

PERSPECTIVE

Swelling displacement and elusive rehabilitation: Deficits in policy interventions

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In the recent past, two major policy interventions have been made to resettle and rehabilitated persons displaced as a result of acquisition of land for development projects. While the Government of Orrissa brought out its policy in 2006, the Central Government notified a new policy in 2007. Both policies suffer from serious deficits and fail to meet the aspirations of the agitating peasantry and the norms advocated by the civil society groups. This paper highlights these deficits and suggest measures which can bridge them.

The model of development pursued by the Indian state since independence has never come up for such sharp scrutiny as, lately, in the context of the magnitude of displacement it has produced and the trauma and impoverishment it has caused to the displaced persons due to the apathy towards their rehabilitation and resettlement. This explains why the irrefutables of development and resettlement of persons displaced by it have acquired a degree of centrality in public and policy discourses never witnessed before. In the past, however, resettlement of displaced persons has received greater attention from researchers, activists and civil society organizations than the nature of development which causes compulsory acquisition of private property resulting in displacement and impoverishment. This is because people in the forefront of research and social action have largely been anthropologists, sociologists and social workers whose interest lies in studying the social impact of development and suggesting how its benefits can reach the people concerned. The added reason could also be that the mobilization of displaced persons for seeking proper resettlement does not bring these agencies into confrontation with the state or the dominant sections of society which could

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be the case if they were to question the nature of development itself which induces displacement. The advocacy on the improvement in resettlement efforts has also a greater chance of receiving a positive response at various levels in the government than the efforts for revision of acquisition of laws or review of development policies. Even so, the heightened interest in resettlement of displaced persons currently witnessed is a post-1980 phenomenon triggered by people's resistance to acquisition of their land, increasing scale of displacement from habitat, livelihood and environment, disappointment with the rehabilitation efforts in the past and the World Bank initiative in repairing its image in the context of the widespread critique of its policies which had caused impoverishment of persons affected by projects financed by it. An impressive literature has now emerged on the subject with considerable theoretical inputs being provided by the experts of the World Bank and the scholars from developed and developing countries. But scholars in India have been engaged in this study from before, though with less sophisticated theorization of the issues involved. India has produced an impressive literature on the rehabilitation and resettlement efforts and their impact which is substantial, rich in quality and a 'richer thesaurus' than is available for any other part of the world (Cernea, 1999).

Displacement, until recently, remained a non-issue. This explains why there was neither a law nor a national policy nor even a firm commitment to address the numerous problems created by displacement. While the pressure from the World Bank hastened the formulation of the first ever National Policy on Resettlement and Rehabilitation for Project-Affected Families, 2003 (MoRD, 2003), the commitment to give a fair deal to the oustees remained weak since the policy that emerged was far removed from the aspirations of the displaced persons and the parameters outlined by the advocacy organizations engaged in this field. Even this policy was not enforced while the land acquisition for projects continued unabated and, in fact, increased substantially. The resistance of the affected persons across the country in the recent past, however, brought to a halt the acquisition of land for mega development projects. This forced the Central Government to revise the Policy (2003). The (revised) National Rehabilitation and Resettlement Policy, 2007 has been notified by the Ministry of Rural Development (MoRD, 2007). The Rehabilitation and Resettlement Bill, 2007 to provide statutory support to the Policy has been introduced in the Lok Sabha (Lok Sabha, 2007). Faced with a similar situation in the state and under pressure to provide a humane resettlement to the affected tribal peasantry to smoothen the progress of its high profile projects, the Government of Orissa notified the Orissa Resettlement and

Rehabilitation Policy, 2006 (GOO, 2006). The paper would look into both policies to highlight the deficits in these interventions.

NATIONAL REHABILITATION AND RESETTLEMENT POLICY

The Policy for the rehabilitation and resettlement of displaced persons covers all projects where involuntary displacement takes place. One of its objectives is to minimize large-scale displacement by avoiding acquisition of irrigated and multi-cropped land. It also commits to provide a standard of living to the displaced persons which is better than the one enjoyed before. Within the project area, the Policy extends benefits to not merely the land owners but also to those losing livelihood. It incorporates requirement for social impact assessment of the project and puts in place dedicated administrative arrangements for preparation and implementation of the rehabilitation and resettlement plan in consultation with the affected persons. The admissible set of entitlements for the displaced persons include provision of house sites, allotment of agricultural land, preference in access to employment in the project and training for employability outside, financial grant for construction of house, cattle-shed for agriculturists, work-shed for rural artisans and subsistence allowance to all the displaced persons for a specified period. The core amenities and social infrastructure needed for the resettlement colony have also been broadly indicated. An elaborate institutional arrangement for monitoring and grievance redressal has been laid down. The additional measures for the Scheduled Tribes require preparation of a Tribal Development Plan which involves settlement of pending land rights, restoration of alienated land and a programme for development of alternative fuel, fodder and non-timber forest produce on non-forest lands within a period of five years where the affected tribals are denied access to forests. The tribals have also been promised preference in the allotment of land if the government land is available in the resettlement area and additional financial assistance for the loss of customary rights or usages of forest produce. The displaced tribal families shall, if possible, be settled in the scheduled area in a compact block and if settled out of the district, they would receive 25 per cent higher rehabilitation and resettlement benefits in monetary terms in respect of the specified provisions. They shall also get allotment of land for community and religious gatherings. It has also been mandated that the *Gram Sabha* or the *Panchayat* in the Schedule V areas and the councils in the Schedule VI areas would be consulted in accordance with the provisions of the PESA, 1996 and the other relevant laws in all cases of land acquisition before issue of notification under the LA Act, 1894. The

tribals, who were in possession of forest lands before December, 2005, would be eligible for the benefits of the Policy.

