievances arising out of the matters covered under this Act.*

Ombudsman.

(2) *Any affected person, if aggrieved, for not being offered the benefits admissible, may move a petition for redressal of his grievances to the ombudsman.*

(3) *The form and manner in which and the time within which petitions under subsection (2) may be made to the ombudsman and be disposed of in such manner as may be prescribed.*

(4) *The ombudsman shall have the power to consider and dispose of all petitions relating to resettlement and rehabilitation against the decision of the Administrator for Rehabilitation and Resettlement or Resettlement and Rehabilitation Committee and issue such directions to the requiring body, the Administrator for Rehabilitation and Resettlement, the District Collector or Deputy Commissioner of the districts, as he may deem proper for the redressal of such grievances.*

15. (1) *In case a project covers an area in more than one State or Union territory where the project affected families are or had been residing, or proposed to be resettled, the Central Government shall, in consultation with the concerned States and Union territories, appoint the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, a common Rehabilitation and Resettlement Committee, and the Ombudsman for the purposes of this Act.*

Inter-State projects.

(2) *The method of implementation of the schemes or plans for rehabilitation and resettlement shall be discussed by the State Governments and the Union territory Administrations, and a common scheme or plan agreed to by them shall be notified by the Administrator for Rehabilitation and Resettlement in the States or Union territories in accordance with the procedure laid down in this Act.*

(3) *If any difficulty arises in the implementation of the schemes or plans, the matter shall be referred to the Central Government for its decision.*

16. (1) *The Central Government shall constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.*

National Monitoring Committee.

(2) *The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields.*

(3) *The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed.*

(4) *The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning.*

Disclosure of information.

17. The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required.

Oversight Committee. 18. (1) For every major project covered under this Act, there shall be an Oversight Committee for Rehabilitation and Resettlement in the Ministry or the Department of the appropriate Government.

(2) The composition, functions and procedures of the Committee referred to in sub-section (1) shall be such as may be prescribed.

National Rehabilitation Commission. 19. (1) A National Rehabilitation Commission shall be set up by the Central Government with the power to supervise and exercise general oversight over rehabilitation and resettlement of the affected families covered under this Act.

(2) The terms and conditions of appointment of the Chairperson and Members and the composition, powers and the procedure for transaction of business of the National Rehabilitation Commission shall be such as may be prescribed.

CHAPTER IV

SCHEMES OR PLANS FOR REHABILITATION AND RESETTLEMENT

Declaration of affected areas. 20. (1) Where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, due to acquisition of land for any project or due to any other reason, it shall, declare, by notification in the Official Gazette, area of villages or lands as an affected area.

(2) Every declaration made under sub-section (1) shall be published in at least three daily newspapers, two of which shall be in the local vernacular, having circulation in villages or areas which are likely to be affected, and also by affixing a copy of the notification on the notice board of the concerned gram panchayats or municipalities and other prominent place or places in the affected area as well as the resettlement area, or by any other method as may be prescribed in this regard by the appropriate Government.

Survey and census of affected families. 21. (1) Upon publication of a declaration under sub-section (1) of Section 20, the Administrator for Rehabilitation and Resettlement shall undertake a baseline survey and census for identification of the persons and families likely to be affected.

(2) Every survey under sub-section (1) shall contain the following village-wise information of the affected families, namely:—

(i) members of the family who are permanently residing, engaged in any trade, business, occupation or vocation in the affected areas;

(ii) families who are likely to lose, or have lost, their house, agricultural land, employment or are alienated wholly or substantially from the main source of their trade, business, occupation or vocation;

(iii) agricultural labourers and non-agricultural labourers;

(iv) families belonging to the Scheduled Caste or Scheduled Tribe categories;

(v) vulnerable persons such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above fifty years of age, who are not provided or cannot immediately be provided with alternative livelihood, and who are not otherwise covered as part of a family;

(vi) families that are landless (not having homestead land, agricultural land, or either homestead or agricultural land) and below poverty line, but residing continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area; and

(vii) the Scheduled Tribes families who are or were in possession of forest lands in the affected area prior to the 13th day of December, 2005.

(3) Every survey undertaken under sub-section (1) shall be completed within a period of ninety days from the date of declaration made under sub-section (1) of Section 20.

(4) On completion of the survey under sub-section (3), or on expiry or a period of ninety days, whichever is earlier, the Administrator for Rehabilitation and Resettlement shall, by notification, publish a draft containing details of the findings of the survey conducted under sub-section (1), in such manner as may be prescribed, and invite objections and suggestions from all persons likely to be affected thereby.

(5) On the expiry of a period of thirty days from the date of publication of the draft containing details of survey and after considering the objections and suggestions received under sub-section (4), the Administrator for Rehabilitation and Resettlement shall submit his recommendations thereon along with the details of the survey to the appropriate Government.

(6) Within a period of forty-five days from the date of receipt of the details of the survey and recommendations of the Administrator for Rehabilitation and Resettlement, the appropriate Government shall publish the final details of survey in the Official Gazette.

22. (1) The Administrator for Rehabilitation and Resettlement shall draw up a list of lands that may be available for rehabilitation and resettlement of the affected families.

Assessment of land available for rehabilitation and resettlement.

(2) The list of lands drawn up under sub-section (1) shall consist of—

- (a) land available or acquired for the project and earmarked for the purpose;
- (b) Government wastelands and any other Government land available for allotment to the affected families;
- (c) lands that may be available for purchase or acquisition for the purposes of rehabilitation and resettlement scheme or plan; or
- (d) a combination of one or more of the above.

23. (1) After completion of baseline survey and census of the affected families under section 21, and assessment of the requirement of land for resettlement under section 22, the Administrator for Rehabilitation and Resettlement shall prepare a draft scheme or plan for the rehabilitation and resettlement of the affected families after consultation with the representatives of the affected families including women and the representative of the requiring body.

Draft schemes or plans for rehabilitation and resettlement.

(2) The draft rehabilitation and resettlement scheme or plan shall be made known locally by wide publicity in the affected area and the resettlement area in such manner as may be prescribed by the appropriate Government which shall also be discussed in the concerned gram sabhas and in public hearings in urban and rural areas where gram sabhas do not exist:

Provided that the consultation with the Gram Sabha or the Panchayats at the appropriate level in Scheduled Areas under the Vth Schedule shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996:

40 of 1996.

Provided further that, in cases of involuntary displacement of two hundred or more Scheduled Tribes families from the Scheduled Areas, the concerned Tribes Advisory Councils shall also be consulted.

(3) The draft rehabilitation and resettlement scheme or plan shall contain the following particulars, namely:—

(a) the extent of land to be acquired for the project or lost otherwise and the names of the affected villages;

(b) a village-wise list of the affected persons, family-wise, the extent and nature of land and immovable property owned or held in their possession in the affected area, and the extent and nature of such land and immovable property which they are likely to lose or have lost, indicating the survey numbers thereof.

(c) a list of agricultural labourers in such area and the names of such persons whose livelihood depends on agricultural activities;

(d) a list of persons who have lost or are likely to lose their employment or livelihood or who have been or likely to be alienated wholly or substantially from their main sources of trade, business, occupation or vocation consequent to the acquisition of land for the project or involuntary displacement due to any other cause;

(e) a list of non-agricultural labourers, including artisans in such area;

(f) a list of affected landless families, including those without homestead land and below poverty line families;

(g) a list of vulnerable affected persons, as specified in clause (v) of sub-section (2) of section 21;

(h) a list of occupiers, if any;

(i) a list of public utilities and government buildings which are affected or likely to be affected;

(j) details of public and community properties, assets and infrastructure;

(k) a list of benefits and packages which are to be provided to the affected families;

(l) details of the extent of land available in the resettlement area for resettling and for allotment of land to the affected families;

(m) details of the amenities and infrastructural facilities which are to be provided for resettlement;

(n) the time schedule for shifting and resettling the displaced families in the resettlement area; and

(o) such other particulars as the Administrator for Rehabilitation and Resettlement may consider necessary.

(4) While preparing a draft scheme or plan in case of a project involving land acquisition on behalf of a requiring body, the Administrator for Rehabilitation and Resettlement shall ensure that the entire estimated cost of rehabilitation and resettlement scheme or plan is included in the cost of the project for which the land is being acquired on behalf of the requiring body; and the entire expenditure of rehabilitation and resettlement benefits including the expenditure incurred on rehabilitation and resettlement of the affected families are borne by the requiring body.

(5) The Administrator for Rehabilitation and Resettlement shall communicate to the requiring body for incorporation in the project cost, the entire cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families.

Final
publication of
schemes and
plans.

24. (1) The Administrator for Rehabilitation and Resettlement shall submit the draft scheme or plan for rehabilitation and resettlement to the appropriate Government for its approval.

(2) In case of a project involving land acquisition on behalf of a requiring body, it shall be the responsibility of the appropriate Government to obtain the consent of the requiring body, to ensure that the necessary approvals as required under this Act have been obtained, and to make sure that the requiring body has agreed to bear the entire cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families as communicated by the Administrator for Rehabilitation and Resettlement, before approving it.

(3) The approved scheme or plan for rehabilitation and resettlement shall be published in the Official Gazette by the appropriate Government.

(4) On the final publication of notification of the rehabilitation and resettlement scheme or plan, it shall come into force.

CHAPTER V

REHABILITATION AND RESETTLEMENT OF AFFECTED FAMILIES

25. The appropriate Government may, by notification, declare any area or areas as a resettlement area or areas for the purposes of rehabilitation and resettlement of the affected families.

Declaration of resettlement areas.

26. (1) The affected families may, wherever possible, be settled in a group or groups.

Affected families to be settled in group.

(2) In case the entire population of the village or area to be shifted belongs to a particular community, such population or the families may, wherever possible, be resettled en masse in the resettlement area.

(3) In the case of resettlement of the Scheduled Castes affected families, such families may, wherever possible, be resettled in the areas close to the villages.

27. The Administrator for Rehabilitation and Resettlement may, on behalf of the appropriate Government, and subject to such rules as may be prescribed, enter into an agreement with any person for the purchase or exchange of any land required for the purposes of the rehabilitation and resettlement scheme or plan.

Purchase or exchange of land for rehabilitation and resettlement.

28. (1) In case of a project involving land acquisition on behalf of a requiring body, it shall be the responsibility of the requiring body to provide requisite funds to the administrator for Rehabilitation and Resettlement for proper implementation of the rehabilitation and resettlement scheme or plan for the affected families.

Funds for rehabilitation and resettlement.

(2) In case of a project involving land acquisition on behalf of a requiring body, as soon as the rehabilitation and resettlement scheme or plan is finalised, the requiring body shall deposit one-third cost of the rehabilitation and resettlement scheme or plan with the Administrator for Rehabilitation and Resettlement.

(3) The Administrator for Rehabilitation and Resettlement shall keep proper books of accounts and maintain records of the funds placed at his disposal, in such manner as may be prescribed, and submit periodical returns to the appropriate Government in this behalf.

29. In case of a project involving land acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in rehabilitation and resettlement shall precede the actual displacement of the affected families.

Compensation and rehabilitation and resettlement ahead of displacement.

30. (1) In case of involuntary displacement of four hundred families or more en masse in plain areas, or two hundred families or more en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, comprehensive infrastructural facilities and amenities notified by the appropriate Government shall be provided in the resettlement area.

Infrastructural facilities and amenities in resettlement areas.

(2) If relocation takes place in an existing settlement area, the same infrastructure shall also be extended to the host community.

