

*Special Issue on*  
Resettlement, Rehabilitation and  
Benefit Sharing in Infrastructure Development



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*Special Issue on*

**Resettlement, Rehabilitation and Benefit Sharing  
in Infrastructure Development**

**(Papers and Proceedings of the International Conference)**

**May 20-21, 2013**

*Edited by*

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M.Phil, Ph.D (Economics)

Associate Professor & Conference Director

**Administrative Staff College of India  
Hyderabad**





# Journal of Management

Vol. 44 No. 1(Spl) September 2014

*Special Issue on*

## Resettlement, Rehabilitation and Benefit Sharing in Infrastructure Development

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वंदना कुमारी जेना, भा.प्र.से.  
VANDANA KUMARI JENA, I.A.S.




सचिव  
भारत सरकार  
भूमि संसाधन विभाग  
ग्रामीण विकास मंत्रालय

SECRETARY  
Government of India  
Department of Land Resources  
Ministry of Rural Development

**MESSAGE**

I am extremely happy to know that the Centre for Excellence in Management of Land Acquisition, Resettlement and Rehabilitation (CMLARR), ASCI is publishing a Special Issue of the ASCI Journal of Management on *Resettlement, Rehabilitation and Benefit Sharing in Infrastructure Development*. I congratulate the Centre for compiling the papers and proceedings of the International Conference, which saw the participation of Land Acquisition and Resettlement Experts from 20 prominent countries of the world. The publication is noteworthy in bringing out the views and opinions of the experts from across the globe, thus giving a holistic perspective on various benefit sharing mechanisms practiced the world over. I am also happy to read the different perspectives on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Centre has been leading the capacity building and research in the area of Land Acquisition, Resettlement and Rehabilitation in the country. I greatly appreciate the contribution of the College for their continuing efforts in knowledge-sharing and capacity-building on this topic of much contemporary relevance. I wish the Centre success in all its endeavours.

  
(Vandana Kumari Jena)

**Dr. S.K. JOSHI, IAS.**  
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### Message

It was indeed a matter of great pride that the State of Andhra Pradesh could host the International Conference on *Resettlement, Rehabilitation and Benefit Sharing in Infrastructure Development (sponsored by World Bank)*, attended by more than 100 practitioners, policy-makers and Land Acquisition experts from 20 prominent countries of the world. The Conference not only promoted awareness of the legislative framework and policy experiences in diverse projects spanning across regions of Africa, Latin America and South Asia but also shared research and practices of benefit sharing in hydropower and extractive industries from countries like Colombia, Norway, LAO PDR, Australia, Pakistan, Canada, China, Chile etc. The Journal comprehensively captures the presentations in the conference and would greatly benefit all stakeholders.

I greatly appreciate the ongoing activities of CMLARR, ASCI in capacity building and research in the area of land acquisition, resettlement and rehabilitation in the country. I congratulate the CMLARR, ASCI in publishing the papers and proceedings of the International Conference as a Special Issue of ASCI Journal of Management.

A handwritten signature in black ink, appearing to read "S.K. Joshi".

(Dr. S. K. JOSHI)

**Sutirtha Bhattacharya, I.A.S.**  
Chairman & Managing Director



(A Government Company)

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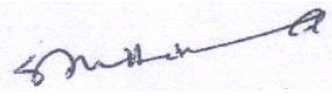


#### Message

I am delighted to know that the papers and proceedings of the widely appreciated International Conference on Resettlement, Rehabilitation and Benefit Sharing, organized by ASCI with the support of the World Bank and AusAID are now being published in the Special Issue of ASCI Journal of Management.

This event evoked participation from several renowned national and international experts. It is indisputable that land has become the most critical issue in infrastructure development. The sharing of experiences and practices of diverse countries would go a long way in addressing these issues and other related issues from a holistic perspective.

I acknowledge the efforts of the College in organizing such events of great public importance and in painstakingly compiling the proceedings of the event comprehensively for the benefit of diverse stakeholders. The Special Issue also includes a great collection of research papers on the legislative framework and on the practical resettlement experiences. I wish the College all success in similar high quality endeavours in future.



**(Sutirtha Bhattacharya)**



**The World Bank**

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
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### Message

The International Conference, organized by ASCI with the support of the World Bank and AusAID, was a great success in global South-South exchange and learning in the management of land acquisition, resettlement, rehabilitation and benefit-sharing in infrastructure development. This event facilitated and witnessed huge quantum of knowledge dissemination and experience sharing by experts from over countries - Afghanistan, Australia, Bangladesh, Canada, China, Chile, Colombia, Costa Rica, Kenya, LAO PDR, Nepal, Nigeria, Norway, Pakistan, Peru, Sri Lanka, Turkey, Uganda and United Kingdom, apart from India. The participants included practitioners, policy makers, academicians and international development partners who presented cases reflecting issues/practices at policy, management and operational level across major infrastructure sectors.

I convey my great pleasure and appreciation at this successful initiative of CMLARR, ASCI to compile the proceedings and papers of the International Conference in ASCI Journal of Management. The Regional Centre for LARR at ASCI, established with the support of the World Bank along with other National Centres in Pakistan and Bangladesh, has been pioneers and has been working diligently in disseminating and promoting good practices in the management of resettlement and rehabilitation. The Journal is another great effort in the direction. My sincere congratulations to CMLARR, ASCI.

Sincerely,



Chaohua Zhang

Lead Social Development Specialist  
The World Bank South Asia Region  
RCA 248423. ☎ WUJ 64145 ☎ FAX (202) 477-6391

## Foreword

Infrastructure is a key for economic growth which in turn is vital for reducing poverty and promoting overall prosperity. However, progress on the infrastructural front, especially in the South Asian region, has been severely hampered largely by conflicts and protests by the affected people.

The opposition to land acquisition has largely stemmed from equity, environmental and socio-cultural concerns. Beyond the material losses are the less discussed but immensely important issues of the social, cultural and other non-tangible costs associated with displacement. It is important to strike a balance between the need for land for developmental activities and the need to adequately address the issues raised by those impacted by the acquisition of land. The multilateral funding institutions like World Bank have been laying stress on viewing the development-induced displacement and the ensuing resettlement as a development opportunity for the resettled population. Though there has certainly been a great advancement in this thought process, the good practices that ensure shared prosperity to those whose primary source of livelihood has been taken away has been few and scattered.

Given the magnitude of the issue in developing countries, addressing the concerns of the land owners within the regulatory framework has assumed critical importance. The past decade has witnessed initiatives at policy and operational front in various countries to address this challenge. From a sustainable development perspective, the benefit-sharing mechanisms piloted in some countries offer a significant learning for adaptation and replication. Though the issues relating to land acquisition, resettlement and rehabilitation are near universal, there is little or no experience-sharing across different projects and countries.

Recognising this gap, the Administrative Staff College of India (ASCI), Hyderabad, supported by the World Bank and Australian AID conducted a weeklong South-South learning event from 20th to 24th May, 2013. The week began with a two-day International Conference on Resettlement, Rehabilitation and Benefit Sharing at ASCI, Banjara Hills Campus, Hyderabad. This was followed by field visits to Pulichintila Irrigation Project in Nalgaonda district, the GMR Varalakshmi Foundation and the Aadarsha Mahila Sahakara Samaikya Ltd in Mahaboobnagar District. The visits were aimed at giving the international participants a practical exposure of projects involving resettlement/livelihood restoration. The event concluded with a one-day workshop to promote South-South collaboration and strengthen networking among the regional Land Acquisition Resettlement & Rehabilitation Centres and other organisations/institutions in the areas of management of involuntary resettlement and benefit-sharing in infrastructure development.

The two-day international conference was attended by 110 delegates from 20 countries such as Afghanistan, Australia, Bangladesh, Canada, China, Chile, Colombia, Costa Rica, Kenya, India, LAO PDR, Nepal, Nigeria, Norway, Pakistan, Peru, Sri Lanka, Turkey, Uganda and United Kingdom. The delegates included practitioners, government officials, teachers in universities, think tanks and international development partners. Experiences were shared among countries at policy, management and operational level and across major infrastructure sectors.

The Conference was split into five technical sessions. The first technical session, *Country Experiences - Learning from the Past* traced the journey of involuntary resettlement from the policy, practitioners and community perspective. The second technical session, *Resettlement & Rehabilitation (R & R)/Benefit-sharing : Policies and Practices* gave a flavour of the policy experiences in diverse projects spanning across regions of Africa, Latin America and South Asia. Understanding the nature of challenges experienced by various projects in the hydro sector and project-specific measures taken to address them can offer significant learning experience. The third technical session on *R & R/Benefit-sharing - Challenges and Practices in Hydro Sector* saw presentations of cases from India, Columbia and Turkey. The theme of the Conference was dealt with in a comprehensive way in the fourth technical session on *Benefit-sharing in Infrastructure Projects*. The session saw sharing of research and practices relating to benefit-sharing in hydropower and extractive industries. The final technical session on *Resettlement-Experiences in Urban Sector* shared experiences of promising practices in selected urban resettlement experiences in Nigeria and India.

The conference also received a large number of papers from academicians and researchers. It was encouraging to see that a significant proportion of the contributions were on dedicated research in the state of Odisha. Odisha assumes special significance with regard to land acquisition and R & R issues in India. The State has the most comprehensive R & R policy that differentiates policy prescriptions for various sectors/projects. Ironically, the State also has the largest number of stalled big ticket projects in the country (including the one with the highest Foreign Direct Investment). The implementation issues are therefore a major area of concern in the State. In this backdrop, the present volume combines a comprehensive coverage of the papers presented at the conference along with dedicated research from the state of Odisha.

The paper section incorporates four papers focusing on Odisha. Besides, the section also includes three papers critically analysing the legislative framework on land acquisition. While two of these papers examine the apprehensions and misgivings regarding the new legislation on land acquisition, resettlement and rehabilitation,

the third one provides an exhaustive study of the issues and challenges in acquiring land with users' rights under the Petroleum and Minerals Pipelines Act-1962 and the recommended amendments in addressing the inherent and emerging issues in the sector.

**Reshmy Nair**

**International Conference on Resettlement, Rehabilitation and  
Benefit Sharing In Infrastructure Development**

**May 20-21, 2013**

**AGENDA**

<b>Day 1</b>	<b>20<sup>th</sup> May, 2013</b>
<i>Inaugural Session</i>	
<i>Welcome Address:</i>	<b>Dr S. K. Rao</b> , Director General, ASCI
<i>Inaugural Address:</i>	<b>Mr. M. Narasimham</b> , Chairman (Emeritus), ASCI
<i>Keynote Address:</i>	<b>Dr Cyprian Fisiy</b> , Director Social Development Department, World Bank
<i>About the Conference:</i>	<b>Dr Reshmy Nair</b> , Associate Professor CMLARR, CEEUGID, ASCI
<i>Technical Session I: Country Experiences - Learning from the Past</i>	
<i>Management of Involuntary Resettlement in India-Past and Present</i> <b>Dr S. M. Jamdar</b> , IAS (Retd.), Former Principal Secretary (Home), Government of Karnataka, India	
<i>Management System of Involuntary Resettlement in Reservoir Projects in China</i> <b>Professor Shi Guoqing</b> , Director, National Research Centre for Resettlement (NRCR), Hohai University, China	
<i>Research on Development-Induced Displacement-Oral History from the Displaced</i> <b>Ms. Siobhan Warrington</b> , Director, Oral Testimony Works, United Kingdom	
<i>Resettlement Policies and Practices in Lao PDR - in the Past Decade</i> <b>Mr. Daovong Phonekeo</b> , Director General, Department of Energy Policy & Planning, Ministry of Energy and Mines, LAO PDR	
<b>Ms. Bouakeo Phounsavath</b> , Director of Legislative Division, Department of Environmental and Social Impact Assessment (DESIA), Ministry of Natural Resources and Environment (MoNRE), Lao PDR	

**Technical Session II: R&R/Benefit-Sharing - Policies and Practices**
*Resettlement Experience in Bujagali Hydropower Project in Uganda*

**Ms. Grace F. Nabadda-Barya**, Trainer, Social Economic Empowerment Consortium, Kampala, Uganda

*Resettlement And Livelihood Restoration in Hydropower Sector-Experiences in South East Asia*

**Dr Stephen Sparks**, Vice President, Corporate Responsibility & HSE, Statkraft AS, Norway

*Resettlement, Rehabilitation and Benefit-Sharing in Indian Mining Sector*

**Mr. Shivraj Singh**, Senior Manager, Northern Coalfields Ltd., India

*R&R/Livelihood Restoration-Challenges and Practices in Hydro Power Projects in Pakistan*

**Dr Raheal Ahmad Siddiqui**, General Manager (Land Acquisition & Resettlement), Water And Power Development Authority, Pakistan

*Land Acquisition through Consent Award - Experiences in Andhra Pradesh*

**Dr S. K. Joshi**, IAS, Principal Secretary, Projects, Irrigation and Command Area Development, Government of Andhra Pradesh, India

**Day 2**

**21<sup>st</sup> May, 2013**

**Technical Session III: R&R - Challenges and Practices in Hydro Sector**
*Resettlement and Benefit-Sharing-Experiences in Vishnugadh Pipalkoti Hydropower Project, Uttarakhand*

**Mr. P.P.S. Mann**, Project Head, VHEP Project, THDC, India

*Management Risks of New Settlements in the Buffer Zones of a Reservoir : The Case of Chivor, Colombia*

**Mr. German Arthuro Vargas Rodriguez**, Consultant, Projects of Land Rights, Acquisition and Evaluation of their Impacts, Columbia.

*Land Acquisition and Involuntary Resettlement Policies and Practices in Turkey*

**Mr. Ali Kılıç Özbek**, Deputy Head, Real Estate and Expropriations Department, State Hydraulic Works, Ministry of Forestry and Water Affairs, Turkey

**Mr. Turan Hazar**, Former Department Head and Consultant Expert, Land Acquisition, Turkey

**Technical Session IV: Benefit-Sharing in Infrastructure Projects**

*Benefit-Sharing : Experiences in the Extractive Industries*

**Ms. Elizabeth Wall**, Social Development Specialist, Shared Resources, Australia

*Benefit-Sharing Mechanisms in the Hydro Sector - Himachal Pradesh Govt. / SJVNL*

**Mr. R. B. Nazim**, IAS, Director, Power, Govt. of Himachal Pradesh, India

**Mr. Kranti Kumar Gupta**, Head of the Project, Rampur Hydro project, India

*Benefit-Sharing and Enhancing Development-Lessons from Hydropower Case Studies*

**Dr Shivcharn S. Dhillon**, Senior Researcher, and Consultant, Sweco Norge AS and ENVIRO-DEV, Norway

**Technical Session V: Resettlement : Experiences in Urban Sector**

*Land Pooling-The Magarpatta Model*

**Mr. Satish Magar**, CMD, Magarpatta City, Pune, India

*Resettlement Experiences in Mumbai Urban Transport Project*

**Mr. Vishram Patil**, Head, Social Development Cell, MMRDA, Mumbai, India

*Resettlement Policies and Practices-The Experience of Lagos Metropolitan Development and Governance Project*

**Mr. Dayo Oguntunde**, Project Director, Lagos Metropolitan Development and Governance Project, Lagos, Nigeria

### ***Valedictory Session - Conference Reflections and Take-Aways***

#### ***Panelists:***

- ◆ ***Mr. Stefano Anzellini Fajardo***, Associate Professor, Universidad de los Andes, Colombia
- ◆ ***Ms. Susan Wong***, Sector Manager, Social Development, World Bank
- ◆ ***Mr. R. D. Nazeem***, IAS, Director, Government of Himachal Pradesh, India
- ◆ ***Mr. Momin Mozibul Haque Shamaji***, Project Director, Local Government Engineering Department, Bangladesh
- ◆ ***Mr. Jawad Peikar***, C E O/DO E, Afghanistan Land Authority, Ministry of Agriculture, Afghanistan.
- ◆ ***Mrs. Bouakeo Phounsavath***, Director of Legislative Division, Department of Environmental and Social Impact Assessment (DESIA), Ministry of Natural Resources and Environment (MoNRE), Lao PDR
- ◆ ***Mr. Sanjaya Dhungel***, Senior Divisional Engineer, Water and Energy Commission, Nepal
- ◆ ***Mr. Diran Akingba***, Executive Director, (Finance & Administration), Lagos Water Corporation, Lagos, Nigeria

Conference Reflections: ***Prof. V. Srinivas Chary***  
Dean of Research and Management Studies, ASCI

Summing Up : ***Mr. Chaohua Zhang***  
Lead Social Development Specialist, World Bank  
***Dr Reshmy Nair***  
Associate Professor & Conference Director, CMLARR, ASCI



**M. Narasimham, Chairman Emeritus, Court of Governors, ASCI**

*Excerpts from the Inaugural Address*

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I am happy to be here this morning at the inauguration of the International Conference on Resettlement, Rehabilitation and Benefit-Sharing in Infrastructure Projects. I would like to extend a very warm welcome to all the participants, especially those from abroad, who have come here from virtually every continent. I would like to commend Dr Reshmy Nair for her initiative in organising this conference. I would also like to express my appreciation to the World Bank for its partnership with ASCI and, in particular, to Mr Chaohua Zhang, Lead Social Development Specialist in organising this Conference.

The fact that this Conference has attracted attendance from so many countries is a reflection of the near universality of the problem of resettlement of those dispossessed of their lands, to promote investment, whether it be in highway, irrigation, infrastructure, mining or industry. While it is to be expected that the issues have a general character, the experiences have been varied in different countries, reflecting local, institutional, political and social realities. There is, therefore, much to be gained in sharing each other's experience, to see to what extent the positive features of a country experience can be replicated elsewhere adjusting for local factors. Experience-sharing is, therefore, central to this conference.

The acquisition of land is an issue, which has both efficiency and equity dimensions. Earlier, land acquisition was seen as the end of the exercise with not much attention being paid to the impact of such acquisition on the people from whom the land was acquired and who were likely to be displaced from their habitations and dispossessed of their land and livelihood. The need to address these human costs was brought into bold relief in this country in the context of implementation of the Narmada Valley Project. It is neither socially nor politically acceptable to disregard the human costs involving the affected population. In this country, legislation is now on the anvil to replace a century old colonial law governing land acquisition, which paid scant attention to these, and which left out of consideration the issue of equity beyond the concept of what was considered appropriate monetary compensation. The law in its application over the years was based on the principle of *Eminent Domain*, which gave the sovereign the power to acquire land without following other aspects of equity. The new legislation now seeks to introduce this element of equity and to reduce the scope for coercive and almost confiscatory acquisition of land. One of the important elements in the legislation in India is the requirement of majority of land-owners whose land is being acquired to agree to the acquisition.

The legislation also seeks to address the issue of R & R. Land acquisition and resettlement are to be seen as equal aspects of the process. In a development oriented democracy, coercion and arbitrariness cannot be the base for land acquisition. Resettlement is to be accorded equal importance. At the same time, we need to recognise that land acquisition is vital for investment, whether it be infrastructure or industry. The requirements of developmental investment will also have to be given due weightage especially in a country like India where inadequate infrastructure has severely impeded the growth effort. If we are not to throw the baby out with the bath water, we need to devise land acquisition systems and procedures, which would promote needed investment for infrastructure or industry, or even commercial agriculture, while respecting the rights of the land-owners in their R & R. This way, the beneficial side of land acquisition will come to the fore.

The above issues are relevant for all countries. It is appropriate that this conference, being organised by ASCI in collaboration with the World Bank, aims at a study of these aspects and will involve intensive discussion on various aspects of land acquisition and resettlement and to share the experience of different countries. The conference also plans to have field visits to certain infrastructure projects in the region, where the participants will be exposed to resettlement efforts, involving successful self-help groups and livelihood restoration activities.

**Cyprian Fissy, Director, Social Development Department, World Bank**  
*Excerpts from the Keynote Address*

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I would like to frame the issues at three levels; look at the standard drivers of change, show how it is influencing in what we are doing with land acquisition, R & R and how do we take this agenda forward. When we look at the standard outlook and challenges, the first that comes to our mind is the changing environment and the shift in the economy centre of gravity towards the developing countries. This has huge implications for land acquisition and involuntary resettlement. The challenge for us is to ensure that people who lose the assets have something back as a response to that.

The infrastructure gap is estimated to be between 1.2 to 1.8 trillion dollars every year. The World Bank accounts for only one percent of this contribution. The rest is going to come from domestic and Foreign Direct Investment (FDI). In the given scenario, where World Bank will only have a very minuscule contribution, we need to see our role in the entire process; how do we do business differently and how do we then have the leverage to ensure that the remaining 99 percent of the investment is also done in ways that are consistent with global guidelines and policies. How do we all do things differently in ways that will empower and ensure that the governments and different clients do the right thing, in ways that we give value to local communities, their local interests and national interests? How do we put in policies and governance structures to change the way we do business?

I am raising these issues because we are going to an era where we may see much more natural disasters and it is also important to see how we reorganise our policies in those areas too. What we have been internally trying to do in the bank is very critical. Our commitment is to reduce extreme poverty by 2020. If we are to eradicate extreme poverty and help shared prosperity, what does it mean for development; how do we do that when there is a huge infrastructure deficit; how do we eradicate extreme poverty in ways that are consistent with government policies at the country level and the national level? Our goals are not only to reduce extreme poverty but also to arrive at new ways of doing business and also share this global knowledge. How we share the global knowledge is going to be the first step in that direction. How do we build Global Centres of Excellence to share global knowledge and a vision of development which is socially sustainable?

Development is socially sustainable when it is inclusive, cohesive, accountable and resilient; that aims to build institutions that achieve these and address the issues of those left out. Among the emerging issues, the first includes the urban renewal programme. Most of the development is going to be in the urban areas. How do we

address the issues of squatters; the issues of security and tenure and how do we build infrastructure that is responsive to the needs of the citizens? The key drivers of change would be to put in place global norms and values, the new performance standards at the global level, at the level that can guide public sector engagement beyond eminent domain principle. How do we ensure inbuilt benefit sharing principle and compensate people in ways that they feel part and parcel of the process of development?

In the future, most of the investments are going to come from the private sector. The sector has to engage differently and to apply the same principles and policies. I would request the august gathering to help the private sector to engage and do business differently at the local level. It is important to see how we improve the present way things are done. This has to do with people who are monitoring the activities and the accountability mechanisms at the local level. These elements will be central to what we do and how we do. They need a new platform to ensure that the ideas we share and learn from each other from different experiences are applied in what we do going forward.

The land question has now come back as a question of land grab. We have to remember that for most people, land is livelihood. Landlessness leads to destitution. If we do not address the land question, we are going to have a huge issue. The land grabbing problem is coming to the fore now because of the increasing urbanisation and land conversion from rural to urban lands. As we go to the urban areas and slums and deal with the squatters, then we are getting into the politics of urbanisation, the politics of dealing with the squatters because they are also potential vote banks of the political parties. There are great challenges in dealing with these issues. By 2020, there is going to be a great surge in the mega cities (with 10 million or more people) and these are going to be primarily concentrated in India and China. The challenge is to see that those who are excluded are included and to design an appropriate policy framework for inclusion. Social inclusion is a process of improving the terms on which people take part in society. This happens in three areas; in markets; in services and in the political, social and cultural spaces. Engagement can only come about when we recognise and appreciate the people. The challenge of urbanisation and inclusion would be to build social relations.

All the above raises an important question about 'voice'. We argue at the Bank that there cannot be meaningful sustainable development without voice. The strong area of contestation would be whose voice to be heard, how do we hear the voice of the citizens, how do we factor them in our policies and activities and how do we plan going forward. The element of voice is so critical because we see two areas of crisis. First, is the 'crisis of representation' - who speaks for whom and how do we know people who are consulted for land acquisition are those speaking on behalf of those affected. Second is the 'crisis of aggregation'. How do we ensure that what

we hear are aggregated and sent into policy making? We want to operationalise the concept of voice as it is critical to collaborative governance. Unless the voices of the citizens are represented and reflected in policies, there is going to be a huge disconnect in the process. We need to move to a different framework where people do not have to use their fist. The challenge for all of us in land acquisition is to transform the fist to a handshake. How do we deal with conflicts differently in ways that the citizens remain law-abiding? Let us strive for new arrangements- for dialogue and for engagement that would get them to think through what it means to live in a cohesive society, a society where we do not let minor conflicts exacerbate into violent conflicts and ensure that there are spaces for negotiation and transformation of societal relations in a positive manner.

The key is to bring in the knowledge agenda to address these issues. The last five World Development Reports had a strong social content. The fundamental change is behavioral change. For this, we need to build partnerships at the global level and then construct these partnerships at the local level in different areas of engagement. I raise these issues here because what we want to get out of these discussions is to start thinking of new forms of partnership between the global, national and the local in ways that develop resources on the ground and to be operational in nature to solve problems on the ground. A part of that challenge is to enhance South-South learning to compare experiences between different countries in the area and help build a platform that has not been done before.

We are starting a new journey in this conference. As development partners, we have to work closely not only to influence the one or two percent projects financed by the World Bank, International Monetary Fund and others, but more so in the other 98-99 percent investment at the country level that are financed by the other actors, who may not have the same values and principles that we do. Our challenge is to have these set values and principles to guide the way we do business and for all purposes, this joining together is the journey to our destination.

---

## **Session I: Country Experiences - Learning from the Past**

- I    Management of Involuntary Resettlement in India: Past and Present  
     **Dr S. M. Jamdar**
  - II   Management System of Involuntary Resettlement in Reservoir Projects in China  
     **Prof. Shi Guoqing**
  - III   Research on Development-Induced Displacement: Oral History from the Displaced  
     **Ms. Siobhan Warrington**
  - IV   Resettlement Policies and Practices in Lao PDR in the Past Decade  
     **Mr. Daovong Phonekeo and Mrs. Bouakeo Phounsavath**
- 

### **I    Management of Involuntary Resettlement in India : Past and Present**      **Dr S. M. Jamdar**

**Background:** Among the participants from twenty countries participating in the international conference, all the countries except China and Norway were former colonies of European powers-United Kingdom, France, Spain and Portugal. Most of the laws relating to land acquisition were framed, practiced and handed over by the erstwhile colonial masters at the time of independence. The experiences of the colonial countries have been repeating in the colonised countries with each country trying to ape the model of development of their masters during their post independence period.

The sporadic displacement seems to be a constant feature of human existence on earth. The first and foremost reason for involuntary resettlement is natural calamities-deluges and floods, famines and epidemics, earthquakes, landslides and tsunamis that occasionally displace large numbers of people world over. These cannot be prevented and no country can be an exception to these calamities. However, the advancements in science and technology and national/international cooperation have greatly improved the mitigation and coping mechanisms. The second most common cause of large scale displacement of people in all epochs of human history is man's wrath against man in the form of wars, ideological/religious/political/economic conflicts, ethnic/racial violence and internal strife. During 2008, the United Nations High Commissioner for Refugees (UNCHR) reported that 15.2 million people became refugees outside their countries and 26 million people were displaced due to internal strife in countries like Syria, Palestine, Iraq, Chechnya, Azerbaijan, Afghanistan, Colombia, Equador, Chad, Sudan, Central African Republic, Honduras, Nicaragua etc. The World Bank has exclusive protocol to assist this category of the displaced (Operational Policy, 2.30 of 2001). The third cause of human displacement

is development itself. After World War II, the developing nations in Asia, Africa, and South America have been acquiring vast tracts of lands, displacing large chunks of their population. The magnitude of Development-Induced-Displacement (DID) is comparable to the displacement of indigenous people in America, Africa, Oceania and parts of Asia by the European colonisers in the earlier times.

**History of Involuntary Resettlement:** While imperialism and colonialism are things of the past, a new form of colonialism-like trend is visible in the developing countries of Asia, Africa and Latin America which have embraced the western model of development. This is with regard to land acquisition process for development purposes, whereby investments through FDIs, Multi-National Companies (MNCs) and Public-Private-Partnership (PPP) modes of development are lured with offer of cheap lands, resembling colonial styles of land expropriation.

The doctrines which govern land acquisition today are as old as colonial times or even earlier. First and foremost is the *doctrine of eminent domain*. In many countries, the land acquisition laws have been used with similar sounding words like ‘public interest’ or ‘public purpose’, or ‘public utility’. The three terms are synonymous and replaced British titles and tradition. Second is the twelfth century law, Magna Carta in England (1215), Rights of Man in France (1791), Bill of Rights in the USA (1789). These laws introduced payment of compensation to the land owners before dispossessing them. Today, almost all the former colonies of United Kingdom (including Indian sub-continent, USA, Canada, Australia) follow the traditions of English law of land acquisition (with some local but minor variations). Similarly, the former colonies of France follow the traditions of French law on land acquisition. The Latin American nations, except Brazil follow the Spanish law of land acquisition which is similar to English law. Brazil, on the other hand follows Portuguese legal traditions. For all development purposes across the world, it is the Law of Land Acquisition that is the foundation of land expropriation. While the Law recognises the rights of the land owners, some countries like India have widened it to include ‘rights of those who hold interest’ in the land which would refer to ‘leases’ and ‘easements’. This however does not include encroachments/squatting. It stipulates ‘Just’ or ‘Fair’ compensation at par with market value to be paid before dispossession.

The contemporary model of economic development leads to large scale displacement of people, fast depletion of natural resources, and dangerous environmental pollution. Since the second World War, an estimated 300-400 million people have been displaced globally for development. The number of displaced is estimated at around 60 million in India. Annually, about 15 million people are being displaced by the development projects world-wide. These are largely in the developing world, particularly India, China, Brazil, Africa and South America. In the developing countries, this is leading to massive protests, violence and unrest. In Peru, 33 people

protesting against land acquisition in Baguawere were killed in 2008; emergency was declared to control violence against privatisation of public lands in Bolivia in 2008; 19 protestors were executed recently in Brazil; in Mexico, the Chiapas movement has led to guerilla warfare partly against land issues. In India, the numerous protests against land acquisition have resulted in the new legislation on Land Acquisition and R & R. In most other developing countries, the protests against land acquisition are growing in number and strength.

**DID in India:** Displacement is not a new phenomenon; it existed even during the pre-colonial periods for construction of ports, roads, canals and infrastructure projects. To acquire huge lands, the British passed the first Regulation Law in 1824 which was amended from time to time and became universally applicable across the country with the Land Acquisition Act, 1894. After independence, the British Colonial law has been used to acquire land for all development purposes. These laws only took care of land owners and provided no scope for coverage of the non-title holders, squatters and encroachers. Between 1992 to 2003, more than 20 million hectares of agriculture land is estimated to have been diverted from agriculture to non-agriculture uses for development projects.

**Policy Guidelines on Resettlement in India:** In India, lands, building and other immovable properties are mostly acquired under the colonial Land Acquisition Act (LAA) of 1894. The Act was extensively amended in 1984 with inclusion of progressive provisions for the affected communities. These included hike in solatium from 15 percent to 30 percent, inclusion of additional market value in compensation, introduction of consent award etc.

Multilateral lending institutions have played a major role in influencing the governments to amend the laws. In 1980, the World Bank came up with an Involuntary Resettlement Policy Statement. During this period and till the late 1980s, the projects largely addressed the resettlement issues as they arose in a purely adhoc manner. In India, the first National Policy for Project Affected People (PAP) came out in 2004 and a modified version (after much debate and discussion), called the National Policy on Rehabilitation & Resettlement, was notified by the Government of India in 2007.

**The New Legislation on Land Acquisition and R & R:** During 2011, the United Progressive Alliance (UPA) government introduced a new Bill in the parliament integrating land acquisition and R & R. The new Act, called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act-2013, got presidential assent in September 2013. The new Act incorporates very significant features. It corrects the information asymmetry that existed between acquiring body and those whose lands are acquired; incorporates the inclusive development philosophy by giving special provisions to indigenous people and gives



space to participation of the affected community at various stages of land acquisition and R&R. The Act combines acquisition and R&R under one umbrella. The cost of land acquisition and R&R are put together as an integral part of project cost. The Act provides for an elaborate institutional procedure of Social Impact Assessment (SIA). This is a pre-notification procedure which guides the government to take a final decision on whether land is to be acquired and in what quantum. The SIA is required to be discussed at the level of gram sabha as a part of the consultation process. The Act has a referendum mechanism for some situations i.e. mandatory approval of 80 percent and 70 percent of landowners is required when land is acquired for the private and public-private-partnership projects respectively. The compensation will be no less than four times the average price of land transactions (50 percent of the highest transaction value considered) in the last three years in the rural areas and twice the price in urban areas. All affected families, both the titleholders and livelihood losers shall be provided an R & R package and one of the options in lieu of lump sum is an annuity for a period of 20 years. The Act also provides for a separate institutional mechanism to implement these provisions.

A major drawback of the Act is that it retains the sales statistics or guideline values as the only method to decide the amount of compensation. The guideline values are often not up to date nor very accurate particularly in urban areas. The sales statistics based valuations have in most cases become the basis for litigation. The extension of mandatory R&R to directly purchased lands (beyond a limit specified by the respective state governments) has been questioned by the industry bodies/ associations. The consent process is also expected to raise several practical issues.

There is also an apprehension that in the absence of adequate safeguard mechanisms, the SIA and baseline surveys would provide scope for too many manipulative practices in respect of 'notional' families, dates of residence of landless families, age of majority etc. While a separate institutional structure is created by the Act for implementing R&R through the Administrator at the project level and Commissioner at the state level, there is an urgent need for training and professional expertise in respect of SIA, consultative processes and implementation of R&R schemes. There is an apprehension that left to NGOs and untrained revenue staff, the very purpose of these progressive provisions would be defeated. It is also felt that the freezing of land transactions should have been at least six months before the preliminary notification since the preemptive transactions would start as soon as pre-notification SIA activities in the proposed area. There is also a criticism that the Act is more an academic pigment of imagination than an implementable law.

## II Management System of Involuntary Resettlement in Reservoir Projects in China

Prof. Shi Guoqing

**Background:** During the last twenty years, China has seen an average growth rate of nine percent. However, thousands of people have been displaced due to various development projects-hydro-power, highway, urban development and renewal projects. It is estimated that from 1950-2010, more than 80 million people were resettled because of development projects. Around 1.3 million people were displaced by the Three Georges Dam Project (world's largest power station in terms of installed capacity of 22,500 MW). The construction of the project, with a cost of \$10.2 billion, started in 1993 and completed in 2009. The second largest irrigation and hydro-power project in China is the Xiaolangdi dam project, funded by the World Bank. About two hundred thousand people have been displaced by this project, affecting eight counties, 29 townships and 174 villages. The resettlement budget of the project was \$ one billion.

**Legal Framework in China for Land Acquisition:** China has a fundamental law, the Land Administration Law (LAL) that governs land acquisition in the country. China also has administrative regulations. There are two important resettlement regulations in the hydropower sector. First is the *Reservoir Resettlement Regulation*. This regulates compensation for land acquisition and resettlement in construction of large and medium-sized water conservation and hydroelectric projects. The Regulation was adopted in 1991 and revised in September 2006. The second is *Regulation on Resettlement for the Construction of the Three Gorges Project* on the Yangtze River. The Regulation is for the Three Gorges Project, the largest displacement-inducing hydro-power project in China. The government, recognising the nature of the project, issued a special regulation for this project in 1993 i.e. before the start of the project and revised it in 2001. Besides these, China has the National Technical Standards/Guidelines issued by Ministry for specific activities pertaining to hydro power projects. These include identification of the landfill scope, physical loss survey, planning and designing for rural resettlement, planning and designing for special items, planning and designing for town reconstruction, designing for reservoir cleaning, resettlement compensation, budget preparation etc. These specifications, called 1+7, guides the entire resettlement planning process in China. China also has some provincial policies, i.e. local regulations and rules issued by the provincial and local government. For projects funded by the international donor agencies, the country follows their standard policies and principles.

The resettlement policies aim at minimising land requirement and displacement. In certain cases, where resettlement cannot be avoided, efforts are made to

compensate and assist the people to restore or surpass their original income and living standards. The compensation is paid to all collective land owners and users. The compensation and resettlement cost is to be included in the project budget. The project authorities are required to submit the Resettlement Plan (RP) to the provincial government or State Council for due approval. The rural resettlers are to be provided with the first option of agriculture resettlement.

**Compensation Standards:** A new resettlement policy was formulated in 2006 for compensation and rehabilitation of dam-affected people. The compensation standard followed in China is the Annual Output Value (AOV). The compensation provided for farmlands acquired is 16 times the AOV or equivalent of 32 years of net income. In addition, compensation is paid for individual assets and subsidies are allocated for relocation and livelihood trainings. With a long-term sustainable livelihood perspective, the policy has also incorporated an annual post relocation fund support of 600 yuan per capita for a period of 20 years. The development of community infrastructure is based on the needs and plan of the project.