But the Policy does not address the major problems which agitate the affected peasantry. The most important of them is that the government should avoid the spectre of displacement and, if that is not feasible, to scale down its level. Unlike the declaration that the acquisition of the irrigated and multi-cropped land would be avoided, the Policy makes no such concession for the scheduled areas or the Scheduled Tribes in respect of the acquisition of land. It does not even contain an assurance that the acquisition of tribal land would be avoided unless absolutely necessary and minimized, if unavoidable. The promised exercise enshrined in the objectives of the Policy to minimize displacement and to explore non-displacing and least displacing alternatives does not specifically contextualize it in respect of land held by the STs. Even as an exhortation of a general nature irrespective of the affected groups, it lacks seriousness, sincerity and commitment. The displaced people are not associated with this exercise which has been entrusted to the Administrator in charge of the rehabilitation and resettlement in consultation with the concerned project agency. This limited objective is also not incorporated in the Land Acquisition (amendment) Bill, 2007 where it was most needed.

The Policy has been made applicable to the projects in future and has ignored the huge number of displaced persons from the earlier projects who have remained unrehabilitated. Besides, the numerical benchmark specified for its applicability makes it evident that even in respect of the new projects, the Policy would not be applicable to all of them. This benchmark though lower in respect of the tribal, hilly, desert areas than in respect of other areas is irrational and arbitrary in the case of both categories and would exclude a large number of the affected persons from even the meagre benefits that the Policy offers. The Policy also creates doubts about its universal coverage for rehabilitation and resettlement even in the areas of its applicability on account of the definition of 'affected family' incorporated in it. It fails to take note of the phenomena of 'secondary displacement' and therefore ignores to include persons who suffer such displacement on account of project activities though their land is not acquired. The tribals are among the major victims of this displacement which is neither recognized nor addressed in the Policy.

As for the entitlement of benefits, the approach in the Policy continues to be property-centric since the loss of livelihood and access to the common property resources are not covered by any compensatory arrangements.

There is only a provision for development of fuel, fodder and non-timber resources on non-forest lands where the tribals are denied access to forests. There is no similar commitment to provide common lands in respect of the non-tribal inhabitants. The discrimination in entitlement of individual benefits to the affected persons such as allotment of land and provision of employment between those who lose land and others who lose livelihood is also implicit. On the issue of allotment of land, the Policy offers no concrete assurance at all. There is no commitment to provide land for land even for the tribal displaces, let alone others. There is a similar lack of assurance for allotment of land whether in the case of irrigation/hydel projects or other projects. The provision of land has been made conditional to the availability of the government land / wasteland in the resettlement area. This condition is most unlikely to be satisfied. The option to acquire private land for such distribution for the vulnerable groups like the STs has been specifically disregarded. The provision of employment to one person from each affected nuclear family lacks positiveness and credibility. It has been subjected to the availability of vacancies and the eligibility of the displaced job seekers. In the current paradigm of the economy, projects public or private, create meagre employment opportunities and, that too, in the skilled category, by and large. Due to the low literacy levels and lack of skills, the displacees generally and tribals among them in particular, would fail to satisfy the requirements for such jobs even if available. With regard to the infrastructure and amenities, an invidious distinction has been introduced in the range of entitlements admissible between the projects which satisfy the specified numerical benchmark and those which do not do so. As the concerned state government has been authorized to determine the civic amenities and social facilities, the provision would lend itself to arbitrary decisions and conservative assessment of requirements influenced by financial and political considerations.

The gender bias is also reflected in the Policy since the definition of 'family' has failed to treat an unmarried adult daughter as an independent unit deserving separate rehabilitation. The women headed households (widows, divorcees and those deserted by their husbands) do not attract attention in the Policy. The concerns of women in general have been ignored since neither the baseline survey and census collect information relating to their specific requirements nor the rehabilitation and resettlement scheme incorporates affirmative action to provide for them. The displaced tribals would suffer additionally if intra-family distribution of land has not been entered in land records since even the adult sons would not be entitled to separate units of rehabilitation and resettlement.

The requirement for a Tribal Development Plan in the Policy suffers from serious inadequacies. It is characterized by a homogenized and standardized approach and fails to reflect the diversity of the social and ecological situations in the tribal areas. The land management practices differ widely in the tribal areas with varying degrees of community control over natural resources. The shifting cultivation areas where the tribals use land on hilltops by rotation are inhabited usually by the 'primitive tribes' (pre-agricultural groups). The land records have not mapped all such areas and individual uses of land particularly on slopes beyond 9° have not been documented since no plough agriculture is possible in that terrain. In the sixth schedule areas, the pattern of land holding is communal with individual use, the land records do not exist and the tribes are opposed to their preparation. There is an extensive variety of rights and interests in access to land resources covered by the customary laws. In addition, the hunter and food gathering tribes are entirely dependent on forest resources with no fixed habitat as they move from area to area in search of food. There are also nomadic tribes, de-notified tribes and pastoral communities with different patterns of habitat and access to land, food resources and fulfilment of other needs. The variety is also reflected in the pattern of land management ranging from settled agriculture to terrace and shifting cultivation. The Tribal Development Plan, therefore, cannot be neatly standardized and prepared in terms of a uniform model which has been made applicable to the non-tribal communities which the Policy seems to do. The conceptual and structural frame for rehabilitation and resettlement of the displaced tribals needs to be designed taking into account their ethnic characteristics, specific social structure, ecological situation and the pattern of economy. This is particularly important for the tribes in remote areas, least exposed to the outside world. This complexity in planning has not been recognized, let alone accommodated in the Policy.

Besides, on the issues of social disarticulation, devaluation of culture and emotional trauma experienced by the displaced tribals resulting from the sudden break with their kinship networks, exposure to the hostile larger society and intrusion of the incompatible cultural and social norms from the immigrant non-tribals in the area, the Policy is totally silent. It does not even take note of the seriousness of the problem let alone address it.

Overall, the Policy offers a faltering and fragile commitment in respect of the fundamental concerns of the peasantry with neither a right based entitlement nor unambiguous assurance in respect of land and employment

and a guarantee of a congenial and culturally compatible relocation with replacement of the facilities and amenities, if not better, enjoyed by them before their displacement.