(3) In case of involuntary displacement of less than four hundred families en masse in plain areas, or less than two hundred families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, all affected families shall be provided basic infrastructural facilities and amenities at the resettlement area as per the norms specified by the appropriate Government.

31. The appropriate Government shall ensure that the resettlement area forms part of a panchayat or a municipality.

Local self-government institutions in resettlement areas.

Special provisions for rehabilitation and resettlement in case of urgency.

32. If land is acquired in cases of urgency, under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force, each affected family shall be provided with transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan, in addition to the payment of monthly subsistence allowance and other rehabilitation and resettlement benefits due to them under this Act.

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Periphery development.

33. In case of a project involving land acquisition on behalf of a requiring body—

(i) the requiring body shall contribute to the socio-economic development of such geographic area on the periphery of the project site as may be defined by the appropriate;

(ii) the requiring body shall earmark a percentage of its net profit or, in case no profit is declared by the requiring body in a particular year, for that year, such minimum alternative amount as may be determined by the appropriate Government after consultation with the requiring body, to be spent for the purpose and within the area referred to in sub-section (i); and

(3) the requiring body shall coordinate with the Commissioner for Rehabilitation and Resettlement while carrying out the developmental activity under this section.

CHAPTER VI

REHABILITATION AND RESETTLEMENT BENEFITS FOR THE AFFECTED FAMILIES

Rehabilitation and resettlement benefits available to eligible affected families. Housing benefits.

34. The rehabilitation and resettlement benefits shall be extended to the affected families who are eligible as affected families on the date of publication of the declaration under sub-section (1) of section 20, and any division of assets in the family after the said date shall not be taken into account.

35. (1) Any affected family owning house and whose house has been acquired or lost, shall be allotted land for house, without requiring him to pay the price for such land, to the extent of two hundred and fifty square metre of land in rural areas or, as the case may be, one hundred and fifty square metre of land in urban areas to each family within the affected family, subject to the actual area acquired or lost:

Provided that, in urban areas, a house of up to one hundred square metre carpet area may be provided in lieu thereof.

(2) Each below poverty line affected family which is without homestead land and which has been residing in the affected area continuously for a period of not less than five years preceding the date of declaration of the affected area and which has been involuntarily displaced from such area, shall be provided with a house having at least fifty square metre carpet area in rural areas or, as the case may be, twenty-five square metre carpet area in urban areas, in the resettlement area:

Provided that any such family which opts not to take the house offered, shall get a one-time financial assistance for house construction, and the amount shall not be less than what is given under any programme of house construction by the Government of India.

Explanation—The houses in urban areas may, if necessary, be provided in multi-storied building complexes.

Allotment of agricultural land.

36. (1) Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, or who has, as a land consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, agricultural land or cultivable wasteland to the extent of actual land loss by the affected family subject to a ceiling of one hectare of irrigated land or two hectares of un-irrigated land or cultivable wasteland, if Government land is available in the resettlement area.

(2) In the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land-for-land in the command area of the project:

Provided that such lands may be consolidated and plots of suitable sizes allotted to the affected families, who could be settled there in groups:

Provided further that, in case an affected family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for the lands lost, for purchase of suitable land elsewhere.

(3) In case of allotment of agricultural land in lieu of the acquired land, each person whose name is included in the records of rights with regard to the affected family shall be given a one-time financial assistance of such amount as may be prescribed by the appropriate Government subject to a minimum of ten thousand rupees.

(4) In case of allotment of wasteland in lieu of the acquired land, each person whose name is included in the records of rights with regard to the affected family shall be given a one-time financial assistance of such amount as may be prescribed by the appropriate Government subject to a minimum of fifteen thousand rupees per hectare of land allotted.

37. (1) In case of a project involving land acquisition on behalf of a requiring body, the stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the requiring body.

Registration, etc., of land or other property allotted.

(2) The land or house allotted to the affected families shall be free from all encumbrances.

(3) The land or house allotted may be in the joint names of wife and husband of the affected family.

38. Each displaced affected family having cattle shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of fifteen thousand rupees for construction of cattle shed.

Financial assistance for cattle shed.

39. Each affected family which is displaced shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of ten thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.

Transportation cost.

40. Each affected person who is a rural artisan, small trader or self-employed person and who has been displaced shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of twenty-five thousand rupees for construction of working shed or shop.

Financial assistance for working shed or shop.

41. In case of a project involving land acquisition on behalf of a requiring body—

Employment and skill development.

(i) the requiring body shall give preference to the affected families in providing employment in the project, at least one person per family, subject to the availability of vacancies and suitability of the affected person for the employment;

(ii) wherever necessary, the requiring body shall arrange for training of the affected persons, so as to enable such persons to take on suitable jobs;

(iii) the requiring body shall give preference to the affected persons or their groups or cooperatives in the allotment of outsourced contracts, shops or other economic opportunities coming up in or around the project site;

(iv) the requiring body shall give preference to willing landless labourers and unemployed affected persons while engaging labour in the project during the construction phase;

(v) the requiring body shall offer the affected persons the necessary training facilities for development of entrepreneurship, technical and professional skills for self-employment;

(vi) the requiring body shall offer scholarships and other skill development opportunities to eligible persons from the affected families, as per such criteria as may be fixed by the appropriate Government.

Rehabilitation grant and option for allotment of shares.

42. In case of a project involving land acquisition on behalf of a requiring body, the affected families which have not been provided agricultural land or employment shall be entitled to a rehabilitation grant equivalent to seven hundred and fifty days minimum agricultural wages:

Provided that if the requiring body is a company authorised to issue shares and debentures, then, it shall give an option to the affected families of taking up to fifty per cent., but in any case not less than twenty per cent., of their rehabilitation grant amount in the form of shares or debentures, in such manner as may be prescribed.

Land development projects.

43. In cases involving land acquisition for land development projects, in lieu of land-for-land or employment, the affected families shall be given developed land or built-up space within the development project, in proportion to the land acquired, but subject to limits as may be prescribed.

Fishing rights.

44. In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government.

Subsistence allowance.

45. In case of a project involving land acquisition on behalf of a requiring body, each affected family which is involuntarily displaced shall get a monthly subsistence allowance equivalent to twenty-five days minimum agricultural wages per month for a period of one year from the date of displacement.

Monthly pension to vulnerable affected persons.

46. The project authorities shall, at their cost, arrange for annuity policies that will pay a pension for life to the vulnerable affected persons as specified in clause (v) of sub-section (2) of section 21, of such amount as may be prescribed by the appropriate Government subject to a minimum of five hundred rupees per month.

Linear projects.

47. In case of linear acquisitions, in projects relating to railway lines, highways, transmission lines, laying of pipelines and such other projects wherein only a narrow stretch of land is acquired for the purpose of the project or is utilised for right of way, each person whose name is included in the records of rights with regard to the affected family shall be offered by the requiring body an ex-gratia grant of such amount as may be prescribed by the appropriate Government subject to a minimum of twenty thousand rupees, in addition to the compensation and any other benefits due under the Act or programme or scheme under which the land, house or other property is acquired:

Provided that, if as a result of such land acquisition, the land-holder becomes landless or is reduced to the status of a small or marginal farmer, other rehabilitation and resettlement benefits available under this Act shall also be extended to such affected family.

Option for a lump-sum payment in lieu of benefits.

48. The affected families shall have the option to take a lump-sum amount, in lieu of one or more of the benefits specified in sections 35 to 47 (both inclusive), as may be determined by the appropriate Government in consultation with the requiring body.

Special provisions for rehabilitation and resettlement of members of the Scheduled Tribes and the Scheduled Castes.

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49. (1) In case of a project involving land acquisition on behalf of a requiring body which involves involuntary displacement of two hundred or more Scheduled Tribes families, a Tribal Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition.

(2) The Tribal Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years sufficient to meet the requirements of tribal communities who are denied access to forests.

(3) The concerned Grams Sabhas or the Panchayats at the appropriate level in the Scheduled Areas under the Fifth Schedule or, as the case may be, Councils in the Sixth Schedule Areas shall be consulted in all cases of land acquisition in such areas, including acquisition under the urgency clause, before issue of a notification under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force as per the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and other relevant laws.

(4) Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, if Government land is available in the resettlement area.

(5) In case of land being acquired from members of the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest at the time of taking over the possession of the land.

(6) In case of a project involving land acquisition on behalf of a requiring body, each Scheduled Tribes affected family shall get an additional one-time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usages of forest produce.

(7) The Scheduled Tribes affected families shall be resettled preferably in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity.

(8) The resettlement areas predominantly inhabited by the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government, free of cost for community and social gatherings.

(9) In case of a project involving land acquisition on behalf of a requiring body, the Scheduled Tribes affected families resettled out of the district will get twenty-five per cent. higher rehabilitation and resettlement benefits in monetary terms in respect of the benefits specified in sub-sections (3) and (4) of section 36, sections 38, 39, and 40.

(10) Any alienation of tribal lands in disregard of the laws and regulations for the time being in force shall be treated as null and void; and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be available to the original tribal land-owners.

(11) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(12) All benefits available to the affected families in the affected areas, shall continue in the resettlement area.

50. The affected Scheduled Tribes families, who were in possession of forest lands in the affected area prior to the 13th day of December, 2005, shall be eligible for the benefits of rehabilitation and resettlement under this Act. Benefits to occupiers.

CHAPTER VII

MISCELLANEOUS

Indexation of rehabilitation grant and other monetary benefits.

51. The rehabilitation grant and other benefits expressed in monetary terms in this Act shall be indexed to the Consumer Price Index with reference to the date to be notified, and the same shall also be revised by the appropriate Government from time to time.

Punishment for false information.

52. If a person, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading, he shall be liable to be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five lakh rupees, or with both.

Duty to assist Administrator for Rehabilitation and Resettlement.

53. The officers of the Central Government, State Governments or Union territory Administrations and the officers or staff of the local bodies or other statutory authorities shall assist the Administrator for Rehabilitation and Resettlement or any other officer duly authorised under this Act, as and when required, for carrying out the purposes of this Act.

Bar of jurisdiction of civil courts.

54. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, or the Ombudsman is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Officers to be public servants.

55. The Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement and the Ombudsman, appointed under this Act shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Indemnity for acts done in good faith.

56. No Suit, prosecution or other legal proceedings shall lie against the appropriate Government, local body or authority or any officer of the appropriate Government or local body or authority acting under this Act for anything which is in good faith done or purported to be done under this Act or the rules, scheme or plan made thereunder.

Overriding effects of Act over all land related laws.

57. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force (except the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996) or in any instrument having effect by virtue of any law other than this Act. 40 of 1996.

Power to make rules.