To ensure fructification of the policy and translation of the planning targets into tangible benefits, adept implementation agencies are of utmost importance. In China, the National Development and Reform Committee (NDRC) is constituted at the central level for approval of the projects. The approval of land acquisition is entrusted with the Ministry of Land and Resources. The Ministry of Water Resources has the responsibility to review the draft and final RP for some key projects. The provincial government establishes a Resettlement Bureau which is a regular department, with some funds also from the project. At the project level, the resettlement units are strengthened through village committees and consulting institutions. As resettlement requires expertise, the government has collaborated with research institutes and universities to operate effectively with the project management team. External monitoring committees and supervision institutions have also been constituted. China lays great emphasis on capacity building for effectively implementing resettlement operations. The NRCR, established by the National Government in 1993, leads the capacity building, research and consultancy activities in resettlement. The Center manages graduate, post graduate and doctoral programmes in resettlement science. The resettlement operations are carried out with the close coordination of the government, consulting organisation and the affected communities.

**Resettlement Implementation and Institutional Arrangements:** The project preparation in China starts with the developer submitting the project proposal to the national or provincial government for approval and registration. The RP outline is to be approved by the provincial government which subsequent to according necessary approvals announces the cut-off dates for survey. The Detailed Physical Loss Survey and the Socioeconomic Survey are to be carried out by a joint team

comprising the affected households, communities, the Township/County government and the developer. The draft RP, prepared by the joint team comprising of the consulting firm, county and township government after due consultation with the community, is sent to the provincial government for an appraisal. The final RP has to be submitted to the provincial and national government for approval.

Thus, while the developer signs the agreement with the provincial and central government, the central government provides for information disclosure to the communities (losses/ compensation standard/relocation policies etc) and after due consultation signs an agreement with the affected households and communities. External monitoring and supervision of resettlement are carried out by independent supervision entities. The house plots in a Resettlement Centre are distributed after community consultation exercises and each household has to build the new house and in-house facilities. The land for public infrastructure is to be arranged by the county government. For the construction of the public facilities, the county office entrusts the responsibility to the contractor selected through the bidding process.

**Resettlement Case Study of Danjiangkou Project:** The Danjiangkou Dam is the largest water diversion project in the world, with a project cost of US\$ 650 billion and involving relocation of 3,45,000 people during 2009-2011. The resettlement policy of the project emphasised on livelihood restoration. Land for land was given as the first priority option for rural farmers. The post resettlement fund helped with the sustained support for livelihood generation of affected households. Besides technical training for diverse activities, micro-credit support was also provided. The project saw a much better post-resettlement economic and social condition for the affected communities as reflected in indicators of livelihood (farmlands per capita), houses (better quality, greater house space per capita), community facilities like water supply (proportion of people with assured water supply), school (number of school teachers and infrastructure), electricity, roads, markets etc.

**Factors for Successful Resettlement:** Based on China's vast experience in resettlement, the key factors for successful resettlement are listed below:

- Good resettlement legislation and policies
- Comprehensive RP prepared in consultation and with the participation of affected communities
- Effective implementation of Resettlement Plan (RP)
- Independent monitoring and supervision mechanism
- Effective participation of affected people in the entire resettlement process
- Transparent consultation and grievance mechanism

- Adequate mitigation measures for impacts on social, cultural livelihoods, especially for affected indigenous people and minorities.
- Sustained capacity building through research and training as well as education for affected people to reconstruct their livelihood in more sustainable way.

### III Research on DID: Oral History from the Displaced

Ms. Siobhan Warrington

**Background:** The Oral Testimony Resettlement Project is an international project carried out by Panos, London<sup>1</sup>. Oral testimony involves an in-depth personal account and interviews covering the memory and experience of the project affected people (PAP). The project, carried out in eight different countries and in 15 different languages, was aimed at not only recording the voices of people affected by the DID but also increasing the understanding of the less visible impacts of resettlement i.e. the social and cultural impacts. The project included the Kariba Dam in Zambia and Zimbabwe; Tarbela Dam in Pakistan; Lesotho Highlands Water Project in Lesotho; Coal mining projects in Jharkhand, India; San Conservation and Development Project in Namibia, Botswana and Kenya and Mining projects in Madagascar and Jamaica. The paper presents the key conclusions that emerge from the large collection of firsthand account of resettlement.

To implement the project, Panos worked directly with the communities and local partnering organisations. The interview team was drawn from those communities and/or from those working with them. Oral testimony considers open and sensitive learning vital to create sufficient understanding of the less visible aspects of individual and community lives. The interviews were gathered primarily to publish, broadcast and amplify the voices of the marginalised in the development debate. By gathering and communicating different perspectives, the objective was to increase the understanding of specific development issues. The project focused on the centrality of people's participation (in the debates and decision-making) and communication in sustainable development.

**Reports from the Oral Testimonies:** The conversations with the displaced people revealed that displacement and resettlement trigger far-reaching change for

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<sup>1</sup> Panos is a global network of nongovernmental organisations (NGOs), comprising seven institutes that predominantly work in Africa, South Asia and the Caribbean. It works with the media and other information actors to enable poor and the marginalised people in developing countries to shape their own development agenda. It works at the community level and focuses on increasing opportunities for those directly affected by development issues-people who usually lack access to channels of communication-to speak out in their own words on issues that concern them, rather than having their views defined by others.

individuals, families and cultural groups. Their concerns are predominantly about coping with the trauma caused not only by asset loss and compensation but also by weakening of bonds and relationships that formerly shaped the sense of community and belonging in a place. These are discussed in brief below:

First, displacement is a traumatic experience for the communities involved. There is an overwhelming feeling of powerlessness in these testimonies; the sense that they had lost control over many aspects of their life. However, there were evidences of agency, adaptation and resilience. Also, in some cases, the lives of people have improved with increased opportunities for education, health and economic infrastructure.

Second, in resettlement, there is often a failure to grasp the significance of soil, land, vegetation and rivers as essential component of the villagers' sense of security and identity. People may value land in many ways; not just in terms of financial value or value of yield but also in terms of identity or heritage. Land is the foundation of livelihood and support in times of need. It is the foundation upon which informal arrangements between households were made and these arrangements provided an opportunity for those who were landless, or who those could not draw on labour, to share the land and labour of others. Those whose crops failed, or whose illness or misfortune kept them off from the field or market were able to call on others for produce or small loans to tide them over. The land-based institutions that had for generations helped to define social relations were in many respects ineffective for those who relocated to towns.

Third, perceptions are important. Sometimes, perceptions are taken as subjective that need not be taken seriously. However, perceptions do matter as they influence people's choices and actions. What people believe to be true can be as important as what may be true in the factual sense, in terms of exerting influence upon their hopes, fears, priorities and choices.

Fourth, there is mistrust among the displaced people towards the Resettlement Authority over compensation disbursement and procedures. In general, there is a deficit of trust with the State/State agencies that are responsible for land acquisition and resettlement.

Fifth, money is looked at something that comes and goes and along with this comes a sense of insecurity and concern for future. The concern was particularly for the future of their children who would grow and have no land asset of their own.

Sixth, from being masters of their destiny to slaves working for others, this evoked extreme reactions from the resettled people. In the words of a resettler, "Earlier we were farmers and potters and masters in our own professions; now we are like slaves working for others. We earn money by any means we can, just to survive

since we had to leave our traditional jobs. We used to work with our own hands as and when we liked but now we have to obey (our employers). If it is day or night we have to obey”.

Seventh, there is a crisis of identity, particularly among the women in many adivasi communities who performed key tasks in the field and forests. After their displacement from land, women were confined to their homes. Women generally seemed unhappy about their enforced idleness. Earlier, they worked as equals in the fields but post resettlement, the employment generally went to the male members. There also seemed a shift in family dynamics in terms of the relationship between the husband and wife; from a more equal relationship to greater subjugation of the latter by the former (perception). Within families, siblings competed among themselves for any available job. The internal dynamics of a family also changes when the father's land is taken and the job is given to one son.

**The Way Forward:** Understanding the perceptions of the resettled people is vital and so are acknowledging and understanding their reactions and responses. Given the extreme vulnerabilities faced by the resettled communities, the following may go a long way in reducing their suffering:

- **Sensitive listening and more equal communication:** It was observed that the work done by the authorities are noticed, acknowledged and appreciated by the resettled people. While it will always be difficult to get everything right, by taking the time to listen to what is important to people, a less hostile environment can be promoted. The same mistakes that were made in the 1960s and 1970s in terms of lack of participation, lack of sensitivity to the disproportionate negative impact on the vulnerable sections (women, landless etc.) is often repeated in the present times. There is a need for sensitive listening. This is the key to moving towards a more equal communication and negotiation process.
- **Long-term support:** The resettled people should also be supported in financial management, conflict resolution and to manage with the socio-economic changes. Apart from the cash component, they should also be supported with the power and agency when they suffer from significant powerlessness.
- **Training for those implementing resettlement:** However well-meaning the policies are, their effectiveness depends on their implementation at the field level. Even well-meaning policies that are carefully thought by experts are only as good as their implementation in the field. Often poorly-trained and supported local staffs are trying to put these policies into practice among distressed and anxious families. The project staff without adequate training becomes unmotivated and as the trust breaks

down; people start losing confidence in them. There is a need for more support and training for those working at the field levels.

#### **IV Resettlement Policies and Practices in Lao PDR in the Past Decade**

Mr. Daovong Phonekeo and Mrs. Bouakeo Phounsavath

**Background:** The Lao PDR economy is expected to grow annually at a rate of 7.7 percent during 2011-15. The country has a population of around 6.4 million and a per capita income of US\$ 1,026. Lao PDR is a significant exporter of electricity. About 15 percent of its export revenue comes from the sale of electricity. In the recent years, the government has signed a number of Memorandum of Understandings (MoUs) with different countries for export of hydro-power to increase its revenue. The total installed capacity in the country is 3,200 MW (2012). This is expected to increase to 12,500 MW in 2020, out of which 85 percent is planned for export. The hydro-power potential in the country is about 26,000 MW and the sector is one of the most rapidly growing sectors.

**The Legal Framework for Addressing Environmental and Social Challenges:** There are 22 hydro projects under operation in the country with an installed capacity of about 3200 MW. About 28 projects, with capacity of 5000 MW are under construction. The Lao PDR Energy Policy looks at tapping the country's large hydropower potential with the participation of private developers. Most of the hydro projects in the country are with the private sector and the government negotiates the terms with the project developer.

The government of Lao PDR is keen to develop the power resource in a sustainable manner. The Ministry of Natural Resource and Environment was created to address the environment and social challenges. The Department of Environment and Social Impact Assessment was also established to develop and disseminate policies and legal framework and review the environment and social impact assessment reports. At the provincial level, the country has established offices to monitor and manage the adverse impacts of projects. The National Policy on Environmental and Social Sustainability of the Lao Hydropower Sector was issued in 2006. Most of the hydro-power projects are located in the northern and eastern parts of the country. In terms of the legislative framework, Laos has an Environment Protection Law (EPL), 1999, the Decree on the Implementation of the EPL, 2001, Decree on the Establishment of Environmental Protection Fund (EPF), 2005, Decree on the Compensation and Resettlement of People Affected by Development Projects, 2005, Technical Guidelines, 2005 on Compensation and Resettlement in Development Projects etc. There are various projects funded by multilateral funding institutions like World Bank and ADB to strengthen the SIA and resettlement management in the country. The major challenges in environmental and social safeguards implementation include compliance of environmental and social impact assessment,



weak monitoring capacity of the national implementing agencies to manage the rapid growth of the hydropower development projects and heavy reliance on overseas technical assistance and expertise, lack of legal awareness among local people and their low participation.

**Experience of Hydro-Power Resettlement in Nam Theun 2 Power Company (NT2):**

The NT2 project is owned by the private shareholders and the Lao Government with the backing of commercial lenders and international financial institutions including the World Bank and the Asian Development Bank. The project with an installed capacity of 1070 MW can generate an average of 6,000 GWH of electricity per year, majority of which will be exported to Thailand, earning the government an average of US\$80 million per year over the first 25 years of the operation of the project.

The project has been hailed as a major cornerstone for poverty reduction in Lao PDR. The revenue (forming about seven to nine percent of the country budget), in addition to the investments made by the NT2 project developers, will allow the Lao government to fund poverty reduction efforts not just in the project area but across the whole country. The project also directly benefited the local people with construction of 270 kms of roads (built or upgraded), major improvements in the living condition of 6500 resettled people, employment generation for 8000 workers during construction etc. The objective of the resettlement policy is to ensure that the income earning capacities of the resettlers are enhanced so as to achieve the Household Income Target (HIT). The HIT is calculated as the greater of the two: first, the national poverty line income multiplied by the number of persons in the household; second, the US\$1200 per average household in June 2002. As per the Concession Agreement, the targets should be measured at the end of every five years of the implementation period. The policy has also given focus to the livelihood restoration (provision of improved agricultural plots @ 0.66 ha/household, fisheries with boats and equipment supplied by the developer, capacity building on improved livestock techniques etc) and public health programmes (provision of infrastructure/equipment/vehicles/medicines, training and capacity building, health education & awareness, public health monitoring and surveillance etc).

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## Session II: R&R/Benefit-Sharing : Policies and Practices

- I Resettlement Experience in Bujagali Hydropower Project, Uganda  
**Ms. Grace F. Nabadda-Barya**
  - II R & R/Livelihood Restoration in Hydropower Sector in South East Asia  
**Dr Stephen Sparks**
  - III Resettlement, Rehabilitation and Benefit-Sharing in Indian Mining Sector  
**Mr. Shivraj Singh**
  - IV R &R/Livelihood Restoration - Challenges & Practices in Hydro Power in Pakistan  
**Dr Raheel Ahmad Siddiqui**
  - V Land Acquisition through Consent Award in Andhra Pradesh, India  
**Dr S. K. Joshi, IAS**
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### I Resettlement for Bujagali Hydropower Project- Uganda Ms Grace F. Nabadda-Barya

**Background:** The Bujagali Hydro Power Project (200 MW), located at a site 10 kilometers north of the source of the Nile River in Lake Victoria in Uganda, was conceptualised in 1994. The United States based power producer, AES Corp was expected to develop, construct, operate, and maintain the Bujagali hydropower plant and sell electricity to the Uganda Electricity Transmission Company Limited under a 30-year power purchase agreement. The construction of the dam was scheduled for completion in 2005. The project was funded by the World Bank. In 2003, the AES pulled out of the project for economic reasons. The experience shared in the Conference is pertaining to the events post the pull out of AES from the project and the impasse created during the period 2003 and 2006.

The experience reflects the critical need of the different agencies involved (promoters, government and funding agencies) to be at par on all aspects of the project including resettlement. In Uganda and other parts of Africa, the concept of resettlement is relatively new. The lack of comprehensive data on the affected people and the project-induced economic losses meant that the new promoters had to start afresh with the collection of the data in 2006. In the earlier times, when land was taken for development projects, there was no payment of compensation. However, in the present times, compensation got improved and there is a special focus on the livelihood issues of affected people. There is also a significant improvement in the collection of data.

**Key Learning Experiences of Resettlement:** Some of the key learning experiences from the project is summarised below:

- **Livelihood:** A major challenge for the project promoters was to deal with the R & R of the fisher folk, who after displacement had to acquire new skills of agriculture to restore their livelihood.
- **Breakdown of social network among the families:** Though the project was funded by the World Bank, their safeguard policy failed to address the social tradition of people. For instance, in Africa, men have three or four wives and men do not sleep in a women's house. Women who were given land in the project were disadvantaged in this respect. It is extremely important to understand that culturally sensitive issues have to be addressed in an appropriate manner
- **Addressing spiritual issues:** A key complaint with the World Bank Inspection Panel was that the project was inundating the waterfalls believed to be inhabited by spirits and worshipped by local people.
- **Partnership between government and project proponents:** The partnership between the government and project promoters is vital for the progress of the resettlement processes. Contradictions may surface when each party wants to go their own way and the central issue of addressing the concerns of local people amicably is relegated to the background. The project faced extreme difficulties due to non-availability of data before or after resettlement.
- **Skepticism on Independent Monitoring Agency:** Issues of fairness and transparency came to the fore with regard to independent monitoring committee which was sponsored by the government or project proponent to monitor their own activities.
- **Adequate addressing of technical issues:** The claims for adverse impacts of blasting viz. chicken not laying eggs, people acquiring diseases even as far as 25-30 kms from blasting site has to be countered technically.
- **Adequate Reporting:** Sharing of information at various stages of the project is extremely important to convince people about the project's benefit and impact. The reporting on details of compensation payment, RP and Livelihood Restoration Plan (LRP) goes a long way in reassuring the affected people.

Uganda has come a long way. The people have begun to exert their power to influence the government on adequate compensation and resettlement standards. Currently, compensation is mixed and valuation of property varies from one project to another. The Government of Uganda has formulated a new land policy in 2006, which in turn

recommends a national resettlement policy. It is expected that this policy would define the guidelines on the process, criteria and standards for eligibility of resettlement benefits and livelihood restoration. It is also expected to emphasise on culturally sensitive approaches to deal with these issues as well as to improve the communication strategies and dissemination of information about the project.

## II R & R Livelihood Restoration in Hydropower Sector in South East Asia

Dr Stephen Sparks

**Background:** The paper reflects on the track record of hydropower and livelihood, discusses the lessons learnt from the *Report of the World Commission on Dams (2000)* and presents a case study of the Theun Hinboun Expansion Project (THEP) in Lao PDR as a good practice case study.

The Report of the *World Commission on Dams* provides many examples of how involuntary resettlement, because of its overreliance on cash payments resulted in impoverishment of the affected people. The experiences in resettlement reveal that the emphasis has always been on physical relocation (with limited focus on long-term restoration process). The livelihood restoration is a very difficult task and requires sufficient and adequate resources both at the planning as well as implementation stage. It is seen that the poor, ethnic minorities, women, and vulnerable groups suffer disproportionately in the resettlement process. It is extremely important in the planning phase to have an adequate funding for social safeguards before going through the construction process. It is also seen that the governments in the developing countries have weak capacity and lack commitment to address issues of R&R. Most of the projects are located in the mountainous regions where the governments have weak capacity in addressing development challenges.

According to Scudder T (2005)<sup>1</sup>, involuntary resettlement is a process that takes away economic, social and cultural resources all at the same time. His study, involving a survey of around 50 dams, showed that only in three cases, the living standards actually improved but there was a marked worsening of living standards in 36 cases. Though the present cases and circumstances may not be the same, it is important to understand the baggage we carry and the concerns raised by the Non-Governmental Organisations (NGOs). To make things more challenging, we now have another concept that we emphasise on, “sustainability”. As defined by the Brundtland Commission, sustainability is that mode of human development in which environment provides for the needs of both the present and future generations.

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<sup>1</sup> T. Scudder (Ed.), *The future of large dams: dealing with social, environmental, institutional and political costs* (London: Earthscan, 2005).

Sustainability is not an easy concept for social aspects. Socially, when we resettle people, we need to see as to how they would fare after two or three generations. This requires clear and convincing goals and monitoring targets that reflect improvement. In the past, since the environmental and social costs of large dams have been poorly accounted for in economic terms, the true profitability of these schemes always remained elusive.

**The THEP Project:** The project aimed at increasing the capacity of an existing 250 MW Hydro Power Plant in Lao PDR. The power plant's capacity was to be expanded by 220 MW with the construction of two new 2 x 30 MW hydro-power plants. The project involved the construction of a 70m high dam on a subsidiary of the Theun River. The number of people displaced was around 4600. The project had significant impact on the fisheries, adversely affecting the livelihood of the people. Prior to resettlement, the affected people lived in severe conditions, mainly deriving their livelihood from natural resources - fishing, forest products and engaged in slash and burn agriculture.

The project provided a resettlement colony, with health-care, education and other facilities. The initial focus was on developing infrastructure projects but as the project progressed, the livelihood challenges came to the fore. The major challenge of the project, one year into its operation was to conclude the compensation and help people focus on the livelihood. To ensure sustainable livelihood, emphasis was laid on improving the soil quality, fencing and development of water user groups for sustainable use of the water resources. The monitoring of R & R focused on the achievement of two targets; first, the income targets for resettlement and downstream impact areas; second, human development indicators covering targets for health, education, infrastructure, food security and general development. The income targets that were included in the license agreement were based on need assessment i.e. how much income would any given household need in the new environment, with an allowance to meet the fluctuations of inflation (to assess their needs in the future). An ambitious target of 80 percent of households achieving the target for two consecutive years was conceptualised.

The economic income restoration was not the only indicator for sustainable resettlement and also emphasised on human development aspects. The monitoring data showed that there was significant improvement in some areas. Insignificant improvement was observed mostly in cases where the people already had a high standard of living. A lot of improvement had to do with the jobs created during construction of the project in the form of contract services. The introduction of cash crop cultivation in these areas also provided significant increase in income. Everything seemed to be going on in the right direction till 2012, when it was observed that there was almost halving of the income targets (except for one area). The major cause was the significant flooding that took place that year destroying

both the crops and the livestock population. This also proved that adverse conditions beyond the control of the project can completely derail the process even when the project is doing all the right things. This also pointed out the difficulties of basing the monitoring project outcomes solely on the income targets. While it was accepted that these targets are important for sustainability, there were so many processes beyond the project that could have an impact on the outcome. Given the developments, a debate also emerged as to whether the targets should be decreased from 80 percent to 50 percent.

About human development indicators, the baseline was to provide basic facilities and infrastructure to access the market facilities. The goal of the project was to achieve a target of 50 percent increase from the baseline in the infrastructure development indicators. The household electricity target was 75 percent and it achieved 77 percent. Overall, the project achieved significant improvement in the human and social development indicators. The draft 2012 report of the project in terms of the HDI targets are given in Table 1.1

**Table1.1 : THEP Project: Targets and Achievements in Human Development**

Human Development Indicators	Baseline	2012 Results	Project Targets-2012
	(%)		
Villages with year-round road access	26	52	50
Households with electricity	45	77	75
Households with year-round access to improved water source	33	73	80
Households reporting regular toilet use	55	77	80
Households reporting women or girls responsible for fetching domestic water	69	30	>50
Villages within 5 kms of a health centre	31	53	80
Households with food security	58	54	80
Households using high risk coping mechanisms to overcome food shortages	0.89	0.3	>1
Diarrhoea in children under five	9	6	>5
Anaemia in reproductive age women	53	41	>30
Wasting in children under five	5	7	>4
Percentage of children in correct school year	24	25	40
Percentage of households that planted atleast one hectare of rice	45	56	80

Table 1.1 shows that there was significant improvement in the various development indicators when compared with the baseline. For some of these indicators, the results exceeded or were close to the targets. However, some of these targets like percentage of households planting atleast one hectare of rice had to be reassessed as people moved from farm based to non-farm based employment.

**Key Learning Experiences:** The THEP project provided some key learning experiences. First, there is a need for adequate resources and budgets for initiation of proactive social activities and planning adequate livelihood restoration activities. Though there is a concern regarding the viability of the project owing to higher social and environmental costs, these fears are unfounded and are generally within the affordable range. Second, qualified and dedicated staff is absolutely vital for successfully dealing with resettlement. Third, all levels of project management and owners should have acceptance of the conceptualised targets, the livelihood restoration programmes etc. Also, it is seen that making the project proponents and local governments solely responsible for achievement of market/job targets may not yield expected results. The involvement of private sector may help in achieving encouraging results. Last but not the least, the involvement of project affected people at all stages provides a critical link to the success of these initiatives.

### III R & R and Benefit-Sharing in Indian Mining Sector

Mr Shivraj Singh

**Background:** Singrauli, the 50th district of Madhya Pradesh (MP) State, is fast emerging as the power hub of India. Also called, *Urjanchal* (a Hindi word for *Land of Energy*), the total installed capacity of all thermal power plants in the district is around 10 percent of the total installed capacity of India. The paper highlights the good practices in R & R followed by Northern Coalfields Ltd (NCL), one of the eight subsidiaries of Coal India Ltd (CIL). NCL produces about 12 percent of coal in India.

Singrauli is located in the remote areas at the border of four States. Most of the people depend on agriculture for their subsistence. The first development activities in the district started with the construction of Rihand Dam which was primarily constructed for irrigation. The total coal bearing area is around 1.73 million hectares of land and the land under coal mining at present is 0.2 million hectares. There are ten opencast mining of NCL in the State. These opencast mines need huge amount of land for its operation. There are two basins in Singrauli area; the Moher Basin and Main basin. The latter is a green field area where mining is yet to start and the project is expected to come up in the 13<sup>th</sup> Five year plan. Presently, all the mining activities are located in the Moher Basin. NCL was formed in 1985 and the production increased from 11.62 million in 1985-86 to 75 million tons by the end of 12<sup>th</sup> Five Year Plan in 2012-13.

**R & R Practices in NCL:** The R & R policy of NCL gives more importance to the socio-economic development of the affected population along with adequate mechanisms for their physical relocation. As per the R & R policy, one regular employment is given for every two hectares of land acquired. The eligible land title holders can also opt for a compensation package of Rs. five lakh rupees or annuity in lieu of employment and three lakh compensation in lieu of plots and structures. The policy also provides for a 'Package Deal' or consolidation of land holdings, with a view to extend the opportunities of employment for project affected people holding less than two hectares of land. The policy emphasizes on meaningful participation of people, transparent dissemination of project information, creation of effective grievance redressal mechanism etc. A subsistence allowance of 25 days minimum agriculture wage per month is given to land-losers for a period of one year. Financial assistance is given to tribal families for their loss of their rights to use forest produce, with families resettled out of the district getting 25 percent higher benefit. Infrastructure and basic facilities are also made available to the affected community after due consultation.

Residential plots are given to house oustees. NCL has constructed six rehabilitation centers for land oustees with civic amenities like; roads, drainage, hand pump/wells, school, health centre, community hall, shopping centre, playground/park, street light, etc. Apart from compensation, financial assistance is given for shifting house-hold belongings to their rehabilitation site. Further, only PAPs are allowed to participate in civil tenders up to Rs. five lakhs. The major challenges are incomplete land records and disputes in land titles in the remote areas, provision of employment opportunities for all the Project Affected People (PAP), tracking people physically not residing in the affected area etc.

**Benefit-Sharing Mechanisms (BSMs):** It is now well recognised that mining involves negative externalities of displacement and environment. Many mineral rich countries have enacted legislations with provisions of benefit-sharing with local communities. In India, the Mines and Minerals (Development and Regulation) Bill (MMDR Bill), 2011 that lapsed with the dissolution of last parliament included the provision for sharing of 26 percent of the net profit with local communities. A consensus is emerging world over and in our country too on the need to share the wealth generated by mining for sustainable development.

#### **IV R &R/Livelihood Restoration - Challenges & Practices in Hydro Power in Pakistan**

Dr Raheal Ahmad Siddiqui

**Background:** The Water and Power Development Authority (WAPDA) was established in Pakistan in 1958 with the vision of optimum utilisation of water resources for irrigation and generation of energy for sustainable economic growth. The paper



provides the learning experiences from five mega projects undertaken by WAPDA. This include previous projects like Mangla Dam (1967, 40,000 displaced), Tarbela Dam (1977, 90,000 displaced), Ghazi Barotha Hydropower project (2003) and two contemporary projects viz. the Diamer Basha Dam Project (33000 displaced, over a lakh indirectly affected) and Dasso Hydro Power Project (10,000 displaced).

**R & R Experiences:** The compensation in these projects was paid according to Land Acquisition Act, 1894. There is no policy on R & R in Pakistan. In the Mangla project, land was offered in place of land but the location of the land was about 1000-2000 kilometers away. Mangla project still has a legacy of R & R issues and there are continuing litigations. The 1,450 MW Ghazi Barotha hydro power project, the implementation of which lasted from 1995 to 2004, benefited from the significant learning experiences of the past. The project, funded by the World Bank, was the first to have a RP. The project has been termed as a success story with regard to social management. The social mobilisation in the project was done with the help of the NGOs, besides the officials of WAPDA. A Land Valuation Committee was set up to realistically arrive at the valuation of land. The compensation was by and large welcomed by the people and there were very little litigations. Unlike in the past, the project provided for an exemplary dissemination of information about the project and its benefits. The much appreciated elements of the social management included comprehensive livelihood restoration and development plan, execution of sustainable livelihood schemes through NGO and the gender entrepreneurship development.

**Lessons from Experiences:** Most of these projects are situated in inaccessible regions with difficult terrain. Poverty and illiteracy are rampant and consultations with womenfolk are not practically feasible (tradition and cultural norms). The experiences of these projects revealed that the social/tribal customs have to be paid due attention. In 2009, there was a major deadlock regarding the land compensation between WAPDA and the provincial government supporting the communities (land-owners and the tenants). The WAPDA offices were burnt down and the provincial government wrote to the federal government not to have any more WAPDA projects. Following this experience, the WAPDA built a new team. The LARR Department was also formed in 2009. The strategy adopted henceforth include:

- Enhanced communication: This relates to the proactive sharing of information regarding project benefits accruable to the community as well as removing misconceptions of the affected community regarding the adverse impact of the project.
- Confidence building measures: This includes provision of social services; education including promotion of vocational training institutes; health (door to door health services by WAPDA medical specialists); water and

sanitation schemes, infrastructure development in the area, flood relief operation etc.

- Emphasis on benefit-sharing at the micro-level and macro-level: For the affected communities, there is an emphasis on sustainable livelihood, education and skill development, opportunities for entrepreneurship, health services, natural resource management, and promotion of viable self-employment schemes through establishing necessary linkages with the market and banks /financial institutions. At a more macro-level, the project benefits should include the royalty from electricity generation, electricity supply to the local areas, greater employment opportunities and improved infrastructure.

There are important learning experiences from the five mega projects. First, there is a need to institutionalise the LARR wing in respective organisations. Second, the information dissemination, consultation and community participation are central to getting acceptance of the community for the project. Third, the need for a sound resettlement policy and a comprehensive RP cannot be understated. Fourth, a lot of issues can be nipped in the bud with an efficient Grievance Redressal Mechanism (GRM). These experiences have been valuable to WAPDA in addressing LARR issues in our ongoing and future projects.

## V Land Acquisition through Consent Award in Andhra Pradesh

Dr S. K. Joshi, IAS

**Background:** Andhra Pradesh is a large agrarian and riverine state of India, with an area of 27.4 million hectares, a cultivable area of 15.8 million hectares and an irrigated area of 6.2 million hectares. The *Jalayagnam* project was launched by the State government in 2004 with a total outlay of Rs 1,867 billion. The project aimed at development of 86 irrigation projects and creation of 3.91 million hectares of irrigated land. This is the highest investment on irrigation project in any State in India.

The LAA, 1894 is a colonial act followed by almost all the South Asian countries, which allows the government to acquire land for public purposes. In India, individuals have a legal right to own, enjoy, dispose off or bequeath private property. The right to private property has however ceased to be a fundamental right after the 44<sup>th</sup> constitutional amendment of the Indian Constitution in 1979. The land acquisition and R & R cannot be separated from each other and are like siamese twins. Under the LAA, the State can compulsorily acquire private property for “public purposes” by paying “compensation” at a rate not less than the ‘market value’. However, ‘compensation’ is different from the ‘price’, which is a value of the property arrived through a free exercise of choice and discretion by the parties involved in the transaction. This unilateral decision of determination of market value by the

government often leads to poor compensation and lies at the root of discontentment of the affected landowners.

**Land Acquisition and Consent Award in Andhra Pradesh:** The State Irrigation Department had acquired 2566 hectares of land for irrigation projects during the period 1997-2007, disbursing a compensation of Rs. 277.4 million. The landowners, discontented with the amount of compensation, had filed 349 cases in the civil courts and in the High Court. The government had to pay an enhanced compensation in 288 cases, incurring an amount Rs. 174.2 million. These legal cases have tremendous adverse impact both on the land requisitioning party as well as the land-owners. For the requisitioning party, there is considerable uncertainty about the overall quantum of compensation and provisioning for the payment and the huge interest rate burden on account of the delay in the courts. The capitalisation methods used by the courts as well as the multiplier for enhancing compensation have been seen to be arbitrary in many cases. On the other hand, from the landowners' perspective, the court expenses and the time and money spent on hearings takes away a considerable chunk of the enhanced compensation.

Given the above issues, the State Irrigation Department has been using 'Consent Award' mode of land acquisition. The Consent Award mode is considered as a via media between land acquisition and market mechanism. The legality of the process emerges from Section 11(2) of the LAA, which states that "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". The process has some inherent advantages. First, the process partially mitigates the pain of parting with the property through a process of free discussion and negotiation and thereby resulting in a fair and agreeable price. The process does not lay down any rigid condition for negotiations and prevents avoidable and prolonged litigation in the court. A negotiated price received at one go initially helps them plan better for replacement assets.

To institutionalise this mechanism, the government has appointed special collectors, special deputy collectors and supporting staff exclusively for land acquisition. To conduct negotiations, the negotiating committees, headed by the Collector are constituted at the district level and a Committee headed by the Chief Commissioner Land Administration at the state level. Retired law officers are also included as members of the Committee. The District Level Negotiation Committee has been empowered to award an additional amount to the upper limit of 50 percent of the total compensation (including market value, solatium, additional value, damages, interest etc), depending on the merit of each case. When the negotiations at the

district level fail, the requisitioning authority requests the Collector to refer the matter to the State Level Negotiation Committee, which has unlimited powers for enhancement of compensation.

In Andhra Pradesh, over 5.75 lakh acres of land has been acquired by the State Irrigation and Command Area Development Department through 'Consent Award' since 2005. This is now considered a good practice since following the consent award process, not a single case of litigation has been filed by land losers for the enhancement of compensation. The State Department has so far spent an amount of Rs. 5250 crores for the above quantum of land. There have been 3930 Awards so far and the average enhancement of compensation has been about 45 percent.

However, there are certain limitations in the Consent Award. The process is only an enabling provision within the ambit of LAA. Apart from the land owners, other dependent communities remain excluded even in this process. Also, incase, the initial compensation is not realistically determined, the negotiated compensation can present a glaring picture. Last but not the least, Consent Award offers no protection against prevailing socio-economic and political undercurrents and middlemen and corruption cannot be completely ruled out.

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### Session III: R & R - Challenges and Practices in Hydro Sector

- I     Resettlement And Benefit-sharing Practices in Vishnugadh Pipalkoti HEP, India  
      Mr. P.P.S. Mann
  - II    Land Acquisition and Involuntary Resettlement Policies and Practices in Turkey  
      Mr. Ali Kılıç Özbek & Mr. Turan Hazar
- 

- I     **Resettlement And Benefit-sharing Practices in Vishnugadh Pipalkoti HEP, India**  
      Mr. P.P.S. Mann

**Background:** The Tehri Hydropower Development Corporation India Limited (THDC) is a company jointly promoted by Government of India and Government of Uttar Pradesh. It was incorporated in July 1988 to develop, operate and maintain the Tehri hydro power project and other hydro projects. The 440 MW Vishnugadh Pipalkoti Hydropower Project (VHEP), located in Uttarakhand, is funded by the World Bank. The project has acquired 140 hectares of land required for the project, 40 hectares from private owners and 100 hectares of government land. Seven villages are affected by the project. The project started with a SIA study and based on the report of the study, the RP was formulated. The major concerns raised by the affected families were adverse impacts of blasting, drying of natural water sources, possibilities of land sliding, loss of access to community forests, safety of women and children, loss of grazing land, fuel and fodder, impact on livelihood etc.

**Strategy Adopted by VHEP:** The project authorities tried to mitigate the concerns raised by the affected people through a well developed strategy. To avoid blasting, the project deployed Tunnel Boring Machines (TBMs). Houses were insured so that any damage could be compensated. A study was conducted to identify the sensitive and fragile land where the landslide may occur and preventive measures were taken for avoiding the same. Alternative roads to access the community forest land were provided. Steps were taken to provide for security to the community against social disturbances in the affected areas. Compensation was provided for loss of fuel and fodder. To avoid water scarcity, it was decided to discharge 15.5 cubic meter water on an average. To restore livelihood, livelihood promotion programmes and training programmes were arranged for the PAPs. Public information centre were established to share and disclose the project information from time to time. Sustained public consultation with local people was given emphasis to understand their major concerns and a responsive GRM was established to address the grievances of local people.

The R&R policy of the project has been guided by the National Policy on Rehabilitation & Resettlement, 2007 (NPRR) and Involuntary Resettlement Policy of the World

Bank. Additional progressive provisions have also been made above the NPRR 2007. The compensation has been paid as per LAA, 1894. The NGOs were involved to negotiate with local people for providing better compensation. The compensation was finalised as Rs.1 lakh per nalli (50 nalli = 1 acre) and house compensation of Rs. 10 lakh. The access to common property was restored. The loss of fuel and fodder were compensated by providing 100 days wage for each household for a period of five years. A local NGO was involved to work as a mediator between THDC and local people and project officials were sensitised to tackle this issue in a more humane way. Adequate investments were made in social infrastructure in the resettlement areas. Benefit sharing arrangements like 100 units of free power to each affected household per month for a period of 10 years was also put in place. An industrial training school was established for upgrading the skills of local people for better job opportunity in the project sites. Income restoration programmes like poultry, horticulture and cash crop irrigation were promoted for livelihood restoration.