ORISSA POLICY, 2006 AND THE NATIONAL POLICY, 2007: COMPARATIVE ASSESSMENT

The Orissa government brought out a rehabilitation and resettlement policy in May 2006. Considerable inputs provided by the UNDP went into its formulation though not all its suggestions found acceptance. The policy is considered to be an improvement on the National Policy (Mathur, 2008) and has been described as the best policy in India (Mehra, 2007). These observations presumably compare the Orissa policy with the National Policy, 2003. But the National Policy, 2003 has already been revised and the National Rehabilitation and Resettlement Policy, 2007 has been notified. Therefore, it may be relevant to compare it with the National Policy, 2007. The Orissa policy scores over the National Policy in respect of the following features.

It applies to persons displaced on account of the acquisition of land carried out through negotiations also and not merely those affected as a result of compulsory acquisition by the government. If the process of negotiation includes land procured/purchased directly by the corporates/private parties, as seems to be the case, since the definition of 'project area' includes land which is acquired/alienated/purchased, it is certainly more equitable, just and humane in its applicability. On the issue of coverage, unlike the National Policy which restricts it to those affected by projects satisfying the specified numerical benchmark of the level of displacement, the Orissa Policy does not place such a barrier and is therefore more liberal.

The norm of eligibility for R&R (Rehabilitation and Resettlement) benefits in the Orissa Policy updates the list up to the 1st January of the year in which the physical displacement is scheduled. This formulation for the coverage of displaced persons is superior to the one adopted in the definition of the 'affected family' in the National Policy.

The definition of 'family' is more inclusive in the Orissa Policy than in the National Policy. It recognizes unmarried daughters and sisters over thirty years of age, a widow or a woman divorcee as a separate family for the benefit of rehabilitation and is, thus, gender neutral. Additionally, it empowers physically and mentally challenged persons and minor orphans by conferring the status of a separate family. The National Policy continues to show bias against these social groups.

The Orissa Policy includes, as one of its objectives, the need for ensuring environmental sustainability through the resettlement/rehabilitation process which the National Policy omits to incorporate. The Orissa Policy has also shown requisite foresight in mandating a comprehensive communication plan for awareness creation with the involvement of civil society at the cost of the project. No such provision has been made in the National Policy. The Orissa Policy has also provided for dovetailing of normal development programmes with the resettlement and rehabilitation package to be made available to the displaced community on a priority basis. This is intended to be in addition to the benefits which a displacee is entitled to under the Policy. The National Policy does not make any mention of it.

The Orissa Policy clearly stipulates that no physical displacement shall be effected before the completion of resettlement work while the National Policy is less equivocal on this issue. It merely requires 'adequate progress' in the rehabilitation and resettlement to be ensured before physical shifting of the affected persons and, therefore, shows less sensitivity to the inconvenience faced by the displaced persons.

'Multiple displacement' does not even attract the attention of the National Policy. The Orissa Policy recognizes the harassment involved to the affected persons who have gone through the experience before and, therefore, provides for, at least, additional 50 per cent compensation over and above the normal compensation to mitigate it. The Orissa Policy also requires steps to be taken by the rehabilitation and resettlement agency to acclimatize the resettled people in the new habitat including development of a cordial relationship with the host community in the resettlement site. Though measures required for this purpose have not been spelt out, the concern itself for the social trauma involved in adjustment to the new physical and social environment has not been reflected in the National Policy.

On the most meaty issues of rehabilitation assistance, the Orissa Policy marginally scores over the National Policy in some respects. It classifies projects into five types: a) Industrial; b) Mining; c) Water Resources/National Parks; d) urban and linear projects; e) any other projects. It makes provision for employment only in Type a) and b) projects while in type c) projects, it replaces provision for employment with assistance for agricultural land. Type d) projects have no provision for either land or employment while type e) projects are silent on the package of benefits which would be notified later. Linear projects are also required to provide

employment to one member of the family where total displacement is caused. The provision for employment, however, is restricted to one member of the pre-displacement family. But, like the National Policy, there is no assurance in respect of this benefit in the Orissa Policy. The policy only talks of giving preference in the matter of employment in the project. A facilitating condition has, however, been added that the eligibility age would be relaxable by five years and the project authorities would be required to notify their employment capacity in advance. In terms of concrete benefits, this provision is as valueless for the displacee to get a job as in the National Policy. The only difference is that one time cash compensation ranging from 5 to 1 lakh where employment cannot be provided has been added in the Orissa policy. The sliding scale of compensation here is linked to the relationship of the nominated member with the displaced family, with a minor son receiving the maximum amount, while a widow or a woman divorcée getting the lowest amount. The discrimination made inter-se between members of the family is both irrational and indefensible besides being a potential source of conflict within the family. On the issue of vocational training and skill development, the National Policy makes a provision for scholarships which the Orissa Policy does not do.

A mandatory provision has been made for allotment of 2 ½ acres of irrigated agricultural land or five acres of non-irrigated agricultural land to each ST displaced family in type c) projects while the displaced families of all other social categories would be provided with two acres of irrigated or four acres of non-irrigated agricultural land. But this assurance suffers from lack of will to effectuate it even in respect of STs since a cash equivalent of Rs one lakh per acre for irrigated and Rs.50,000/- per acre for non-irrigated land including the cost of reclamation or at the rate as decided by the government in the case of non-availability of land has been added. Type d) projects neither provide for employment nor land. The National Policy also provides for a rehabilitation grant to the affected families who have not been given land or employment. Both policies opt for cash option as the most convenient mode of wriggling out of the assurance to provide land or employment.

On the provision of homestead land and house building assistance, the Orissa Policy is more liberal than the National Policy. It provides for at least 1/10 of an acre for this purpose along with a house building grant of Rs. 1,50,000/- for projects in rural areas and 1/25 of an acre with a house building grant of Rs.1.50,000/- in urban areas. The National Policy is

conservative in respect of both the size of land and the cash grant for construction of house admissible.