58. (1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which social impact assessment study is to be carried out under sub-section (1) or section (4);

(b) the manner of granting social impact assessment clearance under sub-section (1) or section 7;

(c) emergency acquisition of land for the purpose of defence or national security, and its institutional safeguards under section 8;

(d) rules of procedure regulating the business of the Rehabilitation and Resettlement Committee under sub-section (3) of section 12; and composition, powers and functions relating to the Rehabilitation and Resettlement Committee under sub-section (2) of section 13;

(e) the manner of appointment of ombudsman, form and manner in which complaints may be made and disposed by the ombudsman under sub-section (1) and (3) of section 14; and

(f) procedures to be followed by the National Monitoring Committee under sub-section (3) of section 16; and composition powers and procedure of transaction of business of the National Rehabilitation Commission under sub-section (2) of section 19;

(g) the method of notifying affected areas under sub-section (2) of section 20;

(h) the manner in which the Administrator for Rehabilitation and Resettlement shall publish a draft details of findings of the survey conducted under sub-section (4) of section 21; and the manner of giving publicity to draft rehabilitation and resettlement scheme or plan under sub-section (2) of section 23;

(i) the method of entering into an agreement with any persons under rehabilitation and resettlement scheme or plan under section 27;

(j) the manner of keeping books of accounts and records of the funds for rehabilitation and resettlement by the Administrator under sub-section (3) of section 28;

(k) specify assistant to affected family under sub-section (3) and (4) of section 36;

(l) rules for giving financial assistance to construct cattle shed under section 38; transportation cost for shifting of the family under section 39; construction of working shed for shop under section 40 and the manner in which rehabilitation grant shall be provided under section 42;

(m) the manner of providing fishing rights of the reservoirs to the affected families under section 44;

(n) the amount of pension payable to vulnerable persons under section 46; and the determination of ex-gratia amount under section 47, the necessary forms for the purposes specified in section 49; and

(o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by the rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses or where such State legislature consists of one House, before that House.

59. Notwithstanding anything contained in this Act, a scheme or plan for rehabilitation or resettlement of affected persons or families formulated by the requiring body, may provide for benefits higher than the extent and the amount of benefit laid down under this Act. Savings.

60. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary, for removing the difficulty: Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, in particular of the weaker sections of the society including members of the Scheduled Castes, the Scheduled Tribes, marginal farmers and their families.

2. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only those who directly lose land and other assets but also all those who are affected by such acquisition of assets. The displacement process often poses problems that make it difficult for the affected persons to continue their old livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact of displacement. There must also be a holistic effort aimed at improving the all-round living standards of the affected people and families.

3. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2004, which came into force with effect from February, 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

4. The aim is to minimise large-scale displacement, as far as possible. However, where large numbers of families are affected, it must be mandatory to do social impact assessments and provide all required infrastructural facilities and amenities in the resettlement area. More particularly, where the Scheduled Tribes people are being displaced in sizeable numbers, a well thought out Tribal Development Plan must be put in place. Furthermore, such a policy must specify clear timeframes within which the implementation of the rehabilitation package as well as utilisation of the land shall be accomplished. Also, it should lay down an effective monitoring and grievance redressal mechanism.

5. The National Rehabilitation and Resettlement Policy, 2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Since the inception of the Land Acquisition Act, 1894 for the first time a legislation namely, the Rehabilitation and Resettlement Bill, 2007 has been developed on the lines of the provisions of the new policy, so as to give a statutory backing to them and provide for Social Impact Assessment, making of scheme and plans well defined Rehabilitation and Resettlement benefits for the affected families.

6. Many State Governments have their own rehabilitation and resettlement policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

The Rehabilitation and Resettlement Bill, 2007 provides for the basic minimum requirements that all projects leading to involuntary displacement must address. The Bill contains a saving clause to enable the State Governments, Public Sector Undertakings or agencies, or other requiring bodies to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

The Rehabilitation and Resettlement Bill, 2007 will be primarily applicable to the rehabilitation and resettlement of persons adversely affected by the acquisition of lands for projects. However, involuntary displacement of people may be caused by other factors also, and the provisions of the Bill may apply to the rehabilitation and resettlement of persons involuntarily displaced permanently due to any reasons.

8. In brief, the Rehabilitation and Resettlement Bill, 2007 will provide for the basic minimum that all projects leading to involuntary displacement must address the grievances of the affected persons. A social impact assessment of proposals leading to displacement of large populations through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding sociocultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

9. The Bill seek to achieve the above objectives.

NEW DELHI;
Dated the 30th November, 2007.

RAGHUVANSH PRASAD SINGH.

NOTES ON CLAUSES

Clause 4.—seeks to provide for social impact assessment study in certain cases in the proposed affected areas taking into consideration the impact that the project will have on public and community properties etc., and specify the ameliorative measures.

Clause 5.—seeks to provide submission of the SIA Report by an independent multi-disciplinary expert group for examination by the appropriate Government; it also seeks to provide for constitution of the expert group.

Clause 6.—seeks to provide for concurrent SIA Studies with Environmental Impact Assessment Study.

Clause 7.—seeks to provide for the manner of SIA clearance and conditions laid down in SIA clearance to be followed by all concerned, etc.

Clause 8.—seeks to exempt, from the provisions of Chapter-II, projects involving emergency acquisition in for the purpose of defence or national security.

Clause 9.—seeks to provide for appointment of Administrator for Rehabilitation and Resettlement by the State Government.

Clause 10.—seeks to provide for the functions of administrator in relation to rehabilitation and resettlement, formulation and execution and monitoring of rehabilitation and resettlement plan, etc.

Clause 11.—seeks to provide for appointment of a Commissioner for Rehabilitation and Resettlement for supervising the formulation of rehabilitation and resettlement schemes/plans and implementation thereof.

Clause 12.—seeks to provide for constitution of Rehabilitation and Resettlement Committee for each project involving involuntary displacement of certain No. of families in plain/tribal or hilly areas, etc.

Clause 13.—seeks to provide for constitution of a Standing Rehabilitation and Resettlement Committee under the Chairmanship of District Collector/Dy. Commissioner.

Clause 14.—provides for appointment by the appropriate Government of an ombudsman for time bound disposal of grievances, etc.

Clause 15.—seeks to provide for appointment by the Central Government of Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement, a Common Rehabilitation and Resettlement Committee, and the ombudsman, in a case where the project covers an area in more than one State or Union Territory; method of implementation of the schemes/plans to be discussed by the State Governments and Union Territory Administrations and a common scheme/plan to be agreed upon; and in case of any difficulty, the matter to be referred to the Central Government for decision.

Clause 16.—seeks to provide for constitution by the Central Government of a National Monitoring Committee for reviewing and monitoring the implementation of schemes or plans under the Bill.

Clause 17.—seeks to provide that the States and Union Territories shall provide relevant information on matters covered under the Bill to the National Monitoring Committee on a regular basis as also as and when required.

Clause 18.—provides for an Oversight Committee for Rehabilitation and Resettlement in the Ministry or Department of the appropriate Government, with the compositions, functions and procedures to be prescribed.

Clause 19.—seeks to provide for setting up of National Rehabilitation Commission by the Central Government to exercise external oversight over rehabilitation and resettlement of affect persons; the composition, powers and procedure of transaction of business to be precribed.

Clause 20.—seeks to provide for declaration of the area of village or lands as affected areas in cases where involuntary displacement of more than certain number of families in plain areas or tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or sixth Schedule to the Constitution are to be acquired for any project; such declaration to be published in newspapers, etc.

Clause 21.—seeks to provide for undertaking, after declaration under clause 20, a baseline survey and census for identification of families, etc. by the Administrator for Rehabilitation and Resettlement; provides for village-wise information of affected families in the survey; completion of the survey within 90 days from the date of declaration, publication of draft of the details of findings/survey by the Administrator for Rehabilitation and Resettlement in the prescribed manner, inviting objections and suggestions; the Administrator for Rehabilitation and Resettlement to submit his recommendations along with details of survey after considering the objections, etc. to the appropriate Government; and the appropriate Government to publish the final details of the survey within 45 days of the receipt of the details of survey and recommendations.

Clause 22.—seeks to provide that the Administrator for Rehabilitation and Resettlement to draw up the list that may be available for rehabilitation and resettlement etc., the list to include land available or acquired, Government wastelands, lands that may be available for purchase or acquisition, etc.

Clause 23.—seeks to provide that the Administrator for Rehabilitation and Resettlement shall prepare, after completion of survey or census and assessment of requirement of land, draft scheme of plan for rehabilitation of affected families, draft to be given wide publicity, to be discussed in the concerned Gram Sabhas and public hearings, etc.; the draft rehabilitation and resettlement scheme/plan to contain the extent of land to be acquired, village-wise list of affected persons etc., list of agricultural labourers, list of persons who have lost or are likely to lose employment, list of non-agricultural labourers, list of affected landless families, list of vulnerable affected persons, list of occupiers, list of public utilities and Government buildings, details of public community properties, details of extent of land available in the resettlement area, amenities and infrastructure facilities, time schedule for shifting and resettling etc.; the Administrator to ensure inclusion of the estimated cost of rehabilitation and resettlement; and the communication to the requiring body for incorporation in the project cost the entire cost of rehabilitation and resettlement benefits, etc.

Clause 24.—seeks to provide for submission by the Administrator for Rehabilitation and Resettlement to the appropriate Government; the approved scheme or plan for rehabilitation and resettlement to be published in the Official Gazette by the appropriate Government and the plan or scheme to come into force on final publication.

Clause 25.—seeks to provide for declaration by the appropriate Government of any area as resettlement area for rehabilitation and resettlement.

Clause 26.—seeks to provide for settlement of affected families; wherever possible, in a group or groups.

Clause 27.—seeks to authorize the Administrator for Rehabilitation and Resettlement to enter into agreement on behalf of appropriate Government, with any person for purchase or exchange of land required for rehabilitation and resettlement scheme/plan subject to the prescribed rules.

Clause 28.—seeks to make it the responsibility of the requiring body to provide requisite funds to the Administrator for Rehabilitation and Resettlement for implementation

of the scheme/plan for affected families; the requiring body to deposit 1/3rd cost of the scheme or plan with the Administrator for Rehabilitation and Resettlement on finalization of the scheme or plan.

Clause 29—seeks to provide that the compensation award, full payment of compensation etc. shall precede actual displacement of affected families where land acquisition is on behalf of a requiring body.

Clause 30—seeks to provide that in case of involuntary displacement of certain number of families in plain areas/tribal or hilly areas, DDP blocks etc., comprehensive infrastructure facilities shall be provided in the resettlement area.

Clause 31—seeks to provide that the resettlement area forms part of a panchayat or municipality.

Clause 32—seeks to provide that where land is acquired because of urgency under the Land Acquisition Act, 1894 the affected families to be provided with transit and temporary accommodation pending rehabilitation and resettlement scheme or plan in addition to monthly subsistence allowance, etc.

Clause 33—seeks to provide for peripheral development by the requiring body like socio-economic development, earmarking percentage of net profit to be spent for the purpose, and coordination with the Commissioner for Rehabilitation and Resettlement while carrying out development activities.

Clause 34—seeks to provide for extension of rehabilitation and resettlement benefits to the affected families.

Clause 35—seeks to provide for housing benefits to an affected family, owning house and whose house has been acquired, in the form of land or house.

Clause 36—seeks to provide for allotment of agricultural land to an affected family whose agricultural land has been acquired or who has been reduced to the status of marginal farmer; each person whose name is included in the records of rights with regard to the affected family to be given a one time financial assistance subject to a minimum of 10,000 rupees; and in case of allotment of wastelands, each such person to be given one time financial assistance subject to a minimum of 15,000 rupees, etc.

Clause 37—seeks to provide that the stamp duty etc. for registration of land or house to be borne by the acquiring body; such land to be free from all encumbrances land to be in the names of wife and husband of the affected family.

Clauses 38, 39 and 40—seek to provide that displaced affected families having cattle to get one time financial assistance: one time transportation cost for shifting of family etc.; and the affected person where he is rural artisan, small trader or self employed, to get one time financial assistance prescribed by the appropriate Government subject to a minimum of 20,000 rupees for construction of working shed or shop.