## **II Land Acquisition and Involuntary Resettlement Policies and Practices in Turkey**

Mr. Ali Kılıç Özbek & Mr. Turan Hazar

**Background:** In the scope of Turkish legal framework, land acquisition/expropriation and resettlement are two distinct but at the same time intertwining aspects of the involuntary displacement stemming from development projects. According to the Turkish Constitution, the state and legal public entities, in cases of public benefit are entitled to entirely or partially expropriate immovable properties in private possession, on condition that the real value of those immovable properties are paid in advance and in cash. In other words, immovable properties cannot be confiscated unless their expropriation compensation is paid to the owners in advance.

**Policy and Practice in Land Acquisition and Resettlement:** In Turkey, Land acquisition/expropriation is based on the Expropriation Law No 2942 (amended by Law No. 4650 in 2001), while resettlement is regulated by Resettlement law No 5543. The Turkish legal framework on land acquisition includes several options to mitigate the issues of permanent land acquisition such as; constitution of servitude (easement, right of way), temporary occupation, land consolidation, bartering, renting, etc.

In case of need, right of ownership of immovable assets belonging to private persons can be acquired by legal public entities through expropriation for public purposes. A decision on public interest is necessary for expropriation of any immovable asset. Although the “public interest decision” is taken without the consent of the owner, he/she has the right to file suit of nullity at administrative jurisdiction against the expropriation process. The owner of immovable asset to be expropriated not only has the right to file suit against at the Civil Court of First Instance but also to

appeal the decision of the Civil Court of First Instance regarding compensation at the Supreme Court of Appeals. The expropriation law ensures that compensation payment to the affected people are transferred in full to the personal bank accounts of the right holders before the land changes hands. According to the Expropriation Law, the agency responsible for land acquisition/expropriation internally appoints a “Valuation Commission” consisting of at least three persons to determine the estimated value of immovable properties and resources to be expropriated. The “Valuation Criteria” which is explained in the Law, have to be taken into account by this Commission.

The “Negotiation Commission” internally established by the agency responsible for land acquisition invites the property owner for negotiation. If the settlement on expropriation value is reached, the payment is done within 45 days and the owner does not hold the right of action for expropriation value after signing agreement. In case an agreement cannot be reached during negotiations, a suit is filed at the Civil Court of First Instance by responsible agency. The Court takes the final decision and payment is done within 15 days and the owner still has the right to appeal the compensation decided by the court. The costs of the court processes are borne by the responsible agency/The General Directorate of State Hydraulic Works (DSI). If a land is expropriated partially and in case the remaining part becomes completely unusable, this remaining part can also be expropriated upon the request of the owner. This point is particularly important for the linear projects. The customary ownership rights are recognised by Expropriation Law and right holders are paid like the title deed holders. In the places without cadastral documentation, ownership is determined by a local Expert Commission. The Commission composes of four members who are designated by the administrative chief. In case of expropriation of the land titled/registered in the name of other persons, ownerless, or still has not been acquired by its real customary owner, minimum material cost of construction of structure and cost of trees valued according to the law are paid to occupant owner while the value of the land is not paid.

**Procedures in Land Acquisition in Turkey:** Land acquisition starts after the decision of public interest is made and the project is approved. The process begins with the preparation of expropriation plans. The owners are identified in each of the affected parcels and the inventory and valuation of the immovable affected assets are carried out by responsible agency. Face-to-face negotiations are carried out with the land owners to finalise the valuation amount stated by the responsible agency. The value of agricultural lands is calculated by using net income approach. Net income is calculated by subtracting total production costs from gross income/gross production value. The capitalisation rate is scientifically defined as the right of usage of the capital invested in agricultural land.

$$K=R/f$$

Where,

K= Expropriation Compensation Value

R= Net income

f= Capitalisation Rate

The 'income approach' is also used during valuation of orchards. The production values and expenditures are compared on a balance-sheet for all the years along with the life time of fruit trees by taking into account the real interest rate. The 'cost approach' method is used for the valuation of structures and infrastructures. The official 'construction unit prices' for buildings/structures that are annually issued on official gazette by the Ministry of Environment and Urban Planning are taken into account. The building plots are valued through 'peer assessment'

**Laws for Land Acquisition and Resettlement:** In Turkey, there are separate laws for land acquisition and resettlement. The resettlement activities carried out by the Government are regulated by Resettlement Law (No. 5543). The Resettlement Law handles the families requesting government assisted resettlement while the Expropriation Law handles the lands and other immovable assets. According to the Resettlement Law, the Ministry of Environment and Urban Planning is responsible to carry out resettlement process. The families are required to leave their locations/ places as a result of partial or full expropriation of their immovable assets. The families who do not own any immovable property but who reside in the expropriation area for three years before the beginning of the calendar year in which the resettlement planning studies were commenced (one year for eligibility to physical resettlement) can be resettled by government upon their request.

The agricultural and non agricultural resettlement is implemented by providing the families with one or more of the following options at the amount provisioned in local implementation project prepared by resettlement agency:

- Agricultural Resettlement: agricultural land, farm building, house, animal for income generation, tools, devices, workbench and credits.
- Non - Agricultural Resettlement: building plot, house, devices, tools, workbench and loans etc.

In case of above mentioned government-assisted (full) resettlement (agricultural or non-agricultural), the families requesting government assisted (full) resettlement should commit to deposit the amount of money (determined by the Ministry) from their expropriation compensation (they received or will receive) into the account of the Main Account Unit of the Ministry. This is however not required for the families without any expropriation compensation as well as in case of Physical Resettlement.



The third option is “Physical Resettlement”. In this type of resettlement, income generation is not generally taken into account since affected families have enough land out of expropriation area for their livelihood. These families are given building plot and construction credit step by step upon their request.

According to the Law, two types of Resettlement Commissions can be formed; one the Central Resettlement Commission and another, the Local Resettlement Commission. The Central Commission provides high level coordination on resettlement activities between the related organisations involving resettlement process. The Local Commission generally assesses the application and takes decisions about entitlement of the families requesting resettlement. The local resettlement office carries out all resettlement operations such as; *inter alia*, announcements, informing affected persons on resettlement, inviting applications, site selection, preparation of local resettlement plans and projects, providing construction of resettlement sites, transportation etc. In case of full resettlement implementation, entitled families are given option to identify their preferred sites. The title deed is registered in the name of resettler family and they do not have to pay for the title deed (registration) fees. However, they cannot sell their lands and houses for ten years. The transportation of entitled families to the resettlement sites is provided free of charge by the government. The government also supports daily allowance, medical help, food, fuel and the support of clothing for people in need. If the project is assisted by an international lender agency like the World Bank, the RP is prepared in line with the guidelines of lending agency.

**The LARR Implementing Agency:** The General Directorate of State Hydraulic Works (DSI) is the primary executive public agency of Turkey for the country’s overall planning, managing, execution and operation of water resources. The main objective of DSI is to develop all water and land resources in Turkey. DSI works under the aegis of the Ministry of Forestry and Water Affairs and aims at the wisest use of the principal natural resources. The specific responsibilities of DSI, as defined in the law of establishment, include, *inter alia*, expropriation, establishment of easement rights, temporary occupation of lands and properties for the implementation of its projects. DSI is in charge with the land acquisition activities while the Ministry of Environment and Urban Planning is responsible for the resettlement of the families affected by DSI projects. DSI plays the leading role since it is the primary displacement causing agency. As the main ‘project owner agency’, DSI is responsible for preparation and implementation of RPs in line with international standards and as required by international lenders.

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## **Session IV: Benefit-sharing in Infrastructure Projects**

- I    **Benefit-sharing Experiences in the Extractive Industries**  
**Ms. Elizabeth Wall**
  - II   **Benefit-sharing Mechanisms in the Hydro Sector, Himachal Pradesh, India**  
**Mr. R D Nazim, IAS**
  - II   **Benefit-sharing and Enhancing Development: Lessons from Hydropower Sector**  
**Dr Shivcharn S. Dhillon**
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### **I    Benefit-sharing Experiences in the Extractive Industries** **Ms. Elizabeth Wall**

The extractive sectors are in a league of its own with regard to their requirements of land. They have a number of characteristics which draw them into the delivery of development at local, regional and sometimes national levels. First, their operations often exist in environments where government institutions may be absent, weak, lacking in capacity or corrupt, leaving gaps in the provision of essential public services. Second, their social and environmental footprint of operations often has impacts on local communities, requiring adequate compensation and mitigation programmes. Third, the remote location of these projects accentuates the expectation for employment and economic development within host communities. Fourth, the enclave nature of the extractive industry can limit the “trickle down” of benefits unless specific social investment programmes are undertaken.

**BSMs:** These mechanisms are explicit measures for channelising a proportion of the projects benefits (monetary and non-monetary) back to those affected for reconstruction of their livelihoods post displacement. Why do we need to integrate BSMs to complement R & R, especially in the case of the extractive industries? For these industries, foremost among the need for the BSMs is to receive a Social License to Operate (SLO). The SLO refers to the level of acceptance or approval by local communities and stakeholders of mining companies and their operations and is based on the idea that mining companies need not only government permission (or permits) but also “social permission” to conduct their business. This helps in reducing the risks of public criticism, social conflicts, and, in general, damage to a company’s reputation. Secondly, the BSMs may be important to reduce the potential risk of impoverishment that may result despite compensation and R & R entitlements. The support to affected communities need to necessarily go beyond the project construction period and should be a part of project operations and management. BSMs offer a channel for continually working on the development of the affected communities.

On the other hand, from the perspective of the government, the BSMs offer a potential channel for a more balanced regional development. In case of extractive industries, there is generally a 'lack of connection between groups benefitting' from projects and those 'adversely affected' and this gap can be narrowed down through BSMs. While the proportion of distribution differs, the royalty received from the mining projects are increasingly being distributed by many national governments. For instance, in Madagascar, 42 percent of the royalty is distributed to the communes, 21 percent to the region and 7 percent to the affected province. Similarly, in Indonesia, 80 percent of the royalty is distributed to the region; 64 percent to the regencies and 16 percent to the provincial government. Also, governments are under increasing pressure to gain political support for mineral development. This has necessitated the demonstration of the positive impact of mining through the project's life cycle.

**Mechanisms of Benefit-sharing:** There are various existing mechanisms of benefit sharing. These include in house management by the mining companies in terms of dedicating funds for community development, re-distribution of the taxes and royalties received by the government to the affected regions and communities, partnering with third party organisations' to work for the community development initiatives and development of a Foundation, Trust or Fund (FTF) with the above objective. Among these mechanisms, the FTF mechanisms are increasingly being looked upon as independent vehicles to channelise revenues generated by mining operations to communities. Under these mechanisms, companies can work in partnership with local communities through shared FTF governance arrangements to fund development projects. The FTFs can support government decentralisation processes by increasing the transparency and traceability of financing from mining regions into development initiatives. The agreements between indigenous people and mining entities can be formalised and made actionable through the creation of an FTF.

FTFs can bring great value addition in the developing country context, where there is lack of local capacity. They can not only lead to delivery of sustainable development outcomes from mining but also increase the accountability of those responsible for delivering the development projects, thus increasing the likelihood of a positive outcome. It is seen that in the remote regions where the mining projects often come up, public services like water, sanitation, and electricity do not exist or are extremely deficient. The responsibility that falls on the mining companies can be better served through a foundation model in partnership with local authorities. When delivered through an endowed FTF, benefit-sharing approaches, such as community investment initiatives experience a smoother and more likely successful transition to sustainability after the mine closes. FTFs also promote greater transparency and provide a channel to establish independence from the existing

structures (eg: company liability and/or reputation, or bureaucratic government processes).

**Comparing and Learning from the FTF Experience:** Since the FTFs in different countries have different legal requirements and are established for different purposes and have different ownership pattern, a comparison model of case studies from Peru, Southern Africa and Papua New Guinea with six attributes was developed. The six attributes used for comparison of the FTFs are given below followed by brief descriptions of these FTFs:

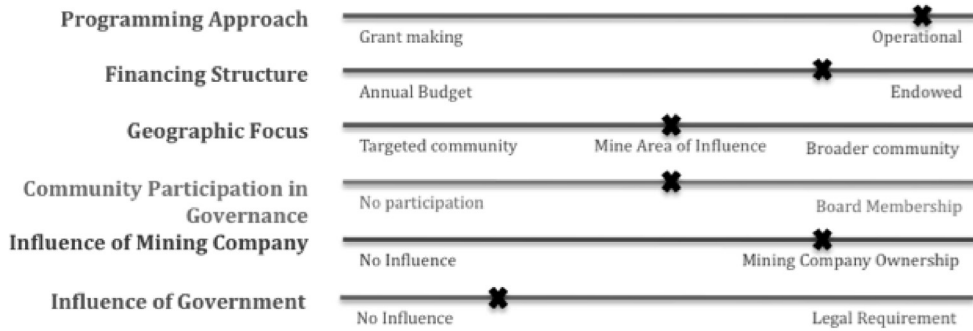
1. The programmatic approach taken by the entity: Does the entity make grants, or does it operate field programs? While grant-making FTFs provide grants to other organisations, operational FTFs use their funds to deliver development projects directly. Many FTFs use a hybrid approach with some grant-making activities and some projects delivered by an in-house team.
2. The financing structure of the entity: How is the entity financed? The main approaches to structuring the funding of an FTF are by endowment, annual budget allocations, or a combination of both. The endowment funding generally favors FTFs that are designed to exist beyond the period of a mining operation, while budget cycle allocations are better suited to FTFs established to deliver benefits solely while a mining project is operational.
3. The geographic focus of the entity: This concerns the area of operation of the entity. On this scale, mining FTFs may target specific communities, such as indigenous or vulnerable people within the mine's area of influence, or they may operate across a broader area.
4. The degree of community participation in governance of the entity: How involved are the communities/beneficiaries in the governance structure of the entity?. FTFs require a governing body in order to be considered separate legal entities. The composition of these bodies varies from representation of mine owners only to multi-stakeholder bodies representing beneficiaries, civil society, government authorities, and technical experts.
5. The influence of the mining company: How much influence does the company exert over the day-to-day operation and direction of the FTF?
6. The influence of the government: How much influence does the government (at all levels) exert over the activities of the FTF? This may be in terms of legal requirement, legal definition, tax incentives, requirement of integration of activities with local and regional development plans, requirements over location and scale of the development activity supported by the FTF etc.

**The Papua New Guinea Sustainable Development Program (PNGSDP):** The PNGSDP was established in 2002 as part of exit arrangement of BHP Billiton from Ok Tedi Mine. The FTF has a large organisational structure, with over 70 staff and the primary focus is on grant making. The Fund now exceeds USD 1.4 billion. Between 2002 and 2008, the PNGSDP had spent more than US\$140 million on development projects. There is very low participation of the community in governance and the same applies to the influence of the Company in its functioning. The scale of the fund, and the perceived lack of tangible benefits of project benefits which were implemented in the past decade, has drawn significant political attention in recent months. The functioning of the FTF shows that “more money does not necessarily equal better outcomes”. Figures 1.1 reveals how the FTFs fared in terms of the six attributes.



**Figure 1.1 - Characteristic Features of PNGSDP on Six Attributes**

**The Palabora Foundation, South Africa:** The FTF was created in 1987 by an endowment. This is the social development arm of Rio Tinto Palabora Mining Company Ltd in South Africa. The FTF has been very actively working towards redressing discriminatory practices in the South African mining industry. The South African Mineral and Petroleum Resource Development Act (2002) require companies to undertake specific social actions, including development of a Social and Labour Plan. The Palabora Foundation works closely with national and provincial government on health, education, skills training and other programs. The FTF employs over 100 people. The geographic focus of the foundation has been largely towards the mine area of influence. All projects are presented in the community forum meetings for consideration and then taken to local government for their endorsement to ensure that they fit into Integrated Regional Development Plan. The Foundation played a successful role in the early roll-out of HIV/AIDS treatments for the region by partnering with the Ministry of Health and provided an exemplary example of bridging the roles of state and private sector. Figure 1.2 shows the key attributes of the FTF.



**Figure 1.2 - Characteristic Features of The Palabora Foundation on Six Attributes**

**The Fondo Minera Antamina (FMA), Peru:** The Peruvian Law requires that 50 percent of income taxes and taxes paid by mining companies to the national government be channelled back to regional (25 percent) and municipal (75 percent) governments. The distribution of mining royalties among municipalities is defined on the basis of where the minerals have come from, rather than where the areas of impact exist. The Foundation was established in 2007 and funded by 3.75 percent of gross profit over a 5 year period (reserves of over US\$160 million). The FMA has local and regional areas of intervention, with staff of over 90 people. The FMA works with government identified priorities i.e. investing in the areas of health and nutrition, economic development, infrastructure, education and institutional capacity building. The finances remain in the hands of FMA, with the oversight of the government. With a very high level of disbursement, the FTF is an example of leveraging private sector experience to deliver public sector financed development



**Figure 1.3 Characteristic Features of The Fondo Minera Antamina on Six Attributes**

**The Arcelor Mittal Global Foundation:** The Foundation was established in 2007, following the merger of Arcelor and Mittal. The Global Foundation has projects in over 30 countries. These projects are primarily developed to implement development

projects for communities in areas where Arcelor Mittal has business operations. The Foundation focuses on health, education and community development, activities that broadly fall within the role of the state.



Figure 1.4 Characteristic Features of The Arcelor Mittal Foundation on Six Attributes

**Proposed FTF in Madagascar:** The mining law in Madagascar was developed to cater to the artisanal and small-scale mining. The royalty and redistribution scheme within the law did not fit well with large-scale mining. The political turmoil in Madagascar has made it impossible to pass new laws to change the royalty structure through legal avenues. This led to the thinking on the potential use of a regional foundation to facilitate equitable distribution of benefits from mining activities in Madagascar. It is proposed to achieve this through the management of savings in a transparent and participatory manner. The expected beneficiaries would be the people impacted by the Rio Tinto QMM project and the broader population of the Anosy region.

**Conclusion:** The above case studies show that the FTFs can be significant “vehicles for change” in benefit-sharing. They can provide opportunities for increased stakeholder participation and consultation. However, despite these potential advantages, experience with the use of FTFs as a means of sharing benefits in mining is mixed and not well understood. Based on the case studies undertaken and experience to date, three conditions for the success of FTF emerge.

First, the complexity of the FTF model is proportionate to the level of financing and capacity available locally. Second, the FTF’s vision, beneficiaries and projects need should be identified from social assessment. Third, the integration of the FTFs activities within local and regional development plans is a key to success. There is a significant potential for role of FTFs to increase if community development agreements (CDAs) become commonplace. In the future, sharing benefits from mining can be expected to become an essential policy element and FTFs will therefore continue to play an important role.

## II Benefit-sharing Mechanisms in the Hydro Sector, Himachal Pradesh, India

Mr. R D Nazim, IAS

**Background:** The north Indian state of Himachal Pradesh (HP) has the highest potential for hydro-electricity in India. Out of the 26000 MW of hydro-power potential in the state, the state has exploited only about 8000 MW. There is great pressure on land in the state owing to the many planned projects. Most of the planned projects are run off the river projects, with huge requirement of dumping of muck. The extremely fragile environment and the accompanying environmental issues have imposed great challenges on the construction of these projects.

The broad principles of the R & R policy in HP is based on the guidelines of the World Bank on Involuntary Resettlement. The policy is implemented by the state government through its department with the assistance of the NGOs and/or implementing agency. All acquisition of land is as per LAA, 1894. The persons affected by the project who does not own land or other properties but who has economic interests or livelihood is assisted as per the broad principles of the R & R policy.

**Experience in Land Compensation, R & R and BSMs:** The practices in land compensation, R & R and innovative benefit-sharing mechanisms followed in the state are given below:

### Land Compensation

- The Himachal Pradesh Power Corporation has paid land compensation at the rate of Rs. 2600 per sqm irrespective of classification of the quality of land in two of its projects in Kinnaur district, a tribal scheduled area in the district. This compensation is the highest in the Northern India.
- All structures (authorised/unauthorised) are compensated

### R & R Benefits

- Rs. 2.50 lakhs lumpsum to each family whose land before acquisition was more than 5 bighas and is left with one biswa or no agriculture land after acquisition
- Rs. 1.50 lakhs lumpsum to each family whose land before acquisition was less than five bighas and is left with one biswa or no agriculture land after acquisition.
- Rs. One lakh lumpsum to each family whose land holding is left with more than one biswa and less than 2-10-0 bighas of land after acquisition.
- Rs. 75,000/- lump sum per family whose land holding is left with more than 2-10-0 bighas and left less than five bighas after acquisition.



- Rs. 10,000/- (not exceeding Rs. 25,000/- per family) to each family whose cattle shed is acquired.
- Construction of a R & R Colony with all infrastructure (water supply, sewerage/drainage, electricity, community centre, green area, roads etc.) for the displaced population.
- Rs. 20,000/- lump-sum as relocation transport facility.
- A plot of 250 sqm permitting house with 150 plinth area in addition to the building cost of Rs 4,000/- per sqm with a maximum limit of six lakh or payment of Rs. 5,000/ per sqm with maximum limit of 150 square meter or Rs 7.5 lakh for the houseless.
- A grant of Rs. 20,000/- to shopkeepers in addition to the one- time financial assistance of Rs. 2,00,000/-.
- Transitional/subsistence allowance at the rate of minimum agricultural wage for 25 days per month for 12 months.
- For PAFs rendered landless, financial assistance at the rate of Rs. 50,000 (in addition to land cost) and land development charges at the rate of Rs. 15,000/bigha in case of a wasteland.
- Rs. 50,000/- for work-shed for the displaced people who were self-employed
- 1000 days minimum wage to each PAF (Main), if not employed.
- Rs 1,000/- pm for 5 to 10 years to each vulnerable PAF
- Education support and merit scholarship for students
- Petty contract up to Rs. 5.0 lakhs only to be given the PAF
- Contract vehicles are to be taken preferably from the PAF
- Seed capital of Rs. 50,000/- to rural artisans and other self-employed
- Existing fishermen's fishing rights are transferred to the project reservoir
- Miscellaneous benefits including medical fund, free medical treatment to PAF in project hospital, medical camps, training and awareness programmes, alternative fuel or fuel saving devices when severely impacted, infrastructure restoration, house and water spring restoration etc.

**BSMs:** During execution stage, all hydro projects above 5 MW capacity are required to contribute one and a half percent of final project cost towards the Local Area Development Fund (LADF) and at the rate of one percent of project cost for projects upto 5MW. The entire contribution towards local area development activities is

maintained in the LADF which is administered by the Local Area Development Committee (LADC). The State Level Committee is headed by a Principal Secretary, a senior government officer in the state government.

Himachal Pradesh is the first State in the country to operationalise the provisions of Government of India's Hydro Power Policy, 2008 for providing regular stream of revenue for income generation for the affected community. Accordingly, each developer has to allot one percent of additional free power after the commissioning of hydro power projects. The additional percent free power is over and above the 12 percent free power to be contributed as royalty to the State government. The additional one percent free power is a pass through in the tariff. The Directorate of Energy (DoE), Government of HP is the nodal agency entrusted with the responsibility of managing the allocation of revenue generated from the one percent additional free power. Besides the above, 100 units of free electricity are given to all PAFs.

The revenue collected by the DoE from the sale of one percent free power (contribution from the Project Developer) is transferred to the LADF for each project. The amount so received is allotted by the LADC in the form of a cash transfer to all the families in the Project Affected Area (PAA) every year, during the entire life span of the project. Out of the total amount, 85 percent is to be distributed equally among all the long term resident families entered in the Parivar Register of the Gram Panchayat(s) of PAA on the date of allotment of the Project. Also, 15 percent is to be additionally given to all the Below Poverty Line (BPL) families in the PAA, subject to the condition that the maximum amount payable to the BPL families does not exceed 1.5 times the amount payable to all families.

The Developer is on the other hand entitled to claim compensation for the delays and financial losses (in commissioning of the Project) due to work stoppage on account of agitation by local people during construction of the Project. The Developer has to submit the details of the stoppages on account of agitations by the locals and these delays (number of days) are to be approved by the State Level Committee in consultation with the District Authorities. The financial loss is worked out for the accepted number of days of delay(s) with reference to the annual generation and is to be paid to the Developer from the revenue accruing from the one percent free power. The Himachal Pradesh Government therefore follows a carrot and stick policy. The norms for the allocation of LADF and the distribution of the fund in Chamera project in the State is given in Table 1.2 and 1.3.

**Table 1.2 Norms for Allocation of LADF during Construction**

S. No.	Category of HEPs.	Project Affected Area (PAA)	Project Affected Zone (PAZ)		
			Project Affected Panchayat(s)	Project Affected Block(s)	Project Affected District(s)
1.	Upto 5 MW Capacity	70%	30%	Nil	Nil
2.	5-100 MW Capacity	60%	20%	10%	10%
3.	>100 MW Capacity	50%	20%	15%	15%

Note: Project Affected Family (PAF) is a family whose land or house or other property or source of livelihood has been partly or fully acquired for the development of Project; A Project Affected Area (PAA) is an area where actual project components related to project implementation are located; Project Affected Zone (PAZ) is the area surrounding such project affected area where impact of the project on the lives of people is considerable.

The BSM initiated in the State will ensure that more and more money is transferred to the land losers when the electricity rates go up. The initiatives in benefit-sharing is with an objective to make people partner in progress so that everybody feel part of the system and have a stake in the system.

**Table 1.3 Distribution of the Funds Among the Beneficiaries**

S.No	Name of Panchayat	No of Families as per Parivar Registers			Actual Amount per Payable per Year per Family (Rs.)	
		Total Families	APL Families	BPL Families	APL Families	BPL Families
1	Radi	388	112	276	12949	16374
2	Lothal	288	158	130	5831	7957
3	Sunara	527	166	361	2581	3433
4	Aura	367	254	113	7267	10812
5	Ulansa	303	117	186	8716	11333
6	Kilod	441	204	237	3298	4387
7	Gehra	469	149	320	4759	6174
8	Lech	201	115	86	6765	9347
9	Khudel	249	59	190	8545	10776
10	Brehi	497	153	344	2687	3566
11	Chhatrari	322	193	129	2682	3583
12	Garola	498	255	243	3066	4095
13	Khanni	521	323	198	3847	5292
14	Palanpooran	429	306	123	4367	6326
	<b>Total</b>	<b>550</b>	<b>2564</b>	<b>2936</b>		

### III Benefit-sharing and Enhancing Development: Lessons from Hydropower Sector

Dr Shivcharn S. Dhillon

**Background:** The concept of benefit-sharing in hydro-power sector evolved through two major efforts in 2000; the International Energy Agency's Technical Report, *Hydropower and Environment: Present Context and Guidelines for Future Action* and the *Report of World Commission on Dams*. IEA (2000) recommended that the local communities should benefit from a project both in the short run and long run. The community benefits do not necessarily mean monetary benefits but also improved access to infrastructure, education, health programmes etc. The Report, recognising the importance of benefit-sharing, pointed out that appropriate mechanisms need to be introduced to ensure equitable distribution of development opportunities generated by the dam.

**Typology of BSMs:** The understanding of social risks and their management is extremely important for successful and timely completion of the project. It is important to address the demands and expectations that emerge from neighborhoods, environmental groups, community members, and other elements of the surrounding civil society. The failure to properly understand these expectations can generate a diversity of risks (reputational damage, project delays or abandonment, security problems, etc.). To get the SLO, there is the need to take into account the community concerns and address these to the extent possible. The original typology of BSMs adapted from a World Bank concept note are given in Table 1.4

**Table 1.4: Typology of BSMs**

Typology	Description of Specific Mechanisms
Project Design and Operations	Maximise benefits of flexible infrastructure and integrated resource management. Eg. multi-purpose infrastructure (flood control, irrigation), managed flows, watershed management etc.
Ancillary Investments	Investments outside core infrastructure to broaden reach of benefits. Eg. social infrastructure, community programs, catchment treatment etc.
Financial Allocations	Distribute economic rents. Eg. taxes, development funds, preferential rates, joint ownership etc.
Institutions and Policies	Build enabling environment for leveraging benefits. Eg. knowledge sharing, river basin organisation, development planning capacities etc.

Frequency of use of different mechanisms

Mechanisms Case Study	Project Design and Operations	Ancillary Investments	Direct Payment/ Disbursement	Institutions and Capacity Building	Policies and Regulatory Framework
Khimti 1 – Nepal	○	●	●	●	●
LHWP – Lesotho/RSA	●	●	●	●	●
Angostura – Costa Rica	●	●	●	●	●
San Carlos – Colombia	○	●	●	●	●
G&L Basin – Norway	●	○	●	●	●
Nam Theun 2 – Laos	●	●	●	●	●
Bujagali – Uganda	●	●	○	○	●
HAD – Egypt	●	●	○	●	○
A'Vuong – Vietnam	○	●	●	●	●
Columbia Basin – Canada/USA	●	●	○	●	●

Central in the portfolio ●  
 Present but not central ●  
 Almost or fully absent ○

**Figure 1.5: BSMs - Frequency of Use of Different Mechanisms**

**Lessons Learnt from Selected Case Studies:** The results from the various case studies of BSMs indicate the following:

- Sound legal frameworks and institutional arrangements become more important when implementing BSMs across larger scales and more complex geopolitical settings. The Khimti 1 HPP in Nepal shows that local level mechanisms can work without a legal framework and institutional arrangements in place, given that the project owner has the interest and sees it as a necessity (securing community good will) for sustainable and successful development, and operation of the project.
- In Costa Rica, the COMCURE's watershed protection programs have led to a decrease in the erosion and sedimentation problems in the watershed benefiting both the project owner and the local communities. The projects in Lao PDR and Costa Rica demonstrate innovative approach to watershed management and ecosystem protection based on the provision of funds (fees, taxes, transfers) from financial allocations by the generation companies.

- PPP projects have shown to be the key for success of implementation of BSMs in some cases.
- The Columbia project showed that their cost sharing partnerships, through a co-financing approach contributed and enhanced benefits among neighboring communities. This approach encourages interested communities to become partners in their development initiatives instead of passive receptors. The project stands out for its clear linkage between projects and regional development plans. The benefit-sharing initiatives like environmental protection, land conservation and education programs were an integral part of the Colombia basin management plan.
- The LHWP and NT2 Cases, with their BSMs emphasising on poverty reduction have had quite a considerable impact on the national economy of Lesotho/Lao PDR and sparked economic development that enabled and strengthened (new) industries and services.
- Finally, since benefit-sharing is central to the long term sustainability of hydro-power development, the dilemma remains in distinguishing where the line needs to be drawn. Also, benefit-sharing extends to a larger area. In many cases, the lack of clarity in terms of obligatory and non-obligatory measures influences the expectations of people. These create conflicts and result in reactive responses of the project owners. This was seen common across projects. Clarity over obligatory and non obligatory measures were seen as important elements to reduce conflicts and risks.

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## Session V: Resettlement - Experiences in Urban Sector

- I Land Pooling: The Magarpatta Model in India  
**Mr. Satish Magar**
  - II Resettlement Experiences in Mumbai Urban Transport Project  
**Mr. Vishram Patil**
  - II Resettlement Policies and Practices in Nigeria: Case of Lagos Metropolitan Development and Governance Project  
**Mr. Olukayode Taiwo**
- 

### I Land Pooling- The Magarpatta Model in India Mr. Satish Magar

**Background:** Magarpatta City covered 430 acres of land that was owned by about 120 farmer families. These farmers joined together to form the township called Magarpatta Township Development and Construction Company Limited (MTDCCL) and developed the city, thereby realising their dream of converting their land into a value-added finished product that gave them benefits and returns in perpetuity. The Magarpatta area was in the agriculture zone but listed as part of the Pune Municipal Corporation from 1960 onwards. Under the Urban Land Ceiling Act, the Government had the authority to acquire the land at rates decided by them. This was in most cases substantially lower than the market rates.

**The Model and the Advantages for Farmers:** The Land Pooling Model provided the farmers with an opportunity to become entrepreneurs while in the other course, the farmers would have sold off their land, spent unproductively and ended up as labour often in their own fields. The objective of the Magarpatta joint venture model was to create long term wealth for the farmers from their landholdings, create opportunity for the farmers to turn into entrepreneurs; to provide the farmers with a long term annuity and to create a strong real estate franchise to enable the development of other large scale projects. In the Model, the farmers contributed their individual landholdings under a Joint Development Agreement (JDA) to the project for a refundable security deposit and a revenue share. The revenue was shared on the entire pool and not only on a particular farmers land. In addition to the share of revenue, the farmers were also given equity position in the project's Special Purpose Vehicle. As opposed to the situation elsewhere, where the farmers were losing their land to the developers with urbanisation, in Magarpatta, every farmer became an equity holder in the company in proportion to his holding. The Magarpatta city with five million sqft of leased space created long term annuity for all the farmers. Most of the farmers also became contractors, building material suppliers and machinery owners.

The above model also ensured that farmers got the appreciation in value of the property in the township. The property values in Magarpatta City increased from about Rs. 1000 per square feet to about Rs. 5000 per square feet during the period 2003 to 2011. There had also been a tremendous value appreciation in the farmers' land. In the year 2000, the land rate around the area was between Rs. 30-35 lakhs per acre. In 2011, the land became worth Rs. 3.5 crore per acre. This appreciation in property prices had come back to the farmers as dividends from the company as per their JDA.

**Other Advantages of the Model:** The model also offered significant advantages to the developers. Offering equity positions to landowners enables negotiations of better terms for the JDA vis-à-vis a traditional JDA. The developers were able to acquire larger tracts of land with minimal capital. Litigations from land owners which are a proverbial problem were non-existent since the model locks in the land-owners. No specific timelines or selling price conditions were there in the JDA for completion of the development as opposed to typical JDAs. It also enabled raising of debt, based on mortgage of land which are not permitted by the landowners in a typical JDA.

Due to the creation of a strong franchise, the farmers invested their share of profits and revenue share amounts with Magarpatta city, making its financial position much stronger. The strong franchise and surplus free cash flows also enabled Magarpatta to start the development of Nanded City, on similar model, with the landowners of Magarpatta owning control equity, with the rest of equity held by farmers of Nanded city.

## II Resettlement Experiences in Mumbai Urban Transport Project

Mr. Vishram Patil

**Background:** Mumbai, India's financial capital, known for its economic dynamism, traffic jams and vast slums, is a home to around 20 million people. Affordable housing is a challenge, pushing poor migrants to settle in slums. Seven million people live in 3,000 slums across the city with most of them encroaching public lands. These slums often obstruct vital infrastructure such as roads, railways tracks, airports, water drains, stations, market etc. Resettling slum-dwellers is the biggest hurdle to expanding much-needed infrastructure in the densely populated city of Mumbai.

**The Resettlement Challenges in Mumbai Urban Transport Project (MUTP):** The MUTP was initiated in 2002 to improve transport services in Mumbai. The MUTP with railway and road sub-projects was implemented with the assistance of the World Bank during 2001-2011 at a total cost of US\$ 555 million. The urban resettlement in MUTP was on an unparalleled scale involving more than 100,000 people, 17,500 residential households, 1,800 shops, more than 100 community and



cultural properties including temples, mosques, madrasas, Buddhist and Sikh shrines, churches, as well as a site designated as a Jewish cemetery. In view of the magnitude of the task, resettlement was initially planned as a separate project. However, it was retained as an element of the larger transportation project to better align resettlement activities with the implementation of civil work.

There were also a number of community and child welfare centres and dozens of public toilet blocks. There were decade old slums on railways tracks and settlements occupying prime public and private lands. The homes to be relocated were equally varied; there were legal homeowners living in multi-storey buildings, 'pagdi holders' who claimed ownership tenants and lessees, as well as squatters without formal title. The businesses similarly included petty vendors, well-established shops, manufacturing and service activities such as recycling units, factories, warehouses, auto repair workshops, fuel stations, restaurants, and dairy farms. Almost ninety-five percent of these households and business did not have legal title. The project required relocation of a host of utilities including underground water and electricity pipelines, telephone cables, drains, and a few large transmission towers.

Moving originally evolved slums in Mumbai is like moving unique worlds. Several issues were faced relating to changing project alignments and design, eligibility and entitlement issues, location of R&R colonies, resettlement of non-residential PAPs, acquisition of private lands and resettlement of resident landlords, tenants, resettlement of community assets including religious structures, building repair and maintenance, upgradation and management of on-service networks, renting and sale of PAP tenements, addressing issues of unauthorised occupants of vacant tenements etc.

**Resettlement and Rehabilitation in MUTP:** The R&R policy provided for coverage of all PAPs/structures based on the survey. Relocating people from horizontal settlements to high-rise buildings posed great challenges. People accustomed to living in close communities which offered both housing and informal job opportunities had to be shifted into multi-storey buildings in homogenous resettlement townships away from their places of work. They would have to live as members of registered housing societies and pay for all basic services such as water and electricity, in addition to paying property taxes, and fees for the maintenance of their buildings. They would also have to manage their surroundings including internal roads, drains, and common lighting facilities. The religious and community structures could not be resettled in high-rise buildings and required alternative sites for their re-establishment. The residents who had legal titles would not move unless they were first provided with comparable housing at similar locations. Another great challenge was relocating large businesses that earned good incomes given their justified fears of losing business if they moved. Resettling over 100,000 people required finding several resettlement sites in land-scarce Mumbai as well as mobilising the huge

financial resources needed to construct new townships. Free housing and shops of 225 sq. ft. each were to be provided to all those who had lost land and assets, including land owners and tenants, as well as to squatters, in accordance with the Government of Maharashtra's R&R Policy. Affected shopkeepers and landowners were also allowed to buy additional floor area up to 525 sq. ft in proportion to their loss.