It is in respect of benefits to the landless and the homesteadless encroachers that the Orissa Policy shows greater sensitivity than is to be found in the National Policy. The landless encroachers will get ex-gratia equivalent compensation admissible under the Land Acquisition Act for a similar category of land provided the encroachment is of ten years duration continuously and 'unobjectionable'. The entitlement, however, would be restricted to one standard acre of encroachment. The homesteadless persons would similarly get cash compensation against encroached homestead of 1/10th of an acre in rural and 1/25th of acre in urban areas subject to the above conditions. This would be in addition to the cost of structure. Where encroachment is 'objectionable', only the cost of structure would be compensated.

The National Policy contains some provisions which are either superior to the Orissa Policy or are omitted in the latter. This includes the mandatory Social Impact Assessment, gamut of physical amenities and social infrastructure to be provided at the resettlement site, detailed enumeration of rehabilitation benefits, norms of compensation assessment, unutilized acquired land, procedure for preparation of a rehabilitation plan, updating of land records, arrangement for grievance redressal and monitoring. The National Policy has also placed a distinct focus on Tribal Development Plan with restoration of alienated tribal land, settling land rights, provision for forest to replace the forest lost and additional financial assistance. The National Policy is, therefore, a more comprehensive version of the Orissa Policy. But on the basic issues, there is little by way of a major difference. Neither of the two policies assure replacement of land for land lost not even to STs or a durable, sustainable and dignified employment. Both policies ignore rights of people in CPRs for compensatory entitlements. Both policies have failed to take note of the ten fold risks which the displacees face and to provide for a risk-wise mitigating counter-risk action. The end result is that the beneficiary of either policy would continue to face acute vulnerability to 'spiral of impoverishments'

DEFICITS IN THE NATIONAL POLICY

From the foregoing, it is evident that there are inadequacies in the two policies which need to be bridged if the current level of agitation and social unrest on account of displacement is to be reduced. The major gaps in the National Policy, which is the latest and a more comprehensive

document on the subject, are indicated below. These would also apply to the Orissa Policy, where appropriate.

EMINENT DOMAIN

People dependent on land need protection from sudden, unavoidable and inevitable acquisition of land causing disruption to their lives. The absolute nature of the power of the State through the use of Eminent Domain for compulsory acquisition of land should be abandoned. *Gram Sabha* of the village should be mandatorily consulted whether in areas covered by PESA or outside for their consent to the acquisition. The acquisition of land, where absolutely necessary for public purposes, should be undertaken after consultation with the *Gram Sabha* and on terms which they collectively settle with the acquisition authority. These terms would reflect the social cost of land. This is the only democratic and humane method for acquisition of land. The referendum carried out by the Maharashtra Government in Raigad for acquisition of land for SEZ shows the way in this regard.

PUBLIC PURPOSE

The scope of public purpose should be drastically narrowed down to projects covered by the Directive Principles of State Policy and where the project provides to the affected persons direct, tangible and demonstrable benefits.

EXPLORING NON-DISPLACING ALTERNATIVES

The most pressing concern of persons affected or likely to be affected by displacement is to get respite from it. Taking this into account, the Policy has laid down as one of its objectives [para 2.1 (a)] the need to minimize displacement and to promote, as far as possible, non-displacing or least displacing alternatives. This commitment should not be hedged by caveats like 'as far as possible'. The efforts should focus on taking this exercise very seriously so as to instill confidence in the affected persons about the sincerity of the efforts involved in it. This part of the Policy should be reframed and reworded taking the following into account.

- The Policy should declare that the government would explore non-displacing alternatives to acquire land and where this has not been found to be possible after making requisite efforts, shall promote the least displacing alternatives to minimize displacement.

- The mode of undertaking this exercise should not be left to the Administrator in consultation with the requiring body as required [para 5.5 (1)] in the Policy. It should be carried out in a transparent manner and through a participatory mode. The people likely to be affected should be appropriately and adequately facilitated to actively participate in this exercise.
- This exercise should not be entrusted to the Administrator but to an independent body outside the government. The composition of this body should inspire confidence of the affected persons who should have a right to represent their case before it through a person of their choice. The requiring body would also have the right to represent its case.
- Public hearing in the affected area should be carried out transparently for this purpose.
- The independent body entrusted with this task should note the facts and arguments made by the parties concerned and should record reasons for coming to its conclusion.
- Prior information about the project and its land requirement relevant to such participation should be made available to the families likely to be affected in a language that they understand and a manner that conveys to them effectively in order that the participation is informed and exclusion is eliminated from this exercise.
- This objective should be appropriately inserted in the Land Acquisition (amendment) Bill, 2007 so that the extent of land to be acquired is determined on the basis of this exercise.

The objectives of the Policy in addition to the provision for non-displacing and least displacing options should also incorporate explicit commitment to avoid acquisition of land belonging to the Scheduled Tribes in view of the statutory protection available to them against alienation of their land. The Policy [para 2.1 (c)] does not incorporate this commitment and only vaguely talks about protecting the rights of the weaker sections especially members of the Scheduled Castes and the Scheduled Tribes. Where, acquisition of tribal land becomes unavoidable for setting up public utility services, a provision may be made for acquisition of their land on lease rather than by outright transfer along with an arrangement of payment of regular lease rent in addition to the lease premium and its periodical revision. The lease rent should be sufficient to assure subsistence to the affected family. This would be in addition to the benefits of rehabilitation and resettlement under the policy.

APPLICABILITY : AREA AND PROJECT SIZE

No norm should be prescribed for restricting the applicability of the Policy. The numerical benchmark laid down in the National Policy for Rehabilitation and Resettlement, 2007 and the corresponding bill to projects where four hundred or more families en masse in plain areas or 200 or more families en masse in tribal and hilly areas DDP blocks or scheduled areas for eligibility to claim the benefit should be scrapped. The policy should be applicable to all projects irrespective of the number of the displaced persons it involves. This would remove selectivity, irrationality and bias in its application and inequality in treatment of the displaced persons. The provision would, at least, assure that whatever has been promised in the policy document would be extended to all displaced persons without discrimination and that the government is shrinking its responsibility in this regard.