Clause 41—seeks to provide that the acquiring body shall give preference to the affected families in providing employment in the project; where necessary, to arrange for training of affected persons, to give preference to affected persons or their groups or cooperatives in the allotment of outsourced contracts, shops etc., give preference to willing landless labourers while engaging labourers in the project; and offer scholarships and other skill development opportunities.

Clause 42—seeks to provide for rehabilitation grant to the affected families or where the acquiring body is a company authorized to issue shares etc., such families to be given shares or debentures, as may be prescribed.

Clause 43 and 44—seek to provide that in the case of acquisition for land development projects, in lieu of land-for-land or employment, the affected families to be given land or built up space; in case of irrigation of hydel projects the affected families may be allowed fishing rights in the reservoirs in the prescribed manner.

Clause 45.—seeks to provide that where the project involves land acquisition on behalf of acquiring body, the involuntary displaced affected family shall get a monthly subsistence allowance equivalent to 25 days minimum agricultural wages per month for one year.

Clause 46.—seeks to provide for payment of pension for life by the project authorities to the affected persons covered under clause (v) of sub-clause 2 of clause 21 to be prescribed by the appropriate Government subject to a minimum of 500 rupees per month.

Clause 47.—seeks to provide that in the case of linear acquisitions, that is, project relating to railway lines, highways laying of pipelines, etc. each person included in the records of rights with regard to the affected family to be offered by requiring body ex-gratia grant as may be prescribed in addition to the compensation and benefits under the Bill or programme or scheme; where that land holder becomes landless or reduced to be "small" or "marginal" farmer, other rehabilitation and resettlement benefits under the Bill shall also be extended to such affected family.

Clause 48.—seeks to provide for affected families to have the option to take lump-sum amount in lieu of benefits specified in clauses-35 to 47 to be determined by the appropriate Government in consultation with the requiring body.

Clause 49. — seeks to make special provisions for rehabilitation and resettlement of members of the Scheduled Tribes and Scheduled Castes, such as, tribal development plan to be prepared, laying down of procedure for settling land rights; such affected families to be given preference in allotment of land for land; at least one-third of compensation amount to be paid to the affected families at the outset etc.; where such affected families are re-settled out of district, to get 25% higher rehabilitation and resettlement benefits specified in sub-clauses (3) and (4) of clause 36, clauses 38, 39 and 40; and such affected families if enjoying reservation benefits in the affected areas shall get such benefits at the resettlement area, etc.

Clause 50.—seeks to provide for the affected Scheduled Tribe families, who were in possession of forest land prior to 13th December, 2005 to be eligible for benefits of rehabilitation and resettlement under the Bill.

Clause 51.—provides for indexation of rehabilitation grant and other monetary benefits.

Clause 52.—provides for punishment for false information.

Clause 53.—seeks to cast a duty on the officers of the Central Government, State Governments, etc., to assist the Administrator for Rehabilitation and Resettlement for carrying out the purposes of the Bill.

Clause 54. — seeks to bar the jurisdiction of civil courts to entertain suits or proceedings in matters which the Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement or the Ombudsman is empowered to determine, etc.

Clause 55. — seeks to provide that officers (Administrator for Rehabilitation and Resettlement, Commissioner for Rehabilitation and Resettlement and Ombudsman) appointed under the Bill, acting in pursuance of the provisions of the Bill, to be deemed to be public servants.

Clause 56. — seeks to indemnify against any suit, prosecution or legal proceedings, the appropriate Government, local body or authority etc. for acts done or purported to be done under the Bill or rules etc. made thereunder.

Clause 57. — seeks to provide that the Central Government may remove any difficulty that arises in giving effect to the provisions of the Bill by an order not in consistent with the provisions of the Bill up to a period of 3 years from the commencement of the Bill and such order to be laid before each House of Parliament.

Clause 58. — seeks to provide for over-riding effect of the Bill cover all land related laws {except the Provisions of the Panchayats (extension to scheduled areas) Act}, 1996 etc.

Clause 59. — seeks to empower the appropriate Government to make rules for carrying out the functions and duties etc. under the Bill.

Clause 60.—seeks to provide that a scheme or plan for rehabilitation may provide for benefits higher than the extent and the amount of benefit laid down under the Bill.

FINANCIAL MEMORANDUM

Clause 14 of the Bill provides for the appointment of an Ombudsman by the appropriate Government, in such manner as may be prescribed for time-bound disposal of grievances arising out of the matters covered under this Bill; to consider and dispose of all complaints relating to resettlement and rehabilitation against the decision of the Administrator for Rehabilitation and Resettlement or Resettlement and Rehabilitation Committee and issue such directions to the Administrator for Rehabilitation and Resettlement, the District Collector or Deputy Commissioner of the district, as he may deem proper for the redressal of such grievances.

Clause 15 of the Bill provides that in case a project covers an area in more than one State or Union Territory where the project affected families are or had been residing, or proposed to be resettled, the Central Government shall, in consultation with the concerned States and Union Territories, appoint the Ombudsman for the purpose of the Bill.

Appointment and functioning of the office of the Ombudsman will involve both recurring and non-recurring expenditure, which would be a part of the administrative expenditure of the Ministry.

Clause 16 of the Bill provides for constitution of a National Monitoring Committee by the Central Government for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under the Bill. The Committee may, besides having representatives of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields. The Central Government shall provide officers and other employees to the Committee as may be necessary for its efficient functioning. The terms and conditions subject to which the Committee members and other staff may be appointed and the time, place and procedure of the meetings shall be as may be prescribed by the Central Government. The Central Government may also envisage to create a National Monitoring Cell in the Ministry of Rural Development to service the National Monitoring Committee. This may involve payment of allowances to the experts, salary and other expenses for the officers and staff provided to the committee. These expenditure would be of a recurring as well as non-recurring in nature.

Clause 19 of the Bill provides for setting up of a National Rehabilitation Commission by the Central Government with the power to exercise external oversight over rehabilitation and resettlement of the affected persons covered under the Bill and the terms and conditions subject to which the Chairperson and other members of the Commission may be appointed. This would involve expenditure of a recurring and non-recurring nature, which would be a part of the administrative expenditure of the Ministry.

The exact expenditure which will be involved under the proposed Bill will depend upon the composition/appointment of the above mentioned Committee, Commission and Ombudsman. Hence, it is not possible visualise the exact estimate of the recurring and non-recurring expenditure for the purpose at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 4 seeks to prescribe by rules, the manner in which Social Impact Assessment study is to be carried out in the proposed affected area. Sub-clause (1) of clause 7 of the Bill seeks to provide that Social Impact Assessment clearance shall be granted in such manner and within such time as may be prescribed by rules. Clause 8 of the Bill provides that projects involving emergency acquisition of minimum area of land by the Central Government for the purpose of defence national security may be exempted, subject to such institutional safeguards as may be prescribed by rules. Sub-clause (3) of clause 12 of the Bill seeks to provide by rules the procedure regulating the business of the Rehabilitation and Resettlement Committee, its meetings and other matters connected thereto.

2. Sub-clause (2) of clause 13 of the Bill seeks to provide, by rules, the composition, powers, functions and other matters relating to the functioning of the Rehabilitation and Resettlement Committee at the district level by the State Government.

3. Sub-clause (1) of clause 14 of the Bill seeks to provide, by rules, the manner of appointment of ombudsman by the appropriate Government for time-bound disposal of grievances arising out of the matters covered under the Bill. Sub-clause (3) of said clause provides for making rules in respect of form and manner in which and the time in which complaints may be made and disposed of by him.

4. Sub-clause (3) of clause 16 of the Bill seeks to empower the Central Government to prescribe by rules, the procedures to be followed by the National Monitoring Committee. The composition functions and procedure of the Oversight Committee under sub-clause (2) clause 18 shall be such as may be prescribed by rules. Sub-clause (2) of clause 19 of the Bill seeks to provide for the composition, terms and conditions powers and the procedure of transaction of business of the National Rehabilitation Commission.

5. Sub-clause (2) of clause 20 of the Bill seeks to empower the appropriate Government to prescribe by rules, the method in which a copy of notification of notice of declaration of effected areas may be affixed. Sub-clause (4) of clause 21 seeks to provide for making rules in regard to manner in which the Administrator for Rehabilitation and Resettlement shall, by notification, publish a draft of the details of the findings of the survey conducted. Sub-clause (2) of clause 23 of the Bill seeks to provide that the draft rehabilitating and resettlement scheme of plan shall be made known locally by wide publicity in the affected area and the resettlement area in such manner as may be prescribed by rules by the appropriate Government.

6. Clause 27 of the Bill seeks to provide that the Administrator for Rehabilitation and Resettlement may, on behalf of the appropriate Government, and subject to such rules as may be prescribed, enter into an agreement with any person for the purpose of the rehabilitation and resettlement scheme of plan.

7. Sub-clause (3) of clause 28 seeks to provide the manner to be prescribed by rules in which the Administrator for Rehabilitation and Resettlement shall keep proper books of accounts and records of the funds for rehabilitation and resettlement.

8. Sub-clause (3) and (4) of clause 36 seeks to provide one time financial assistance to affected family of such amount as the appropriate Government may prescribe by rules.

9. Clause 38 of the Bill seeks to provide by prescribing rules one-time financial assistance to the affected family to construct cattle shed. Clause 39 of the Bill seeks to provide by rules, one-time financial assistance for transportation cost for shifting of the family, etc. Clause 40 of the Bill seeks to provide by prescribing rules one-time financial assistance for construction of working shed or shop. Clause 42 of the Bill seeks to prescribe by rules the manner in which rehabilitation grant shall be provided.

10. Clause 43 of the Bill seeks to provide, by rules, the limits of land for the purposes of said clause. Clause 44 of the Bill seeks to provide manner in which fishing rights in the reservoirs shall be given to the affected families by the appropriate Government by prescribing rules. Clause 46 of the Bill seeks to provide, by rules, the amount which shall be payable as monthly pension for life to the vulnerable affected persons. Clause 47 of the Bill seeks to provide an *ex-gratia* grant of amount as the appropriate Government may prescribe by rules. Sub-clause (1) of clause 49 seeks to prescribe, by rules, the forms for the purposes of the said clauses.

11. Sub-clause (2) of clause 58 enumerates the matters on which rules may be made by the appropriate Government. Sub-clause (2) and (3) of clause 58 provide that rules made under the Bill are required to be laid before Parliament or the State Legislature, as the case may be.

The aforesaid matters in respect of which rules may be made by the Central Government or the State Government relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, and for matters connected therewith or incidental thereto.

(Shri Raghuvansh Prasad Singh, Minister of Rural Development)

MINISTRY OF RURAL DEVELOPMENT

(Department of Land Resources)

(Land Reforms Division)

RESOLUTION

New Delhi, the 31st October, 2007

Subject : National Rehabilitation and Resettlement Policy, 2007

F.No. 26011/4/2007-LRD.—Whereas, the Government of India, Ministry of Rural Development, Department of Land Resources, have formulated a National Rehabilitation and Resettlement Policy, 2007;

And, whereas, the Government of India desire that the contents of the said Policy be brought to the notice of the general public and given wide publicity;

Now, therefore, it is directed that the National Rehabilitation and Resettlement Policy, 2007 given in the Schedule hereto annexed be published in the Gazette of India, Extraordinary, Part I, Section I, dated the 31st October, 2007.