Given the scale and complexity of the resettlement process, several preparatory measures were taken. These included consultations with the affected people, SIA studies to understand the project's impacts, steps to address the social and economic needs of the affected people, the drawing up of RPs and the establishment of institutional capacity for implementation. To successfully plan and implement the resettlement activities, the government established a resettlement cell at Mumbai Metropolitan Regional Development Authority (MMRDA), hired NGOs, carried out census surveys, prepared resettlement plans and established public information centers and a responsive Grievance Redressal Mechanism (GRM). Despite these efforts, the challenges on the ground proved enormous and serious grievances emerged, requiring flexibility and innovative measures in dealing with them.

R&R activities hit roadblocks when it came to resettling households and commercial establishments affected by the widening of the two major east-west road corridors, the Santa Cruz Link Road (SCLR) and the Jogeshwari-Vikhroli Link Road (JVLR). Unlike the people living along the railway tracks who were waiting to be rescued from their harsh living conditions, those affected by road construction were a heterogeneous group that included landowners, lease holders, large commercial units, and religious structures. Tied to their locations with established incomes and social networks, they resisted relocation with all their might, and especially resented being equated with slum dwellers. It proved particularly difficult to engage with the large shopkeepers, who put up stiff opposition with the backing of local leaders. Misperceptions, lack of trust, and the fear of forcible relocation kept large shopkeepers and landowners away from meetings and negotiations with MMRDA. The failure to establish a dialogue increased MMRDA's impatience with the PAPs, leading to a hardening of positions on both sides. This adversarial relationship, marked by ideological tensions, stalled the relocation process. The people affected by the project complained to the World Bank's Inspection Panel, questioning the adequacy of R&R options for shopkeepers, the suitability and quality of resettlement sites, the quality of information disclosure and consultation, and the grievance redressal processes.

**Finding Land for Resettlement and Finances:** Recognising the need for huge financial resources to build the resettlement sites, the state government encouraged private participation by offering additional 'Transfer of Development Rights' (TDR) or 'Floor Space Index' (FSI) to private developers willing to resettle slum dwellers

at their own cost. TDR is a certificate from the city administration that the owner of a property gets for developing public utilities such as parks, schools and hospitals. Under the TDR policy, land owners are compensated in kind if they surrender some of their land to the government for purposes such as widening a road, creating a park or rehabilitating slum dwellers. These rights can be sold to other builders or can be used for development by the land owner her/himself in lieu of the plot that has been surrendered. Most TDRs are generated from the redevelopment of slums, initiated by the Municipal Corporation of Greater Mumbai and MMRDA. In the case of slum resettlement, developers were offered additional TDR/FSI between 1.5 to 2.5 times the floor area created, which they could use to develop other properties at a profit. One sq. ft. of TDR can cost about Rs. 2,500 to Rs. 3,000 (US\$50-60) in Mumbai, depending on the location. About thirty resettlement colonies were developed in this manner by the MMRDA. Most resettlement colonies housed over 1,000 households with the two larger ones at Anik and Mankhurd, each housing over 5,000 households.

**Livelihood Restoration Plan (LRP) in MUTP:** A Resettlement Impact Assessment Study was carried out in 2007-08 by the Tata Institute of Social Sciences (TISS). Following the findings of the study, the MMRDA took several measures to improve the quality of the post-resettlement process, including the establishment of a livelihood cell to promote income-generating activities for women at all the resettlement sites. While the first phase focused on the establishment of women's self help groups, a second phase laid emphasis on skill development, training, marketing and access to credit for the women. A women's cooperative called SANKALP was formed to undertake a range of economic activities including the supply of office stationery, the sale of vegetables, providing catering and housekeeping services, and conducting seasonal trade in a variety of consumer goods. At the time of relocation, MMRDA provided a free bus service so that the children did not have to change school midway through the academic year because of the relocation. In 2008, MMRDA organised an 'Opportunities Fair' to link educated youth with various employment opportunities. Youth groups were also trained in English language communication, etiquette and computer skills to improve their employability. While these livelihood support activities may not have fully addressed the economic needs of all affected households, they opened a door to a range of income-generating activities for both women and young people.

**Grievance Redressal, Monitoring and Transparency:** The GRM consisted of a field-level grievance redressal committee to consider individual grievances, a senior-level grievance redressal committee to consider appeals against the decisions of the field-level committee, and an Independent Monitoring Panel comprising eminent citizens empowered to consider group complaints and policy-related issues. MUTP also emphasised transparency. Accordingly, RPs, summary of implementation plans,

and lists of people eligible for compensation were posted on the MMRDA website. Other documents posted online included the R&R implementation manual, the GRM brochure, resettlement procedures in case of failure of negotiations with shopkeepers, procedures for partially affected structures etc. MMRDA also ran Public Information Centres at the project sites, in the resettlement colonies, as well as at its office.

**Lessons from MUTP:** Many useful lessons have emerged from the project experience in urban resettlement. These are given below:

- The resettlement policies and plans need to be treated as living documents that can be rapidly adapted to changing demands and evolving contexts.
- Consultation and communication with the affected people throughout the project cycle, along with the transparent provision of information on eligibility and entitlements can go a long way in reducing the misinformation and enhancing the people's trust and confidence in the resettlement process.
- A robust and transparent GRM through independent and recognised committees helps resolve complaints, win people's confidence, and reduce the costs and delays associated with litigation. The establishment of an independent monitoring panel and oversight committees also help resolve critical issues and reduce the number of complaints substantially
- Training NGOs, even those with significant experience, is important for managing large-scale resettlement.
- Synchronising R&R with civil works is important for timely completion of project works. The commencement of civil works without serious progress in land acquisition and resettlement can result in massive time and cost overruns. Inter-agency coordination is critical to prevent inordinate delays in project implementation.
- Independent reviews of the resettlement process help to measure the effectiveness of actions taken, identify gaps, and formulate remedial measures. For instance, in large resettlement townships, common amenities such as schools, dispensaries, and other facilities should be developed prior to the relocation of people. Estate management should be integrated into the resettlement process to enable communities to manage the resettlement sites themselves.

### III Resettlement Policies and Practices in Nigeria: A Case of Lagos Metropolitan Development and Governance Project

Mr. Olukayode Taiwo

**Background:** Lagos is the most populous city in Nigeria and sixth largest city of the world. The total population of the city is around 20 million. The metropolitan area, an estimated 300 square kilometers, is a group of islands endowed with creeks and a lagoon. Lagos is the commercial and industrial hub of Nigeria. Since 1985, state urban renewal plans have concentrated on upgrading the environment of slum communities by building roads, drainage channels, providing water supply, electricity, schools and health clinics.

**Transport Infrastructure Development and Institutional Changes:** Rapid urbanisation has been exerting a huge strain on the existing infrastructure. To tackle the issues relating to the transport sector, Lagos state has defined a transport sector strategy for public transport users and the poor. The strategy rests on six pillars; creation of organisational and institutional capacity for the planning and management of the transport system; raising the level of cost recovery in the transport sector; promotion of affordable public transport services; reduction of external impacts of transport through the provision of safeguards; creation of a conducive environment for the private sector provision of transport services and making the best use of the existing transport capacity. The Lagos Metropolitan Area Transport Authority, (LAMATA) was created by an Act on January 13, 2002. LAMATA, established with the World Bank's technical and financial assistance is a semi-autonomous agency. It is the implementing agency of the Lagos Urban Transport Project (LUTP), funded by the World Bank.

**Legal and Policy Perspectives:** The Land Use Act-1978 empowers the state government through the Governor to grant and revoke rights of occupancy, revoke title to land for overriding public interest or purposes, compensate for a revoked title, provide for improvements made on the land and replacement cost of such land after assessment and resettle displaced land holders.

LAMATA, being funded by the World Bank, followed the Bank Safeguards policy OP 4.12. Accordingly, the resettlement and compensation activities were conceived and executed as sustainable development programs with opportunity for displaced persons to share the project benefits. The policy applied to all the displaced persons, regardless of whether they had a legal title or not. Also, particular attention was given to the vulnerable groups. The project R&R policy emphasised meaningful consultations with the affected communities, with opportunities to participate in planning & implementation.

At the beginning of the project, a stakeholder list was developed, which included transport unions, women associations, government ministries etc. A number of meetings/workshops were held in which a broad section of stakeholders participated. This helped considerably in the public acceptance of the project. The Local Government Council hosted the consultations and this helped facilitate the ownership of the project. The policy also emphasised on transparent and open communications so that stakeholders could raise their concern and grievances. The continuous consultation with local people provided new ideas and a general consensus over the activities to be carried out. There was the consensus agreement on the PPP on the operations of the Bus Rapid Transit (BRT) corridor. Accordingly LAMATA provided the enabling framework and infrastructure comprising bus depot garage, bus terminals, segregated bus ways, bus shelters, road markings and other traffic management measures, while the selected private sector operator accepted regulatory enforcement, commitment to procurement of buses, operations and maintenance.

One major achievement of the consultation and bringing the transport unions on board was their non-interference in BRT operations. Similarly, the consent of the relevant school administrators was sought and obtained for the demolition and replacement of the fence walls and some school blocks of classrooms to make way for the relocation of Ikorodu market. The established feedback mechanisms for the public included a call centre in the Authority to respond to enquiries from the commuting public, telecast of Live programmes like *“BRT half an hour”*, *“BRT Parliament”* and *“Lagos on the Move”* were telecasted.

**RP for BRT Extension Project:** For the BRT Extension Project, a survey was conducted for the corridor to demarcate all land to be acquired around 60m right of way, besides the land required for bus depots and terminals. Out of the 1,488 persons who were affected by the planned project, 112 structures were to be demolished, 1171 were to be relocated to new areas and 205 were to be shifted backwards, away from the corridor. The disadvantaged and vulnerable groups of people (widows and persons aged 65 years and above) were identified and were given special attention. The survey and the consultations revealed that about 57 percent of the 1171 PAPs were willing to relocate if provided with a viable alternative. The R & R activities were linked to the implementation of the overall project. For the traders, the market was untouched until the construction activity went on the new market. The new location was planned not only to accommodate more traders but also with provisions for toilet and pipe borne water facilities (non-existent in the previous location).

**Key Learnings from the Project:** First, elaborate consultations prior to the implementation of the baseline study and the RP can go a long way in addressing the concerns of the community. Second, maintenance of minutes of consultations

(including the place and dates) with signatures of key stakeholders can help in terms of community taking a consistent stand with regard to the project. This is often seen as a major impediment in most of the projects. Third, RP should be developed in a simple language for ease of understanding and implementation so that cut-off dates for eligibility are adhered to. Last but not the least, the World Bank Operational Policy (OP 4.12) can be consulted as a key document of reference.

R.S. Ranade\*

## Petroleum and Minerals Pipelines Act-1962: Issues and Challenges in Acquiring Land with Users' Rights

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**Abstract:** *The transportation of petroleum products through underground pipelines is considered safe, efficient and economical. The pipelines have become an integral component of transportation infrastructure base supporting a wide range of industries and have been aptly termed as the lifeline for the survival of industrial development. Pipelines require a strip of land of nominal width, known as Right of User (ROU) to be laid underground. Keeping in view the specific requirements of constructing pipelines, a special Act known as the Petroleum Pipelines Act, was enacted by the Parliament in 1962 (later amended as "Petroleum and Minerals Pipelines Act"). Till the turn of the twentieth century, the laying of pipelines through ROU land was relatively easy, with no major issues involved in the acquisition of ROU for laying or maintaining pipelines. The paper discusses the issues raised by the land owners in this regard in the recent times. The paper also points out the need to bring forth suitable amendments to the Pipeline Act and provides suggestions to ensure its effective implementation.*

**Introduction:** The agitations of farmers and landowners against the acquisition of land for Special Economic Zones (SEZs) and industrial projects have prompted the ROU land owners to raise similar demands for higher compensation. In the petroleum industry, the transportation of petroleum products through underground pipelines has proved to be very safe, efficient and economical. Historically, the Chinese are known to have first used the strings of hollow bamboos for channelising water from one place to another. Perhaps, that was the beginning of transportation through pipelines. In India, hundreds of kilometers of underground pipelines have been constructed, which have been in use for transporting petroleum, petroleum products and minerals from the source to the ultimate consumers. The pipelines have not only become part of the basic base of transportation infrastructure, but also an integral part of the essential services catering to the needs of the common people. The pipelines carrying petroleum and petroleum products are directly or indirectly linked to power, public and private transportation, agriculture, manufacturing and

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processing industry, as also domestic and commercial kitchens. The pipelines are aptly termed as lifelines for sustaining industrial development. However, in the recent times, acquiring land with users' right for constructing pipelines has become a great challenge. The ROU landowners are raising various issues, also adversely affecting the execution of pipeline projects. Keeping in view the importance of pipelines and the present situation, an attempt has been made in this paper to analyse the issues raised by landowners pertaining to ROU land to provide certain workable suggestions for amendments to the Petroleum and Minerals Pipelines Act 1962. This is with a view to facilitate a hassle free passage for building a pipeline network across the country, through ROU land.

**Acquisition of Land for Pipelines:** As in the case of transport projects, pipelines do not require any permanent acquisition of land, nor do they occupy any space over the land. A continuous strip of land with an average width of 20 to 30 meters is needed for constructing pipelines. In the pipeline industry, the strip of land through which the cross country pipelines are laid out is known as a Right-of-Way (ROW). In the legal terms, the strip of land to be acquired with users' rights is termed as ROU. The ROW is a corridor provided for constructing pipelines. The width of the ROW depends on the diameter of the pipeline proposed to be constructed and the construction practices. In the earlier times, the strip of land, along the pre-determined route of the pipelines, used to be acquired on a permanent basis, from the respective land owners, under the provisions of the LAA, 1894. The ownership of such land would then be transferred to the name of the pipeline company. However, the process of acquiring land on a permanent basis under the provisions of the LAA, 1894, was found to be time consuming in addition to involving huge expenditures.

Under normal operating conditions, pipelines once laid well below the surface of land remain there without causing any disturbance to the surface/sub-surface area or any other normal activities over the surface of land. The strip of land remains occupied only during the construction phase, in view of the movement of manpower and machinery deployed in construction activities. During this period, the land within the strip land is not available to the farmers for cultivation. If the cultivators are not in a position to carry on with the normal agricultural activities, it would obviously deprive them of the income accruing from the agricultural production of the occupied area. Therefore, it was necessary that the cultivators were suitably compensated for the losses suffered by them. This fact led to the realisation that there was no need for acquiring land on a permanent basis, incurring huge financial expenditures and the cultivators were required to be compensated only to the extent of losses suffered by them.

**Alternate Process of Acquisition:** With the growth of petroleum industry in India in the late fifties and the findings of promising and commercially viable deposits of

oil and gas, more and more pipelines were required to be constructed for transportation and distribution of petroleum and petroleum products across the country. Keeping in view the purpose and objective of constructing pipelines, the provisions of the LAA-1894 and the actual use of the land, it was felt necessary to put in place a well designed alternative process for acquiring the strips of land all along the route of the pipelines. Accordingly, a new Act was drafted by the then Ministry of Petroleum and Chemicals, called the Petroleum Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962). The Act was enacted by the Parliament to facilitate the acquisition of users' right on the land for laying pipelines for transportation of petroleum and other products. Under the provisions of this Act, the Government (Central and State) or a Corporation, intending to lay pipelines for the transportation of petroleum could acquire privately owned strips of land (with users' rights) for laying pipelines through their lands.

The Statement of Objective and Reasons for enactment of this Act states "although land can be acquired outright for laying such pipelines under the LAA, 1894, the procedure for such (outright) acquisition is long-drawn and costly". There is a distinct difference between the land acquired on a permanent basis and the land acquired only with the users' right. Since the petroleum pipelines are laid well below the surface of the average ground level, with a minimum cover of one meter over the pipeline, the above ground area of the land remains free of any obstruction. The same land, after burying the pipelines under the ground, is available to the owner of the land for continuing with the usual agricultural activities. Thus, there was no necessity of acquiring land on a permanent basis. The emphasis of the enactment of this Act was on the time and cost factor, which is of great importance for any pipeline project.

After the enactment of the Act, a numbers of cross-country pipeline projects were successfully executed through ROU land, duly acquired as per the provisions of the Act. The Act was made applicable to different states and the Union Territories in a phased manner, keeping in view the requirements of the upcoming pipeline projects. In 1977, the principal Act was amended and thereafter the Act came to be known as the "Petroleum and Minerals Pipelines Act 1962". The inclusion of the word "minerals" in the Act was to extend the provisions of the Act for constructing water pipelines also. Till the turn of the twentieth century the laying of pipelines through ROU land was easier with no major issues involved in acquiring ROUs.

For implementing the provisions of this Act, the functional authority is vested with a "Competent Authority" who is authorised by the Central Government through a Notification published in Gazette of Government of India. Subsequent upon the authorisation, the procedures for acquiring ROU are initiated by the Competent Authority, for and on behalf of the acquiring body. The required actions to be taken under the provisions of this Act pertaining to land and land records is a subject of

the revenue department of the respective state governments. Therefore, the central government, state government or a corporation/company, prefers to have officials with a necessary knowledge of the subject from the revenue department, on deputation from the respective state governments. Till recently, the practice was in vogue but of late the state governments are expressing their inability to spare the services of their officials to the companies intending to acquire ROU for laying pipelines. Under such circumstances, the land acquiring bodies are opting for the nomination of a suitable officer from the department for performing the functions of the Competent Authority.

**Role of Revenue Officials and Co-operation from State Administration:** The experience of companies that have so far successfully completed the cross country pipeline projects shows that the timely availability of land with the user's rights is possible only with the active participation and co-operation of the state government. For instance, India's longest and largest diameter gas pipeline project, popularly known as HBJ Gas Pipeline Project, passing through four States, was constructed in a record time and without any cost overrun. The availability of ROU, free of encumbrances and free from any obstructions or resistance from ROU landowners, helped the timely completion of the project. The respective state governments had then provided adequate revenue officials on deputation to the acquiring body. For a period of over four decades, (from the year of enactment of P&MP Act 1962), the passage of pipelines projects through ROU land was free from any kind of major issues or any kind of daunting problems.

**Increasing Demand for Land for Building Infrastructure and Industries:** In the wake of recent developments in the industrial sector and in rural and urban areas all over the country, there has been a rapid and drastic change in the land use pattern. Lands are being acquired for both the private and public sector enterprises including the real estate developers for building infrastructure, setting up of industries, rural and urban housing projects etc. Cross-country lands, through which the trunk pipelines are constructed, are being converted into non-agricultural lands. The cost of land is also skyrocketing with the increase in the demand for land. The real estate developers and the private entrepreneurs, interested in buying land with commercial outlook are busy finalising land deals offering much higher prices for getting the land, with the result that private landowners are not willing to accept the price of the land determined and awarded in terms of the provisions of the LAA, 1894. These developments have also increased the awareness of ROU land owners, resulting in their demanding a higher compensation.

**Emergence of Problems in ROU Land:** After completing several pipeline projects through ROU land through P&MP Act, 1962, the practice of acquiring of land with users' right should have been much easier and simpler. Contrary to this, not only has it become more complicated and troublesome but it has also become much

more difficult in using the already acquired ROU land for constructing new pipelines or even maintaining the existing pipelines. At a time when the P&MP Act 1962 has completed its golden jubilee year of enactment and application, the Act is not in a position to provide either the intended empowerment of the users' right in the land or any assured protection to persons associated with the construction activities of the pipeline projects in any part of the country. In the recent years, in respect of ROU land, the law of the landowners is prevailing. The very provisions of the Act are being challenged besides conveniently being interpreted by the vested interests. Acquiring ROU rights has turned out to be a nightmare for the pipeline companies continuing in the pipeline industry in the country.

**Issues of Compensation for ROU and Other Damages:** For lands acquired as per the provisions of the P&MP Act-1962, the compensation is paid only for the purpose of having acquired user's right in the land. In the true sense, it cannot be termed as compensation. It is only a payment for the enjoyment of user's right in the land. Compensation for such lands acquired only with user's right is payable at the rate of ten percent of the prevailing market rates and is payable one time only. As in the case of permanent acquisition, the ROU landowners are also demanding compensation at much higher rates than the prevailing market rates. The landowners have also in some cases demanded compensation for the second time for laying a pipeline through the already acquired ROU area, where pipelines had been laid earlier. For determining the amount of compensation, be it for land or damages caused to crops, trees and structures etc. falling within the ROU area, procedures have been laid down in the Rule of the P&MP Act 1963. The compensation generally paid for damages caused to standing crop, trees and structures etc. during the process of construction, has been most reasonable. In fact, presumptive crop compensation is being paid for the subsequent seasons, in case the work of laying pipelines continues during that period.

The compensation is determined on the basis of a field *panchnama*, carried out by a team nominated by a Competent Authority, in the presence of local prominent persons and the respective landowners. This is done prior to the commencement of work throughout the ROU area for recording standing crops, trees, structures etc which are likely to get damaged during the process of laying pipelines. The objective is to compensate the ROU land owners/cultivators for any loss from the agricultural produce, normally obtained from the portion of the land being used for the purpose of constructing pipelines as per the P&MP, Rules 1963. The ROU landowners as per the provisions of the Act are legally entitled to receive compensation in terms of awards declared by a Competent Authority. The compensation intended to be paid as contained in the Act is purely for compensating the losses actually sustained by the affected ROU land owners. Of late, there has been an undue pressure and interference in the process of Panchanama, from the parties interested in the ROU

land, whose objective is to derive a maximum possible compensation, by way of inflating the damages.

The project managers, in their attempt to complete the projects within a scheduled period, make every effort to see that no delay occurs for any reason. Therefore, the pipeline company, through the office of a Competent Authority appointed for the project makes every attempt to see that most reasonable compensation is awarded and timely payment of the same is made to all the affected ROU landowners. In the interest of work, on many occasions undue/unreasonable demands are being met by the acquiring body.

Over the period, the ROU land owners have become aware of the fact that once a particular pipeline project is taken up, the Company will invariably make all out efforts to complete the pipeline work as early as possible. This is because of the huge capital investment made in the project by the Company concerned and also the mobilisation of huge manpower, machinery, special equipments and expatriates deployed in the field by the contractor. If the work is suspended, irrespective of any reason, it costs lakhs of rupees not only to the Company, but also to contractor. Also, if the day to day work is delayed due to frequent stoppages and resistance from the ROU land owners, the works get automatically extended to the next agricultural season in which case the ROU landowners become entitled for the presumptive crop compensation for the coming season. This situation is being exploited by persons interested in the land, for deriving undue benefits, through lodging numerous complaints and claims and also demanding additional compensation through landowners, citing some reason or other and stopping the work while in progress, or not allowing any work in the ROU to continue. The right to compensation has now turned out to be a source of getting easy money.

Recently, during the execution of a pipeline project in Gujarat, the hindrances and resistance from the ROU land owners were so severe that the work which was taken up during October 2009 remained suspended till June 2010. However, the intermittent stoppage was a regular affair at various locations and the project was finally completed in December 2010. Due to delays in getting free access to the ROU, additional compensation for the crop of next season was paid by the acquiring body. During earlier times, in spite of the provision in the Act, there have been very few instances wherein the landowners were represented by their advocates for hearing and for filing of compensation claims. But in the present times, the legal practitioners, after thoroughly studying and analysing the various provisions of the Act have found the ROU as a new professional avenue of mutual interest, for them and their clients i.e. the ROU land owners. According to a provision of the Act, "any person interested in the land under which the pipeline has been laid is liable to receive compensation". Even after receiving the compensation, hundreds of applications are being filed in the office of the Competent Authority and also in the

District Courts, by the ROU landowners through their legal aid providers, claiming additional compensation on different grounds.

**Abnormal Increase in the Expenditure on Account of Payment of Compensation:**

In the case of cross-country pipeline projects which were recently executed or some of the projects which are under construction, the acquiring bodies have been compelled to incur huge expenditure on account of demand for compensation based on the commercial value of land (as against the value of agricultural land which is otherwise payable). The crop compensation is also required to be determined, taking into consideration the highest yield and the highest rates for the respective produce being sold in the market. In a pipeline project which was executed in Gujarat during 2003-2004, land and crop compensation to the extent of Rs. 11 crores was paid by the Competent Authority during the construction phase. The additional compensation through negotiated settlement (based on claims raised by the landowners) resulted in the payment of Rs. 28 crores. In another project executed in Gujarat during the year 2010-2011, compensation amounting Rs.55 crores was paid for a similar project. For this project, the ROU landowners have filed cases in the court for claims to the tune of Rs 65 crores. All such additional expenditure on account of compensation adds to the capital cost of the project. During the last ten years, the expenditure incurred by the pipeline companies, on account compensation as a ratio of the expenditure incurred earlier by these companies on similar projects, keeping in view the additional claims, has been almost 1:10. In respect of the earlier projects, the estimated project cost included the expenditure on account of ROU compensation at three to five percent (maximum) of the total cost of the projects. During the last decade, the expenditure incurred on account of compensation has been increasing, affecting the capital cost of the project.

**Why Amendments in the Pipeline Act are Necessary?:** It is pertinent to note that the present Act does have some loopholes, open ends and certain issues which remain unaddressed. The pipeline industry in the country was in its nascent stage when the Act was drafted and there is a vast difference in the prevailing situation in the country. As in the case of LAA 1894, the P&MP Act 1962 also will have to be suitably modified, redrafted, enacted and made more effective to serve its basic purpose and objective, while giving due consideration to the difficulties faced by the acquiring bodies executing the pipeline projects.

The country's energy requirements are so huge and ever increasing that many more pipelines, in the near future, will have to be constructed in the country. Many state owned and other private sector companies involved in the petroleum sector have plans of constructing several hundred of kilometers of pipelines. The expenditure incurred on a given pipeline, i.e. the capital cost of any pipeline project is taken in to consideration for fixing the sale price of products, as per the guideline issued by the Government. If the common consumers are to be benefited, the capital

expenditure must be strictly monitored and kept under control with no exception to the expenditures on account of compensation for the ROU of the given pipeline.

Apart from making the Act very effective with all the necessary amendments, the authorities need to be adequately empowered for its strict application. The misconceptions among the ROU land owners who create resistance and raise issues, citing various reasons are required to be cleared and clarified. At the same time, the acquiring Bodies must also realise the responsibility and the importance of the users' right. The various issues being projected by the ROU landowners are to be jointly analysed and discussed by all the concerned for the purpose of clarification and also for resolving these issues. This can be done only by introducing suitable amendments not only in the P&MP Act 1962, but also in the construction practices.

**Issue of Premium Price for Land:** The area falling within the width and length of the ROW is acquired with user's rights. Once the ROU is acquired, the users' right is recorded in the respective village land record register. Such an entry is made for the safety of the pipeline, information of the possessor and for the knowledge of others who may be intending to use the said land for purposes other than agriculture (no construction of any kind should be carried out over the pipeline or within the ROU area). The remaining area where the ROU has not been acquired is free from any restrictions with regard to use of land by the land owner. The issue of premium price is of no serious nature. The recent agitations against the acquisition of land on a permanent basis reveal that the landowners are not interested in parting with their ancestral lands as they are emotionally attached to their lands. Under such circumstances the issue that the landowners are deprived of the premium price for land is not at all sustainable.

It is important to note that the ROU land will remain green as it is not possible to use that land for non agricultural purposes. The green cover will always help to protect and improve the environment. In fact, the pipeline companies laying pipelines must ensure that the ROU of more than the adequate width is acquired with the user's right which will directly help to increase the green cover over the land creating a positive impact on the environment. Acquisition of ROU in the land will actually help the landowners to protect their ancestral lands from acquisition by others with which the owners claim to have an emotional attachment.

**Higher Compensation for ROU Land:** The issues being raised by landowners pertaining to a permanent acquisition of land have directly impacted the acquisition of land with the users' right. This is in spite of the fact that strips of land required for laying pipelines are not acquired on permanent basis and there is no change in the ownership of land and most importantly the land is very much available for agricultural activities. As per the Rule, the basic rate of the land is to be obtained from the local Registrar/Sub Registrar office or from other Government authorities

who fix the price of land and accordingly the compensation at the rate of 10 percent of the value is to be determined by a Competent Authority. For various reasons, the actual rate at which the land deals are concluded never gets reflected in the sale deeds registered at the Registrar's office. There is a huge difference observed in the actual market rate and the rate recorded in the registered document. The index price fixed by the Government authority is also not comparable with the commercial value of the land which is being demanded by the landowners. Basically, the demand for a higher compensation is not in conformity with the objective and the purpose of the P&MP Act 1962, which was purposefully enacted by the Parliament for facilitating the construction of cross country pipelines. Even though there is no justification in adopting the commercial rate for agricultural lands, the Competent Authority and the acquiring body are compelled to satisfy the demand for a higher compensation by giving undue justifications in the order of awards declared for payment of compensation for the ROU land.

**Demand for Compensation for Improper Restoration of ROU:** Another major issue relates to the restoration of ROU land. After the completion of construction activities, ROU land is required to be restored back to its original condition. It is the responsibility of the acquiring body to ensure that ROU is restored to its original condition and released to the respective land owners for continuing with their agricultural activities. The restoration of the ROU land is covered under the scope of the work, awarded to an Agency for laying pipelines. However, claim applications are increasingly being filed before a Competent Authority as well as in the District Court citing improper restoration. All the companies, involved in the construction and maintenance of cross country pipelines, must try to find a permanent solution to this perennial problem.

**Other Demands for Additional Compensation:** According to the landowners, the top layer of virgin soil of the land under the ROU gets mixed with other layers of the soil due to excavation and movement of heavy machinery through ROU land, adversely affecting the fertility of the soil and thereby the growth and yield of the crops. The soil also becomes hard and loses its porosity and moisture retaining capacity. The field gets divided into two parts during construction of the pipelines and trenches, resulting in temporary severance adversely affecting agricultural activities. There is a demand for payment of additional compensation for the above.

**Demand for Additional Compensation for Restrictions Imposed on ROU Land:** Although the ownership of land does not change in the events of acquiring the users' rights, there are certain restrictions with regard to the use of land falling under ROU area. The construction of any building or any other structure, reservoir or dam or sinking of wells or planting of any trees is restricted. Land-owners demand additional compensation for depriving them of the above including compensation



for losing a suitable location for locating other sources of water for agriculture, for losing fruits, firewood etc.

**Validity of Claims for Additional Compensation:** Except for the severance of land, which is likely to happen at certain locations during the construction phase, none of the other issues raised the landowners for claiming additional compensation has been addressed in the Act. Many of the issues like virgin soil and mixing up of soil layers etc. are normally taken care of during the construction phase itself. The compensation claims for depriving the landowners of benefits following from trees and the planting of trees which has been restricted in the ROU land run against the normal agricultural practices. Trees are normally planted on the field boundaries and not in the middle of the field, unless the landowner decides on using the entire field for horticultural purposes. In such cases, the trees are planted across the entire or part of the area of the field. In fact, a minimum tree cover is sufficient for providing shelter, while the rest of the land can be used for other agricultural activities a practice in vogue since a long time. What is happening now is that the interested parties, through raising all such issues and making claims are exploiting the situation by conveniently interpreting the provisions of the Act.

**Conclusion:** All the issues raised by landowners related to compensation and the problems faced by the acquiring body involved in the construction and maintenance of pipelines, will have to be given due consideration for incorporating suitable amendments to the various provisions of the Act and the Rules. The guideline for determining compensation both for land and damages must be clearly laid down in the Rules, with no scope for its interpretation, so that the authorities concerned are not required to provide any undue justification while declaring the compensation awards.

The pipelines, being part of the essential services, do not cause any disturbance to the land use pattern or any harm to the environment. In fact, the pipelines help to protect the area available for agriculture. Therefore, the application of the Act must be made very effective with the support of the state administration in all the states and at all levels. This is very necessary since one of the state governments, very recently, keeping in view the demands raised by the affected landowners, had advised a public sector company to have the pipelines removed from the ROU land.

### **Suggestions for the Pipeline Sector**

1. **Adequate Compensation should be given to ROU Land :** Instead of referring to the land value as recorded in the Registrar's office, the basic value of land can be taken from the latest index price of land determined by the Government for the irrigated lands in the respective villages. The compensation at the rate of 10 percent which is payable only once is certainly inadequate for enjoying the users' right in the land throughout the life

period of pipelines. Therefore, the percentage of compensation, at the rate of 50 percent of market value could be reasonable and adequate for satisfying the demand for a higher compensation of the landowners. The index price and the average cost of land in the villages of a Taluka, whichever is higher, should be considered for determining the land compensation uniformly for the entire ROU lands in that Taluka, irrespective of their classification or characteristics. In case the latest index price is not available, price escalation based on the price index can be added for each year for arriving at an updated price of land. The detailed guidelines for determining the land compensation should be included in the modified Rules.

2. **Authentic Recording of Panchanama:** Crops, trees and structures etc. falling within ROU area which are likely to be damaged during the construction activities are to be recorded based on a Panchanama, to be carried out by a team nominated by the Competent Authority. The local prominent persons from the respective village and landowners are also included in the team. Presently, the compensation is determined by the Competent Authority on the basis of the Panchanama. On many occasions, the teams are found to have been influenced by prominent persons in the villages, resulting in awarding of excessive/undue compensations. To get rid of this situation and the interference from the locals, it is desirable that the latest technology of Geographic Information System (GIS) is adopted for mapping and generating the most authentic land use maps with the help of satellite imageries, which help monitor activities at different stages in the ROU land. The data obtained from such maps can be further supplemented through site visits for identifying the type of crops, trees and details of the structures.
3. **Nomination of a Competent Authority:** The functions of the Competent Authority is very important, with a dual role to perform. It is, therefore, necessary that a person to be nominated to perform the functions of a Competent Authority is fairly conversant with the land revenue matters. He may be an officer from the State Government (in the rank of Deputy Collector) or an officer from the Company with a legal background and having a fair experience in the execution of pipeline projects. This aspect needs to be incorporated in the basic Act.
4. **Effectiveness of the Act:** Since the provisioning of ROU for constructing pipelines has a direct relationship with the industrial and economic development of the country, the Act will have to be made very effective with stringent provisions. The pipelines, directly or indirectly benefit each one of us who are in constant need of energy in various forms.

5. **Support from Local Administration:** The revised Act must have a provision clearly indicating that the State Government, while applying the provisions of this Act, shall provide necessary support through the local administration to the acquiring body and the Competent Authority to ensure a hassle free ROU' acquisition process.

Charanjit Singh\*

## The RFCTLARR Act-2013: Some Reflections

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**Abstract:** *After a long and adventurous journey in which series of deliberations were held at various levels, and incorporating various concerns of diverse stakeholders, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act-2013 was enacted by the Parliament. The Act has come into effect from 1<sup>st</sup> January, 2014. There have been mixed reactions to the Act as was expected from such a path breaking legislation. Some of the apprehensions expressed are premature as the Act is still to fully test the waters. The important changes and perceived apprehensions about the Act have been discussed in the paper.*

**Introduction:** The new Land Acquisition Act, i.e., RFCTLARR Act-2013, has come into effect from 1<sup>st</sup> January, 2014. It replaces the 119 year old Land Acquisition Act-1894. As the country gears up to implement the new landmark legislation, this paper aims at reflecting the ground reality that necessitated its enactment as well as demystifying its important provisions.

**Issues with LAA, 1894:** The objections/protests against the old Act centered on the following issues:

1. There was no provision for consultations with stakeholders during the land acquisition process. The concerns of the land owners were hence not taken on board.
2. Land could be acquired for any 'public purpose' and the term was not defined comprehensively.
3. The urgency provision of the Act was used rampantly for any purpose and the land owners had to vacate the land immediately as per its provisions.
4. The persons who were dependent on the land being acquired but did not own it were completely left out of the process of land acquisition and did not get any benefit.

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5. The land was acquired for one purpose and utilised for another. Further, if the acquired land changed hands from one concern/owner to another at a large consideration, the benefit was cornered by the entity that transferred it, without sharing it with the land owners from whom the land was acquired.
6. The land owners did not get a fair price for the lands which were acquired. This was due to the lack of an objective formula in the Act. The price determination was therefore left at the discretion of the Collector.
7. The lands were acquired and the project took off on the acquired land but the owners did not get compensation for their land for years for one reason or another. The cases related to land acquisition continued in civil courts for years.
8. There was no provision of R & R in the Act. In the absence of the legislation, this was the mostly neglected part (despite the NPRR, 2007).

The aforesaid issues led to agitations in one form or another against various land acquisition proceedings across the country, also resulting in police firing and casualties. The overall result was long delays in implementation of projects, court cases and in some cases shifting of projects from one state to another. Singur in West Bengal, POSCO in Odisha and Noida in Uttar Pradesh are few examples of projects that gained national attention.