DEFINITION : ‘OCCUPIERS’

The definition of the word “occupiers” should include all those who are in possession of any land and are engaged in its cultivation /other uses but have not been able to obtain valid rights on it prior to the issue of notification under Section 4(1) of the Land Acquisition Act. This should apply only to such occupiers who are otherwise eligible for regularization of their possession and getting ownership rights in terms of the existing law, policy, guidelines or instructions of the state government.

DEFINITION: ‘FAMILY’

The definition of family should do away with the requirement of a continuous stay for a prescribed period to qualify for benefits under the Policy. The residence on the date of notification for acquisition of land should suffice for this purpose. Besides, displacement from livelihood can take place even if a person does not reside in the village. This may happen in the case of agricultural labourers, artisans or such other persons. Therefore, loss of livelihood should form the focal point of the definition of ‘family’. Appropriate adjustment in the entitlement of benefits can be made in the case of a person falling in this category. Such a person may not be resettled in the new location but may be provided cash compensation for loss of his/her livelihood.

The definition of family must remove gender bias and should explicitly recognize unmarried daughter, sister (of specified age), widow, divorcee,

desertee (women) as a separate family for the purpose of rehabilitation. Similarly, disabled persons and orphans should also receive the same treatment.

SOCIAL IMPACT ASSESSMENT

Environmental Impact Assessment and social impact assessment should be mandatory in all cases irrespective of the size of the project or the nature of purpose for which land is acquired. This exercise should be carried out through a participatory mode. The structure and processes of participation should be laid down. The exemption provided to the Ministry of Defence from social impact assessment in respect of the acquisition of land by them should be removed because such acquisitions do have serious social and environmental externalities. No institutional safeguards can emerge without such assessments having been made. In the case of extreme urgency, these assessments can be carried out expeditiously. The social impact assessment should specifically focus on the impact of the project on people, their economic conditions, social status, cultural values, identity and access to resources and benefits and not merely on infrastructure and institutions.

UPDATING OF LAND RECORDS

The provision in respect of updating of land records should be undertaken before the issue of notification under Section 4(1) of the Land Acquisition Act, 1894 in order that all matters pending resolution which affect rights and interests of the individuals and groups involved are sorted out and their status duly recorded. It makes no sense to undertake updating of land records after the preliminary notification has been issued as it would not enable such claimants to get recognition of their rights and to file claims for compensation. The process of updating of land records should specifically regularize eligible cases of occupation of government / public land, mutation of intra-family distribution of land, allotment of government land, transfer of land, sale and purchase transactions, classification of land, change in land use, status of possession, etc. In case of tenancies, specifically, efforts should be made to record all tenancies, formal and informal, irrespective of the contestations involved. While formal tenancy rights would get finally resolved in the competent court, the Policy should accommodate all such tenants in the ambit of rehabilitation and resettlement without waiting for the outcome of the adjudication process.

APPROACH TO REHABILITATION

Compensation

The scheme of compensation should be restructured on the following lines.

- The scheme of compensation should provide for all types of losses - land, livelihood, access to community property resources and externalities such as social disruptions, mental trauma, loss of networks, etc. Appropriate value should be assigned to each such loss/externality. This exercise should be transparently worked out by a body of experts.
- Compensation for loss of land should include all types of access to it, whether formal or informal, recorded or unrecorded. It should specifically cover tenants, share-croppers, forest dwellers, artisans, fishermen, agricultural labourers, etc. Those accessing common property resources should also be included in this ambit. Appropriate values for such losses should be transparently worked out by a body of experts for computing the amount of compensation.
- Compensation for loss of land should be assessed taking into account its 'replacement value' in the close proximity of the area of settlement rather than the 'market value'.
- The rehabilitation and resettlement authority should function as the custodian for the compensation amount in the case of the Scheduled Tribes and such other weaker sections lacking in capacity to handle cash, in order to build up durable productive assets for them suited to their existing skill base, choice, experience and to which they consent.
- The determination of compensation, taking the above norms in view, should be settled by an independent body so as to inspire confidence in the displaced persons.
- Necessary protective measures should be taken to prevent compensation amount being squeezed by a corrupt bureaucracy or intermediaries or / and spent in unproductive expenditure. The responsibilities for its productive investment shall lie with the specified authority.

MITIGATION OF RISKS

The paradigm of a rehabilitation and resettlement policy must explicitly incorporate the internationally recognized ten-fold impoverishment risks which a displacee invariably faces. These are landlessness, joblessness,

homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to CPRs, social disarticulation (Cernea,1997), loss of schooling (Mahapatra,1999), loss of access to public services ahead of displacement. (Mathur, 1998). The rehabilitation and resettlement plan should provide a risk mitigating strategy in respect of each one of these ten risks. Landlessness should be neutralised by allotment of land. Joblessness should be tackled through provision of employment. Homelessness should be eliminated by provision of housing. Marginalization should be addressed by measures which restore the community and its support system. Morbidity and mortality should be overcome by provision of adequate health services right from the day the displacees are shifted to the new site. Food insecurity should be dealt with by provision of subsidized foodgrains, availability of PDS, improving the purchasing power of the affected persons, extension of ICDS to children, midday meal to school going children, free grains (Annapoorna) to the elderly and destitutes and the disabled. Loss of access to CPRs including water bodies should be compensated by alternative provision of land for grazing, fuel-wood, medicinal plants, etc. Social disarticulation should be countered by strengthening the community networks, removing hostility and irritation with the host community, an creating institutional mechanism for social assertion, etc. Loss of schooling should be made up by providing a functional school at the site so as not to disrupt the education of children. Access to public services should continue at the existing site till the time people are fully shifted and alternative services are available at the new site. The specific measures required for each risk mitigation strategy are discussed below.