SCHEDULE

**THE NATIONAL REHABILITATION AND RESETTLEMENT
POLICY, 2007**

CHAPTER - I

1. Policy

PREAMBLE:

1.1 Provision of public facilities or infrastructure often requires the exercise of legal powers by the state under the principle of *eminent domain* for acquisition of private property, leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, in particular of the weaker sections of the society including members of the Scheduled Castes, Scheduled Tribes, marginal farmers and women. Involuntary displacement of people may be caused by other factors also.

1.2 There is imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. Additional benefits beyond monetary compensation have to be provided to the families affected adversely by involuntary displacement. The plight of those who do not have legal or recognised rights over the land on which they are critically dependent for their

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subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets. The displacement process often poses problems that make it difficult for the affected persons to continue their earlier livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and social impact of displacement. There must also be a holistic effort aimed at improving the all round living standards of the affected people.

1.3 A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, and it came into force w.e.f. February, 2004. Experience of implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families – economic, environmental, social and cultural – needs to be assessed in a participatory and transparent manner. A national policy must apply to all projects where involuntary displacement takes place.

1.4 The aim should be to minimise large-scale displacement, as far as possible. Only the minimum area of land commensurate with the purpose of the project may be acquired. Also, as far as possible, projects may be set up on wasteland, degraded land or un-irrigated land. Acquisition of agricultural land for non-agricultural use in the project may be kept to the minimum; multi-cropped land may be avoided to the extent possible for such purposes, and acquisition of irrigated land, if unavoidable, may be kept to the minimum. Prior to initiating the acquisition of land for a project, the appropriate Government should, *inter alia*, take into consideration the alternatives that will (i) minimise the displacement of people due to the acquisition of land for the project; (ii) minimise the total area of land to be acquired for the project; and (iii) minimise the acquisition of agricultural land for non-agricultural use in the project. The options assessment may be in terms of the alternative project plans, potentially suitable sites, technological choices available, or a combination of these. Suitable institutional mechanism should be developed and adopted by the appropriate Government for carrying out the task in a transparent manner.

1.5 Where large numbers of families are affected, it must be mandatory to do social impact assessments and provide all required infrastructural facilities and amenities in the resettlement area. More particularly, where the Scheduled Tribes people are being displaced in sizeable numbers, a well thought out Tribal Development Plan must be put in place.

1.6 Furthermore, such a policy must specify clear timeframes within which the implementation of the rehabilitation package as well as utilization of the land shall

be accomplished. Also, it should lay down an effective monitoring and grievance redressal mechanism.

1.7 It is acknowledged that many State Governments, Public Sector Undertakings or agencies, and other requiring bodies either have their own Rehabilitation and Resettlement (R&R) policies or are in the process of formulating them. The provisions of the National Rehabilitation and Resettlement Policy, 2007 (NRRP-2007) provide for the basic minimum requirements, and all projects leading to involuntary displacement of people must address the rehabilitation and resettlement issues comprehensively. The State Governments, Public Sector Undertakings or agencies, and other requiring bodies shall be at liberty to put in place greater benefit levels than those prescribed in the NRRP-2007. The principles of this policy may also apply to the rehabilitation and resettlement of persons involuntarily displaced permanently due to any other reason.

CHAPTER – II

2. Objectives of the National Rehabilitation and Resettlement Policy

2.1 The objectives of the National Rehabilitation and Resettlement Policy are as follows:-

- (a) to minimise displacement and to promote, as far as possible, non-displacing or least-displacing alternatives;
- (b) to ensure adequate rehabilitation package and expeditious implementation of the rehabilitation process with the active participation of the affected families;
- (c) to ensure that special care is taken for protecting the rights of the weaker sections of society, especially members of the Scheduled Castes and Scheduled Tribes, and to create obligations on the State for their treatment with concern and sensitivity;
- (d) to provide a better standard of living, making concerted efforts for providing sustainable income to the affected families;
- (e) to integrate rehabilitation concerns into the development planning and implementation process; and
- (f) where displacement is on account of land acquisition, to facilitate harmonious relationship between the requiring body and affected families through mutual cooperation.

CHAPTER – III

3. Definitions

3.1 The definition of various expressions used in this policy are as follows:

- (a) “*Administrator for Rehabilitation and Resettlement*” means an officer not below the rank of District Collector in a State appointed for the purpose of rehabilitation and resettlement of affected persons;

(b) "*affected family*" means:

- (i) a family whose primary place of residence or other property or source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement for any other reason; or
- (ii) any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the *abadi* or other property) in the affected area or otherwise, has been involuntarily displaced from such land or other property; or
- (iii) any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person; who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than three years preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason;

(c) "*affected area*" means area of village or locality notified by the appropriate Government under paragraph 6.1 of this policy;

(d) "*agricultural labourer*" means a person primarily resident in the affected area for a period of not less than three years immediately before the declaration of the affected area who does not hold any land in the affected area but who earns his livelihood principally by manual labour on agricultural land therein immediately before such declaration and who has been deprived of his livelihood;

(e) "*agricultural land*" includes lands being used for the purpose of-

- (i) agriculture or horticulture;
- (ii) dairy farming, poultry farming, pisciculture, breeding of livestock or nursery growing medicinal herbs;
- (iii) raising of crops, grass or garden produce; and
- (iv) land used by an agriculturist for the grazing of cattle, but does not include land used for cutting of wood only;

(f) "*appropriate Government*" means,-

- (i) in relation to the acquisition of land for the purposes of the Union, the Central Government;
- (ii) in relation to a project which is executed by the Central Government agency or undertaking or by any other agency on the orders or directions

- of the Central Government, the Central Government;
- (iii) in relation to the acquisition of land for purposes other than (i) and (ii) above, the State Government; and
- (iv) in relation to the rehabilitation and resettlement of persons involuntarily displaced due to any other reason, the State Government;
- (g) *"BPL family"*: The below poverty line (BPL) families shall be those as defined by the Planning Commission of India from time to time and included in a BPL list for the time being in force;
- (h) *"Commissioner for Rehabilitation and Resettlement"* means the Commissioner for Rehabilitation and Resettlement appointed by the State Government not below the rank of Commissioner or of equivalent rank of that Government;
- (i) *"DDP block"* means a block identified under the Desert Development Programme of the Government of India;
- (j) *"family"* includes a person, his or her spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother and other relatives residing with him or her and dependent on him or her for their livelihood; and includes *"nuclear family"* consisting of a person, his or her spouse and minor children;
- (k) *"holding"* means the total land held by a person as an occupant or tenant or as both;
- (l) *"khatedar"* means a person whose name is included in the revenue records of the parcel of land under reference;
- (m) *"land acquisition"* or *"acquisition of land"* means acquisition of land under the Land Acquisition Act, 1894 (1 of 1894), as amended from time to time, or any other law of the Union or a State for the time being in force;
- (n) *"marginal farmer"* means a cultivator with an un-irrigated land holding up to one hectare or irrigated land holding up to half hectare;
- (o) *"non-agricultural labourer"* means a person who is not an agricultural labourer but is primarily residing in the affected area for a period of not less than three years immediately before the declaration of the affected area and who does not hold any land under the affected area but who earns his livelihood principally by manual labour or as a rural artisan immediately before such declaration and who has been deprived of earning his livelihood principally by manual labour or as such artisan in the affected area;
- (p) *"notification"* means a notification published in the Gazette of India or, as the case may be the Gazette of a State;
- (q) *"occupiers"* means members of the Scheduled Tribes in possession of forest land prior to the 13th day of December, 2005;

- (r) "Ombudsman" means the person appointed under paragraph 8.3 of this policy for redressal of grievances;
- (s) "prescribed" means, unless otherwise specified, prescribed by guidelines or orders issued by the Central Government under this policy;
- (t) "project" means a project involving involuntary displacement of people, irrespective of the number of persons affected;
- (u) "requiring body" means a company, a body corporate, an institution, or any other organisation for whom land is to be acquired by the appropriate Government, and includes the appropriate Government if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to a company, a body corporate, an institution, or any other organization, as the case may be, under lease, license or through any other system of transfer of land;
- (v) "resettlement area" means any area so declared under paragraph 6.9 of this policy by the appropriate Government;
- (w) "small farmer" means a cultivator with an un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal farmer.

CHAPTER - IV

4. Social Impact Assessment (SIA) of Projects

4.1 Whenever it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, the appropriate Government shall ensure that a Social Impact Assessment (SIA) study is carried out in the proposed affected areas in such manner as may be prescribed.

4.2.1 The above SIA report shall be prepared, in such proforma as may be prescribed, considering various alternatives, and using agencies accredited in the manner prescribed.

4.2.2 While undertaking a social impact assessment, the appropriate Government shall, *inter alia*, take into consideration the impact that the project will have on public and community properties, assets and infrastructure; particularly, roads, public transport, drainage, sanitation, sources of safe

drinking water, sources of drinking water for cattle, community ponds, grazing land, plantations; public utilities, such as post offices, fair price shops, etc.; food storage godowns, electricity supply, health care facilities, schools and educational/training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc.

4.2.3 The appropriate Government may specify that the ameliorative measures, which will need to be undertaken for addressing the said impact for a component, may not be less than what is provided in a scheme or programme, if any, of the Central Government or a State Government in operation in that area.

4.3.1 Where it is required as per the provisions of any law, rules, regulations or guidelines to undertake environmental impact assessment also, the SIA study shall be carried out simultaneously with the Environmental Impact Assessment (EIA) study.

4.3.2 In cases where both EIA and SIA are required, the public hearing done in the project affected area for EIA shall also cover issues related to SIA. Such public hearing shall be organised by the appropriate Government.

4.3.3 Where there is no requirement for EIA, the SIA report shall be made available to the public through public hearing to be organised by the appropriate Government in the affected area.

4.4.1 The SIA report shall be examined by an independent multi-disciplinary expert group constituted for the purpose by the appropriate Government. Two non-official social science and rehabilitation experts, the Secretary/Secretaries of the department(s) concerned with the welfare of Scheduled Castes and Scheduled Tribes of the appropriate Government or his (their) representative(s), and a representative of the requiring body shall be nominated by the appropriate Government to serve on this expert group.

4.4.2 Where both EIA and SIA are required, a copy of the SIA report shall be made available to the agency prescribed in respect of environmental impact assessment by the Ministry of Environment and Forests, and a copy of the EIA report shall be shared with the expert group mentioned in paragraph 4.4.1.

4.5 The SIA clearance shall be accorded as per the procedure and within the time limits as may be prescribed.

4.6 The SIA clearance shall be mandatory for all projects involving involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, and the conditions laid down in the SIA clearance shall be duly followed by all concerned.

4.7 The Ministry of Defence, in respect of projects involving emergency acquisition of minimum area of land in connection with national security, may be exempted from the provisions of this Chapter, with due institutional safeguards, as may be prescribed, for protecting the interests of the affected families and achieving the broad objectives of this policy.

CHAPTER - V

5. Appointment of Administrator and Commissioner for Rehabilitation and Resettlement and their powers and functions

5.1 Where the appropriate Government is satisfied that there is likely to be involuntary displacement of large number of persons due to acquisition of land for any project or due to any other reason, it may; and where the appropriate Government is satisfied that there is likely to be involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution due to acquisition of land for any project or due to any other reason, it shall, appoint, by notification, by the State Government(s) concerned, in respect of that project, an officer not below the rank of District Collector of the State Government to be the Administrator for Rehabilitation and Resettlement (R&R):

Provided that if the appropriate Government in respect of the project is the Central Government, such appointment shall be made in consultation with the Central Government:

Provided further that in case of a project involving involuntary displacement of less than four hundred families *en masse* in plain areas, or less than two hundred families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, where the appropriate Government decides not to appoint an Administrator for Rehabilitation and Resettlement, adequate administrative arrangements shall be made by the appropriate Government for the rehabilitation and resettlement of the affected families as per this policy.