**Features of the RFCTLARR Act-2013:** After a long drawn consultation process, the RFCTLARR Act, 2013 was passed by the Parliament in the year 2013 which endeavors to address all the issues listed above. Its main features are as follows:

1. The Act provides for a mandatory SIA study along with Social Impact Management Plan (SIMP). The SIMP, listing the ameliorative measures to address the adverse impact of the project has to be prepared, in all cases of land acquisition.
2. To ensure transparency and participation, the Act provides for mandatory consent of at least eighty/seventy percent of the land owners in the cases of land acquisition for private/PPP projects. In the Scheduled Areas, consent of the Gram Sabhas/Panchayats/Autonomous District Councils is mandatory in all cases of land acquisition.
3. The term “Affected Family” has been defined comprehensively to ensure compensation to those also who may not lose land in the acquisition process but who stand to lose their livelihood due to land acquisition.
4. The Act provides for a clear scientific formula prescribed for calculation of the market value of the land being acquired. The market value has to be

multiplied by a factor prescribed in First Schedule. Further, solatium has been increased from 30 percent to 100 percent.

- The Act prescribes an institutional mechanism for implementation of R & R in the form of Administrator and Commissioner of R & R.
- The comprehensive R&R benefits for the affected families has been provided for in the Second Schedule of the Act.
- The Act provides for mandatory list of amenities/facilities to be developed at the rehabilitation site where the displaced families are to be settled (provided for in the Third Schedule of the Act).
- To curb the misuse of the urgency provision, the conditions for its imposition has been limited to acquisition of land for defence of India, national security or for any emergency arising out of natural calamities only.
- To ensure time bound disposal of disputes related to LARR, the Act mandates the establishment of the Land Acquisition, Rehabilitation & Resettlement (LARR) Authority.
- To ensure time bound utilisation of the land, the Act provides that if any land or part thereof acquired (under the Act) remains unutilised for a period of five years from the date of taking of the possession, the same shall have to be returned to the Land Bank/original land owners as specified by the appropriate government.

**Reflections on Common Apprehensions:** The aforesaid Act has been generally well received in the country by a cross section of stakeholders. However, there are also apprehensions with regard to delay in acquisition proceedings and cost appreciation of the projects, with the latter being most vigorously raised by the reality sector. These apprehensions are however preposterous as the Act is still to be tested on the ground. Some of the oft-repeated apprehensions are discussed below:

The concern that it will increase the cost of the project is right. But it has been overlooked that most of the projects get mired in controversy due to opposition to land acquisition by the land owners and other stakeholders. The subsequent delay due to this increases the cost of the project appreciably. The project, promoted by POSCO, a South Korean firm, was estimated to cost \$12 billion, when the agreement was signed in the year 2005<sup>1</sup>. It has been mired in controversy due to land acquisition, environmental clearances etc. The cost of the project has increased appreciably in the past nine years. As on 30th June 2012, due to non-acquisition of land, 58 projects

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<sup>1</sup> Editorial - This land is whose land?, Sep 7th 2013, *The Economist*, Print Edition Asia

of national highways have been delayed<sup>2</sup>. The estimated cost of these projects is increasing with delay each year.

In developed countries like the United States of America, comprehensive compensation is ensured in all cases of land acquisition<sup>3</sup>. Though the government or governmental agency may acquire land of an individual owner for some public purpose, the owner is entitled for compensation of property and losses incurred or even of lost profit. In ensuring reasonable compensation, the following factors are taken into consideration:

- loss of private property
- damages connected with loss of private property, such as business and economic losses and lost profit
- limitation of usage of land
- disturbance, such as noise, dust, and smell etc., causing, in turn, reduction of the land value

In comparison, in spite of the huge population in India we still have a lot of distance to cover in ensuring comprehensive compensation for land acquisition. The new Act has made a small beginning by introducing transparency and participative approach in ensuring comprehensive compensation to the affected families in a time bound manner. Though the projects costs may increase to some extent, this is unlikely to have an impact on the viability of the project to the developers. The compensation/ R & R norms will certainly decrease their profits and reduce income inequalities. However, the increase in the financial costs for the developer would be at the expense of a decrease in the social costs, undoubtedly improving the welfare outcome.

There have been apprehensions that the time period for land acquisition has increased in the new Act. In fact, the LAA, 1894 prescribes a period of one year from section 4 (preliminary notification) to section 6 (declaration) and a further period of two years up-to Collector's award under section 11. The equivalent sections in the new Act are section 11, 19 and 23 respectively. The time period between section 19 and 23 has been reduced to one year. So, even if we take eight months of SIA and its appraisal which are pre notification processes into consideration, the period is still lesser than the old Act. Further, since the new Act prescribes time limits for various steps within these broad limits, this can be expected to speed up the land acquisition proceedings.

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<sup>2</sup> [www.indiastat.com](http://www.indiastat.com), accessed on 13<sup>th</sup> September, 2014

<sup>3</sup> [http://www.hiil.org/bestpractices/How%20to%20determine%20compensation%20for%20land%20acquisition%20\(USA,%20Arizona\)](http://www.hiil.org/bestpractices/How%20to%20determine%20compensation%20for%20land%20acquisition%20(USA,%20Arizona)), accessed on 15<sup>th</sup> September, 2014

Among the major apprehensions against the new Act is the delay in acquisition proceedings by mandating SIA in all cases of land acquisition. To ensure participative and transparent approach in land acquisition process, it is essential that the pros and cons of the project are discussed with the community before starting the acquisition proceedings. In the absence of this, misgivings about the project may remain which will ultimately hurt the project in the long run. Further, as the democracy strengthens its roots in the country, it is imperative that people are brought on board in land acquisition proceedings also. The provisions of SIA seek to ensure this. The time limits of SIA and its appraisal of six and two months are outer limits and it is expected that overtime as the things fall into place, these processes will be completed in a much shorter time period. In land acquisition for projects which require less land, the time required for SIA will be much less.

Another major concern is that there are too many steps in the land acquisition proceedings in the new Act. The RFCTLARR Act-2013 broadly incorporates the same steps as in the LA Act-1894 except the provisions of R & R, which run parallel to the main steps of preliminary notification, declaration and award by the Collector. As already stated, these steps have to be completed in the reduced time period of two years now. SIA and its appraisal is the only new addition in the new Act, the importance of which is explained above. On the other hand, the time bound disposal of disputes by the LARR Authority has been totally ignored in the discussions on the new Act. The jurisdiction of the civil courts has been barred and the decisions of LARR Authority can be challenged in the High Court only. Further, the LARR Authority is expected to clear the cases within a period of six months only. This will be a big relief for both the land acquirers as well as the land losers. In fact, at present the cases remain pending in civil courts for years resulting in inordinate delay in the project implementation.

The whole issue of land acquisition for private parties has been raised repeatedly at various fora. Even within the government, the view of one group was that the Government should not acquire land for private parties and they should purchase land directly from the land owners<sup>4</sup>. Their main contention was that in the developed economies of USA, Japan and Canada etc. the government does not facilitate land acquisition for private purposes and in a free economy why should this be advocated and why should the government take sides? In a “*Willing seller and willing buyer market*” fair price is sure to be fixed. The provision of land acquisition for private parties was added in the LAA, 1894 only in the year 1984 by a major amendment. On the other hand, the other view point was that in a developing economy like India, the government has to play an active role in facilitating various economic activities including land for industrialisation, infrastructure development etc.

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<sup>4</sup> Thirty-First Report of the Standing Committee on Rural Development on ‘The Land Acquisition, Rehabilitation And Resettlement Bill, 2011, pages 18-26



Further, as the farmers are ill informed, they can be exploited in direct negotiations of land sale/purchase with the project authorities. The new Act takes a middle path as it encourages private purchases for various activities but provides for land acquisition for private purposes with the consent of majority of land owners. Further, it provides for comprehensive land compensation and R & R for them.

There has been a criticism in some quarters that the powers have been centralised by the new Act. In fact, the LA Act, 1894 did not provide any lee way to the states. It is to be noted that the states have been given adequate leverage in the new Act, e.g., notification of limits for private acquisition after which provisions of the Act (R & R) will become applicable, limits for acquisition of multi-cropped land, determination of the multiplier on a sliding scale in the rural areas etc. The new Act is progressive as it leaves key decision points with the state governments and provides them the flexibility to take various steps as per their specific requirements.

**Conclusion:** The LAA-1894 was amended seventeen times by the Central Government and each section of it had been amended in one form or another by various States during its illustrious 119 year old history. As the subject “Acquisition and Requisition of property” is in the List III viz. the Concurrent List of the Constitution, both the Centre and States can legislate on the subject. Therefore, after actual implementation of the RFCTLARR Act, 2013, the state governments, if required, can move specific amendments to the Act.

In the nutshell, it can be stated that the most of the misgivings about the new Land Acquisition Act are preposterous and misplaced. The new Act strives to maintain a delicate balance between concerns of land owners and the needs of the project authorities who desire land for various infrastructural and developmental activities. However, business cannot be as usual. In the changing scenario of increasing awareness, rising prices of land etc. new and innovative models need to be developed in which land owners should also have a stake in the development. The concept of ‘Lease’ introduced in the new Act needs to be explored. An example in this regard is *Maan* village in Maharashtra where the villagers have come up with the idea of developing the land themselves and renting it to the project authorities<sup>5</sup>. Thus villagers will retain ownership of the land and get an income in the form of rent, resulting in a win-win situation.

The new Act marks a new and much desired beginning in the crucial field of land reforms. Let the waters be tested by the new Act. If certain difficulties are observed during its implementation, the relevant provisions can certainly be amended and improved upon.

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<sup>5</sup> Sathe, Dhanmanjiri, Vicissitudes in the Acquisition of Land: A Case Study, Economic & Political Weekly, Feb 15, 2014.

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Reshmy Nair\*

## The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act-2013: A Critical Review

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**Abstract:** *This paper attempts to present an unbiased evaluation of the provisions of the new legislation on land acquisition and demystify the impact of its major improvisations - the compensation, mandatory R & R and the new processes. While analysing the promising features, the paper also presents the areas that would require more clarity and concerted action. The paper in its concluding section, examines the policies and practices of benefit-sharing followed worldwide to improve the post acquisition social and economic status of the affected people, a concern that has been inadequately addressed by the landmark legislation.*

**Introduction:** Land is a dominant source of livelihood for a significant majority of the population of our country. Beyond the assured source of employment, land serves as a source of collateral, provides cushion against inflation and is a source of social prestige. On the other hand, land is a crucial resource required for development activities. It is the dichotomy of views on land by different stakeholders which is at the heart of opposition to land acquisition. During the past decade, land acquisition has emerged as the most critical impediment for infrastructure development in India. The opposition to land acquisition has largely stemmed from equity and socio-cultural concerns. These developments are in contrast to traditional literature on development economics that was largely biased towards labour and capital with less attention paid to land as a constraining factor for development.

It is important to strike a balance between the need for land for developmental activities and the need to adequately address the issues raised by those impacted by the acquisition of land. The issues of land acquisition and compensation are now occupying the attention of the policy makers. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 that replaces the colonial LAA, 1894 is an effort in this direction. The Act, that seeks to ensure humane, participative, informed and transparent process for land acquisition

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would be the first ever legislation mandating R & R for all affected families. The Act has undergone innumerable revisions at every stage i.e. from the draft of the National Advisory Council (NAC) to the bill introduced in the parliament to the bill finally passed by the Lok Sabha and Rajya Sabha. The present paper attempts to present an unbiased evaluation of the provisions of the new legislation and demystify the impact of its major improvisations

**The Genesis of the Regulatory Framework:** The LAA-1894, formulated during the British Raj, allowed the government to forcibly acquire land from private landholders for projects of public purpose. The law was premised on the doctrine of *Eminent Domain*, the legal theory of government taking power; the power of the sovereign to take or destroy private property for public purpose without the consent of the owner. The term was taken from the legal treatise, *De Jure Belli et Pacis*, written by the Dutch jurist Hugo Grotius in 1625, who used the term *dominium eminens* (Latin for *supreme lordship*) and described the power as follows:

*“... The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property.”*

The doctrine of eminent domain invests power in the state to acquire private land for public purpose on payment of compensation. The origin of the doctrine in India can be traced to the need of the colonial state to create infrastructure to facilitate movement of goods and services for trade and commerce. The British acquired land for railways, expansion of trade routes, establishment of army cantonments and ordinance factories, construction of dams and canals etc. After independence, the central and state governments acquired huge tracts of land using LAA, 1894 for setting up heavy industries, physical infrastructure (such as dams, railways, and highways), creation of townships etc. The legislation facilitated transfer of land by doing away with the protracted negotiations with numerous small land holders, thus economising on time and cost.

The Constitution, as originally enacted, had provisions under Articles 19 (1) (f) and Article 31 which constituted the fundamental right to property. The 44th Constitutional Amendment of 1978 removed the right ‘to acquire, hold, and dispose of property’ from the Constitution as a fundamental right and retained it as only a legal right under Article 300A (that is, no person shall be deprived of his property save by authority of law). Under the Constitution of India, states have the legislative competence to enact laws relating to land. However, acquisition and requisitioning of property is a concurrent subject. Land can be acquired either by the state or the

central government for the purposes listed under state and central list respectively. The state governments can make any amendments they want as long as such changes are not opposed to the provisions as they stand in the Act.

LAA-1894 only prescribed how land could be expropriated with payment of compensation, but had nothing about people's entitlement to being resettled and rehabilitated. Further, the legal framework provided for cash compensation to persons with legal title/legal right in the acquired lands while leaving the livelihood issues unaddressed (leaving the livelihood dependents on a lurch). The Act, was also inherently unfair in fixing a compensation based on market value for forcible acquisition of land (explained in the following sections). In India, transactions of land in the rural areas, if any, are found to be minimal. In the tribal areas, transactions of land are greatly restricted by legislation or customary practice. Arbitrary market evaluations have accentuated the problems. Sound mechanisms to evaluate and quantify loss of CPR by the displaced do not exist.

**Critical Evaluation of The RFCTLARR Act, 2013:** Given the above deficiencies of the LAA, 1894, there was an escalating demand to replace the legislation with a more humane law that recognises the issues related to DID. The RFCTLARR Act, 2013 is an effort in this direction. The new legislation provides for enhanced quantum of compensation for land, a mandatory R & R package that extends beyond eminent domain acquisitions (land purchases beyond State's fixed limits), mandatory social impact assessment, 'prior consent rule' in select situations, benefit sharing from accretion in land value of non-developed land, restraining indiscriminate use of urgency clause etc. The major provisions of the Act are critically examined below.

1. **Land Compensation:** It is common knowledge that land markets do not function efficiently in the country. Existing research point out that there is very few land transactions (especially) in the rural areas. Unless forced by extreme circumstances, the land-owner does not sell his land. Thus, there is an involuntary element in majority of the recorded land transactions as many of these are distress sales. There is also improper recording of even the limited transactions that take place. It is also widely appreciated that vast variations in land quality render it extremely difficult to find comparable transactions. The RFCTLARR Act rightly recognises that the owners hold on to their land as they value their asset more than the prevailing market price.

Though the new legislation continues to have the compensation based on market value and there can be endless debate on using this as a benchmark<sup>1</sup>, the significantly

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<sup>1</sup> Fair market value of land is the amount that the land might be expected to realise if sold in the open market by a willing seller to a willing buyer" (Asian Development Bank). Going by the definition, it may be difficult to conclude if the valuation proposed can arrive at the correct valuation of a given land.

higher benefits to the land losers is beyond doubt. For determining the average sale price, fifty percent of the higher sale deeds of the past three years is taken (if this is higher than the market value specified under the Stamp Act) would be taken into account. Market value of land multiplied by a maximum factor of two in the rural areas (multiplier determined on a sliding scale, the scales to be decided by the respective states) and a solatium of 100 percent of the total compensation amount (30 percent in LAA-1894) would imply that in the extreme cases, the compensation would indeed be four times the traditional valuation. Given the lack of functioning market, the ensuing valuation of the land would itself depend on the subjective valuation by the District Collector. The final legislation places the responsibility on the state government for specifying the floor price in areas where the market value cannot be determined based on sales statistics or the Stamp Act. Is the legislation anti-industry and would there be an enhanced compensation and spiraling costs for land? There are three points that merit attention in this regard:

- First, the value of land in a number of land acquisitions across the country have already been a multiple of the valuation arrived by LAA, 1894. For instance, the compensation was 40 -50 percent and in some instances more than 100 percent higher than the traditionally arrived value (market value plus solatium plus enhanced compensation from Section 4) in majority of the land awards arrived through consent by Irrigation department in Andhra Pradesh. The State Irrigation department has acquired more than 5 lakh acres of land since 2005 through the consent mode. Similarly in many transport projects assisted by the World Bank, the land compensation has been 50-100 percent higher than the traditionally arrived market value (World Bank, 2012). Forced by protests, project proponents have increasingly been agreeing to consent awards and paying a compensation that is often several times higher than the market value. The new legislation only makes the existing and widely prevalent practice mandatory. There does remain a possibility of the affected people still not agreeable to the norms and the likelihood of negotiations albeit at a high benchmark level.
- There was an apprehension that the consideration of highest sale transactions for determining the average sale price may result in a spurt in the speculative rate. Experiences in land acquisition in the country reveal a marked increase in the land transactions prior to the notice. In the case of the new legislation, it could take a year of preparation, examination and approval of the SIA Report by the government before the preliminary notification. The existing landowners could resort to sale of small extent of land at exorbitant rates. Some of the judicial interventions have set useful precedent in this regard. In *Ranvir Singh and another vs. Union of India* (2006) , the Supreme Court pointed out that *“Market conditions prevalent on the date of notification are relevant. An isolated sale deed showing a very high price cannot be the*

*basis for determining market value*". Similarly in *Union of India and Another Vs. Ram Phool and Another* (2003), the apex Court observed that the *"Sale price in respect of a small piece of land, it is well settled, cannot be the basis for determination of a market value of a large stretch of land.*

The RFCTLARR Act does take into consideration this critical concern of the industry. Explanation 4 of Section 26 states that "while determining the market value under this section..., any price paid, which in the opinion of the Collector is not indicative of the actual prevailing market value may be discounted for the purposes of calculating the market value.

- The apprehension of spiraling land cost in subsequent acquisitions have been quelled by the additions in Section 26, Explanation 3 which states that any price paid as compensation for land acquired on an earlier occasion in the district shall not be taken into consideration in determining market value.

On the other hand, from the perspective of the land-losers, there has been a criticism of significantly scaling down the multiplying factor since the NAC made its initial recommendations. There is also a concern about the significant differences in the price of land and economic value of land for those rendered landless. Given that land forms a livelihood base, the value of land would be very different for those whose entire lands are confiscated and those who are partial land losers. A uniform R & R package for the different categories will be inherently unjust owing to the difference in their economic valuations of land as also varying levels of economic losses. Further, the land valuation will certainly be higher if it were used for industry, compared with its present value in the agricultural sector. This issue was aptly reflected in the judgment of the Supreme Court in the *"A Natesan Pillai Vs Government of Tamil Nadu, 2010"* Case. In the said case, for providing Adi Dravidas with house sites, the Tamil Nadu Government acquired land at Tiruchi district. The Land Acquisition Officer awarded Rs. 1.72 per sq. feet. The appellants received a much appreciated value of Rs. 17 per sq.ft. for their land from the reference court. On the State Government's appeal, the Madras High Court brought the value down to Rs. 9. However, the Supreme Court fixing the value at Rs. 11 held that *"The market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under LAA, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future"*.

The Act does not make an allowance for the above and may be particularly regressive in fixing a uniform compensation package. However, it does contain three progressive measures.

- To combat the cause of resentment due to increase in the values of land post acquisition and development, it is increasingly being advocated that land could be acquired in surplus to what is necessary for the project and this excess land which is likely to be more valuable post development could be reallocated to the displaced people (Dan et al 2008). The Act introduces a form of benefit sharing in case of land acquired for urbanisation purposes, a measure that has long been emphasised by the resettlement specialists. The Act makes it mandatory to reserve 20 percent of the developed land to the land losers, though the price of land offered to the land oustees will include the cost of acquisition and development. It may become imperative to ensure that the cost of development thus arrived at does not render the land beyond the reach of the economically vulnerable people.
- A major reason for the protests against land acquisition in the recent years has been the disappointment of the original land owners over the manifold increases in the prices of the land after it is compulsorily acquired from them for infrastructure and urbanisation purposes. The new legislation mandates that whenever the ownership of any land acquired under this Act is transferred to any person for a consideration, without any development having taken place on such land, forty per cent of the appreciated land value shall be shared amongst the persons from whom the lands were acquired in proportion to the value at which the lands were acquired. However, the condition “without any development having taken place on such land” may still prove to be blessing for the project proponents and a significant roadblock in the implementation of this novel provision.
- Third, the Act makes an additional seventh consideration in determining the amount of compensation in Section 28 (as against six considerations in the original LAA-1894, Section 23). This states that in determining the amount of compensation to be awarded for land acquired, the Collector shall take into account any other ground which may be in the interest of equity, justice and beneficial to the affected families. Though the Act does away with the provision of Consent Award (Section 11.2 of LAA-1894), this additional condition does provide the Collector with some flexibility to address genuine concerns of land losers or differential impact per se.

Further, to ensure that the Act benefits the original owners who had unassumingly sold their land to speculative elements, the Act states that if any land is purchased by a person on or after 5<sup>th</sup> September, 2011 (above limits specified by appropriate government) and the same land is acquired within three years of the new Act, 40 percent of the compensation amount would have to be shared with the original owners.



## 2. Mandatory R & R Package Extending beyond Land-losers and Land Acquisitions:

The LAA, 1894 Act provided for a notice to be served on all *persons interested*. Section 8, Clause 9 (2) states that “Such notice shall state the particulars of land so needed, and shall require all persons interested in the land to appear personally .....to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for such interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to be made”, Clause 9(2). “The Collector shall also serve notice to the same effect on the occupier (if any) of such land and all persons known or believed to be interested therein”.... Clause 9(3)

However, since the law did not provide a clear definition of the term nor any procedure to identify various affected categories, the land acquisition process could be completed with compensation (whatever meager) to the title holders. This was recognised by the NPRR, 2007. Apart from the families whose land or other place of residence is adversely affected by the acquisition, NPRR included tenants, agricultural/non agricultural labourers, rural artisan, small traders/self employed residing/engaged in any business etc. The new legislation makes this definition more comprehensive by including families dependent on CPR, tribals and other forest dwellers who have lost any of their traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, families assigned government lands, and urban livelihood affected families, with a uniform qualifying benchmark for all livelihood dependents (primary source of livelihood) of having stayed in the acquiring area for a minimum of three years.

The RFCTLARR Act will be the first legislated relief for the affected families who are not land-losers. All affected families will have a choice of employment, annuity of two thousand rupees per month per family for twenty years (with appropriate indexation to the Consumer Price Index) for agricultural labourers or a onetime payment of five lakh rupees. In addition, each displaced family would be entitled for a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year and a plethora of other monetised resettlement benefits (one time resettlement allowance, transporation grant, grant for cattle-shed, grant to artisans, land for land in irrigation projects, houses for the displaced families and 25 infrastructure facilities in resettlement colonies).

The Act gives a more precise meaning of the term “family”. A family includes an adult person, spouse, minor children, minor brothers and minor sisters dependent on him i.e. *‘an adult of either gender with or without spouse or children or dependents shall be considered as a separate family’*. While the more inclusive definition is certainly a welcome change, the criteria to be adopted in identifying

the affected people would have to be clearly spelt out. In most projects, the outsiders swell the affected area to avail the R & R benefits. The situation would become more difficult for the project proponents if all dependents would be deemed as separate families and legally entitled to R & R packages. Clear identifiable criteria and documentary evidence to support their claims would have to be finalised. In the event of lack of clarity on this critical aspect, the interpretation would remain at the discretion of the authorities and misused by claimants.

The R & R package envisaged by the Act extends to not just eminent domain acquisitions but also to the lands purchased by the private sector, the limits for the applicability clause being left to the discretion of the respective state governments. However, for those land acquisitions, where the private sector has already compensated the landowners with a higher or similar package (provision of employment, annuity and comparable monetary compensation), the applicability of this provision may not be fair. The package would in that case have to be solely for the other affected families. On the other hand, to safeguard against those private developers who intent to escape these limit, the land purchases for a single project by the same company ought to have been clubbed together and the combined area considered for determining the applicability of R & R provisions.

### **Procedural Changes in RFCTLARR-2013**

**SIA:** The most important procedural change in the impending legislation is the SIA study which is to be carried out as a prelude to all land acquisition projects initiated for a public purpose. This is expected to provide the affected people with a legitimate forum to articulate their concerns before the actual start of the land acquisition process. The NPRR, 2007 did envisage a mandatory SIA study when the number of displaced people exceeded 400 in the plain areas and 200 in the hilly areas.

Under the Act, SIA will be mandatory for all projects (except land acquisition under urgency provisions and in irrigation projects wherein an Environment Impact Assessment Study has to be carried out). The study (to be completed in 6 months) would aim at assessing the veracity of public purpose in the proposed land acquisition, impact of the acquisition on the human and material costs imposed and if it is outweighed by the projected benefits. More importantly, the study would assess if the land proposed is the bare minimum and if all available alternatives have been considered. The process of seeking consent in scheduled areas and private/public private partnership projects will also be covered in the SIA. The SIA Report is to be evaluated by a seven member Expert Committee (comprising two social scientists, two representatives of affected local bodies, two rehabilitation experts and one technical expert) within two months of its constitution. SIA study by the appropriate government also has a mandatory public hearing process.

The Act incorporates few major changes from the bill version as regards the evaluation of the SIA study is concerned. First, the Chief Secretary headed Committee (where land acquired exceeds 100 acres) for evaluation of SIA Report has been done away with. Second, the appropriate government is now empowered to overrule the recommendations of Expert Committee and go ahead with acquisition. Section 7 (2) states that *“Where the appropriate government in spite of such recommendations, proceeds with the acquisition then, it shall ensure that its reasons for doing so are recorded in writing”*. Third, following recommendations of the Standing Committee, the Act includes representation from the local communities and affected people in the constituted committees. Fourth, the appropriate government has to ensure that there is no unutilised land previously acquired in the area and if its exists, the same is used for the purpose before going for fresh acquisition.

A pre notification process and SIA is a major procedural change in the process of land acquisition in the country and there are valid concerns of project authorities for its potential to delay the process. Though the above two conditions have been incorporated to address such concerns, there are other issues that is of great concern to the industry viz. the nature of social cost benefit analysis undertaken and the process thereof, the representatives of affected communities scuttling the process, the possible bureaucratic delays etc. There are other concerns regarding the extended pre notification process aiding outsiders to purchase land in the area and the benefits not reaching the intended beneficiaries.

- SIA is a process very well understood by social scientists. The need is to demystify the same to technical experts in the industry. In simple terms, SIA is predicting in advance, the social impacts (social/ cultural, economic, infrastructure and public services, physical cultural resources and intangible cultural resources) likely to follow from a project proposal. Having predicted the impact, the study aims at proposing suitable steps to prevent/contain harmful potential impacts of proposed projects.

One of the important reasons for the impoverishment of the displaced and the poor record in resettling displaced people have arisen owing to the focus on the aggregate costs and benefits from the project. The loss for a numerically smaller proportion of the population often tends to get overshadowed by the larger benefits offered by the project. This becomes particularly important in the case of CPR dependents. While LARR defines the affected families more comprehensively, the Expert Group/ Committee also need to certify that a concrete plan to avoid impoverishment risks (at all cost) and restore the incomes and livelihood of the affected families is in place, before moving ahead with the acquisition of land.

- The transparent pre notification procedure allays another prevalent issue relating to information asymmetry and the existing land owners coerced into selling lands to others who are aware of the planned project in any area. The concern is still being raised by project proponents pointing out that the long drawn pre-notification process would further aggravate the situation at the ground level. This fear is unfounded primarily because a transparent process of SIA would make the existing land-owners aware of their own rights under the new Act and the accruable benefits. Information asymmetry induced land purchase can therefore be expected to decrease. In the changed circumstances, there may still be land transactions but this would not be caused by lack of information but by the existing land owners wanting to bargain and sell their land at a price which may be greater than the benefits provided in the Act. Either ways, they make an informed decision.
- Given the protests against land acquisition which has become more of a norm and less of an exception, there is a great deal of apprehension that a transparent public hearing process may result in scuttling the process. This may be a misconceived notion which may have the potential to be partially true in some projects. However, on a universal plane, the transparent mechanisms are likely to aid the process and ensure that the opposition to the well-meaning development programmes does not arise and would not derail the development process. This is because, lack of transparency and adequate communication mechanisms coupled with extremely meager compensation norms were the greatest concern and source of discontentment (among the affected) with the existing legislative framework of land acquisition. The land losers remain at the periphery. The first individual notice that goes to the land affected is after Section 9 i.e. a final declaration is issued by the government. This would change with the new legislation when affected people would be consulted at every stage and feel party to the process.
- While it may be premature to predict the precise impact of the SIA, a definite likely outcome of the SIA would be the reduction in the quantum of land acquired, search of lesser displacing options and utilisation of available unutilised land.

The need is now to clearly spell out the manner and time limit for carrying out SIA in the rules that would be framed shortly and demystify the process for the project authorities.

**Timelines:** Table 2.1 and 2.2 shows the differences in processes and time lines prescribed under LAA, 1894 and RFCTLARR Act, 2013. There is an apprehension of greater delay in the possession of land under the new legislation. This oft-repeated criticism of the required timeline for possession of land exceeding 5 years under

the new legislation has its base in the maximum timelines specified under the Act. Also, it is important to understand the precise meaning of the various sections as well as the understanding that maximum timelines provide only the outer limits. For e.g, Section 14 of the Act states that “where a preliminary notification under Section 11 is not issued within twelve months from the date of appraisal of the Social Impact Assessment Report submitted by the Expert Group under section 7, then, such report shall be deemed to have lapsed”. Obviously, the state government, deciding to go for land acquisition can do so immediately after receiving the appraisal report by the Expert Committee. This would effectively reduce the timeline between start of the SIA and final award to two years and eight months.

**Table 2.1 Comparisons of Maximum Time Lines-RFCTLARR Act 2013 & LAA-1894**

Start Date	Process - RFCTLARR Act, 2013	Start Date	Process- LAA, 1894
1 <sup>st</sup> Jan 2013	SIA Notification	1 <sup>st</sup> Jan 2013	Preliminary Notification
30 <sup>th</sup> Jun 2013	SIA Report	1 <sup>st</sup> Jan 2014	Final Declaration
1 <sup>st</sup> Sep 2013	Appraisal of SIA by Expert Committee (if constituted before receiving SIA Report)	1 <sup>st</sup> Jan 2016	Award
1 <sup>st</sup> Sep 2014	Preliminary Notification (updatation of land records within 2 months by Collector)		
1 <sup>st</sup> Sep 2015	Final Declaration		
1 <sup>st</sup> Sep 2016	Award Time lines - Compensation (3 months) Monetary R & R (6 Months) and Infrastructure entitlements (18 months)	No timelines for disbursement of compensation	
Displacement of people by Collector after R & R is complete in all respects			

**Table 2.2 LAA, 1894 and RFCTLARR Act, 2013 - Comparison of Processes**

<b>LAA, 1894</b>	<b>RFCTLARR Act, 2013</b>
No Pre-Notification provision for SIA	S.4 - SIA Study for Land Acquisition (LA) projects (except in Urgency Clause/Irrigation projects which mandates EIA) <ul style="list-style-type: none"> <li>• Consultation with Local Bodies</li> <li>• Consent - Scheduled Areas(Gram Sabha), Public Private Partnership Projects (70% landowners), Private Projects (80% landowners)</li> <li>• Public Hearing</li> <li>• Recommendations of Expert Committee</li> </ul> Final decision of appropriate government- public purpose, social benefits outweighs costs, land proposed is absolute minimum and minimises displacement.
Preliminary Notification (PN), S. 4. Only details of lands required	PN (S. 11) - Within one year of date of appraisal of SIA report by Expert Committee - Land details, summary of SIA, nature of public purpose, reasons for displacement of affected persons, details of Administrator
Land Records updation - No timeline	Complete updation of land records-Two months of S.11 (5)
Hearing of Objections within 30 days of Publication of PN, S.5A. Objection to acquisition of land	Hearing of Objections, S.15(1) -Within 60 days of Publication of PN Objection to the area and suitability of land, justification offered for public purpose and findings of the SIA Report
Between PN and Declaration Preliminary survey of land Hearing of objections, S.5 A	Between PN and Declaration - Hearing of objections S. 15, Preliminary survey and census, S. 16 (1), Preparation of draft R & R Scheme, S.16 (2), Public hearing S.16 (5)
Final Declaration, S.6 within 1 year of PN, S.4 (1)	Declaration - within one year of PN, S.19(1). Publication of Declaration and Summary of R & R 19 (4)
Award - LA, S. 11 & 12 - Within 2 years of Declaration, S. 6 (1)	Award - LA and R&R, S.23. Within one year of Declaration, S.19
Six Conditions for determining Land Compensation- S.23	Seven conditions for determining Land Compensation - "any other ground which may be in the interest of equity, justice and beneficial to the affected families", S. 28
Possession - After the Award, S.16	Possession - R & R to be complete in all respects before displacing families, S.38 (1) and (2).
Award - No timeline	Award timeline - Compensation (3 months) Monetary R & R (6 Months) and Infrastructure (18 months), S.38(1)
Urgency Clause, s.17 - Expiry of 15 days from S. 9	Urgency Clause, S.40 - Expiry of 30 days from s. 21 (defence, national security, emergencies arising out of natural calamities). Additional compensation of 75% of market value (except security/strategic interests)
Reference to Court, S.18	Reference to LARR Authority, S.64. Cases to be decided in 6 months
Monitoring LA - No provisions	National and State Monitoring Committees
Consent - No requirement	More transparent. Prior consent in select situations
Multiple displaced-No consideration	Double compensation for multiple displaced

However, concerns of delay are not completely unfounded; foremost among them is the delay in the rolling out of the Act (decision on key action points, formulation of rules, establishment of institutional arrangements conceptualised under the Act have to be completed by the respective state governments). The following considerations also merit attention in this regard:

First, the legislation provides for mandatory R & R to all the affected families that include livelihood losers beyond the land losers. Unless adequate measures are undertaken including finalising a transparent and accurate identification criteria, the consulting agencies are sufficiently equipped to handle this role and extensive capacity building of the ground level functionaries is undertaken, the legislation may result in a great deal of teething troubles and also possible delays. This can however be expected to improve in the in the long run with sound systems and procedures in place.

Second, there are discretions with the appropriate government at every stage to extend the process. Though the effective time period from preliminary notification to the award has been reduced from three to two years, the appropriate government has been empowered to extend the same if in their opinion the circumstances justify the same. Section 14, 19(7) and 25 are provisions empowering the government to extend the timelines of preliminary notification, declaration and the award respectively.

Third, the legislation prescribes timelines i.e. payment of compensation (3 months), monetary R & R (6 months) and infrastructural entitlements (18 months) of the award. There is a need to proactive work for projects involving resettlement given the high potential for delay in this case. Section 38 (2) specifies that the Collector shall be responsible for ensuring that the R & R process is completed in all its aspects before displacing the affected families and this would include the infrastructural entitlements which has a maximum timeline of one and half years of the award. This is unlike LAA, 1894, which empowers the Collector to take possession of land after the award. The above has enormous practical implications for the project proponents. Finalisation of resettlement sites has to be explored in the SIA study itself and work on the prescribed infrastructure, after adequate stakeholder consultation, has to be initiated as early as possible to facilitate early possession of the land.

The Act gives a great deal of discretion for the state government - finalisation of compensation (determination of scaling limits to arrive at the multiplying factor for land compensation), determination of limits for R & R by private companies, limits for acquisition of multi-crop land and the process thereof and establishment of institutional mechanisms (State Monitoring Committee, LARR Authority etc). Needless to say, the implementation of the legislation would vary from state to state depending on the initiatives of the state government with regard to the above.

**Transparency and Accountability:** The RFCTLARR Act introduces disclosures at every stage to usher in transparency in the process. An additional provision that is introduced is the disclosures in the local language in the Panchayat/Municipality/Municipal Corporation/offices of the District Collector, the Sub-divisional Magistrate and the Tehsil and uploaded on the website of the appropriate government. These provisions include the mandatory public hearing to record the views of the affected families in the SIA report, publishing of the SIA study and SIMP, recommendation of the Expert Group, decision of the appropriate government, preliminary notification, draft R&R schemes, approved R&R scheme, summary of the R & R scheme along with draft declaration, summary of the entire proceedings under taken incase of acquisition of land including the amount of compensation awarded to each individual along with the details of land finally acquired under this act on the website created for the purpose.

Though this may still be a far cry for the long standing demand of prior informed consent (which is mandatory under the present legislation only in scheduled areas and in acquisitions for private/public-private partnership projects from 70/80 percent of the title-holders affected), yet there is no denying the fact that the legislation does provide for transparent information sharing at very stage/process. The consent from 70/80 per cent of the land-owners is likely to be a potential delaying factor if people pour in at different stages of the project to prove their stake. It therefore becomes utmost important that a cut-off date is specified for the entire process. After the formal consent by the people, negotiation and finalisation of the compensation package, the reopening of the issue must not allowed.