LANDLESSNESS

The entitlement to land mitigates this risk. With regard to the provision of land to tackle landlessness, there should be no vagueness about this entitlement. In the first place, a transparent and informed choice should be given to all displaced persons about the mode of rehabilitation they would prefer to have. Those who are most comfortable with land based rehabilitation, as for example, the members of the Scheduled Tribes, must be mandatorily allotted land. This provision could be made through the following ways:

- Identifying government/panchayat or public land in the vicinity and allotting it to the beneficiaries after developing it adequately and making it cultivable at the cost of the project.

- Identifying degraded land and restoring its productive capacity through necessary development inputs at the project's cost and thereafter allotting to the displaced persons.
- Purchasing land from the market with the compensation money given to the displacees and meeting the deficit, if any. Before purchasing the land, it must be ensured that there are no disputes over it. The land should be allotted, possession over it should be delivered and the entry to this effect should be made in the land records.
- Acquiring additional land and make it cultivable by providing necessary development inputs.

One or more of these modes should be adopted to, meet the commitment, at least, in respect of the Scheduled Tribes and, if feasible, the Schedule Castes.

The primitive tribal groups, who are still at a pre-agricultural stage, must be allotted forest land and, if no forest land is available, certain areas of the acquired land must be converted into forest for their benefit so that there is no violent break with their existing pattern of life.

JOBLESSNESS

The joblessness should be tackled upfront by provision of employment and durable income generating opportunities to each family affected by displacement whether landed or landless. This could be done through the following measures:

- All jobs up to the semi-skilled categories in the project should be assessed in advance and exclusively earmarked for the displaced persons against which, at least, one person from each affected nuclear family could be adjusted.
- Ahead of displacement, a detailed exercise should be undertaken about the qualifications and experience needed for such jobs and how such requirements could be met by preparing nominated displace candidates. Among the displaced persons, at least one from each family could be identified who would be suitable for doing such a job, if necessary, after appropriate training and skill development. This training and skill development may be arranged whether within the project or outside and thereafter the candidates may be absorbed against the posts. No pre-conditions about certification of technical capability in terms of a degree should be insisted upon in such cases as they have acquired

adequate training and work experience suitable for the concerned jobs. No outsider should be appointed against these jobs in order that the project is persuaded to make the displaced persons employable.

- It should be the sole responsibility of the project to provide durable and dignified employment to at least one person of each family whether within the project or outside. This objective should be pursued by undertaking training, skill development and apprenticeship of a standard which enables them to get this work and of a vocation for which there is adequate market demand. If necessary, multi-skilling should be resorted to so that redundancy can be avoided. It should be the responsibility of the project to ensure their placement for this purpose.
- Until the identified nominee of the displaced family obtains such durable employment, the family should receive wages of two unskilled labourers from the project. This is being suggested because in the family of self-employed farmers and agricultural labourers both husband and wife usually work and contribute to the family income. One person's wage would be inadequate for family subsistence. This alone would minimize acute economic impoverishment. The period of payment of this subsistence allowance should be used for adequate skill development of the husband and wife at project cost in order to create their employability.
- Independent experts should certify the level, standard of training and its relevance to the job market and work experience in order to eliminate the possibility of sub-standard training.

This drill should be followed in respect of those displaced families who fail to get either land for cultivation or regular employment from the project. No distinction should be made in this respect between those who owned land or were landless before acquisition. Those who are not keen to get the entitled employment may be given attractive cash compensation.

Those who are not keen to get land in place of land lost or employment in the job market could be asked to choose from a range of alternatives which would create sustainable and dignified self-employment which can assure a reasonable income. They should be facilitated in this regard with necessary inputs of credit, training and market facilitation along with cash grant as capital. This alternative should not be tried for displaced persons from the Scheduled Tribes and other weaker sections who have no skills other than agriculture, are not exposed adequately to the market economy

and have no risk taking capabilities. Self-employment should not be an option for them except where they were already engaged in non-agricultural jobs with reasonable and sustained incomes. But the displaced persons from the upper castes and the middle castes who were already socialized in alternative vocations could be given this options.

HOMELESSNESS

This risk should be mitigated by provision of a decent, environmental, healthy dwelling with each adult son or a daughter or a widow/divorcee (women) as a separate unit. No distinction should be made between the size of the house occupied before the acquisition of land as it would discriminate against the poorer households particularly the SCs/STs. An area of ten cents corresponding to what the Orissa policy provides should be allowed for this purpose so that landless families can use the small backyard area for income generating activities and future expansion of facilities. The requirement for the urban areas should also follow the Orissa norm. The family should be given an option either to have a constructed dwelling as per a standardized model prepared in consultation with beneficiaries for this purpose or the cost of construction which is adequate. Separate arrangements for sanitation, livestock should form part of the dwelling plan / construction estimates. The layout of the colony should provide drainage arrangement and a gathering place for the community.

MARGINALIZATION

The following measures may be taken to address this phenomnon:

- The pre-displacement 'community' existing among the displaced persons should be restored or recreated. This could be done by reorganizing the traditional community structure as a valid agency for negotiations, articulation and engagement different from the statutory panchayats.
- Forests and CPRs lost in the process of displacement should be restored/recreated. A common fund should be set up for its development. Management of these resources should be taken over by the community around which the traditional structures of participation and decision-making could be rejuvenated.
- In respect of heterogeneous villages, options should be given to various ethnic groups to decide whether they would like to be joined with other groups as in the pre-displacement village or resettled separately.

Many ethnic groups who have experienced domination / hegemony would like to use resettlement as an occasion to disengage from the old oppressive relationship. They should be consciously helped to do so which would facilitate building a community spirit and self-confidence.

- Where heterogeneous groups prefer to live in the old composite village, new community structures would need to be created to build solidarity around common activities such as common property management, fairs and festivals, cultural activities, group specific activities (women / youth,) religious activities, etc. Common school systems should be promoted. The new resettlement site should be notified as a village so that a three-tier panchayat system operates and development activities are extended. Separate resources should be devoted to community activities which facilitate bonding (Mahapatra, 1999).