5.2 The Administrator for Rehabilitation and Resettlement shall be assisted by such officers and employees as the appropriate Government may provide.

5.3 Subject to the superintendence, directions and control of the appropriate Government and Commissioner for Rehabilitation and Resettlement, the Administrator for Rehabilitation and Resettlement shall take all measures for the rehabilitation and resettlement of the affected families.

5.4 The overall control and superintendence of the formulation, execution and monitoring of the rehabilitation and resettlement plan shall vest in the Administrator for Rehabilitation and Resettlement.

5.5 Subject to any general or special order of the appropriate Government, the Administrator for Rehabilitation and Resettlement shall perform the following functions and duties:

- (i) minimise displacement of people and to identify non-displacing or least-displacing alternatives in consultation with the requiring body;
- (ii) hold consultation with the affected families while preparing a rehabilitation and resettlement scheme or plan;
- (iii) ensure that interests of the adversely affected persons of Scheduled Tribes and weaker sections are protected;
- (iv) prepare a draft scheme or plan of rehabilitation and resettlement as required under Chapter VI of this policy;
- (v) prepare a budget including estimated expenditure of various components of acquisition of land, rehabilitation and resettlement activities or programmes in consultation with representatives of the affected families and the requiring body;
- (vi) arrange adequate land, as far as possible, for rehabilitation and resettlement of the affected families;
- (vii) allot land and sanction the benefits to the affected families;
- (viii) perform such other functions as the appropriate Government may, from time to time, by order in writing, assign.

5.6 The Administrator for Rehabilitation and Resettlement may, by order in writing, delegate such of the administrative powers conferred and duties imposed on him by or under this policy to any officer not below the rank of *Tehsildar* or equivalent.

5.7 All officers and staff appointed by the appropriate Government under this policy shall be subordinate to the Administrator for Rehabilitation and Resettlement.

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5.8 The State Government shall appoint an officer of the rank of Commissioner or of equivalent rank of that Government for rehabilitation and resettlement in respect of such cases to which this policy applies to be called the Commissioner for Rehabilitation and Resettlement.

5.9 For the purposes of this policy, the Administrator for Rehabilitation and Resettlement and other officers and employees appointed for the purposes of rehabilitation and resettlement of the affected families shall be subordinate to the Commissioner for Rehabilitation and Resettlement.

5.10 The Commissioner for Rehabilitation and Resettlement shall be responsible for supervising the formulation of rehabilitation and resettlement plans or schemes and proper implementation of such plans or schemes.

CHAPTER - VI

6. Rehabilitation and Resettlement Plan

The procedure mentioned in this chapter shall be followed for declaration of the affected area, carrying out survey and census of affected persons, assessment of government land available and land to be arranged for rehabilitation and resettlement, declaration of the resettlement area or areas, preparation of the draft rehabilitation and resettlement scheme or plan and its final publication.

6.1 Where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution due to acquisition of land for any project or due to any other reason, it shall, declare, by notification in the Official Gazette, area of villages or localities as an affected area.

6.2 Every declaration made under paragraph 6.1 of the policy shall be published in at least three daily newspapers, two of which shall be in the local vernacular, having circulation in villages or areas which are likely to be affected, and also by affixing a copy of the notification on the notice board of the concerned *gram panchayats* or municipalities and other prominent place or places in the affected area and the resettlement area, and/or by any other method as may be prescribed in this regard by the appropriate Government.

6.3 Once the declaration is made under paragraph 6.1 of the policy, the Administrator for Rehabilitation and Resettlement shall undertake a baseline survey and census for identification of the persons and families likely to be affected.

6.4 Every such survey shall contain the following village-wise information of the affected families:-

- (i) members of the family who are permanently residing, engaged in any trade, business, occupation or vocation in the affected area;
- (ii) families who are likely to lose, or have lost, their house, agricultural land, employment or are alienated wholly or substantially from the main source of their trade, business, occupation or vocation;
- (iii) agricultural labourers and non-agricultural labourers;
- (iv) families belonging to the Scheduled Caste or Scheduled Tribe categories;
- (v) vulnerable persons such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above fifty years of age; who are not provided or cannot immediately be provided with alternative livelihood, and who are not otherwise covered as part of a family;
- (vi) families that are landless (not having homestead land, agricultural land, or either homestead or agricultural land) and below poverty line, but residing continuously for a period of not less than three years in the affected area preceding the date of declaration of the affected area; and
- (vii) Scheduled Tribes families who are or were having possession of forest lands in the affected area prior to the 13th day of December, 2005.

6.5 Every survey undertaken under paragraph 6.4 shall be completed expeditiously and within a period of ninety days from the date of declaration made under paragraph 6.1.

6.6 On completion of the above survey or on expiry of a period of ninety days, whichever is earlier, the Administrator for Rehabilitation and Resettlement shall, by notification, and also in such other manner so as to reach all persons likely to be affected, publish a draft of the details of the findings of the survey conducted by him and invite objections and suggestions from all persons likely to be affected thereby. This draft shall be made known locally by wide publicity in the affected area.

6.7 On the expiry of thirty days from the date of publication of the draft of the details of survey and after considering the objections and suggestions received by

him in this behalf, the Administrator for Rehabilitation and Resettlement shall submit his recommendations thereon along with the details of the survey to the appropriate Government.

6.8 Within forty-five days from the date of receipt of the details of the survey and recommendations of the Administrator for Rehabilitation and Resettlement, the appropriate Government shall publish the final details of survey in the Official Gazette.

6.9 The appropriate Government shall, by notification, declare any area (or areas) as a resettlement area (or areas) for rehabilitation and resettlement of the affected families.

6.10 The Administrator for Rehabilitation and Resettlement shall ensure that the affected families may be settled, wherever possible, in a group or groups in such resettlement areas. However, it has to be ensured that the affected families may be resettled with the host community on the basis of equality and mutual understanding, consistent with the desire of each group to preserve its own identity and culture.

6.11 For the purposes of paragraph 6.9 above, the Administrator for Resettlement and Rehabilitation shall draw up a list of lands that may be available for rehabilitation and resettlement of the affected families.

6.12 The lands drawn up under paragraph 6.11 shall consist of:-

- (a) land available or acquired for the project and earmarked for this purpose;
- (b) Government wastelands and any other land vesting in the Government available for allotment to the affected families;
- (c) lands that may be available for purchase or acquisition for the purposes of rehabilitation and resettlement scheme or plan; or
- (d) a combination of one or more of the above.

However, the Administrator for Rehabilitation and Resettlement should ensure that such acquisition of land does not lead to another set of physically displaced families.

6.13 The Administrator for Rehabilitation and Resettlement, on behalf of the appropriate Government, may either purchase land from any person through

consent award and may enter into an agreement for this purpose, or approach the State Government concerned for acquisition of land for the purposes of rehabilitation and resettlement scheme or plan, keeping in view the contents of paragraph 6.12(b) above.

6.14.1 After completion of baseline survey and census of the affected families and assessment of the requirement of land for resettlement, as mentioned in paragraphs 6.3 and 6.12, the Administrator for Rehabilitation and Resettlement shall prepare a draft scheme or plan for the rehabilitation and resettlement of the affected families after consultation with the representatives of the affected families including women and the representative of the requiring body.

6.14.2 The draft rehabilitation and resettlement scheme or plan shall contain the following particulars, namely:-

- (a) the extent of land to be acquired for the project and the name(s) of the affected village(s);
- (b) a village-wise list of the affected persons, family-wise, and the extent and nature of land and immovable property owned or held in their possession in the affected area, and the extent and nature of such land and immovable property which they are likely to lose or have lost, indicating the survey numbers thereof;
- (c) a list of agricultural labourers in such area and the names of such persons whose livelihood depends on agricultural activities;
- (d) a list of persons who have lost or are likely to lose their employment or livelihood or who have been or likely to be alienated wholly or substantially from their main sources of trade, business, occupation or vocation consequent to the acquisition of land for the project or involuntary displacement due to any other cause;
- (e) a list of non-agricultural labourers, including artisans;
- (f) a list of affected landless families, including those without homestead land and below poverty line families;
- (g) a list of vulnerable affected persons, as indicated at paragraph 6.4(v);
- (h) a list of occupiers, if any;
- (i) a list of public utilities and government buildings which are affected or likely to be affected;
- (j) details of public and community properties, assets and infrastructure;
- (k) a list of benefits and packages which are to be provided to the affected families;

- (l) details of the extent of land available in the resettlement area for resettling and for allotment of land to the affected families;
- (m) details of the amenities and infrastructural facilities which are to be provided for resettlement;
- (n) the time schedule for shifting and resettling the displaced persons in the resettlement area or areas; and
- (o) such other particulars as the Administrator for Rehabilitation and Resettlement may consider necessary.

6.14.3 The draft scheme or plan may be made known locally by wide publicity in the affected area and the resettlement area (or areas) in such manner as may be prescribed by the appropriate Government.

6.15.1 The draft rehabilitation and resettlement scheme or plan shall also be discussed in *gram sabhas* in rural areas and in public hearings in urban and rural areas where *gram sabhas* don't exist.

6.15.2 The consultation with the *gram sabha* or the *panchayats* at the appropriate level in the Scheduled Areas under Schedule V of the Constitution shall be in accordance with the provisions of the Provisions of the *Panchayats* (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).

6.15.3 In cases of involuntary displacement of two hundred or more Scheduled Tribes families from the Scheduled Areas, the concerned Tribes Advisory Councils may also be consulted.

6.16 While preparing a draft scheme or plan as specified in paragraph 6.14, the Administrator for Rehabilitation and Resettlement shall ensure that the entire estimated cost of the rehabilitation and resettlement scheme or plan forms an integral part of the cost of the project for which the land is being acquired. The entire expenditure on rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families are to be borne by the requiring body for which the land is being acquired. The Administrator for Rehabilitation and Resettlement shall ensure that the entire estimated cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families is communicated to the requiring body for incorporation in the project cost.

6.17 The Administrator for Rehabilitation and Resettlement shall submit the draft scheme or plan for rehabilitation and resettlement to the appropriate Government

for its approval. In case of a project involving land acquisition on behalf of a requiring body, it shall be the responsibility of the appropriate Government to obtain the consent of the requiring body, to ensure that the necessary approvals as required under this policy have been obtained, and to make sure that the requiring body has agreed to bear the entire cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families as communicated by the Administrator for Rehabilitation and Resettlement, before approving it.

6.18 After approving the rehabilitation and resettlement scheme or plan, the appropriate Government shall publish the same in the Official Gazette. On final notification of the rehabilitation and resettlement scheme or plan, it shall come into force.

6.19 It shall be the responsibility of the requiring body to provide sufficient funds to the Administrator for Rehabilitation and Resettlement for proper implementation of the rehabilitation and resettlement scheme or plan. As soon as the rehabilitation and resettlement scheme or plan is finalized, the requiring body shall deposit one-third cost of the rehabilitation and resettlement scheme or plan with the Administrator for Rehabilitation and Resettlement.

6.20 The Administrator for Rehabilitation and Resettlement shall keep proper books of accounts and records of the funds placed at his disposal and submit periodic returns to the appropriate Government in this behalf.