LAA, 1894 had provided for vast discretion in what is considered urgent which resulted in the indiscriminate use of this power. Urgency Clause (Section 17) provided for acquisition of land in just 15 days notice without giving the landowners right to hearing. There has been widespread criticism over the state governments acquiring large tracts of agriculture lands invoking urgency clause and distributing them to the real estate developers. The new legislation restricts the urgency clause for the purposes of national defence, security purposes and emergencies or natural calamities only and this would entail 75 percent additional compensation (except acquisition of land for security/strategic interests).

The legislation has some other remarkable features that had been potential irritants in the colonial legislation. These include limits for acquisition of multi-crop irrigated land, return of unutilised land (within 5 years), no change of purpose for which land was initially acquired, provision of income tax exemption for the affected families, constitution of state and national monitoring committees for reviewing/monitoring implementation of R & R etc. Further, the Act also provides for establishment of the Land Acquisition, Rehabilitation and Resettlement Authority



with the original jurisdiction to adjudicate upon very reference made to it by affected people not accepting the award.

Rather than being pessimistic about the functioning of similar such institutional mechanisms elsewhere, it would be worthwhile examining the impact of these revolutionary measures after few years. Now that the legislation is a reality, the policy makers would do well to understand the implementation issues and bring forth adequate improvements so that a well-intentioned policy change achieves its avowed objectives. Notably, the Act also empowers the Government to make provisions within two years to remove difficulties in implementing the Act (Section 113).

**Other Critical Issues in the New Legislation:** Some of the remarkable provisions of the new legislation along with their practical concerns have been explained above. One of the greatest concerns with the existing Act was the widespread misuse of the term 'public purpose'. Though the new legislation proposes to provide for a stricter definition of the term, virtually everything has now been included in the definition. Also, there is an element of ambiguity in some of the operational provisions of the Act. Below mentioned are few other concerns in the implementation of the Act.

- **Massive Potential for Reaping of R & R Entitlements by Non-Genuine Claimants:** The definition of affected family includes the owner of land or other immovable property, without specifying the quantum of loss. The period between the initiation of SIA under Section 4 and preliminary notification under Section 11 could extend to 1.8 years or more in extreme cases. The R & R plan is to be prepared by the Administrator after the census after Section 11. There can be a massive effort of non-genuine claimants of R & R through fragmentation of land into numerous small holdings/construction of structures during the intervening period. The Gol under Section 113 (I) may provide appropriate directions in this regard. Evidence of land holdings during SIA, utilisation of videography images taken during the pre-notification SIA procedure etc. may be construed as evidence against non-genuine claimants and their possible consideration under section 84 of the Act. i.e. R & R benefits availed by making false claim or through fraudulent means.
- **Quantum of Losses and R & R Entitlement:** Under the New Act, each affected family (owner of land or immovable structure or whose primary source of livelihood has been affected by the acquisition of land) is entitled to an R & R package. The Act however does not specify the differential limits for quantum of losses, for deciding the R & R entitlements. This would mean a large farmer losing a fraction of land of his total holdings will also be entitled to a comprehensive R & R package. In terms of the package, he may also be

treated at par for R & R entitlements with another who has become marginal or completely landless in the process. In this regard, necessary correction may have to be provided in the central legislation as state rules may not be able to reduce the benefits. This may also be considered under the removal of difficulties clause, S. 113.

- Similarly, there is no triggering point for setting up resettlement colony and there is no clarity on the responsibility for maintenance of infrastructure amenities in the colony.
- There is higher responsibility to the Collector without adequate provision for enhanced infrastructure/manpower support. This should be taken care in the state rules

The Government of India would also have to make corrections for errors and typos in the Act, the prominent ones being the start date of the enhanced compensation of 12 percent (date of SIA notification or preliminary notification), the inadvertent exclusion of Schedule VI areas in section 41, applicability of R & R incase of purchases by government companies in section 46 etc.

**The Way Forward:** Another drawback of the otherwise progressive legislation is the inadequate attention to the means for achieving its highly progressive objectives - affected persons become partner in development leading to an improvement in their post acquisition social and economic status (as mentioned in the preamble to the Act). Needless to say, the means must be commensurate to render the objectives feasible. The means to achieve this is certainly limited because in most cases the legislation would in essence complete the process with a higher monetary package. This is certainly not a replacement for lost livelihoods. Increasingly, benefit sharing mechanisms are being advocated across the world to complement R & R. Benefit sharing implies explicit measures for channelising a proportion of the projects benefits (monetary and non-monetary) back to those affected for reconstruction of livelihoods post displacement. Other than the limited scope of benefit sharing in urban projects, the legislation is largely silent on this critical issue.

The basic limitations in the compensation packages that reinforce the main poverty risks inherent in forced displacements have been captured in the Impoverishment Risk Reconstruction Model (Cernea, 1997). Ownership of a resource entitles the owner to derive benefit from the use of the resource and the right to earn a return on the resource. It is increasingly being recognised that since the landowners are parting with a resource that is critical to the project, any package that only takes care of the asset value of land and confines to one time settlement would be inherently unfair. Since the project cannot take-off without the critical resource appropriated from the people (more often against their wishes), a consistent flow of the project profits for their upliftment is a logical step.

At the most basic level and as a minimum measure, there has been the long standing demand to provide the PAFs with a sustainable income source and not dispense with a onetime cash settlement. The RFCTLARR Act does well to introduce the option for provision of annuity to the PAFs. While the policy appreciably includes the non-title-holders, the R & R package would be uniform to everybody irrespective of the degree of losses to the individual because of appropriation of land. The policies of Uttar Pradesh, Haryana and Jharkhand (while including only the land losers) are more progressive in fixing the annuities per acre, thus paying due consideration for the degree of economic losses to the individual land losers. Some of these notable progressive provisions include distribution of developed land (Uttar Pradesh, JNPT), sharing of project benefits in the form of fixed proportion of sales revenue by hydro power projects (Himachal Pradesh), comprehensive R & R package including equity sharing and compensation in fixed deposits (Jindal Steel, Salboni) etc. Another strategy which is being looked at with great interest is the pooling of land as followed in the Magarpatta city project whereby, the farmers continued to own the land and owned shares in the company.

The models of project benefit sharing takes different forms in different countries viz. sustained spending for welfare of PAFs through a development fund (China), distribution of taxes to the affected local bodies for the development of the PAFs (Norway), sharing of royalty (Brazil, Papua New Guinea), sharing of project revenues (Colombia) and sharing of equity (Canada, Australia) with the affected communities (Table 2.3).

The Mines and Mineral Development and Regulation (MMDR) Bill, 2011 that lapsed with the last parliament had for the first time provided for 26 per cent profit-sharing by coal companies and an amount equivalent to royalty by others with PAFs. The case of profit/revenue/royalty sharing in case of land appropriating hydro-power projects is equally valid like the mining companies. Other than the hydropower and extractive industries, most of the projects acquiring land and reaping in huge profits also would do well to share a proportion of their project benefits to provide for better health and education infrastructure and a sustainable livelihood for the PAFs.

**Table 2.3: International Best Practices for Sustainable Livelihood of the Displaced Families.**

Best Practices	Country	Provisions
Beyond one time Compensation	China	<ul style="list-style-type: none"> <li>Annual Allowance: 600 Yuan (\$ 100) per capita for a period of 20 years.</li> <li>Financial measures for rectifying past under-payments in the five prior decades.</li> <li>Post Resettlement Development Fund created with regular contributions from the power companies</li> </ul>
Land Leasing	Japan	<ul style="list-style-type: none"> <li>Upfront payment to the landowners</li> <li>Regular rent payments to landowners for the leased land for the life of the project.</li> </ul>
Taxation	Norway	<ul style="list-style-type: none"> <li>All electricity companies need to pay 28% tax on their profits with the shares divided equally among the central and county budgets</li> <li>4.75% goes directly to the local municipality</li> <li>Tax on the use of natural resources (based on average power generated over previous seven years) distributed to municipalities</li> </ul>
Sharing of Project Benefits	Norway	<ul style="list-style-type: none"> <li>Electrical Companies to provide 10% of the electricity produced to the local municipality.</li> </ul>
Irrigated Land Options	Japan	<ul style="list-style-type: none"> <li>Development of dry lands into cultivable lands by introducing irrigation at governments cost for distribution to the resettlers.</li> </ul>
Sharing of Project Revenue	Colombia	<ul style="list-style-type: none"> <li>3.8% to regions watershed agencies for investments in water saving and local irrigation</li> <li>1.5% to municipalities bordering the reservoir</li> <li>1.5% to upstream municipalities</li> </ul>
Sharing of Royalties	Brazil	Public hydropower plants: <ul style="list-style-type: none"> <li>45% of royalties given to overall budgets of affected states.</li> <li>45% of royalties to directly affected municipalities within those states</li> </ul>
	Papua New Guinea	Mining Companies: Payment of a royalty by a mine lease holder at the rate of two percent of the sale of minerals. 20% of the royalty is to be distributed between the landowners of the project area and the rest is to be spent as community sustainable development plan in the area.
Equity sharing	Canada Australia	Equity stake that entitle the communities to a share of project benefits for the long term proportionately with their land share

Source: Compiled by the Author from Modi (2010) and other Sources

**Conclusion:** Displacement is viewed as a price that society must pay to avail rapid economic growth and development as also an important tool for the integration of remote and backward communities to the mainstream. However, displacement is no longer understood as *fait accompli* by those affected by development projects and there have been rising protests against the serious inadequacies in the R & R packages offered and implemented. Eliminating the risks of impoverishment is the key to a successful R & R policy. Experience shows that compensation-based traditional R & R measures have largely failed to address the livelihood issues of the displaced population.

Good practices from all over the world and in particular the benefit-sharing models in countries like Brazil, Canada, China, Columbia, Australia, Japan and Norway indicate a determined effort at the highest level to move beyond the traditional compensation packages to a more sustainable livelihood for the PAFs through a continuous sharing of royalties/project benefits. The new legislation on land acquisition, resettlement and rehabilitation is a great step forward in envisioning a transparent and participatory process and ensuring a much higher compensation/R & R package. It would have been more futuristic if it had moved beyond the narrow confines of market value based land compensation and the largely monetised R & R packages to incorporate some of the best practices followed in the country and worldwide in sharing project benefits. This would have in essence made the affected persons partners in development as mentioned in the preamble to the new LARR legislation.

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Sthitapragyan Ray\*

## Sharing Benefits of Mining in Scheduled Areas of Odisha: Issues and Approaches

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**Abstract:** *The dialectical interface between mining and development of the affected communities, particularly tribal groups in the scheduled areas of Odisha, poses both challenges and opportunities. The sustainability of the new mineral-based growth strategy in the state depends to a great extent on realising a synthesis of antithetical forces at work by way of providing among other things, innovative institutional frameworks for benefit-sharing. The evolving statutory and policy measures should be aimed at addressing unmet popular needs and counteracting politics engendered from this gap.*

**Introduction:** Like elsewhere in the world, where DID is an ongoing phenomenon, India (along with China) is also no exception, with a large number of such displacements (Koenig 2002; Drèze, Samson, and Singh 1997). The phenomenon of large-scale DID in India, which started mostly after independence, with the construction of big dams, industrial and mining projects, has assumed new dimensions since the launching of the policy of liberalisation and privatisation<sup>1</sup>. Specifically,

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<sup>1</sup> By default or design there are no authoritative statistics (official or non-official) on the number of people displaced by large development projects since Independence in India. Notable attempts made by individual researchers and research institutes to estimate the number of displaced/affected include those by W. Fernandes, M. Asif, L. Lobo, N. C. Saxena, the IIPA etc. These are marked by wide variations in their calculations of the magnitude of displacement in the country. While scholars like Fernandes et al. provide a figure of some 21 million displaced persons over a five-decade period between 1951 to 1990, with 77 percent of them being displaced by irrigation/dam, 12 percent by mining and about 6 percent by industrial projects, others like N. C. Saxena put their estimate of persons displaced by development projects since 1947 at more than double this figure i.e., 50 million.

the magnitude of DID in Odisha is one of the highest in the country.<sup>2</sup> The phenomenon of large-scale DID, which started in the state with construction of the Machkund hydel project across the Duduma river in tribal-dominated Koraput district (Stanley, 1996; Jojo, 2008) has persisted over time. The entry of private companies, both domestic and multinational, into the industrial and mining sectors of the state in a big way since the 1990s, has in fact changed the tone and tenor of the DID debate. Even a cursory look at the rather conservative figures of project-wise displacements given by the Government of Odisha (2008) brings to the fore the magnitude of DID. The total land acquired for industrial projects in the state adds up 80,250 acres, involving 52,570 acres of private land and 26,680 acres of government land, while the number of families displaced due to these projects stands at 12,560. Similarly, the total land used for irrigation projects in the state amounts to 4,20,000 acres, accounting for 1,47,000 acres of private land and 2,73,000 acres of government land, while the number of families displaced on account of water resource projects stands at 38,000 (Ibid.). Taking the total amount of land acquired for development projects as a proxy indicator for displacement, one could infer the impact of economic reforms. Odisha, one of the most backward yet mineral rich states, has all along pursued a proactive mineral-based and private capital-led industrial development path. What seems really striking is that Odisha acquired 100,000 ha of land within a decade of the reforms process as against 40,000 ha of land for industrial projects from 1951 to 1995. Protest movements against DID have become part of Odisha's socio-political landscape. The state is trying to acquire and exploit natural resources - mineral, water, land including forest land in tribal (scheduled areas) for private rather than for public interests. This has intensified protests, both violent and non-violent, amidst debates over issues of resource distribution, sharing of costs, benefits of growth etc (Padel and Das, 2010; Das and Das, 2006).

**Mining and Displacement in Odisha:** Odisha accounts for 97 percent of India's chromite, 95 percent of nickel, 50 percent of bauxite and 24 percent of coal reserves (Govt. of Odisha, 2008). The Mahanadi valley in central Odisha, spread across the districts of Angul, Jharsuguda and Sundergarh, constitutes the coal belt of the state, where about one-third of the coal deposits in the country are located. The Sukinda Valley in Keonjhar district, parts of Mayurbhanj and Sundargarh districts are known as the chrome, iron ore and manganese belts of the state. The

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<sup>2</sup> In Odisha, the total number of displaced from 1951 to 1995 was being put approximately at 546,794. As for resettlement and rehabilitation, Odisha has resettled 32 percent of its DPs from 1951-1995 (with similar figures for Andhra Pradesh, Goa and West Bengal being 27 percent, 42 percent and 25 percent respectively). In most cases, the quality of rehabilitation is poor. This record is not surprising, as around 40 percent of the DPs are tribals, 20 percent Dalits and a similar number are from other poor and marginalised categories.

southwestern zone of Odisha, consisting of Koraput, Rayagada, Bolangir and Kalahandi, districts is known as the bauxite belt of the state, as it counts for about 70 percent of the bauxite deposits of the country, while Coastal Odisha is endowed with deposits of mineral sands and rare earth. Mining in Odisha started in 1857 in Talcher, one of the 14 most polluted industrial zones in India. Around 370 mining companies are presently active in Odisha, including multinational companies and public sector undertakings such as the National Aluminum Company (NALCO), the Steel Authority of India (SAIL), the Mahanadi Coalfields Limited (MCL) and the Odisha Mining Corporation (OMC). The association of big private mining companies with Odisha could be traced to the early 20<sup>th</sup> century, when the Tatas, secured a lease from the erstwhile princely state of Mayurbhanj, a predominantly tribal district, in 1903-04 for mining operations in the Santal tract of Bamanghati and Punchur with the objective of supplying iron ore to their steel factory at Jamshedpur (Pati, 2006).

During 2012-13, there were 600 mining leases in 14 mining circles of the state, covering an area of 101,947 hectares (Govt. of Odisha, 2013). Between 1993 and 2003, there was a phenomenal 278 percent growth in mining and quarrying even as production in the agriculture, forestry and fishing sectors fell by 16 percent. In 2003-04, the total production of minerals and ores was 108,283 million tons- an astounding increase of 171 percent from 1992-93 levels with iron ore registering the highest growth in production. The annual report of the Steel and Mines Department, the nodal administrative agency for mining in the state, acknowledges, “with the opening up of Indian economy and adoption of liberalisation as a policy, mineral resources have now drawn worldwide attention for setting up of large scale mining and processing industries” (Govt. of Odisha, 2008). The Govt. of Odisha signed 49 MoUs with various promoters for setting up steel plants in the state, with a proposed investment of about Rs.1,98,150 crore and an estimated annual steel production of about 75.66 million tonnes. The highest FDI in the history of India in the form of the Pohang Steel Company (POSCO) of South Korea (investment of about US \$12 billion) was also to come up in the state (Govt. of Odisha, 2008).

The Industrial Policy Resolution (IPR), 2001 of Odisha, has put in place a policy framework for industrial promotion and investment facilitation in the state geared towards economic liberalisation. The IPR, 2007 seeks to further reinforce and expand this process. On the other side, the mining revenue collection in the state has increased from 1380.59 crore rupees in 2008-09 to 4586.65 crore rupees in 2011-12 (Govt. of Odisha, 2013). The mining-induced displacements in the country is estimated to be 23.5 lakhs. Odisha, Andhra Pradesh and Jharkhand accounts for more than 10 lakh of the affected population (Fernandes and Asif, 1997). Notwithstanding the gravity of mining induced issues, the literature on mining and extractive industries remains relatively sparse as compared to dams and other development projects (Downing, 2002; Pandey, 1998). In contrast to the large-



scale displacement and impoverishment caused by dams, the insidious impact of mining on local communities remains mostly indirect and less apparent seldom leading to formal resettlement, compensation and other benefit-sharing operations.

**Mineral Resources and Tribals in Odisha:** Tribal regions (scheduled areas) are rich in mineral, forest and water resources, which serve as locomotives of industrial growth of the state and the country. Odisha, home to 11 percent of the national tribal population, accommodates 62 tribal communities, accounting to about one-fourth (22.21%) of the state population. About 44.7 percent of the total area of Odisha (including 13 districts, 120 blocks and 1941 gram panchayats) has been declared as scheduled areas (Fifth Schedule to the Constitution of India). The scheduled areas comprise the entire geographic spread of six districts and parts of seven other districts in the state (Govt. of Odisha, 2007). A major part of the mineral zone of Odisha, as already discussed, lies in the scheduled areas including the coal belt (containing about one-third of national coal deposits) in the undivided Sambalpur and Sundergarh districts, the chrome, iron ore and manganese belts in Keonjhar, Mayurbhanj and Sundargarh districts, the bauxite belt in Koraput, Rayagada and Kalahandi districts. However, in view of the inescapable dynamics of modern growth and inadequate policy planning, the tribal population and regions in the state (as in other parts of the country) remain severely marginalised in the process of industrial and urban development. This is quite evident from the poverty profile of Odisha, one of the poorest states in India, with 37 percent of its population living below the official poverty line. Poverty in the state is characterised by pronounced social and regional differences, with the Scheduled Tribes (STs) and Scheduled Castes (SCs), constituting 38.6 per cent of the state's population and accounting for more than 40 percent of its poor. Besides, the STs suffer from the dual burden of isolated existence with minimal access to basic infrastructure and social services. The resource extraction from their areas for development projects have been without any commensurate benefit accrual. While large sections of the state's population, including scheduled castes, have improved their income levels since 2000, the poorest 40 percent of the population has gained much less than the better-off 60 percent. Most of the state's STs are part of this poorest 40 percent and continue to lag behind (World Bank, 2008).

According to the official data on GSDP with 1999/00 as the base, most of Odisha's economic sectors have grown faster than all-India since 2003-04, with industry (mining, manufacturing, electricity and construction) growing at around 20 percent annually (Government of Odisha, 2005). Odisha has a US\$ 125 billion portfolio of 470 ongoing investment projects that are projected to generate an additional GSDP of US\$ 35 billion. This alone amounts to twice the size of Odisha's GSDP for 2006 (ibid.). Natural resources of the scheduled areas thus seem to have been more of a curse than a blessing for their inhabitants. The paradox of tribal poverty in the

context of natural resource abundance seems to lend credence to the classical natural resource curse hypothesis (Sachs and Warner, 1995).

It also highlights the classic tension between economic growth and social justice. The benefits of mining in their areas should not be lost to the people, particularly tribals. There should be a fool-proof framework for the protection of their culture, livelihood, ecology and equitable sharing of benefits. Social tension in the form of protest and dissents like the ones in Lanjigarh against bauxite mining in Niyamgiri hills or Kalingnagar, is generated when the negative effects of mineral-based development on the affected communities are perceived to be outweighing the positive ones. Although the movements usually remain location and context specific, yet they have the potential to constitute a rallying point against the perceived ill-effects of the mineral-based growth strategy of the state government. In this context, the following issues assume importance:

- Need for increased transparency in land acquisition, granting of mining leases and industrial permissions and regulating the activities of private mining companies.
- Need for socio-economic and environmental analysis that details the sustainability of mineral extraction and value addition to the state.
- Need for formal space and institutional mechanism for meaningful participation of affected communities in the mining belts in the terms of regulatory framework and benefit-sharing mechanisms that are perceived to be just, equitable and transparent. This is with a view to counter the popular perception that corporates are profiteering at the expense of the poor particularly the tribals who bear the brunt of mining-induced impoverishment risks i.e., loss of land, livelihood, culture, environment, health etc.

**Policy Response and Institutional Mechanism:** The areas inhabited by the tribals are rich in mineral (and other natural) resources - Odisha's prime advantage and the basis on which a high economic growth is projected. This presents both opportunities and challenges to inclusive growth. The question that arises is- how do the government ensure that the gains that come from these areas also flow back to the people that inhabit them. Given the context, a combination of approaches towards synthesising the dialectical interface between mineral based growth and tribal development seems to have been adopted in the state. The strategies to tackle the mining-induced impoverishment risks (Cernia, 1997) and new poverty (Downing 2002) could be broadly classified into the following:

- (i) using a portion of profits from the mining sector to fund public welfare measures (like roads, electricity) and to facilitate community development in the mining belts of scheduled areas by way of setting up Periphery

Development Fund (PDF) through the operation of the Odisha Rural Infrastructure and Socio-economic Development Act (ORISED Act), the Scheduled Areas Mining Lease Policy etc<sup>3</sup> ;

- (ii) using a part of profits to support PAFs directly through public policy measures like the Odisha Resettlement and Rehabilitation Policy, 2006 that lays down the parameters of compensation and R&R benefits to be extended to individuals displaced by mining projects.

**Odisha Model of PDF:** One of the key strategies evolved in Odisha involves the setting up of a dedicated instrument in the form of Periphery Development Fund (PDF) patterned on the foundations, trusts and funds (FTFs) model (World Bank 2011) for channelising revenues generated from mining operations towards the development of local communities. Mining companies operating in the state contribute to the PDF in addition to what they pay as taxes and royalties. Odisha, instead of going in for either a company-driven model or a corporate-indigenous partnership and community-development corporations model as in the case of US and Canada (Anderson 1997; Pinel 2007; World Bank 2011), has opted for the government-authored benefit-sharing approach of PDFs with the state acting as a via media between companies and tribals for sharing the benefits accruing from mining.

In response to the Supreme Court ruling on the Samatha vs. Andhra Pradesh case in 1997 and in keeping with the spirit of the Fifth Schedule to the Constitution, the Odisha government has come out with a Policy on Grant of Mining Lease and Transfer of Land for Commercial Projects in Scheduled Areas of the state through a Notification of the Steel and Mines Department (No.375/IV(A)SM-40/2003 Dtd.15.01.2004). The Policy, effective from 15.01.2004, while reiterating the fundamental difference between the Andhra Pradesh and Odisha scheduled area land transfer laws, states the imperative of implementing a sensitive and foolproof rehabilitation and employment package to protect the interests of project-affected tribals in scheduled areas. This is in respect of the land transfer cases for developmental activities including the establishment of industries, operation of mining leases etc. The policy makes it mandatory for the mining industry and other commercial projects coming up in scheduled areas of the state to ear mark up-to five percent of their equity towards preferential equity shares for the displaced tribal persons on the value of land acquired for the development projects. The amount of the preferential equity share thus issued should however be limited to the compensation package by a

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<sup>3</sup> Interestingly there seems to be an official recognition of the existence of a tribal periphery as public policies seek to develop these areas through PDF which is to be financed from a share of the profits made by mining and industrial companies operating in tribal belts.

given oustee, subject to the amount being not less than the minimum tradable lot. It also stipulates that five percent of the net annual profit accrued from the project be spent (through PDF Societies/Trusts constituted at the District/Divisional-levels headed by Collectors/RDCs) towards the development of health, education, communication, irrigation and agriculture of the said scheduled area within a radius of 50 kms.

The ORISED Act-2005 aims at providing a legal basis to the 2004 PDF Policy through a statutory mechanism for additional resource mobilisation in the form of an annual rural infrastructure and socio-economic development tax on all mineral-bearing land in the state and the proceeds of which are to be used for the development of rural and mining areas in the scheduled districts of the state. The proceeds of the tax, deposited with the Rural Infrastructure and Socio-economic Development Fund, are to be used by the Odisha government for improvement and development of infrastructure, implementation of production programmes, promotion of education, health, sanitation and employment in the rural and backward areas, provided that not less than ten percent of the fund is utilised in the mining areas. A majority of the areas identified under Schedule-I of the list of mining areas fall under the scheduled areas of the state. The Fund is administered by the Steel and Mines Department of the state government with the manner of the fund utilisation being decided by a high-level body headed by the Chief Minister.

The PDF, established at the district level in scheduled areas with which five percent of a company's net profits is to be deposited, is based on an "area development" and public goods approach. It is implemented at the field level through a Committee headed by the Revenue Divisional Commissioner (RDC) with Collectors as functioning primary implementing authorities. The decisions are based on consultations with a cross-section of people's representatives at the district level. This benefit-sharing strategy operates through the District Periphery Development Society (DPDS) with the Rehabilitation and Periphery Development Advisory Committee (RPDAC) constituted under the Odisha R&R Policy, 2006. The RPDAC is a decision-making authority while the DPDS is an executing authority. The Chairman of RPDAC is the Revenue Divisional Commissioner (RDC) with the Collector as Member Secretary and Convener. It has members comprising public representatives and senior officials of the district, but does not include representatives of the mining companies. However, representatives of the mining companies in the district are invited to the general body meetings of the DPDS. The DPDS functions as an autonomous society registered under the Societies Registration Act, 1860. The District Collector is the Chairman and the Mining Officer/Deputy Director of Mines the Convener.

The RPDAC invites proposals, examines them before approving and recommends a list of activities that are to be funded through PDF. It also draws up shelves of projects to be undertaken besides identifying the implementing agencies for

periphery development programmes. Post the RPDAC approval, the disbursement of funds and the implementation of approved activities are the responsibility of the DPDS. The projects are either directly implemented by the DPDS or through line departments like PWD, Rural Development, Panchayati Raj etc. Thus the functional approach of PDF through its two mechanisms RPDAC and DPDS combines both grant making and operational dimensions. The financing structure is designed to receive statutorily-backed endowed funds from mining companies operating in the area. The geographic focus extends outward from the project's direct area of influence to a radius of 50 kms. The community participation in the governance of PDF is sought to be ensured through membership of people's representatives and NGOs in RPDAC and DPDS. The PDF remains mostly independent of the influence of mining companies save that representatives of the mining companies in the district are represented in the DPDS in addition to being invited to its general body meetings. Thus, the Odisha model is a state-authored initiative with statutory and public policy backing and the government exercises control over the nature and location of development activities to be funded through PDF.

The Supreme Court in its judgment delivered on 23rd November, 2007 on the multinational Vedanta's bauxite-mining project in the in the scheduled Lanjigarh block of Kalahandi district, seems to have taken into account the 2004 PDF Policy of Odisha as is evident from some of the stipulations for granting mining permission i.e., contributing five percent of the net profit annually (before taxation) or Rs.10 crores (whichever is higher) to the special purpose vehicle (to be formed with the Odisha Government) for Lanjigarh Scheduled Area Development; committing to the number of locals who could be given permanent employment, giving Rs.12.20 crore for tribal welfare and Rs.50.53 crore for wildlife conservation etc.

The experience with the implementation of the PDF strategy appears mixed given the fact that to a large extent it depends on the initiative of the Divisional Commissioners and Collectors. Issues like the need for a greater transparency in both revenue contribution to and spending of the PDF, need for a sound legal framework to ensure sustainability of revenue collection from mining companies for the PDF, ensuring that the PDF remains an additional source of development expenditure for the scheduled districts and not just a substitute for plan funds for tribal development, discretionary powers of the administration notwithstanding the existence of consultative committees comprising representatives of affected communities, the need for prioritising expenditure as per the felt needs of the local people etc. are to be addressed to meaningfully operationalise the strategy.

The implementation of the ORISED Act has been legally challenged by mining companies, both private and public, operating in the state, with the Odisha High Court declaring the Act as null and void. This has put the operation of PDF strategy in the scheduled districts in a quandary. In an effort to deal with the situation, the

Odisha government has come out with a draft Odisha (Scheduled Areas) Development of Mineral Bearing Area Regulation, 2013, which would enable the state government to receive a certain amount of payment from the miners which is equal to the mining royalty being paid by them. The amount would go to the District Periphery Development Fund to be used for social, economic, health and educational improvement including livelihood promotion of the tribal people living in the mineral bearing scheduled areas of the state. The draft Regulation has already been approved by the Tribal Advisory Council (TAC) of the state during July, 2013.

In a similar vein, the Mines and Minerals (Development and Regulation) Bill, 2011 of the Government of India (that lapsed with the previous government) proposed the establishment of a trust, called the District Mineral Foundation (DMF), as a non-profit body, in each district of a given state where a mining lease has been granted or is in operation. The DMF was expected to work for the development of the mining-affected population in each district including the distribution of monetary benefits to the affected persons, creation and maintenance of the local infrastructure and implementation of the sustainable development framework etc. The state government may give financial assistance to any DMF by way of loans, capital grants or other payments. The DMF was to be managed by a governing council led by the District Magistrate as Chairperson and other members like Chairperson of the District Panchayat, all holders of mining lease in the district, heads of departments in the district, representative of the Indian Bureau of Mines etc. with the District Mining Officer as its Secretary.

**Odisha R&R Policy, 2006 and Other Related Measures:** The specific and strong cultural connections that many indigenous groups share with their lands and the environment in which they live make their physical dislocation potentially more disturbing in relation to other groups (Colchester, 2000). The Odisha R & R Policy, 2006 seems to have taken cognizance of this fact. The Policy mandates the establishment of Rehabilitation and Periphery Development Advisory Committees (RPDAC) for all development projects having displacement implications. The RPDAC is expected to take into account the interests of tribal members when it comes to finalising the action plans for projects to be implemented. While developing the resettlement plans, the socio-cultural norms of tribal groups are to be respected. Each displaced family coming under the indigenous category is to be given a preferential treatment in terms of allotment of land. Close to being practicable, indigenous communities are also to be resettled in a compact area close to their natural habitat. Displaced indigenous families resettled outside the district, are to be given 25 percent higher R&R benefits in monetary terms (Govt. of Odisha, 2006).

The Odisha R&R Policy specifies five types of projects including mining for delivery of tailor-made R&R benefits. As far as mining projects are concerned, the Policy provides for employment to one member of the displaced and affected families in

the project, depending on the magnitude and severity of loss suffered by them. But where employment cannot be provided because of reasons to be explained in writing, a onetime cash assistance ranging from one to five lakh rupees, in lieu of employment, is to be provided. The mining-project proponent under the guidance of the Collector is also to provide training for self-employment to at least one member of each displaced/affected family so as to equip them to take advantage of new job opportunities. For those engaged in traditional occupations/handicrafts, suitable training needs to be organised at the cost of project authority for upgrading their existing skills (Ibid). At the option of the displaced family, the project authority may issue a convertible preference share up-to a maximum of 50 percent of the one-time cash assistance provided. Subject to availability, each displaced family is entitled to at least 1/10th of an acre of land free of cost in the resettlement habitat for homestead purpose. Each of the displaced families, opting for self-relocation elsewhere other than the resettlement habitat are to be given a one time cash grant of Rs.50, 000/- in lieu of homestead land. Besides, the mining-project authority is also required to construct houses for displaced families in the resettlement habitat or provide house building assistance of Rs.1, 50,000/- to each of the displaced families settling in the resettlement habitat or opting for self relocation elsewhere. The project authorities are required to construct shops and service units at feasible locations at their own cost, to be allotted in consultation with the Collector concerned to displaced families opting for self-employment.

The Policy also provides for mandatory consultations with the Gram Sabha or Panchayat concerned at the appropriate level in the scheduled areas before initiating the land acquisition process. Here it draws authority from other legislative measures like the Panchayats (Extension to the Scheduled Areas) Act-1996 (PESA).<sup>4</sup> In conformity with Section 4(i) of PESA Act, executive instructions have been issued by the Odisha Government (No.L.A.(C)-5/2000 (Misc.) 35678/R, dtd.27.7.2001) to Collectors providing for mandatory consultations with the Gram Sabha/Panchayat in the land acquisitions cases in the scheduled areas. It lists out detailed procedures to be followed by the Collectors for land acquisition, including emergency land

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<sup>4</sup> Based on the Dileep Singh Bhuria Committee Report of 1995, the PESA Act-1996 was passed by Parliament and came into effect on 24<sup>th</sup> December, 1996. Under Article 243M (4)(b) of the Indian Constitution, this Act seeks to extend the provisions of Part IX of the Constitution as referred to in Clause (1) of Article 244 to the nine Fifth Scheduled states of the country (including Odisha) covering around eight per cent of the national population. It calls upon the legislature of a Fifth Schedule state not to make any law under Part IX inconsistent with any of the features under Section-4 of the Act, which gives a wide range of developmental and regulatory powers over vital aspects of tribal life to Gram Sabha and Panchayats at appropriate level including those on land acquisition, resettlement/rehabilitation of displaced persons and grant of prospecting license or mining lease for minor minerals.

acquisition in the scheduled areas. Further, it also provides that wherever more than one gram sabha is involved, consultations with the intermediate or the district-level panchayat is mandatory.

The Supreme Court judgment on 18th April, 2013, on the bauxite mining project of the multinational Vedanta Alumina in the scheduled Lanjigarh area of Kalahandi and Rayagada districts of Odisha, has extended the rights-based approach beyond economic benefit-sharing to include the protection of customary and religious rights, traditions, cultural identity and community resources of tribals as provided under the Scheduled Tribes & Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Sections 6 and 13) and the PESA Act, 1996 (Section 4). This has enabled the Dongaria and Kutia Kondh tribals in the mining-affected areas of Niyamgiri hills to say a firm “no” to the bauxite mining project.

**Conclusion:** The attempts of the State government to provide policy and statutory backing to benefit-sharing strategies in the mining sector point to a move away from the “reformist-managerial” approach of benefit-sharing (Cernea 1997) to a “rights and risk” approach (WCD 1999). This middle-range approach recognises upfront the dialectical tension between mining sector and sustainable development of local communities, particularly the tribal groups. That is why it seeks to pitch the problem at a higher level rather than a mere micro-management of diverse interests under the managerial approach. At the same time, it also tries to move away from a rather abstract focus on conflict of values and rationalities towards what can be considered a radical movement strategy.

Thus, it seeks to put a premium on creating adequate and enabling institutional measures through appropriate regulatory/legal frameworks, sustainable livelihood provisions, meaningful community participation, enforcement of accountability and commitment of the state and the corporate sector and above all the recognition of rights of the affected communities, most notably the tribal groups. If implemented in letter and spirit, the new rights-based benefit-sharing measures have the potential to reverse mining-induced impoverishment risks in the scheduled areas in addition to blunting the sharp edges of opposition and radical movements against mineral-based industrial development in the state.

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## Resettlement and Rehabilitation in Odisha: A Study of Utkal Alumina International Project

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**Abstract:** *This paper examines the rehabilitation and resettlement of the displaced persons directly related to Utkal Alumina International Limited (UAIL) in Odisha. It makes a comparative analysis of the pre and post-displacement period, besides highlighting the problems associated with displacement. The paper offers some suggestions drawn on empirical observations, which include the need for providing a viable rehabilitation package that has the full participation and consent of the affected people.*

**Introduction:** Development, at its primary level, emphasises the empowerment and welfare of the marginalised sections of the society; the underlying rationale being an equitable distribution of power and resources in society. During the last two decades of the previous century, the magnitude of forced population displacements caused by development programmes was of the order of 10 million people each year or some 200 million people globally. Thus, by their frequency, size, and dire consequences, DIDs have become a problem of worldwide proportions (Cernea, 2000).