FOOD INSECURITY

Food insecurity can be tackled if the following steps are taken:

- Extension of the public distribution system by opening a fair price shop to be managed by a person selected by the community consensually.
- In the tribal areas, 'grain banks' may be set up to be managed by the community with transparent rules and participatory decision-making.
- Intensified rural employment programmes should be taken up under NREGA to provide the necessary purchasing power.
- Social security by way of pension to the elderly and the other eligible persons, free rations to destitute and elderly persons (Annapurna). should be extended.

INCREASED MORBIDITY AND MORTALITY

The risk of increased morbidity and mortality should be mitigated by provision of functioning health facilities at the site of resettlement. The range of facilities should take into account not only the common illnesses afflicting the area of resettlement but the likelihood of new ones resulting from the trauma of displacement such as mental illness. The functional health facilities include requisite service providers (doctors, specialists, para medics), diagnostic aids and equipment, drugs, mobility, modest number of indoor beds and an effective referral service for emergency

cases. Where necessary, visits of specialists to the colony may be arranged on specified days to attend to patients not treatable at the PHC. The existing standardized structure of a PHC should be strengthened for this purpose. A counselling unit managed by an NGO should be attached to this health facility.

With arrangement for food, security and generation of purchasing power, the risk of under/malnutrition can be reasonably met.

SOCIAL DISARTICULATION

- Social disarticulation is a serious consequence of displacement and requires sensitive handling over a period of time. This could be tackled by counselling, confidence building, adjustment to new surroundings, re-building support groups and conflict resolution within the displaced community and with the outside community. For this purpose, NGOs, social activists, anthropologists/sociologists, university departments of social work, etc. could be associated. The timeframe for this work and the terms of association of these agencies should form part of the rehabilitation and resettlement policy.

LOSS OF ACCESS TO COMMON PROPERTY RESOURCES

The loss of access to Common Property Resources should be met by mandatory provision of common land and water bodies attached to the resettlement site with well-defined rights of users and a structure of participatory management. Initial development of these common resources should be accomplished by the rehabilitation and resettlement agency. Subsequent maintenance should be entrusted to a democratically constituted structure of the resettled community sufficiently representative of the weaker sections - SCs, STs, women. A separate fund should be created for this purpose which this community structure should manage.

LOSS OF SCHOOLING

The loss of schooling should be made up by the following arrangements.

- A primary/ middle school which is functional from the day the physical shifting of the displaced persons takes place.
- The rehabilitation agency should arrange for admission of students in neighbouring schools who are in higher classes. If there is no such school within a reasonable distance, the existing school should be upgraded.

- Hostel arrangement should be arranged for students studying in higher classes in schools where distance cannot be traversed on foot or cycle. The provision of a cycle for such students should form part of the rehabilitation plan.
- Arrangement of facilities should take into account the needs of both boys and girls.
- To avoid hassles in admission to schools in the resettlement area, special directives from the competent authority should be issued.
- The date of shifting should ensure that it does not lead to the loss of the academic year, missing of examinations and admission into an appropriate class in the new school.

LOSS OF ACCESS TO PUBLIC SERVICES

This can be avoided with the following decisions:

- All public services should continue to function at the existing location until the displaced persons have physically moved to an alternate site.
- The public services available at the site of the old settlement should be available at the new site before physical shifting is arranged.
- The affected persons should be consulted well in advance about the withdrawal of services and their wishes should be taken into account in deciding on this matter.

SOCIAL AND PHYSICAL INFRASTRUCTURE

The provision of social and physical infrastructure laid down in the Policy should be provided in all resettlement colonies irrespective of their size and should not be left to the state governments to determine. To the extent certain facilities exist in the already existing villages adjacent to the resettlement site, appropriate adjustment can be made to avoid duplication. But it must be ensured that the existing facilities are appropriately strengthened in such situations taking into account the addition of users due to the location of the resettlement colony.

INTEGRATION WITH DEVELOPMENT PLANNING

This objective needs to be concretized by the following structural arrangement for its implementation.

- This objective needs to be concretized by structural arrangement for its operations. A dedicated organization should be created to integrate rehabilitation concerns into development planning on a long-term basis. This would require that the body should continue to engage with the displaced persons for a long period after they are shifted to their new resettlement site. For this purpose, a long-term regional plan should be drawn up which appropriately integrates them into the emerging opportunities for upgradation of their standard of living. This should also take into account the secondary displacement caused by the project after the project activities have started. Their concerns should also be brought into the ambit of development planning. This would provide the displaced persons a continuing structure of support to deal with their multifarious problems long after they are shifted to the resettlement site.

REHABILITATION AND RESETTLEMENT PLAN

There should be a provision for awareness creation well in advance of the initiation of the rehabilitation process. In fact, the work relating to awareness should start before the land acquisition so that the affected persons can make informed decisions at every stage from land acquisition to resettlement. A dedicated functionary may be assigned this task. The civil society groups may be associated with this work. The modalities for this work may be laid down.

TRIBAL DEVELOPMENT PLAN

The Tribal Development Plan should not have a uniform and standardized approach. It should be left to the local agencies to design such a plan taking into account the wide diversity of social and ecological situations and land management practices in the tribal areas. The Tribal Development Plan must officially recognize the traditional community quite different from the village panchayats as a stakeholder. PESA, 1996 does this precisely by empowering the *Gram Sabha* for various protection and development activities. It should be enabled to record land use pattern and management in shifting cultivation areas in order to map out land under use of the individual families. The Tribal Development Plan should recreate a variety of rights and interests in access to land resources covered under respective customary laws. Such a plan for groups like primitive tribes, hunters, food gatherers and nomadic tribes would obviously be different from the plan which is prepared for the tribals engaged in settled

agriculture. The plan should specifically address the problems of social disarticulation, devaluation of culture by arrogant non-tribal groups, emotional trauma caused by sudden break with their traditional pattern of life and kinship network and stresses faced on account of pressures to adjust to a new and hostile environment.

GENDER AND DISABILITY BIAS: SEPARATE DEVELOPMENT PLANS

The definition of the 'affected family' should remove the distinction between major sons and major daughters in respect of its composition. Adults, unmarried daughters, women-headed households (widows, divorcees) should be counted as a separate unit for the purpose of entitlements in the Policy.