6.21 In case of a project involving land acquisition on behalf of a requiring body, an exercise for fast-track updating of land records shall be undertaken concurrently with the land acquisition proceedings. Persons who have acquired any right prior to the date of issue of the notification under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (or such notification under any other Act of the Union or a State for the time being in force under which land acquisition is being undertaken) as per the updated records shall also have right to proportionate compensation along with the original landowners referred to in the said notification.

6.22 In case of a project involving land acquisition on behalf of a requiring body:

- (a) The compensation award shall be declared well in time before displacement of the affected families. Full payment of compensation as well as adequate progress in resettlement shall be ensured in advance of the actual displacement of the affected families.

- (b) The compensation award shall take into account the market value of the property being acquired, including the location-wise minimum price per unit area fixed (or to be fixed) by the respective State Government or UT Administration.
- (c) Conversion to the intended category of use of the land being acquired (for example, from agricultural to non-agricultural) shall be taken into account in advance of the acquisition, and the compensation award shall be determined as per the intended land use category.
- (d) The applicable conversion charges for the change in the land use category shall be paid by the requiring body, and no reduction shall be made in the compensation award on this account.

6.23 In case of a project involving land acquisition on behalf of a requiring body, and if the requiring body is a company authorized to issue shares and debentures, the affected families who are entitled to get compensation for the land or other property acquired, shall be given the option to take up to twenty per cent. of the compensation amount due to them in the form of shares or debentures or both of the requiring body, as per the guidelines to be notified by the Central Government:

Provided that the appropriate Government, at its discretion, may raise this proportion up to fifty per cent. of the compensation amount.

6.24.1 Land compulsorily acquired for a project cannot be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the appropriate Government.

6.24.2 If land compulsorily acquired for a project or part thereof, remains unutilized for the project for a period of five years from the date of taking over the possession by the requiring body, the same shall revert to the possession and ownership of the appropriate Government without payment of any compensation or remuneration to the requiring body.

6.25 Whenever any land acquired for a public purpose is transferred to an individual or organisation (whether in private sector, public sector or joint sector) for a consideration, eighty per cent. of any net unearned income so accruing to the transferor, shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired. The fund shall be kept in a separate account which shall be administered in such manner as may be prescribed.

CHAPTER - VII

7. Rehabilitation and Resettlement Benefits for the Affected Families

7.1 The rehabilitation and resettlement benefits shall be extended to all the affected families who are eligible as affected families on the date of publication

of the declaration under paragraph 6.1, and any division of assets in the family after the said date may not be taken into account.

7.2 Any affected family owning house and whose house has been acquired or lost, may be allotted free of cost house site to the extent of actual loss of area of the acquired house but not more than two hundred and fifty square metre of land in rural areas, or one hundred and fifty square metre of land in urban areas, as the case may be, for each nuclear family:

Provided that, in urban areas, a house of up to one hundred square metre carpet area may be provided in lieu thereof. Such a house, if necessary, may be offered in a multi-storied building complex.

7.3 Each affected below poverty line family which is without homestead land and which has been residing in the affected area continuously for a period of not less than three years preceding the date of declaration of the affected area and which has been involuntarily displaced from such area, shall be entitled to a house of minimum one hundred square metre carpet area in rural areas, or fifty square metre carpet area in urban areas (which may be offered, where applicable, in a multi-storied building complex), as the case may be, in the resettlement area:

Provided that any such affected family which opts not to take the house offered, shall get a suitable one-time financial assistance for house construction, and the amount shall not be less than what is given under any programme of house construction by the Government of India.

7.4.1 Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, may be allotted in the name of the *khatedar(s)* in the affected family, agricultural land or cultivable wasteland to the extent of actual land loss by the *khatedar(s)* in the affected family subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land or cultivable wasteland, if Government land is available in the resettlement area. This benefit shall also be available to the affected families who have, as a consequence of the acquisition or loss of land, been reduced to the status of marginal farmers.

7.4.2 In the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land-for-land in the command area of the project, to the extent possible. Such lands may be consolidated, and plots of suitable sizes allotted to the affected families who could be settled there in groups. In case a family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for their lands lost, for purchase of suitable land elsewhere.

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7.4.3 In the case of irrigation or hydel projects, the State Governments may formulate suitable schemes for providing land to the affected families in the command areas of the projects by way of pooling of the lands that may be available or, otherwise, could be made available in the command areas of such projects.

7.5 (a) In the case of irrigation or hydel projects, fishing rights in the reservoirs shall be given to the affected families, if such rights were enjoyed by them in the affected area; (b) In other cases also, unless there are special reasons, fishing rights shall be given preferentially to the affected families.

7.6 In case of a project involving land acquisition on behalf of a requiring body, the stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the requiring body.

7.7 The land or house allotted to the affected families under this policy shall be free from all encumbrances.

7.8 The land or house allotted to the affected families under this policy may be in the joint names of wife and husband of the affected family.

7.9.1 In case of allotment of wasteland or degraded land in lieu of the acquired land, each *khatedar* in the affected family shall get a one-time financial assistance of such amount as the appropriate Government may decide but not less than fifteen thousand rupees per hectare for land development.

7.9.2 In case of allotment of agricultural land in lieu of the acquired land, each *khatedar* in the affected family shall get a one-time financial assistance of such amount as the appropriate Government may decide but not less than ten thousand rupees, for agricultural production.

7.10 Each affected family that is displaced and has cattle, shall get financial assistance of such amount as the appropriate Government may decide but not less than fifteen thousand rupees, for construction of cattle shed.

7.11 Each affected family that is displaced shall get a one-time financial assistance of such amount as the appropriate Government may decide but not less than ten thousand rupees, for shifting of the family, building materials, belongings and cattle.

7.12 Each affected person who is a rural artisan, small trader or self-employed person and who has been displaced shall get a one-time financial assistance of such amount as the appropriate Government may decide but not less than twenty-five thousand rupees, for construction of working shed or shop.

7.13.1 In case of a project involving land acquisition on behalf of a requiring body,-

- (a) the requiring body shall give preference to the affected families – at least one person per nuclear family – in providing employment in the project, subject to the availability of vacancies and suitability of the affected person for the employment;
- (b) wherever necessary, the requiring body shall arrange for training of the affected persons, so as to enable such persons to take on suitable jobs;
- (c) the requiring body shall offer scholarships and other skill development opportunities to the eligible persons from the affected families as per the criteria as may be fixed by the appropriate Government;
- (d) the requiring body shall give preference to the affected persons or their groups or cooperatives in the allotment of outsourced contracts, shops or other economic opportunities coming up in or around the project site; and
- (e) the requiring body shall give preference to willing landless labourers and unemployed affected persons while engaging labour in the project during the construction phase.

7.13.2 The affected persons shall be offered the necessary training facilities for development of entrepreneurship, technical and professional skills for self-employment.

7.14 In case of a project involving land acquisition on behalf of a requiring body, the affected families who have not been provided agricultural land or employment shall be entitled to a rehabilitation grant equivalent to seven hundred fifty days minimum agricultural wages or such other higher amount as may be prescribed by the appropriate Government:

Provided that, if the requiring body is a company authorised to issue shares and debentures, such affected families shall be given the option of taking up to twenty per cent. of their rehabilitation grant amount in the form of shares or debentures of the requiring body, in such manner as may be prescribed:

Provided further that the appropriate Government may, at its discretion, raise this proportion up to fifty per cent. of the rehabilitation grant amount.

7.15 In cases where the acquisition of agricultural land or involuntary displacement takes place on account of land development projects, in lieu of land-for-land or employment, such affected families would be given site(s) or apartment(s) within the development project, in proportion to the land lost, but subject to such limits as may be defined by the appropriate Government.

7.16 In case of a project involving land acquisition on behalf of a requiring body, each affected family which is involuntarily displaced shall get a monthly subsistence allowance equivalent to twenty-five days minimum agricultural wages per month for a period of one year from the date of displacement.

7.17 The project authorities shall, at their cost, arrange for annuity policies that will pay a pension for life to the vulnerable affected persons as indicated at paragraph 6.4(v), of such amount as may be prescribed by the appropriate Government subject to a minimum of five hundred rupees per month.

7.18 If land is acquired in cases of urgency, such as under section 17 of the Land Acquisition Act, 1894 or similar provision of any other Act of the Union or a State for the time being in force, each affected family which is displaced shall be provided with transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan, in addition to the monthly subsistence allowance and other rehabilitation and resettlement benefits due to them under this policy.

7.19 In case of linear acquisitions, in projects relating to railway lines, highways, transmission lines, laying of pipelines and other such projects wherein only a narrow stretch of land is acquired for the purpose of the project or is utilised for right of way, each *khatedar* in the affected family shall be offered by the requiring body an ex-gratia payment of such amount as the appropriate Government may decide, but not less than twenty thousand rupees, in addition to the compensation or any other benefits due under the Act or programme or scheme under which the land, house or other property is acquired:

Provided that, if as a result of such land acquisition, the land-holder becomes landless or is reduced to the status of a "small" or "marginal" farmer, other rehabilitation and resettlement benefits available under this policy shall also be extended to such affected family.

7.20 The affected families may be given the option to take a lump-sum amount in lieu of one or more of the benefits specified in paragraphs 7.2 to 7.19, the amount being determined by the appropriate Government after consultation with the requiring body.

7.21 REHABILITATION AND RESETTLEMENT BENEFITS FOR PROJECT AFFECTED FAMILIES BELONGING TO THE SCHEDULED TRIBES AND SCHEDULED CASTES:

7.21.1 In case of a project involving land acquisition on behalf of a requiring body which involves involuntary displacement of two hundred or more Scheduled Tribes families, a Tribal Development Plan shall be prepared, in such form as may be prescribed, laying down the detailed procedure for settling land

rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition. The Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce (NTFP) resources on non-forest lands within a period of five years sufficient to meet requirements of tribal communities who are denied access to forests.

7.21.2 The concerned *gram sabha* or the *panchayats* at the appropriate level in the Scheduled Areas under Schedule V of the Constitution or as the case may be, Councils in the Schedule VI Areas shall be consulted in all cases of land acquisition in such areas including land acquisition in cases of urgency, before issue of a notification under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which land acquisition is undertaken, and the consultation shall be in accordance with the provisions of the Provisions of the *Panchayats (Extension to the Scheduled Areas) Act, 1996* and other relevant laws.

Further, in cases of involuntary displacement of two hundred or more Scheduled Tribes families from the Scheduled Areas, the concerned Tribes Advisory Councils (TACs) may also be consulted.

7.21.3 Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, if Government land is available in the resettlement area.

7.21.4 In case of land being acquired from members of the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first installment and the rest at the time of taking over the possession of the land.

7.21.5 In case of a project involving land acquisition on behalf of a requiring body, each Scheduled Tribe affected family shall get an additional one-time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usages of forest produce.

7.21.6 The Scheduled Tribes affected families will be re-settled, as far as possible, in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity. Exceptions would be allowed only in rare cases where the requiring body in case of a project involving land acquisition, or the State Government in other cases of involuntary displacement, is unable to offer such land due to reasons beyond its control.

7.21.7 The resettlement areas predominantly inhabited by the Scheduled Tribes shall get land free of cost for community and religious gatherings, to the extent decided by the appropriate Government.

7.21.8 In case of a project involving land acquisition on behalf of a requiring body, the Scheduled Tribes affected families resettled out of the district will get twenty-five per cent. higher rehabilitation and resettlement benefits in monetary terms in respect of the items specified in paragraphs 7.9, 7.10, 7.11, and 7.12.