Development requires the removal of major sources of un-freedom: poverty, tyranny, poor economic opportunities, and systematic social deprivation, neglect of public facilities as well as intolerance or over activity of repressive states (Sen, 2000). The current development process which constantly involves forced evictions of people all over the country is in itself incompatible with the goals of creating wider conditions of equity and social security. Despite constitutional mandates, in an overwhelming number of cases, national and regional interests subordinate the interests of politically, economically and socially weaker groups and individuals. Many of the big development projects have been set up in tribal areas and on lands owned by tribals. Tribals are by and large very simple people attached to their indigenous life style, customs and tradition. Displacement of these people implies disturbance to their way of life. This automatically leads to the destruction of their

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social, cultural, religious and economic practices. These are groups that have traditionally depended on CPRs on forest lands for their survival (Mishra, 2002).

It is fairly evident that a major problem associated with development projects such as irrigation, power, and mining is the acquisition of private lands which in turn leads to the large-scale displacement of people. Those who deserve to get development related benefits are generally ignored. The principle of “greater good for the larger numbers”, routinely invoked as a way of rationalising forced displacements is, in fact, often abused and turned into an unwarranted justification for tolerating the associated ills that are avoidable. The inevitable outcome is an unjustifiable distribution of development costs and benefits i.e., some people enjoy the gains of development, while others bear its pains (Cernea, 2000). The main objective of this paper is to present a comparative analysis of the pre and post-displacement period and the problems associated with displacement. The paper is divided into five sections: The second section provides a conceptual review of related literature; the third section outlines the methodology followed; the fourth section deals with the historical background of UAIL Project, the R & R policy adopted by UAIL and the actual extent of displacement; the fifth section carries a comparative analysis based on the collected data of the pre and post-displacement period besides looking in to the problems associated with displacement. The last section presents a discussion and concluding remarks drawn on empirical observations.

**Conceptual Review of LARR:** Most development projects require land on a large scale. The associated displacement results in people losing their traditional occupations and ancestral habitats. In the process of land acquisition by the government, people either voluntarily leave or are forcibly evicted. Morris and Pandey (2007) observe that due to the notion of public purpose, *eminent domain* or compulsory takings has arisen. Cernea (1995), through his widely discussed and quoted *Impoverishment Risk and Reconstruction Model* highlighted that displacement causes eight types of risks-landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to CPRs and social disarticulation for the affected communities. Dams, mines, power plants, industries, parks and sanctuaries induce varying magnitudes of displacement of people from their traditional habitats. Often, displacement is followed by some form of voluntary or involuntary resettlement at the original or other locations. Typically, displacement causes serious economic, social and cultural disruption of the lives of those affected by it, and the social fabric of the communities of the area (Parasuraman, 1996).

Thukral (1996) argues that displacement disproportionately affects women’s lives the most. When displacement occurs, they lose their right to access CPR. Displacement makes their lives physically uncomfortable, in addition to making them more vulnerable to physical and sexual harassment. According to Saxena (2008),

the discourse on displacement caused by acquisition of land in India has thrown up a number of issues concerning the nature of development, distribution of power, control over life supporting resources, commitment to social justice and equity and economics-ecology interface. In the process of development, the poor have got further impoverished, while the advanced sections of the society have become richer. In Odisha, it was the Rengali Dam project, beginning in 1971, that brought the resettlement issue into the open. In 1973, the state Government announced a resettlement policy for the Rengali Dam, which was the first such initiative. Until then, there was no resettlement policy in Odisha for people displaced by dams or other projects. Supported by the United Nations Development Programme (UNDP), the Government of Odisha formulated the R & R policy in 2006 as a response to new challenges arising in the context of globalisation, liberalisation and privatisation (Mathur, 2008).

In view of involuntary settlement, the traditional sources of employment for the displaced communities often disappear, the market links break and the customs related to child care, food security, intra community, credit transfers etc get dissolved. In addition, the close knit kinship groups get scattered disrupting the long established relationships. As a result, the economic and social impoverishment of these people get further accentuated (Fernandes and Paranjpye, 1997). Statistical figures indicate that dam/irrigation projects, industrial projects, mining projects, urban development projects, thermal projects and wild life sanctuaries have accounted for 70 percent, 12 percent, 3.37 percent, 12.86 percent, 2.60 percent and 0.5 percent of the total displaced people in the State of Odisha (Sahoo, 2005).

**Study Methodology:** The present paper is based on both primary and secondary data sources. For an empirical survey, two villages Ramibeda and Kendukhunti were selected. The displaced people of these two villages had been relocated in the R & R colony near Nua Poda junction in Hadiguda panchayat of Kshipur block, in Rayagada district of Southern Odisha. It is about 65 kilometres off from Rayagada District and 30 kilometres from Kshipur block. This paper is based on the author's M.Phil. related field work carried out from July 2009 to November 2009, in the R & R colony. A random sampling method was adopted for identifying the households. This paper has also drawn on several published and unpublished papers related to UAIL in various journals and newspapers. In-depth interviews and discussions were held with the key informants, including local people.

Both Ramibeda and Kendukhunti villages are home of the displaced families, now settled in the R & R colony. The people from these villages were SCs and STs. The total households of these two villages were 41 and 55 respectively. Out of a total 96 households, 70 households were selected randomly, which included 31 households (ST) from Ramibeda and 39 (SC) households from Kendukhunti.

**History of the Project:** UAIL is situated in the Kashipur tehsil in Rayagada district, which was carved out of the erstwhile Koraput district in 1992. It has a hilly terrain with only three small flat valley areas around Tikiri, Doraguda and Kashipur. The tehsil has a total of 461 villages spread over 49,081 hectares of land. There are three major bauxite deposits (368 million tonnes) within a radius of 20 kms of the proposed alumina plant site at Doraguda. These sites are Baphlimali, Sasbahumali and Kodingamalli. Baphlimali hill, located around 15 kms west of Kashipur, is the largest single deposit after Panchpatmali across the whole group of east coast bauxites. The Baphlimali area hardly supports any vegetative cover, but the area around the plateau has a medium to thick vegetation. The plant site at Doraguda is fairly barren patch with no thick vegetation growth within five kms. Dense and fairly dense forests form a horse-shoe shaped area around the main Kashipur plains.

**Chronology of Events:** UAIL is a cent percent export-oriented joint venture alumina consortium. In 1993, the State government of Odisha entered into a contract with a private company, UAIL, a joint venture of ALCAN (Canada), Hindalco of Birla Group (India), TATA (India), and Norsk Hydro (Norway) with a proposed investment of Rs. 4,500 crore. In 1994, the people of Kucheipadar village restricted the entry of UAIL vehicle into the area. But, in 1996, a meeting was organised by UAIL near Kucheipadar village for mobilisation and motivation of the local people. On 14<sup>th</sup> February, 1996 more than 10,000 people gathered in Kucheipadar and launched Prakrutik Sampad Surakshaya Parishad (PSSP) to fight against the UAIL project. In June 1996, land acquisition for UAIL began with full force; coercion and threats were used by the local administration (Das and Das, 2006). In July 1997 and 1998, UAIL started construction work at the resettlement colony and some minimal ground leveling work at the site of power plant. On 10<sup>th</sup> August, 1997 due to tribal protests, the company discontinued its construction work at the resettlement colony and subsequently, the construction work at the power plant was demolished by PSSP. On 15<sup>th</sup> December, 2000 at Maikunch village, people organised an anti mining meeting but the next day on 16<sup>th</sup> December the State police opened fire on a crowd, killing three tribal people and injuring many more.

On December 2001, Norsk Hydro withdrew from the joint venture. Alcan eventually took over a portion of Norsk's investment in 2003, giving Alcan a total 45 percent share with Indal (Alcan's former Indian subsidiary), holding the remaining 55 percent. On 14<sup>th</sup> April 2004, as appeared in an Economic Times article, "Officials in the Odisha government confirmed that UAIL has started R & R work at the plant and mining sites" Goodland (2007) points out that on 11<sup>th</sup> September 2004, local newspapers carried reports of Pali sabha (local ward) meetings, stating that the three Pali Sabhas had been organised by the Rayagada District Collector with a substantial police protection to avoid any untoward incident; the District Collector had talked to DPs/PAPs, assuring that their demands would be looked into. The report further stated that in three villages, Domkaral, Kendukhunti and Ramibeda, the villagers had unanimously agreed to the establishment of the alumina plant. At

the same time Alcan's website mentioned: "Restated R&R package approved by local committees (Gram Panchayat and Zilla Parishad)". However, in the same year on 1<sup>st</sup> December, an anti-UAIL demonstration was organised at Dama Karol village, near Kucheipadar, where ten platoons of state police brutalised the unarmed people affected by UAIL. Again on 13<sup>th</sup> February, 2007, more than one 1000 men and women of Kucheipadar village hoisted a black flag as a mark of protest against UAIL.

UAIL has been trying to start work for the last 17 years despite people's protests and demonstrations. The mine Alumina complex of UAIL at Kashipur includes: (1) fully mechanised bauxite mine using ripper dozer technology (2) a conveyor belt of 19.5 kms to transport ore from the mine at Baphilimali to the alumina plant situated near Doraguda; (3) alumina plant; and (4) captive thermal power plant of 80 MW. The choice of the factory was influenced by the proximity to the Baphilimali mine and the existing railway line at Tikiri (15 kms away). The other distinct advantages that a plant at this location enjoys are: (1) low bohemite and reactive silica content of the supplied ore; (2) a recently laid railway line which reduces transport costs to and from the Vizag port (Dash and Samal, 2008).

**Magnitude of Displacement in the Project:** Sahoo (2005) points out that more than 2800 hectares have already been acquired by the Government for the company and another 2100 families in two dozen villages stand to lose their land, including 370 families who would lose all their lands. Estimates of the people, negatively affected by the Utkal project, range from 750 (Hydro's estimate) to 3500 (Utkal's estimate) to 60,000 (Norwegian Agency for Development Cooperation estimate). It is certain that directly or indirectly nearly 22,000 people from 82 villages would be affected due to this project (INSAF, 2005).

The company made available only three settlements before for 148 displaced families from Domkaral, Ramibeda and Kendukhunti. However, the people of Dumkoral later refused to stay in the colony. Patnaik (2001) estimates that 1,750 hectares of land will be required for mining, the plant site, a township, and dumping spots. Additionally, a stretch of land, approximately 20 km. long and 50 meters wide, will be required for conveyer and corridor maintenance. The ore would be mined from plateau tops in the areas. Just one plateau, Baphilimali in Kashipur block, has bauxite deposits spread over an area of about 10 sq. km. (Sahoo, 2005).

**R & R Policy of UAIL<sup>1</sup>:** UAIL had chalked out its R&R policy before 2006 on the lines of Government of Odisha's Policy for Rehabilitation of Displaced Persons/Families

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<sup>1</sup> Government of Odisha Revenue Department: Resettlement and Rehabilitation Policy for the Displaced and other project affected families for the establishment of alumina industrial unit to be set up by Utkal Alumina International Limited at Kashipur, Rayagada, Odisha. A status Report was submitted to the National Commission for Scheduled Tribe, Government of India, on 13.09.2005.

with regard to the establishment of major industrial projects (1998), and the National Rehabilitation and Resettlement Policy for Project Affected Families (2004). The Government of Odisha's Revenue Department finally approved the Policy in respect of UAIL project for the DFs. The important features of the policy include:

- R & R benefit to displaced persons/families and to project-affected persons
- Family: 18-year-old son (married or unmarried), 30-year-old daughter (unmarried), divorcee, physically and mentally retarded are treated as separate families.
- Employment: Preference to the nominated members of the PDFs in employment either in the main plant or in its ancillary units (with following priority), (a) PDFs losing all lands, (b) PDFs losing more than 2/3rds of land, (c) PDFs losing more than 1/3rd of land, (D) others PDFs.
- Infrastructure facilities in resettlement colonies and clusters.
- Each of the displaced people opting for relocation elsewhere other than in the Resettlement colony were to be given a onetime cash grant of Rs.50,000/-
- In order to ensure timely vacation, an allowance of Rs, 500 per month per displaced family was to be provided for a period of one year.
- The company shall provide appropriate training facilities to the nominated persons of the displaced families for acquiring skills as required for such employment.

**Compensation for Agricultural and Homestead Land:** The UAIL project paid compensation in the form of money, in lieu of agricultural and homestead lands acquired for the project from the DPs and PAPs. As already mentioned, it did not offer land in return for lands acquired for the project. The land losers received the compensation in two phases. In the first phase, according to the quality of the cultivable land, an amount between Rs 21,300 and Rs 66, 030 was paid per acre. Similarly in the first phase, for homestead land Rs 71,000 was paid per acre. However, the ex-gratia was paid only after the struggle made by the local people. Subsequently, due to resistance and Maikunch firing, the project authority raised the actual price of land, ranging between Rs 1- 1.50 lakh per acre of agricultural land and Rs 8 lakh per acre for homestead land. However, the empirical work reveals that there are still some families which have not received their full compensation package. Table 2.4 highlights the details of compensation paid by UAIL project authorities.



**Table 2.4: Compensation Package of UAIL**

Land type	Compensation Paid by UAIL per Acre	Ex-gratia Paid after Maikunch Firing	Total Amount per Acre
Atto	21,300	78,700	1,00,000
Mala	32,660	87,340	1,20,000
Beronna	39,050	90,950	1,30,000
Bahal	50,410	99,590	1,50,000
Ghora	71,000	7,29,000	8,00,000
Bahal Pani	58,220	91,780	1,50,000
Bahalpani (thoposoli)	66,030	83,970	1,50,000
Potato	10,300	89,350	1,00,000
Bagayata/badi	21,300	78,700	1,00,000
MamuliKachoro	33,370	87,630	1,20,000
Rasta	21,300	78,700	1,00,000

**Source:** National Commission for Schedule Tribe 2005.

**Comparative Analysis of the Pre and Post- Displacement Period:** The survey work for the UAIL project was started without the knowledge of local people. It was only after some months that they came to know about the project. Even the people from the affected villages had no clear idea regarding displacement. This was because neither the administration nor the company had shared any information with the people in this regard even though the company had promised to provide the displaced people with vocational training and employment opportunities. However, the company did not carry out its promises. The jobs provided to the locals were ad-hoc in nature and completely based on daily wages (Rs. 60 per day). There was no provision of scholarship for higher education. The GRMs for the affected/displaced people was missing. Although inclusion of daughters above the age of 30 years, physically challenged, orphans, and widows as separate families among the oustees under the rehabilitation was a positive feature, there were many gaps even in that policy. The majority of PAPs were tribals and some of them could not get their compensation package since they are unable to show the records of right over their lands or that they had been cultivating the land either as cultivators or encroachers not as owners.

**Table 2.5: Occupation of the Respondents Before and After Displacement (%)**

Indicators	Before Displacement	After Displacement
Unemployment	-	62.9%
Farming	71.4%	4.3%
Agricultural labour	25.8%	30.0%
Business	1.4%	1.4%
Service	1.4%	1.4%

**Source:** Field data (2009).

Table 2.5 shows that out of 70 respondents, unemployment percentage was nil before displacement, but increased to 63 percent after displacement. Farming was the main occupation for 71.4 percent respondents before displacement. This reduced to 4.3 percent after displacement. The above table indicates that a quarter of the affected sample population were agricultural labourers before displacement, which increased to one-third after displacement. No significant change has been observed with respect to occupations like business and service. The physical displacement of people due to UAIL project has brought about significant changes in their occupation. Formerly, they were dependent on agriculture for their livelihood and whatever crops they were able to cultivate were utilised for one year, also sharing with their relatives. The UAIL project did not come up with a policy of land for land with the result that, the proportion of landless people increased post displacement. Given that majority of people in these villages were illiterate, their employability or lack of it was apparent. Furthermore, the survival of the landless and the agricultural labourers affected by the project was another pertinent issue.

Table 2.6 shows that about 66 percent of the families, before displacement, were joint families. But after displacement, some of the adult members of the previously held joint families have been compensated separately with houses constructed for them by the company, increasing number of nuclear families also has increased. Therefore, 90 per cent of the respondents reported that they are currently staying in nuclear families as against only 10 per cent staying in joint families.

**Table 2.6: Impact on Family Before and After Displacement**

Type of family	Before Displacement	After Displacement
Joint	46	7
Nuclear	24	63
Total	70	70

**Source:** Field data (2009).

Continuing further, Kitu Majhi, a 43 year old respondent expresses in his native dialect, “the houses are not worthy of living. They are small and narrow. You cannot plant a *lanka* (chilli) or a mango tree in the yard. It is so small that your friends cannot assemble there. Even though these are *pucca* houses, it is not like our earlier village. There is no room for our young boys and girls to dance. We cannot grow our food, in the absence of land. The strong family and kin ties that once was the core feature of our village have now broken down. People are more interested in making more money, chasing material comforts for themselves. The hilly path, through which we used to travel to our relatives, has been acquired by the company. Due to this, we are not able to meet them as often as we used to do and not even during festivals, get together, etc.”

**Utilisation of Compensation Money:** The affected people being mostly illiterate had no proper knowledge regarding monetary savings. They spent all their money on purchasing luxury goods, procuring daily necessities and medical services. Table 2.7 shows that 36 percent of the respondents had invested their money in purchasing consumer goods while exactly the same numbers of respondents report that they had spent the compensation money on procuring health services. Only 7.1 percent of the people stated that they had spent their money on education for their children. The people of the area, particularly those suspected to be directly or indirectly supporting the resistance revealed that they were constantly harassed with arrest, also dragged into various types of false cases by the Company. Many of them reported to have spent a large amount of their compensation money only for their release. All the people in the project area belonged to STs and SCs with no proper knowledge and experience of handling money. Hence, suddenly handling a huge amount of money was really difficult for them. The company had deposited money with post offices and local banks. The villagers were mostly dependent on wage employment and providing services as required by the local village community. These backward communities were relatively unexposed to monetary transactions. As a result, they were unable to use their compensation money properly for acquiring productive assets and/or for self-employment purposes. Due to these reasons, their economic condition gradually deteriorated with negative consequences on their future living conditions.

Table 2.7: Utilisation Pattern of Compensation

Expenditure	Frequency	Percentage
Consumer goods	25	35.7
Health	25	35.7
Vehicle	-	-
Education	5	7.1
Purchased land	-	-
Marriage of children/sisters	1	1.4
Information not shared	8	11.5
Deposited in Bank	6	8.6
Total	70	100

**Source:** Field data (2009).

**Incomplete Civic Amenities and Facilities:** The drainage facility provided by the project in the R&R colony has been left incomplete. The government also has failed to develop CPRs such as grazing land, religious centre, cremation ground, playground, and pond in the colony. The colony has one school with one lady teacher. She comes to the school just about two days in a week and teaches nearly 30 students belonging to different classes by combining them together. The school building also serves as an alternate shelter for cows. The colony goes without electricity and adequate water facility, due to which, the resettlers in the resettlement colonies were faced with problems of insufficient and inadequate water for bathing, washing and drinking purposes.

**Views Regarding Compensation:** Recipients of compensation from this project expressed their dissatisfaction regarding the rates fixed by the project authority, which they felt was not on par with the prevailing market rates. The main reasons for dissatisfaction include, (a) Valuation of their land was done based on registered sale deeds, which works out to less than the actual market price; (b) Valuation of land, based on the type of land recorded in pattas, was also faulty. (c) Houses provided to them by the company could not be sold up to 10 years; (d) The prices of houses and trees have been partially calculated and the measurements of houses and wells by the project authorities were not proper.

**Problem of Communication between PDPs and the UAIL Project Authority:** Communicating with the government and company authorities has been very problematic for the displaced people. Only 10 percent of the respondents reported contacting the project official's authority, while 44.3 percent reported non-communication and 45.7 percent reported that they could not understand the

language of higher authorities nor they ever want to contact the authorities. These gaps happen mainly because of the difference in language and educational levels between the displaced people and the authorities. Interestingly, being unable to understand the language spoken by the project authorities, the displaced people simply nod their heads and follow whatever is asked of them by the authority. Although some of the village representatives understood Oriya language partially, they could not fully comprehend the literal and legal meanings in the language. The letters by the project authorities were also found to have been wrongly conveyed to the people representatives who also lacked a proper understanding of the English language. Due to lack of education, the affected community did not understand the full implications of the agreements.

**Impact of UAIL Project on the Lives, Beliefs and Rituals of Displaced People:** The rehabilitation colony is completely devoid of any forest cover around it, due to which, the displaced people were finding it difficult to arrange for fuel even for their domestic consumption. The women folk had to travel very long distances and spent almost the whole day just for collecting fuel required for their daily consumption. The colony also lacks a cremation ground where they can cremate the dead bodies. The people have a belief that after the cremation of a dead body it becomes a *dumba* (ancestral spirit), and also that if the *dumba* is satisfied, it will not cause any harm, but if not satisfied it can cause diseases like diarrhoea, continuous fever, and extreme weakness. They are scared that *Dumbas* can trouble them as the dead bodies could not be cremated properly. Before displacement, in their village there used to be one *village Thakurani* (village deity temple) but now they have nothing. There are several changes in the celebration of different festivals like chait *parab* (spring festival), *dipabali* (diwali), but in the displaced colony there is no conducive environment for them to celebrate such festivals. During the period of merry making also, they miss out on many traditional things because of the absence of forest environment and relatives.

**Impact of UAIL Project on Social Relations:** Prior to displacement, there was an agrarian patron-client mode of relationship between money lenders and borrowers. The borrowers happened to be marginal and small scale land holders who used to take loans from money lenders simply based on trust. The traditional *jajmani* relations governed the relationship between the money lender and borrower. However, such type of a relationship was found missing in their new environment.

**Impact of UAIL Project on Position of Women:** Due to the loss of CPRs, the women folk have to endure a great deal of suffering. The tribal women shoulder the responsibility of collecting fuel, wood, fodder, minor forest produce and water for their families. Deprived of land, forest and forest products as a consequence of displacement, women are no longer equal partners with men in terms of food gathering, hunting and cultivation. This has resulted in the loss of their freedom in

social matters, dependence on others in economic matters and almost no role in the political and educational fields. Surprisingly, after displacement, there has been an increase in the practice of giving dowry both in the form of cash and commodities and also the incidents of marriage of girls at a lower age. Girls are given in marriage immediately when the cash compensation was received in the locality, as the parents are not sure of what would be their economic status later on.

The girls of the affected families were sought by the unaffected people out of greed so that they can acquire more dowries. This is particularly true for the *tribals* and *dalits* who started adopting the dowry system, which was relatively unknown to them before. As a consequence of displacement, there is also a rise in social evils such as alcoholism and gambling. The increase in such type of social problems has affected directly the lives and status of women in the form of domestic violence being inflicted on them. As men get more and more addicted to social evils, women and children become scapegoats. Increase in anxiety, idleness and insecurity among men seems to have caused increase in incidents of alcoholism and domestic violence.

**Impact of UAIL Project on The Condition of Elderly Persons:** Around 35 persons were excluded from wage works (out of three villages viz. Rmaibeda, Kendukhuti and D.Korol Talsai) due to old age. It was contended that in the Gram Sabha meeting, held in December 2004, the company and the government authority had assured them that the old aged persons would be provided with job opportunities and also that if they are found unable to work, their nominees could be recognised as proxy workers. But later the company did not carry out its promise as expected and the elders felt cheated of their livelihood.

**Conclusion:** While the main source of income for the habitants of Kashipur block was agriculture, they were dependent on forests for food, fuel, fodder and other household items. The literacy rate of this block is abysmal. About 82 percent of the population within a radius of 10 km. of the mining site is SCs and STs. The displaced people are basically landless labourers and agricultural labourers. After displacement they have become landless and jobless and the question of their survival in the event of them not securing jobs remain. There were numerous instances of ‘brutal, vengeful and uncivilised behaviour’ of the local administration in the Rayagada region (Bandyopadhyay, 2004, pp-411). The company has failed to provide land-based rehabilitation and employment to the displaced people. Although the government has given rehabilitation cash grant towards their economic rehabilitation, no other skill based training or alternative vocation were imparted to them. Due to the UAIL project, the position of displaced people has got undermined, bringing in great agony to the women and old aged persons. A sound R and R programme could have been facilitated by taking into account the felt needs of the local people.

The displaced people were not involved in the resettlement planning and implementation like the development of the resettlement site and infrastructures. In addition, the homestead plots and infrastructures were not developed properly in the resettlement colony. They could have been formulated with a fair scope for displaced people's participation in the resettlement planning and implementation. People owning lands have been paid a compensation of Rs.1,20,000 per acre besides being promised of houses in the resettlement colony. No other benefits were forthcoming to these people who are yet to receive their third installment of compensation (at the time of survey). Further, compensation was restricted to those who could establish their ownership of lands while non-titleholders received nothing. Similarly, the loss of access to minor forest products such as fuel and food, for both people and livestock were not compensated at all.

According to Cernea and the IRR model, the eight impoverishment risks should be anticipated and requisite steps taken so that displacement does not result in landlessness, homelessness, deterioration in health and nutritional standards, a loss of food security, unemployment, loss of access to CPRs, disarticulation of the social bonds, and marginalisation. Rehabilitation and reconstructing the livelihoods of the displaced peoples should have the commitment and dedication of all those involved in it. Resettlement is a dynamic process and the impacts on the displaced people take place at different times and in different phases (Dash, 2008).

The administration should strive for an early release of those charged with false crimes besides dropping their outstanding warrants. The state should provide sufficient protection for peaceful assemblies, rallies, and demonstrations organised by local groups. One of the very important issues related to development projects is the process of 'negotiation'. The Government must ensure that all details of R & R packages, which are entitlements to the affected communities are given in the regional language. DPs and PAPs must be identified and compensated according to the standard of the accurate demographic data collected. The survey should ensure that all villages and habitations in the affected area are properly identified and recorded by the relevant government authorities. All these steps will go a long way in healing the wounds of the affected communities.

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## Mining and Displacement in South Odisha: Perspectives from a Census Survey

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**Abstract:** *This paper examines the displacement impact of projects of National Aluminium Company (NALCO), a leading public sector enterprise in India. Based on the field survey results, the paper brings to the fore the plight of the most vulnerable sections viz. the SCs and STs who have lost lands, houses and other assets for the project and are unable to regain their livelihood status. The fact that land scarcity was not a serious issue in the 1980's as it is felt now is a sufficient ground that the company should have adopted a land to land policy. As a result of the present approach, the above sections have become casual labourers. On the whole, the R & R measures undertaken by NALCO are found to be piecemeal and ad hoc in nature. The paper points out that the company, with its huge profit base could have done justice to these much marginalised groups.*

**Introduction:** Odisha, endowed with a wide variety of mineral resources, occupies an important position in India's mineral map. Among all the minerals, bauxite is a prominent one. According to the production data for 2009-10, India produces 13,95,2002 tons of bauxite. Odisha is the highest producer (35%) followed by Gujarat (19%), Maharashtra (14%), Chhattisgarh (12%) and Jharkhand (12%)<sup>1</sup>. Deposits of bauxite ore are mined and processed into alumina - one of the feed stocks for aluminium metal. At the refinery, alumina is extracted from bauxite ore; while at the smelter, aluminium is extracted from alumina oxide. Aluminum is used in every aspect of our day-to-day life, such as in tetra packs, saucepans, foil wraps, laptops, cars etc. In India, aluminum consumption has increased from less than one kilo per

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<sup>1</sup> <http://www.indiastat.com/table/minesandminerals/23/bauxite/19204/617982/data.aspx>

person per year to 15-30 kg per year (Padel and Das, 2010)<sup>2</sup>. It is known as a 'green metal' as it can be easily recycled, besides reducing the fuel consumption of cars by way of making them lighter. In 2009-10, India produced about 14 MTs of bauxite from 200 mines. NALCO, a public sector enterprise, alone produces about 35 percent of the total, with bulk of production from the state of Odisha.

Out of the ten bauxite deposits in Odisha, mining leases have been granted in respect of two deposits. Panchapatmali deposit in Koraput district has been under the operation of NALCO since 1986. Maliparbat deposit in the same district has been granted to Hindustan Aluminium Company (HINDALCO). The present study focuses on the former. Koraput, a district in south Odisha is known for its rich mineral deposits and a high concentration of tribal groups. In 2006, the Ministry of Panchayati Raj declared Koraput as one of the most backward districts of India. The district has a very low literacy rate (36.20%). Naxal activities have spread across the district and now it is part of the red corridor<sup>3</sup>. Despite being affected by a high degree of poverty, the district is known for its indigenous varieties of rice in addition to hosting many major industries of Odisha. This paper is organised as follows: The first section is an introduction to the study; the second presents the past picture of NALCO, the third takes a look at the study area and the fourth highlights the result followed by concluding remarks in section five.

**Bauxite Mining in South Odisha-Revisiting the Past:** NALCO was set up for exploiting the vast bauxite deposits of south Odisha. It was involved with a French international aluminum company (Srinivasan, Vyasulu & Rajagopalan, 1981). There was a public debate on the huge public investment even as papers in a leading journal, *Economic and Political Weekly* raised a number of questions regarding the then ongoing debate (Srinivasan et al, 1981; Subrahmanyam 1982). Researchers pointed out that the financial viability and foreign exchange earnings of the project were dependent on the global alumina prices. There were also questions regarding the interest rate on the Eurocurrency loans. There were also questions on why this plant was taken up when there was a resource crunch to finance projects and programmes covered by the Sixth Five Year Plan (EPW, 1982). However, another reviewed paper in EPW (1986) argued that it was a major development in the aluminium industry during the 6<sup>th</sup> Plan.

Stanley (1996) provides a clear account of displacement, compensation and rehabilitation of the NALCO Bauxite Mine and Plant at Damanjodi. It is evident

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<sup>2</sup> Padel and Das (2010) describe their book 'Out of this Earth' as an anthropology of aluminum industry, with a vivid account of the industry concerning Odisha, India and the World.

<sup>3</sup> [http://en.wikipedia.org/wiki/Koraput\\_district](http://en.wikipedia.org/wiki/Koraput_district)

from the table that 597 families in 26 villages were displaced, out of which 42.55 percent were tribals (Table 2.8). Out of the total acquired land, 69.5 percent was utilised for the construction of plant and the remaining utilised for township. Out of the displaced families, about 74 percent were rehabilitated, while 59 percent got employment in compensation. Compensation amounted to Rs. 2000 per acre of land while compensation for trees was fixed at Rs.100 per tree. There was no compensation for CPRs.

**Table 2.8: Displacement Scenario of NALCO Projects**

Affected Area	26 Villages	
Affected Families	Tribal	254 (42.55)
	Dalit	56 (9.38)
	Others	287 (48.07)
Total	597 (100)	
Land acquired (acres)	Mines	427.30 (4.25)
	Township	2,638.96 (26.24)
	Plant	6,992.50 (69.52)
Total	10,058.76 (100)	

Source: Stanley (1996)

**Table 2.9: Compensation and R & R in NALCO**

Families Displaced	597
Families Rehabilitated	441 (73.87)
Job Received	352 (58.96)
Compensation per one acre of land (Rs)	2000
Compensation for Tree	100
Compensation for CPR	No

Source: Stanley (1996)

Another study carried out by Samal (1996) during the same year, covering the NALCO Angul sector (smelter), pointed out that NALCO R & R policy was regarded as one of the best in India. According to Khatua and Stanley (2006), NALCO paid compensation in respect of patta lands. However, no compensation was extended to CPR or government and village lands. All these studies encouraged the authors to revisit the displaced communities after three decades so as to compare the condition of the displaced people in the pre-mining and post-mining periods.

**Study Area and Sample Selection:** The study concentrates on Koraput district of Odisha as this district produces more than 98 percent of bauxite. Bauxite mines in Panchpatmali hills of Koraput district were taken up for the study because it constitutes the largest single deposit in the world. NALCO was established in 1981 to produce aluminium from this rich bauxite deposit. It is also Asia's largest integrated aluminium complex. Called as the 'pride of Odisha', by the Government of Odisha, the company declared a net profit of Rs. 608 crore, the highest on record for the first quarter of 2006, besides winning the Government of India's Indira Priyadarshini Vrikshamitra Award for its contribution to wasteland development (Goodland, 2007). It has three operations channels in Odisha, Bauxite mining in the Panchpatmali hills of Koraput district with deposits of 112.8 million tons; Alumina refinery complex at Damanjodi, Koraput district, (11 km off from the mines with an installed capacity of eight lakh tones of alumina annually) and Smelter plant at Angul district (Stanley, 1996).

The present study is part of a major research project titled "Bauxite mining in Koraput Region of Odisha: A Socio-Economic Impact Analysis". The main objective of this project was to assess the socio-economic and environmental challenges of bauxite mining. A census survey was undertaken to identify the sample households. The present paper is based on the results of the field survey. The study concentrates on the first two areas. It also includes villages near the ash and red mud pond areas. NALCO has divided the surrounding areas into two zones: core zone (falling within a radius of 5 km either from the plant or the refinery) and buffer zone (falling within a radius of 6 to 15 km either from the plant or the refinery). This has been decided by NALCO in view of the severity of pollution effects. The villages were selected from each zone. There are 12 villages from three blocks surrounded by the refinery and nearly 40 villages from four gram panchayats surrounded by the mines. The authors visited eleven villages and conducted a census survey to understand the extent of displacement. All household heads of the hamlets in these villages were interviewed. The sample information was collected from 1483 households. The demographic profile of the selected villages is given in Table 2.6. In the mining core zone, Kapsiput is a sample village with 142 households, out of which 141 households belong to the scheduled tribe category. In the mining buffer zone, Khardiguda and Putraghati are two sample villages. Khardiguda has 79 households, all belonging to the ST population and Putraghati has 201 households with a mixed population.

In the refinery core zone, Analabadi village has 607 households. This is a resettlement colony consisting of eleven displaced hamlets of the refinery. It also has a mixed population. The second village, Ambogam, consists of 133 households, most of them being tribals. This village is almost located in the refinery premises (1.2 km). This village was originally to be displaced but NALCO later on changed their decision.

The villagers are all the victims of the immediate environmental impacts. In the refinery buffer zone, Mujanga village has 259 households, dominated by SC and ST population. Marchimal is another village in this area with 77 households and a mixed population but with no tribal households.

**Table 2.10: Demographic Features of Selected Villages**

Study Zone	Village	Panchayat	Block	Households Category				
				SC	ST	OBC	OC	Total
Mining Core	Kapsiput	Bhifaarguda	Lakhimpur	1	141	0	0	142
Mining Buffer	Khardiguda Putraghati	Littiguda	Koraput	0 26	79 95	0 79	0 1	79 201
Refinery Core	Analabadi Ambogam	Matalput Littiguda	Koraput	68 2	267 131	144 0	128 0	607 133
Refinery Buffer	Mujanga Marchimal	Mujanga Matalput	Dasamanthapur Koraput	143 21	93 0	0 15	23 41	259 77
ARMP Core Zone	Goudaguda Kharaguda Champapodar	Charangul Podampur Mujanga	Semiliguda Koraput Dasamanthapur	0 4 11	0 2 1	0 14 9	73 13 64	73 33 85
ARMP Buffer Zone	Charangaguda	Podampur	Koraput	30	42	0	0	72

In the Ash and Red mud Pond (ARMP) core zone, Goudaguda is a village with 73 households. All the households belong to *Gouda* caste, whose main occupation is livestock rearing. Both Kharaguda and Champapodar are displaced villages in this area. Kharaguda has 33 households with a mixed population and Champapadar has 85 households, dominated by 'Other Caste'. In the ARMP buffer zone, Charangaguda is a village with 72 households, dominated by SC and ST population. Most of them have lost their land because of the railway track of NALCO. The next section presents the displacement scenario in these affected villages.

**Impact of Displacement:** The package offered by NALCO is considered as one of the best compensation package of the times. For the fully affected households, i.e., those who lost their home and homesteads, the company offered a new house at the rehabilitation colony, one job to one person, health card and free education at NALCO School. Monetary compensation was paid for tangible losses, i.e. Rs. 500 to Rs. 15000 for home and homestead; Rs. 2500 to Rs. 5000 for wetland; Rs. 1500 to Rs. 2500 for dry land and Rs. 100 for the trees. For the partially affected households i.e. those who had not lost their homes and homesteads but other tangible assets,

compensation money was the same. They also gave a high priority for the contract and wage labour works at the NALCO refinery and mining. In the mining core zone, 51 percent of households had lost their agricultural lands and none of these households claims to have received any compensation. These villagers practiced *podu* a top of the hills and hill slopes.

**Table 2.11: Displacement and Compensation Scenario**

Study Zone	Total HHs	Affected HHs	Assets lost		Compensation Received	
			Land	House	Land	House
Mining Core	142	72 (50.70)	72	0	0	NA
Mining Buffer	280	138 (49.29)	138	0	136	NA
Refinery Core	740	383 (51.76)	141	361	129	344
Refinery Buffer	336	34 (10.12)	34	0	28	NA
ARMP Core	191	128 (67.02)	86	103	85	103
ARMP Buffer	72	38(52.78)	38	0	36	NA

Source: Field Survey (2011).

After getting the required permission for mining in the area, NALCO evicted these villagers. As these displaced households did not possess *patta* with regard to their agricultural lands, they did not receive any compensation. In the mining buffer zone, 49 percent of the households had lost their agricultural lands. These villagers had lost their lands in view of the rehabilitation colony, conveyor belt and another road connecting the mining to the refinery site and almost all the households had received compensation except two households because of unclear documents. The compensation package amounted to Rs. 1000 to 1500 per acre in respect of dry lands and Rs. 2500 to 5000 per acre in respect of wet lands.