The Policy should also treat physically and mentally challenged persons and minor orphans (having lost both his/her parents) as a separate family for this purpose.

This would remove the gender and disability bias from the definition. The policy should address gender concerns specifically through a development plan for women which focuses on (a) access to land (b) provision of CPRs, (c) employment, (d) drinking water and sanitation facilities, (e) health concerns. (f) security. Similarly, development plans should be prepared for differently abled persons taking into account their specific needs. For this to happen, the Policy should have a provision to collect relevant information concerning these groups in its census and surveys.

PERIPHERY DEVELOPMENT

Development projects besides causing direct displacement on account of acquisition of land also unleash indirect displacement in areas adjoining the acquired land due to pressures generated by the project activities on the existing settlers. The provision regarding periphery development has not taken this contingency into account. This dimension of development should, therefore, be specifically included. A periphery development plan focusing on this aspect, among others, should be prepared which incorporates preventive as well as developmental measures. A designated authority charged with the responsibility for periphery development should be specified. The structure and processes for planning and implementation of periphery development may also be laid down.

ACQUISITION FOR URGENCY

In case of land acquired under urgency, the Policy should provide for the return of the land if the contingency forcing such acquisition has ceased to exist. There should be no blanket provision for permanent acquisition in all cases of urgent acquisition. The existing provisions regarding urgent acquisition are too wide ranging and create possibilities for their misuse. The provision for 'urgent' acquisition can be easily resorted to it for normal acquisition to tide over people's resistance to the project. The scope for use of these provisions should be narrowed down. Appropriate checks should be introduced so that acquisition under urgency is used only in the case of natural calamities or such other unforeseen situations.

PROCESS OF CONSULTATION

The provision for mandatory consultation with the *Gram Sabha* for acquisition of land as required in PESA should be facilitated by the land acquisition authority. The process of facilitation would involve furnishing necessary and sufficient information to the displaced persons in a manner that is easily intelligible to them and in a language that they understand. A dedicated functionary should be earmarked for this purpose to ensure that the information reaches people in time and their doubts and apprehensions in this regard are cleared. The Policy should specifically mention that any attempt to obtain the 'manufactured consent' of *gram sabha* by intimidation, threat, use of force or fraud would be to constitute a punishable criminal offence.

UNUTILIZED LAND

The provisions regarding unutilized land should expressly lay down that after reversion of such land to the appropriate government, it would be distributed among the erstwhile land losers in proportion to the quantum of land lost by them. In the unlikely event of the erstwhile land losers or their legal heirs not traceable despite efforts, this land should be distributed among the landless displaced persons of the village/area. This distribution of land whether to land losers or to landless persons should not require any payment to be made by the beneficiaries. If the government wishes to use this land for improving the infrastructure and services in the resettlement colony, the cash equivalent of this land calculated at the current market price may be distributed among the erstwhile land losers in proportion of the land lost by them. The project agency should be charged with this amount as a penalty for inflating its land requirement resulting in its unutilization.

Central government should fix norms for requirement of land for projects of different categories and capacities.

TRANSFER OF ACQUIRED LAND

The transfer of land from one purpose to another should carry financial cost to the government by way of a liability to pay additional compensation to the erstwhile land losers. This cost should be determined on the basis of the current market value of the unutilized acquired land at the time of its utilization for a different public purpose. The amount should be distributed among the erstwhile land losers in proportion to the land lost by them.

PARTICIPATION

All structures created for monitoring should have participation of the affected persons with due representation of SCs/STs/women besides NGO/social activists engaged in working for the displaced persons. Therefore, where such structures have not provided for participation, this may be done.

PAST AND FUTURE PROJECTS

Considering that 75 per cent of persons displaced from the earlier projects remain unrehabilitated, the Policy should, without reservation, extend rehabilitation to them even at this late stage. The Policy should not be restricted to projects taken up after its notification. This would remove the sense of despair and neglect in persons left out and help to assure those likely to be displaced in future that the government stands by them. The task of identification of persons from past projects who remain unrehabilitated should be left to the National Commission/State Commission, as the case may be, proposed in the Policy. The Commission would determine its norms for such identification through a process of wider consultation with civil society groups representing the interests of the displaced persons.

PRIVATE AND PUBLIC ACQUISITION

The Policy should apply to all acquisition of land whether done under the land acquisition laws or procured privately by the companies through negotiations. The agencies acquiring/purchasing land privately should be fully bound to observe the norms laid down in the Policy.

NORMS OF REHABILITATION

There should be no differentiation in the nature and content of rehabilitation and resettlement irrespective of whether a project is large or small. In respect of past projects, the range of benefits to be admissible should be guided by the actual conditions on the ground both in respect of common benefits such as the physical amenities and social infrastructure as well as individual entitlements. The deficit in entitlements taking into account the norms laid down in the Policy should be identified and met. This task should be left to the National/State Commissions to accomplish. Expert assistance should be mobilized to work that out. This aspect would obviously get sorted out while preparing the rehabilitation and resettlement plan as per the procedure prescribed in the Policy.

CONCLUSION

The perspective of resettlement presented here highlights the complexities of addressing multiple impoverishment risks which displacees experience. The challenges faced in the process require strong determination, sustained commitment, dedication, resources and capacity over a period of time. The magnitude of the task is mind boggling considering the huge backlog of unattended cases and the rapidly increasing number that is in the pipeline. But the quality of efforts required are even more demanding since a genuine beginning in terms of comprehensive risk mitigation has not even been conceived let alone accomplished in the resettlement attempted so far. While seriously pursuing these dimensions would test the political commitment of the government and the skills, capacity and patience in governance, the more nagging issues associated with the paradigm of development which causes this level of displacement would not disappear. Social disruption on a scale that has taken place and is increasingly unfolding is simply unacceptable. The conflicts which this development gives rise to have to be resolved to the satisfaction of those who bear the brunt of its adverse effects.□

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