7.21.9 Any alienation of tribal lands in violation of the laws and regulations for the time being in force shall be treated as null and void. In the case of acquisition of such lands, the rehabilitation and resettlement benefits would be available to the original tribal land-owners.

7.21.10 In the case of irrigation or hydel projects, the affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

7.21.11 The Scheduled Tribes and Scheduled Castes affected families enjoying reservation benefits in the affected area shall be entitled to get the reservation benefits at the resettlement area(s).

7.21.12 The affected Scheduled Tribes families, who were in possession of forest lands in the affected area prior to the 13th day of December, 2005, shall also be eligible for the rehabilitation and resettlement benefits under this policy.

7.22 AMENITIES AND INFRASTRUCTURAL FACILITIES TO BE PROVIDED AT RESETTLEMENT AREAS:

7.22.1 In all cases of involuntary displacement of four hundred families or more *en masse* in plain areas, or two hundred families or more *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, comprehensive infrastructural facilities and amenities notified by the appropriate Government shall be provided in the resettlement area(s). Such facilities and amenities shall, *inter alia*, include roads, public transport, drainage, sanitation, safe drinking water, drinking water for cattle, community ponds, grazing land, land for fodder, plantation (social forestry or agro-forestry), Fair Price shops, *panchayat ghars*, Cooperative Societies, Post Offices,

seed-cum-fertilizer storage, irrigation, electricity, health centres, child and mother supplemental nutritional services, children's playground, community centres, schools, institutional arrangements for training, places of worship, land for traditional tribal institutions, burial/cremation grounds, and security arrangements.

7.22.2 In cases of involuntary displacement of less than four hundred families *en masse* in plain areas, or less than two hundred families or more *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, all affected families shall be provided basic infrastructural facilities and amenities at the resettlement site(s) as per the norms specified by the appropriate Government. It would be desirable that provision of drinking water, electricity, schools, dispensaries, and access to the resettlement sites, amongst others, be included in the resettlement plan approved by the appropriate Government.

7.22.3 If relocation takes place in an existing settlement area, the same infrastructure shall also be extended to the host community.

7.22.4 While shifting the population of the affected area to the resettlement area, the Administrator for Rehabilitation and Resettlement shall, as far as possible, ensure that:

- a) In case the entire population of the village or area to be shifted belongs to a particular community, such population or families may, as far as possible, be resettled *en masse* in a compact area, so that socio-cultural relations and social harmony amongst the shifted families are not disturbed.
- b) In the case of resettlement of the Scheduled Caste affected families, it may, as far as possible, be ensured that such families are resettled in the areas close to the villages.

7.22.5 The appropriate Government shall ensure that a resettlement area forms part of a *gram panchayat* or municipality.

7.23 INDEXATION OF REHABILITATION GRANT AND OTHER BENEFITS:

The rehabilitation grant and other benefits expressed in monetary terms in this policy shall be indexed to the Consumer Price Index (CPI) with the first day of April following the date of coming into force of this policy as the reference date, and the same shall also be revised by the appropriate Government at suitable intervals.

7.24 PERIPHERY DEVELOPMENT:

In case of a project involving land acquisition on behalf of a requiring body, the requiring body will be responsible for development of the defined geographic area on the periphery of the project site as decided by the appropriate Government, and will be required to contribute to the socio-economic development of the areas contiguous to its area of operation. For this purpose, the requiring body will earmark a percentage of its net profit or, in case no profit is declared by the requiring body in a particular year, for that year, such minimum alternative amount as may be determined by the appropriate Government after consultation with the requiring body, to be spent within the specified zone. The requiring body will carry out the developmental activity within this zone in close coordination with the Commissioner for Rehabilitation and Resettlement. The State Governments will be free to frame their own rules and guidelines for this purpose.

CHAPTER - VIII

8. Grievance Redressal Mechanism

8.1 Rehabilitation and Resettlement Committee at the Project Level:

8.1.1 For each project which involves involuntary displacement of four hundred or more families *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution, the appropriate Government shall constitute a Committee under the chairpersonship of the Administrator for Rehabilitation and Resettlement, where appointed, or some other senior Government official, where the Administrator for Rehabilitation and Resettlement is not appointed, to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the scheme or plan of rehabilitation and resettlement of the affected families, and to carry out post-implementation social audits.

8.1.2 The Rehabilitation and Resettlement Committee constituted as above shall include, apart from officers of the appropriate Government, as one of its members:-

- a representative of women residing in the affected area;
- a representative each of the Scheduled Castes and Scheduled Tribes residing in the affected area;
- a representative of a voluntary organisation;
- a representative of the lead bank;

- Chairperson(s) of the *panchayats* and municipalities located in the affected area, or their nominee(s);
- Members of Parliament and Members of Legislative Assembly of the area included in the affected area;
- the Land Acquisition Officer of the project; and
- a representative of the requiring body.

8.1.3 The procedure regulating the business of the Rehabilitation and Resettlement Committee, its meetings and other matters connected thereto shall be such as may be prescribed by the appropriate Government.

8.2 Rehabilitation and Resettlement Committee at the District Level:

8.2.1 In each district, the State Government shall constitute a standing Rehabilitation and Resettlement Committee under the chairpersonship of the District Collector or, as the case may be Deputy Commissioner of the district, to monitor and review the progress of rehabilitation and resettlement of the affected families in the district excluding those covered by the Rehabilitation and Resettlement Committees at the project level as prescribed in paragraph 8.1.

8.2.2 The composition, powers, functions and other matters relating to the functioning of the Rehabilitation and Resettlement Committee at the District Level shall be such as may be prescribed by the State Government.

8.3 Ombudsman:

8.3.1 An Ombudsman shall be appointed by the appropriate Government, in the manner as may be prescribed, for time-bound disposal of the grievances arising out of the matters covered by this policy.

8.3.2 Any affected person, if aggrieved, for not being offered the admissible rehabilitation and resettlement benefits as provided under this policy, may move an appropriate petition for redressal of his or her grievances to the Ombudsman concerned.

8.3.3 The form and manner in which and the time within which complaints may be made to the Ombudsman and disposed of shall be such as may be prescribed by the appropriate Government.

8.3.4 The Ombudsman shall have the power to consider and dispose of all complaints relating to rehabilitation and resettlement against the decision of the Administrator for Rehabilitation and Resettlement or Rehabilitation and

Resettlement Committee and issue such directions to the requiring body, the Administrator for Rehabilitation and Resettlement (where appointed, or the other senior Government official appointed for rehabilitation and resettlement, where the Administrator for Rehabilitation and Resettlement is not appointed; or the District Collector/Deputy Commissioner, as the case may be) as he may deem proper for the redressal of such grievances relating to implementation of this policy.

8.3.5 In case of a project involving land acquisition on behalf of a requiring body, the disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which the acquisition of land is undertaken, and will be outside the purview of the functions of the Ombudsman.

8.4 Inter-State Projects:

8.4.1 In case a project covers an area in more than one State or Union territory where the project affected families are or had been residing, or proposed to be resettled, the Central Government in the Ministry of Rural Development (Department of Land Resources) shall, in consultation with the concerned States or Union territories, as the case may be; appoint the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, a common Rehabilitation and Resettlement Committee, and the Ombudsman for the purposes of this policy.

8.4.2 The method of implementation of the rehabilitation and resettlement schemes or plans shall be mutually discussed by the State Governments and the Union territory Administrations, and the common scheme or plan shall be notified by the Administrator for Rehabilitation and Resettlement in the States or Union territories, as agreed to, in accordance with the procedure laid down under this policy.

8.4.3 If any difficulty arises in the implementation of the rehabilitation and resettlement schemes or plans, the matter shall be referred to the Central Government in the Ministry of Rural Development (Department of Land Resources) for its decision, and the decision of the Central Government shall be binding on the concerned States and Union territories.

CHAPTER - IX

9. Monitoring Mechanism

9.1 National Monitoring Committee:

9.1.1 The Central Government shall constitute a National Monitoring Committee, to be chaired by the Secretary, Department of Land Resources for reviewing and monitoring the progress of implementation of rehabilitation and resettlement schemes or plans relating to all cases to which this policy applies. The Committee will have the following or his nominee not below the rank of Joint Secretary as its members:

- Secretary, Ministry of Agriculture;
- Secretary, Ministry of Coal;
- Secretary, Ministry of Commerce;
- Secretary, Department of Industrial Policy and Promotion;
- Secretary, Ministry of Defense;
- Secretary, Ministry of Environment and Forests;
- Secretary, Ministry of Law and Justice;
- Secretary, Ministry of Mines;
- Secretary, Ministry of Panchayati Raj;
- Secretary, Planning Commission;
- Secretary, Ministry of Power;
- Secretary, Department of Road Transport and Highways;
- Secretary, Ministry of Railways/Chairman, Railway Board;
- Secretary, Ministry of Social Justice and Empowerment;
- Secretary, Ministry of Tribal Affairs;
- Secretary, Ministry of Urban Development; and
- Secretary, Ministry of Water Resources.

Besides, in case of a project involving land acquisition on behalf of a requiring body, the Secretary of the concerned administrative Ministry or Department shall be invited as one of the members. Secretary of any other Ministry or Department, and independent expert(s) of eminence in the relevant field(s) may be made special invitee(s) to this Committee.

9.1.2 The duties and procedures of the National Monitoring Committee shall be such as may be prescribed.

9.2 National Monitoring Cell:

9.2.1 The National Monitoring Committee shall be serviced by a National Monitoring Cell to be constituted by the Central Government for reviewing and monitoring the progress of implementation of rehabilitation and resettlement schemes or plans relating to all cases to which this policy applies.

9.2.2 The National Monitoring Cell constituted under this policy shall be headed by an officer not below the rank of Joint Secretary to the Government of India, and shall be suitably staffed for efficient functioning.

9.3 Information Sharing:

9.3.1 All information on displacement, rehabilitation and resettlement, with names of the affected persons and details of the rehabilitation and resettlement package, shall be placed in the public domain on the Internet as well as shared with the concerned *gram sabhas, panchayats*, etc. by the project authorities.

9.3.2 The States and Union territories shall provide all the relevant information on the matters covered by this policy to the National Monitoring Cell in a regular and timely manner, and also as and when required.

9.4 Internal Oversight:

9.4.1 For each major project covered by this policy, there shall be an Oversight Committee for rehabilitation and resettlement in the Ministry/Department concerned of the appropriate Government.

9.4.2 The composition, functions and procedures of this Committee shall be such as may be prescribed by the appropriate Government.

9.5 External Oversight:

9.5.1 A National Rehabilitation Commission shall be set up by the Central Government with the power to exercise external oversight over the rehabilitation and resettlement of affected families covered by this policy.

9.5.2 The composition, powers and the procedure of transaction of business of the National Rehabilitation Commission shall be such as may be prescribed.

9.6 Commencement:

The National Rehabilitation and Resettlement Policy, 2007 shall come into effect from the date of its publication in the Gazette of India (Extraordinary).

Dr. SUBAS CHANDRA PANI, Secy.

UN Guiding Principles on Internal Displacement*/

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

*/ Extract from the document E/CN.4/1998/53/Add.2, dated 11 February 1998

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;

- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
 - (a) Genocide;
 - (b) Murder;
 - (c) Summary or arbitrary executions; and
 - (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
 - (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
 - (b) Starvation as a method of combat;
 - (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
 - (d) Attacks against their camps or settlements; and
 - (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with

the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.



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