In the refinery core zone, out of the affected households, 37 percent (141 households) had lost their agricultural lands. Of these, 129 households received compensation, while it is still pending for the others. On the other hand, 94 percent of the affected households (361 households) have lost their home and homestead area, of which 344 households have received compensation to the extent of Rs. 500 to Rs. 5000 based on the classification of households like hut, semi-pucca, pucca etc. These households, now settled in the rehabilitation colony are entitled to one job (per house) at NALCO. In the refinery buffer zone, only 10 percent of the total households were affected. They had lost their agricultural lands for the refinery as well as a part of red mud pond. Out of 34 households, 28 households had received compensation. In the ARMP core zone, 67 percent of the affected households had

lost their agricultural lands. All the households have received compensation except one. Also, in this area 80 percent of the households have lost their homes and homestead area. In respect of these households, the compensation package is the same. In the ARMP buffer zone, out of the 53 percent of households affected, 38 had lost their agricultural lands and while 36 households had received compensation.

As part of the compensation package, NALCO had provided jobs to those households who had lost their homes and homestead area. Therefore, it is interesting to study how the main occupational structure has changed in the post displacement scenario (Table 2.12 to 2.14).

**Table 2.12: Main Occupation of Households: Pre and Post Displacement**

Main Occupation	Mining Core Zone		Mining Buffer Zone	
	Pre	Post	Pre	Post
Farmers	118 (100)	75 (63.6)	193 (81.8)	78 (33.1)
Wage Labours	0	0	43 (18.2)	
Others	0	0	0	9 (3.8)
NALCO Contract/ Wage Employee	NA	43 (36.4)	NA	149 (63.1)
Total	118 (100)	118 (100)	236 (100)	236 (100)

Source: Field Survey (2011).

In the mining core zone, the main occupation was farming in the pre displacement period, while in the post displacement period, 36 percent of the households were found engaged in NALCO as contract or wage employees though not on a permanent basis. NALCO gives works to contractors. These contractors recruit the contract and daily wage labourers. They do not have job security though they receive weekly payments. The work category has been divided into four: High Skilled, Skilled, Semi Skilled and Un-skilled and the wage rates were Rs. 330, Rs. 280, Rs. 220 and Rs. 190 per day respectively. In the mining buffer zone, farmers were found dominating the main occupation (82 percent) in the pre displacement period followed by wage labourers. However, this percent has got reduced in the post displacement period in that now NALCO contract and wage labourers constitute the main category.

**Table 2.13: Main Occupation of Households: Pre and Post Displacement**

Main Occupation	Refinery Core Zone		Refinery Buffer Zone	
	Pre	Post	Pre	Post
Farmers	665 (94.5)	71 (10.1)	165 (54.8)	100 (33.2)
Wage Labours	27 (3.8)	207 (29.4)	132 (43.9)	172 (57.1)
Others	12 (1.7)	33 (4.7)	4 (1.3)	19 (6.3)
NALCO Contract/ Wage Employee	NA	98 (13.8)	NA	10 (3.3)
NALCO Employee	NA	295 (41.9)	NA	0
Total	704 (100)	704 (100)	301 (100)	301 (100)

Source: Field Survey (2011).

In the refinery core zone, farmers dominated the main occupation in the pre displacement period (94.5 percent), while in the post displacement period, the majority are permanent employees of NALCO. The households that have lost their homestead area in this zone have been absorbed by NALCO as part of the compensation package. This is followed by wage labourers and NALCO contract employees. In the refinery buffer zone, both farmers and wage labourers were found prominent in the pre displacement period. However, in the post displacement phase, wage labourers outnumbered the farmers. As the extent of displacement is very less, people have got employed in NALCO.

**Table 2.14: Main Occupation of Households: Pre and Post Displacement**

Main Occupation	ARMP Core Zone		ARMP Buffer Zone	
	Pre	Post	Pre	Post
Farmers	164 (85.9)	16 (8.4)	38 (52.8)	1 (1.4)
Wage Labours	22 (11.5)	90 (47.1)	34 (47.2)	65 (90.3)
Others	5 (2.6)	7 (3.7)	0	3 (4.2)
NALCO Contract/ Wage Employee	NA	9 (4.7)	NA	3(4.2)
NALCO Employee	NA	69 (36.1)	NA	
Total	191 (100)	191 (100)	72 (100)	72 (100)

Source: Field Survey (2011).

The situation is similar in the ARMP core zone too. During the pre displacement period, the main occupation was farming. However, in the post resettlement



scenario, it is the wage labour and NALCO employees that dominate. Here also, the households that have lost their homestead land have got permanent employment in NALCO. In the ARMP buffer zone, the main occupation was dominated by farmers and wage labourers. However, in the post displacement period it is dominated by wage labourers. In view of water problem and other environmental impacts, farming is no longer a profitable occupation. It was also revealed that the people preferred to work as wage labourers rather than as contract employees as they felt the NALCO contract employees were exploited.

In the tribal and hilly habitations, CPRs play an important role in the lives of the poor and marginalised. In these regions, the access to and availability of CPRs in terms of grazing pastures, ponds, streams, forests (for minor forest produce) were critical to their livelihoods and access to these was usually free and unrestricted. Interactions with the affected households in these areas also revealed that NALCO does not provide access to their health facilities. This attitude of NALCO, a profit making public PSU was found totally inadequate and unsatisfactory. Permanent employment opportunities with NALCO were very limited. Whatever employment was offered was only on a contract basis and that too through contractors. It has been reported during the survey that once an employed person gets married and moves away from the house, the others, especially the elderly become totally vulnerable without any regular source of income. Land to land compensation was eminently possible during the early eighties, but this option was not followed. The affected households also become addicted to certain social evils as a result of cash compensation.

Many women from surrounding mining areas were working in mines as cleaners; cement workers, machinery cleaners and helpers. They get employment through contractors not NALCO. The wage rates were in the range of Rs. 90 to 120 per day. Women workers report that they are not provided with adequate transport facilities to reach mining sites. It has been observed that, people from surrounding villages work in the refinery in both technical and non-technical sections; people working in the technical section include technicians, fitters, electricians, while non-technical people work as maintenance workers, daily wage workers in the boiling section, and as other workers. It was found that transport was a major problem from refinery to refinery that surrounds the villages. Generally, men use bicycles or motor cycles for their transport while women trek long distances (9 to 10 Kms). Due to the transport problem, they were not able to reach home on time nor do they get enough time to spend with their children at home. They expect NALCO to provide adequate transport facility to reach the refinery on time.

Besides the problems enlisted above, there were certain environmental and ecological problems observed in the field. Dust emanating from the conveyor belt carrying bauxite affected agricultural lands in terms of productivity. There was no

mechanism in place to overcome such losses. Natural resources like ponds and streams get adversely affected due to mining and conveyor belt. In Goudaguda village, for instance, there was a leakage of caustic soda and septic water pipelines carrying septic water flows into agriculture fields, adversely affecting soil fertility and crop production. The canal water was contaminated due to caustic mud and septic water. The village elders revealed that in 1995, few livestock had died drinking the contaminated water. The villagers also reported health problems like skin orders, TB and other ailments.

Regarding other infrastructural facilities, most of the villages were facing water problems. They depended on wells and hand pumps for both drinking and domestic usage. For agriculture, they were dependent on streams, ponds and rainfall. NALCO gets water from Kerandi River which is 8 km off from the refinery. The pipeline is connected to carry water from the river. People reported that their request to access water from the pipeline was denied by NALCO, though there is huge water wastage due to leakages. Interactions with associations revealed that due to the project, while many have lost their agricultural lands and houses, NALCO has provided jobs only to a few people. There seemed to be no proper guidelines for job recruitment. Post recruitment, the company had conducted a Minimum Literacy Programme for the displaced people. The programme duration was nine months. However, spouses of the displaced people who had got jobs were denied jobs by NALCO.

During, 1984-85, NALCO started the Peripheral Development Programme. The area which is 10 Kms from Refinery and Mining was considered as a Periphery, wherein NALCO promised to provide all the facilities like health, education, roads, drinking water and infrastructure development (School building etc.) However, there is not much progress on the ground and there are allegations of the Peripheral Development Fund being diverted to other areas.

**Conclusion:** NALCO, a profit oriented public sector company called ‘the pride of Odisha’, cannot really be characterised as such from the perspective of affected population. The data shows very clearly that the most vulnerable sections, viz., SCs and STs that have lost lands, houses and other assets are not in a position to get back their livelihood status as a result of the cash compensation policy. The fact that land scarcity was not there in the 1980’s as is felt now is a sufficient ground that NALCO should have explored and adopted a land to land policy. As a result of the approach followed by them, most of the displaced people got reduced from being farmers to casual laborers. Even the job allocation was confined to one member of the family reducing others to mere dependents. The other infrastructural facilities promised by NALCO were also not adequately provided and there were still loose ends in the whole approach. On the whole the R & R measures undertaken by NALCO were found to be piecemeal and ad hoc in nature. The company with its

huge profit base could have done much better to ensure justice to these marginalised people.

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## Development through Displacement and Benefit-sharing

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**Abstract:** *The process of economic development in India can be said to have begun with the building of mega dam projects and large scale industrial units in various parts of the country. The state of Orissa has also witnessed this process with the construction of big dams (Hirakud, Rengali etc) and mega projects by Public Sector Undertakings. All these have left an imprint of untold misery upon the displaced population (displacement in terms of the loss of lands, homes, and livelihood). Of the various projects, dams rank at the top of the list in displacing people. In the latter part of the 1970s, the Govt. of Orissa evolved policies to provide limited relief to the affected population. Though policies were also formulated from time to time to address the issues of the displaced people, these seem to have failed to generate the desired results. In the last decade, the developments in Kalinganagar, Vedanta and POSCO projects in the state have drawn the attention of politicians, bureaucrats, professionals, researchers and different stake holders. The present article examines the issue of displacement and R&R policy frame work aimed at mitigating the negative impacts of DID through certain BSMS.*

**Introduction:** Economic development is a process whereby an economy's real national income increases over a long period of time. The 'process' of economic development implies the operation of certain forces; these forces while operating over a long period brings forth certain visible changes, even as details of the process vary under diverse conditions over space and time. A general result of the process is growth in an economy's national product- in itself a particular long run change (Meir and Baldwin, 1975). Philip McMichael puts the issue of development in terms of four questions: (i) What is the goal of development on an increasingly finite planet; (ii) what are the core values of development (iii) why is development realized through inequality?; and (iv) what is an appropriate scale of development (Mc Michael, 2008).

As the 1991 UN Human Development Report states, the basic objective of human development is to enlarge the range of people's choices to make development

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more democratic and participatory. These choices should include access to employment opportunities, education, health and a good physical environment. Each individual should also have the opportunity to participate fully in community decisions and to enjoy human, economic and political freedom. In the nineteenth century, development was understood philosophically as the improvement of humankind and interpreted by European political elites as social engineering of emerging national societies. It meant formulating government policy to manage the social transformations associated with the rise of capitalism and industrial technologies. Thus, development was identified with industrialisation as well as the regulation of its disruptive social effects. These effects began with the displacement of rural populations by land encroachers for cash cropping, creating “undesirables” such as menacing paupers, restless proletarians, and unhealthy factory towns. Development, then, meant balancing technological changes and class structuring through social intervention- understood idealistically as assisting human social evolution and managing citizen-subjects experiencing a wrenching social transformation (Ibid). This definition clearly indicates that development leads to social transformation through displacement of rural population.

The post independent India went ahead with the Nehruvian ideas of mega projects, where the public sector was assigned the crucial role of transforming India into a self-sustained economy. Although Nehru’s personal charisma acted as a great shock-absorber, while deflecting sources of tension, it was clear that troubles were being stored for the future. Displaced people inevitably become involuntary victims of development. Displacement has become an evil in the process of economic development. As development projects are not ‘space neutral’, land acquisition and displacement of human population become inevitable.

**Studies on Displacement:** Although the basic arena of displacement lies with economists, it has largely been dominated by sociologists and social anthropologists. Despite negative affects of displacement, economic studies relating to displacement and resettlement is inadequate. This is because of externalisation of social and economic costs of the affected people/area. As for the research of economists on population displacement, Prof. Cernea observes that “basic research by professional economists on population displacement, to the best of my knowledge, currently is not carried out anywhere. Development economics still has to respond in full to the challenge of analysing not only the economic dimension of dislocation, but also the economic content of other social development (Cernea, 1999).

In India, economists seem to have devoted themselves more to the study of poverty and its alleviation programmes. However, a systematic analysis of impoverishment arising out of land acquisition and displacement due to development projects has been missing. While economists undertook special studies viz economic survey of Orissa State (Mishra, 1960), produced reports on the benefits of Hirakud Irrigation

or even when the National Council of Applied Economic Research prepared a perspective plan for economic Development of Orissa from 1974 to 1984, they showed no intellectual interest in respect of the many forms of impoverishment experienced by PAPs. Nor are current mainstream economists concerned with the economic and financial dimensions of restructuring displaced person's livelihoods. It is, as if, the development projects studied by them have not resulted in the displacement of any people (Mahapatra, 1999).

There is a sufficient reason for studying the issue of displacement caused by dam projects. This is because the dam projects have completely shattered the lives of displaced people over a much wider area than any other development projects, topping the list of involuntary displacements. Further, the treatment towards the displaced people of dams and industries has never been uniform. In this context, it would be unjust if we failed to mention the displacement scenario of the Hirakud dam, the largest artificial lake in Asia, with its reservoir spreading over 743 square kms at full reservoir level. While the dam has been built mainly for irrigation and generation of power, flood control and protection of coastal Orissa was one of the other significant benefits conceptualised from the project. The Hirakud project has been built over the tears of 18000 families displaced from the most fertile track of western Orissa. About 22,144 families with a population of about 1.1 lakh to 1.6 lakh spreading over 249 villages in the then Sambalpur district, Orissa, and 36 villages of Raigarh district of Chhatisgarh were badly affected due to this reservoir. The problem of displacement attracted poor attention of the planners. On the altar of development, a large number of people sacrificed their lands, homes and a lot more, inviting the wrath of socio-economic deprivation and degradation. While laying the foundation stone, Nehru told the villagers, if you are to suffer, you should suffer in the interest of the country (Supakar, 2007). The people have done exactly that. The construction of IB Thermal Power Station and coal mining around the reservoir, particularly in Jharsuguda and Sambalpur belt again uprooted them for the second time from their land and livelihood. There were 21 un-surveyed villages of Hirakud dam reservoir whose lands were acquired though not under the reservoir. The legal rights over their lands were taken away with the owners of lands becoming tenants on their own lands. No solid measures have so far been taken by the government to solve the problem of these 15000 families belonging to 21 villages. Even after six decades of its existence, there are more than 1000 cases of undisbursed compensation. Another post independent euphoria of sacrifice relates to the construction of Bhakra dam across the Sutlej River in Punjab. It displaced 7206 families from 371 villages, affecting 36,000 persons. Even today, 60 years after their displacement, they are still struggling to put their lives back on the track. The entire economic and social structure of this population remains completely disrupted since displacement. Long arduous years were spent trying to scrap up enough for minimum sustenance (Dharmadhikary et al, 2005).

Studies reveal the pain and sacrifice or the real cost borne by these people for the sake of nation building. A few studies dealing with the issue of displacement arising out of industrial projects have also set a mile stone in this regard. They include B.K.Roy Burman on Rourkela Steel Plant (RSP); S. Parsuraman on National Thermal Power Company (NTPC) in Korba; K.C. Samal on National Aluminium Company (NALCO) etc. The studies on displacement arising due to industrial projects also do not show encouraging findings. For instance, the findings related to RSP show that although the benefits accruing to the nation through the multiple effects are immense, the local people are affected by the 'backwash effects' of industrialisation. Most of the direct and organised sector jobs generated by the steel plant have been monopolised by outsiders hailing from different parts of the country, and also people from the relatively more advanced coastal districts of Orissa. The backward tribal people of the region and people from other depressed categories of adjacent tribal districts have mostly landed up informal and contractual category jobs of an exploitative nature. (Meher, 2001). Mohapatra, P. (1998), a bureaucrat turned politician and Member of Parliament, candidly admits that little attention has been given to the adverse affects of displacement on the social, economic and community life of the displaced people although they have sacrificed a lot towards nation building. In the case of land acquisition in Rourkela steel plant, the land was allotted to outsiders and employees at a price 100-400 times more than what the government paid as compensation to the displaced people. The displaced people were deprived of land and commercial complexes by the authority.

The study of industrial project of Korba region revealed that displacement dismantles the mode of production and settlement patterns; disrupts social networks, induces impoverishment and threatens cultural identity; creates health problems and deeply affects regional economies. Displacement should therefore, be avoided at all costs but if inevitable, the issues must be addressed holistically (Dhagamwar et al, 2003). It is also pointed out that even though the NALCO project has induced substantial benefits in the terms of creating additional employment and improvement of various infrastructure amenities, the damages outstrip the benefits (Reddy, 1990).

The cost- benefit analysis of the major development projects implemented in the country brings us to the stunning discovery that the Planning Commission criterion of 1:1.5 cost-benefit proportions has rarely been realised in respect any of them. (Murickan et al, 2003). The Environmental Impact Assessment (EIA) is hardly carried out properly to guard against of global warming and climate change. The model of development adopted at present has been questioned in many ways. Lip service continues to be paid to the issues of environment, social and human concerns even as development dominates over other issues.

Mc Cully (1996) observed that while the number of people forced out of their homes by dams is staggering, it is difficult to give even a reasonably accurate estimate of

the total number of people evicted by industries. India and China have displaced and are displacing more number of people than any other nation. The conservative estimate arrived at by the Indian Social Institute, New Delhi, puts the figure to be more than 14 million people displaced by reservoirs and associated irrigation projects in post independent India.

Singh (2012) points out that the ambiguities surrounding the LAA, 1894 have repeatedly been exploited by the state to acquire land for companies and other powerful sections of the society. To cite an example, there is no provision for emergency acquisition of land under part VII and acquisition for companies is limited to only those activities which can benefit the public directly in the form of housing for workers, setting up of schools, hospitals etc. However, the states have in the past acquired land for setting up of shoe-manufacturing factories, air conditioner compressor plants, hotels and swimming pools that may not have served the intended public cause. Ambiguities and misuses have increased in the context of judicial interpretations of the Act. In the majority of litigated cases, the courts have awarded compensation much higher than the land acquisition award.

Thus, the studies carried out with regard to major dams and industrial establishments show that the displaced people have not become the beneficiaries of the projects in most of the cases and that there is a ‘lack of human touch’ in dealing with victims of development projects in general.

**Magnitude of Displacement:** During the last two decades of the previous century, the magnitude of forced population displacement caused by development programmes was of the order of 10 million people each year or some 200 million people globally during that period (Cernea, 2000). Table 2.15 shows a few cases of land acquisition & the subsequent displacement by a few selected public and private sector industries established during the pre and post reform periods.



**Table 2.15: DID in Selected Industrial Projects**

<b>Name of Projects</b>	<b>No of Villages Affected</b>	<b>No of Families Displaced</b>	<b>No of Persons Displaced</b>	<b>Total Land (ha)</b>
Rourkela Steel Plant	30	4251	23400	13185
Bokaro Steel Plant	—	12487	68700	12442
Bhilai Steel Plant	—	5703	31300	13500
Durgapur Steel Plant	—	2150	11800	6633
HAL	10	468	—	3764
HEC	25	2198	12990	3725
NALCO	19	788	3104	3444
National Test Range	130	11609	70102	10121
TISCO	18	—	—	6806
Vizag Steel Plant	37	14000	—	10814
Aditya Aluminium	11	444	—	1419
Bhusan Steel	03	164	418	533
IB Thermal Power Station	02	147	342	570

Source: Reddy, 1992 and Other Official Records, 2007.

With the adoption of New Economic Policy 1991, the domestic private sector and multinationals have assumed the role of industrialising the state mainly through mineral based industries rather than through any value additive industries. POSCO at Paradeep is going to affect more than 4500 families. So also the other industrial groups such as Bhusan, Vedanta, Aditya Birla, Sterlite, Tata are all going to contribute more to displacement through their mining and industrial operations in the districts of Koraput, Kalahandi, Sambalpur, Jharsuguda, Keonjhar, Jagatsingpur etc. The growth of thermal power projects has increased the need for coal mining and the ensuing displacement. A number of similar struggles have been witnessed in other areas as well including Kashipur in South Odisha and the agency areas of Visakhapatnam in Andhra Pradesh. Though the Fifth Schedule of the Indian Constitution provides protection to the Adivasi (Tribal) people living in Scheduled Areas (also known as agency areas), across nine states from alienation of their lands and resources to non-tribals, one sees that rather than upholding the adivasi people's rights to land and resources, governments are colluding with private investors to usurp these rights".

**People's Voice:** Sacrifice and pains, and the real cost borne by the displaced persons are neither recognised by the society nor even the beneficiaries of the project concerned. It has been an observed fact that the project authorities and the displaced communities have no economic compulsion to "work together". A significant number of people have been gradually refusing to become silent sufferers of the ill effects of development and are now raising their voices collectively to counter development plans that they feel go against their interests and existence. In the process, they are profoundly influencing the emergence of an alternative development paradigm for India (Hussain, 2008).

When you are transferred from one place to another for a short period of one to three years you resort to doing all possible means either to cancel or change the place of transfer, in case it is not to your place of choice. And when we are leaving our birth place with all social and economic means, being snatched away, will we not raise our voice against this forced eviction? This was the straight, simple question raised by a displaced person to the official, when he was asked that in spite of a number of provisions; why he was reluctant to leave the area for the stake of particular project. This naked truth needs to be understood by the politicians and bureaucrats in its true sense. Once they find themselves out of the original habitats, they are marginalised with every possibility of grievances remaining unresolved forever.

The causes underlying the displacement of people have been brought to light more successfully by Narmada Bachao Andolan (NBA) against the construction of Sardar Sarovar Project. The history of struggle against development projects has shown a little record of success. The long march in October, 2007 of more than 25000 displaced, landless dalits and tribals from Gwalior to New Delhi to pressurise the central government to form a National Lands Commission and formulate a National Land Reforms policy was the culmination of many years of struggle, despairing and hopes of thousands of land less people (Pai:2007). The cases of Kalinganagar, Singur, Nandigram, and Kashipur in the recent past are worth mentioning. The police firing at Kalinganagar killed 13 tribal people, protesting against the construction of Tata Steel. In 2001, ten tribal people were killed in a police firing in the wake of a protest against Koel Karo Hydro Power Project. Similarly, on 6th December, 2008, one person was killed and several other people injured in a police firing near Dumka, Jharkhanda. Thus, history draws our attention to a number of cases where bloodshed has taken place in the name of development.

A recent release by the people's tribunal on Nandigram has described the police firing and killings of March 14 in Nandigram as nothing less than a "state sponsored massacre". The report of the people's tribunal, headed by Justice S.N.Bhargava, a former Chief Justice of Sikim High Court finds that there was unprovoked, indiscriminate firing without sufficient warning and without following the established

procedure in accordance with the existing law against a peaceful religious and lawful gathering of mostly women and children from Nandigram. The report names 14 people, including two women, who were killed by police and one person who is missing. Further, it refers to an unsavory collusion between the government agencies and the ruling CPI (M) party. Thus, the motive behind this massacre seems “to teach a lesson” by the ruling party to the poor villagers of Nandigram for opposing the proposed Special Economic Zone (SEZ) project. (Chaudhuri and Sivaraman, 2007: 4103).

In Dinkia Panchayat of Kujanga area, the government of Odisha has acquired 2000 acres of land while planning to acquire another 700 acre of land for the Korean steel company, POSCO. For the last one decade, the people have been protesting against this land acquisition citing livelihood issues at stake. On 7<sup>th</sup> March 2013, an unprecedented protest by women took place. The women protested by undressing themselves before the police, who were engaged in dismantling the betel vine. The inhumane and barbaric police lathi charged those naked women for rising against the forced eviction of the government. The (people's) movements have brought to light the tremendous loss of resources-forests, land, money etc., due to development projects and policies. It is a highly subsidised development that the nation bears in the form of loss of green forest, pure air and water, fertile land, livelihood besides social disruption.

The usual cash compensation and sporadic job arrangement measures are not a due compensation for sustainable livelihood. These movements exhibit a fair degree of genuineness because the past experiences of displaced people show a very poor track record by the governments with regard to R & R. As part of an immediate post independent euphoria of nation building, people sacrificed their land and livelihood for the cause of economic development but they were thrown to the street, hardly cared for, either by the state or by the society receiving benefits from such mega projects. Infact, the temples of new India have become a grave yard for these displaced people of different the country. Many prosperous villages and towns have lost their identity in the deep sea of Hirakud, Bhakra, Narmada, and Tehri.

**Impact of Displacement:** The Land Acquisition Act fails to address several economic, social, cultural, psychological and physical aspects of the displaced people. Once displacement takes place successfully, irrespective of the policy of R&R, they become marginalised; their voices remain unheard and they become rootless and suppressed ruthlessly. The democratic rules of right to equality and right against exploitation fail to operate for the victims of development. Their sacrifice for the cause of development becomes a forgotten story of the past and they slip down the economic and social ladder. Experiences show that development process creates a marginalised section in the society who become exclusive rather than inclusive to the process.

The net effect of lopsided development upon the displaced people has not only been impoverishment at the social and economic levels but also disempowerment in the political sphere. To quote Cernea, “Expropriation of land removes the main foundation upon which people’s productive systems, commercial activities and livelihoods are constructed. This is the principal form of decapitalisation and pauperisation for most rural and many urban displaced people, who lose this way both natural and manmade capital” (Cernea, 1999). The draft National Tribal Policy, 2006 also admits that the alienation of tribal land is the single most important cause of pauperisation of tribals.

**Domestic Animals turning Wild:** Gujaparat is a hill locked in the reservoir water has become a shelter for what were once domestic animals like cows, bulls, buffalos. It is located near village Kumarbandh of Belpahar-Banharpali area of Jharsuguda district. These domestic animals have now become violent wild animals. This island has no human population. The DPs of HDP were forced to leave their domestic animals (1956-57) in this hill in view of uncertain resettlement of human population, and leave the care of animals. Till date, there seems to be no provision for domestic animals in the R&R policy. Gujaparat is a unique example of negative impact of displacement on the domesticated animals, considered a wealth in an agricultural society. On these aspects, little has been found in the literature of displacement and as such need to be addressed.

**Policy towards Displacement:** A well defined, all comprehensive LAA, covering the whole of British India came into force on the first day of March, 1894 as the Act 1 of 1894. Land could be acquired from the public under the clause ‘*eminent domain*’ and *public purpose*. Till the recent past this Act was being followed by the States as well as Government of India in the matter of land acquisition and distribution of compensation. The LAA provided for only the monetary compensation to the land owners. The amendments made in 1984 to the LAA, 1894 nullified any differentiation between acquisitions for a state purpose and “acquisition for a private enterprise” or state enterprise by amending Section 4 of the original Act to insert the words “or for company” “for any “public purpose”. The Courts have interpreted this amendment to mean that any notification of acquisition issued under Section 4 need not specify whether the acquisition is for a “public purpose” or for a “company”, thus opening the floodgates to acquisition of land by the state and companies. This in turn has unleashed the tribal and rural backlash, forcing the government to replace the 1894 Act with an altogether new Act.

In addition to the LAA-1894, there are 16 more Central Acts which facilitate land acquisition. They include The Land Acquisition (Mines) Act, 1885, The Indian Tramways Act, 1886, The Works of Defence Act, 1903, The Forest Act, 1927, The Maneuvers, Field Firing and Artillery Practice Act, 1938, The Resettlement of Displaced Persons (Land Acquisition) Act, 1948, The Damodar Valley Corporation

Act, 1948, The Requisitioning and Acquisition of Immovable Property Act, 1952, National Highway Act 1956, The Coal Bearing Areas Acquisition and Development Act 1957, The Ancient Monuments and Archaeological Sites and Remains Act, 1958, The Atomic Energy Act, 1962, The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, The Metro Railways (Construction of Works) Act, 1978, The Railway Act 1989, The Electricity Act, 2003, The Special Economic Zones Act 2005 and the Cantonments Act, 2006. The Coal Bearing Areas Act, 1957 empowers the coal companies/department in a more autocratic manner. Possession of land by a company is also possible even before the payment of compensation. The corporate bodies take advantage of these laws for grabbing large tracts of land in collaboration with the state machinery. According to LAA 1894 and the NH Act 1956, land owners consent is not necessary to acquire private lands and objections and opinions are heard from the land owners though their version is not binding on the final decision. Thus, landowners have little say over their right of ownership and determination of compensation. All these laws empower the government to take away private land in the name of 'eminent domain' and public purpose.

The Comptroller and Auditor General (CAG) has recently exposed a land scam in Orissa where, land for industrial houses like Vedanta and POSCO were acquired by the state, reportedly misusing the provisions of the LAA-1894. The report states that the companies have not used the land for which it was allotted, instead hoarding the same for future profit. The Report further states that 4,967.08 acres of private land, valued at Rs 165 crore (approximate present market value being Rs 901.305 crore), was acquired between July 2002 and March 2011 for setting up industries by six business houses using the emergency provisions under Section 17(4) of LAA. The government acquired 2021.41 acres of land for Aditya Aluminium in Sambalpur district, 826.56 acres for Vedanta Alumina Limited Lanjigarh in Kalahandi district, 1,070 acres, for Dhamara Port Company Ltd in Bhadrak and 437.86 acres for POSCO India Ltd in Jagatsinghpur district. The Industrial Infrastructure Development Corporation (IDCO) of Orissa Act, 1980, is also applied in cases where (IDCO) had acquired land for companies. Between 1995 and 2011, the Revenue and Disaster Management Department allotted 50,277 acres of land, including 33,355.127 acres (66.34 per cent) of private land to 107 companies for setting up industries in 16 districts. IDCO had been allotted 1141.98 acres of government land and 4151.24 acres of private land valued at Rs 66.68 crore (present market value being about Rs 2631.98 crore) between 1996 and 2006. In 1996, IDCO handed over 2,800 acres to Tata Iron and Steel Company for a factory to be set up at Gopalpur. IDCO also handed over 1,300 acres of land to Aditya Aluminium between 2006 and 2008 (Mohanty, 2012).

In India, about 1.8 crore of rural families are landless. The 44<sup>th</sup> amendment to the Indian Constitution (Right to Property legal rights vide article 300A), clearly states

that no person shall be deprived of his property right save the authority of law. However, the LAA and other such laws have constantly and systematically neglected the individual and community property rights through arbitrary measures. It was only in the latter part of the 1970s that states started focusing on R & R of the PAFs. In Orissa, the dam projects had no R&R policy till 1973. It was only the agitation of Rengali dam displaced people's movement that forced the Government come up with a R&R policy in 1973. Industrial and mining units have their own policies. For instance NALCO adopted two types of policy; one, land for land and other land based rehabilitation. However, the R&R measures as stated under different policies have failed to bring back the lost status of oustees as well as to chalk out a path of sustainable development for the displaced people. They have been treated just as a byproduct of the land acquisition process.

In Japan, in order to ease tensions and conflicts in the context of land expropriation and relocation, land acquisition has been substituted by land leasing required for reservoirs. In Canada, the local indigenous communities affected by dams have become the direct investors in hydro projects, through land contribution similarly; in the case of Columbia 20 percent of the project revenue is allocated towards providing benefits to the reservoir displaced population (Cernea, 2007). The kind of benefit sharing measures adopted in other countries can also be practiced in India provided the age old LAA is replaced with a new set of laws with an adequate provision for BSMs to the victims of development projects. There is a lack of uniform policy for various displacing agencies. The mining, industrial and water resource sectors have their own policies to deal with this aspect differently. The displaced people are dealt with an iron law but treated with a soft policy which is not on par with the status of the law.

The inadequate provision of agricultural land for the displaced people of mining and industrial projects often results in frittering away of cash compensation in a very short time period. Thus, there is a need for providing displaced people with replacement of agricultural lands. The cases of multiple displacements need a far better treatment than the prescribed additional compensation amounting to 50 percent of the normal compensation. The multi-faced engagement of District Collectors has led to a half hearted implementation of R&R policies, causing a considerable discontentment among the affected families. A separate body for this purpose needs to be put in place. An Ombudsman like institution should be set up to check malpractices, corruption and discrimination in this regard.

**Conclusion and Policy Prescription:** It can be inferred safely that the policy towards the displaced people suffers from a "lack of human touch". The deterioration in the displaced people's socio-economic conditions is mainly due to inadequate compensation and inappropriate rehabilitation measures undertaken by different development projects. The resettlement of DPs has been generally treated as a by-

product of development, and as such remains externalised with respect to projects' main agenda. This has in fact negated the principle of development with social justice. Most of the studies have vigorously pointed out that there is an underestimation of social and economic cost of the affected people. Whatever, compensation paid to the displaced people is always inadequate and inappropriate in terms of the loss of land income they have suffered.

While dealing with development of the economy, the issue of displacement and environment cannot be relegated to the background. The sacrifices made by the displaced people for the development of the country as a whole is in no way less than the sacrifices made by the freedom fighters. To achieve sustainable development, there is the need to deal with the issue of displacement and environment on a more scientific basis. The new legislation on Land Acquisition and Resettlement & Rehabilitation duly recognises the land acquisition and R&R as two sides of the same coin. The interests of the land owners and whose livelihoods are affected must be protected. The following merits attention in this regard:

- Displacement should be avoided or minimised
- The fertile lands and populated areas should be kept out of the reach of industrial establishments. The displaced people should be provided with the replacement cost of land rather than a market determined price for the acquired land.
- R & R measures need to precede the construction of projects.
- Education and training must be imparted to the affected population before the commencement of projects so as to prevent the hijacking of jobs and other benefits by outsiders.
- Time bound measures are needed to achieve an all-round development of the affected area.
- The industrial units should allot share to the affected people so as to maintain a regular source of income.
- The land owner should be provided with regular rent by the land acquiring body. In the case of dams, land under the command area of a given project must be acquired to resettle and rehabilitate the displaced people of that project before the start of the project.
- Additional taxes in the form of special assessment should be collected from farmers of the command area in order to give a regular rent to the land losers of the project.
- Social security measures like family pension need to be introduced with regard to all categories of displaced people irrespective of the nature of projects. Insurance coverage in respect of health, life and property should be provided to the victims of all development projects.

- The corporate houses must adhere to their commitment by discharging their corporate social responsibility in an effective manner, particularly in respect of the displaced people.
- The displaced people of other projects should also be taken into consideration on a normative basis so that their deprivation of economic development is minimised and brought back to the main stream.
- Adequate measures should be taken to protect the environment so as to make provision of finite resources for future generations and to achieve sustainable development.

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## ABBREVIATIONS

AOV	Annual Output Value
BPL	Below Poverty Line
BSM	Benefit-Sharing Mechanism
CMLARR	Centre for Excellence in Management of Land Acquisition, Resettlement and Rehabilitation
CEEUGID	Centre for Energy, Environment, Urban Governance and Infrastructure Development
LAA	Land Acquisition Act
DID	Development-Induced Displacement
DOE	Directorate of Energy
DPs	Displaced Persons
DPDS	District Periphery Development Society
DSI	General Directorate of State Hydraulic Works
FDI	Foreign Direct Investment
FSI	Floor Space Index
FTF	Foundation Trust or Fund
GRM	Grievance Redressal Mechanism
HIT	Household Income Target
IMP	Independent Monitoring Panel
JDA	Joint Development Agreement
LADC	Local Area Development Committee
LADF	Local Area Development Fund
LAMATA	Lagos Metropolitan Area Transport Authority
LRP	Livelihood Restoration Plan
MMRDA	Mumbai Metropolitan Region Development Authority
MNC	Multi-National Corporation
MOU	Memorandum of Understanding
MUTP	Mumbai Urban Transport Project

NCL	Northern Coalfields Limited
NGO	Non-Government Organisation
NPRR	National Policy on Rehabilitation and Resettlement
NRCR	National Research Centre for Resettlement
NT2	Nam Theun 2 Power Company
OMC	Odisha Mining Corporation
ORISED	Odisha Rural Infrastructure and Socio-Economic Development Act
PAA	Project Affected Area
PAF	Project Affected Family
PAP	Project Affected Person
PDF	Periphery Development Fund
PPP	Public Private Partnership
R & R	Resettlement & Rehabilitation
RFCTLARR	Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act
RDC	Revenue Divisional Commissioner
RP	Resettlement Plan
ROU	Right of User
ROW	Right of Way
SIA	Social Impact Assessment
SIMP	Social Impact Management Plan
SLO	Social License to Operate
TDR	Transfer of Development Rights
THEP	Theun Hinboun Expansion Project
UAIL	Utkal Alumina International Limited
UHEP	Vishnugadh Pipalkoti Hydropower Project
VAL	Vedanta Alumina Ltd.
WAPDA	Water and Power Development Authority



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