

# Displacement and Rehabilitation

## A Comparison of Two Policy Drafts

*The government's draft National Rehabilitation Policy fails on a number of counts when compared to the document prepared by the National Advisory Council in early 2006.*

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The ministry of rural development has made public a draft National Rehabilitation Policy (GoI draft), 2006. It comes in the wake of widespread expectation that the government would endorse the draft National Development, Displacement and Rehabilitation Policy (NAC draft) recommended by the National Advisory Council (NAC). The latter was based on a draft policy prepared by a group representing various people's movements (People's draft). The NAC web site lists this as the last document forwarded by the council to the government, at the beginning of 2006, before Sonia Gandhi resigned as the chairperson and the body went into suspended animation. Unfortunately, the GoI draft 2006 has little resemblance to the NAC draft and is on the whole a thoroughly unsatisfactory proposal.

A rehabilitation policy can be assessed on the basis of at least five critical tests. First, does it minimise displacement? Second, how comprehensively does it define project-affected people? Third, how just is the compensation package? Fourth, does it prescribe a humane and people-friendly displacement and rehabilitation process? And, fifth, does it contain adequate provisions to ensure that it would be implemented in letter and spirit? Let us apply these five tests to the GoI draft and compare it with the NAC draft.

### Minimising Displacement

The GoI draft lists its first objective to be "To minimise displacement and to promote, as far as possible, non-displacing or least-displacing alternatives".<sup>1</sup> However, having made this politically correct statement, the policy contains little that would operationalise this good intention. It does suggest that a Social Impact Assessment be

done "...considering various alternatives" (GoI draft, para 4.2), and that the administrator for resettlement and rehabilitation shall perform, among various other functions, the minimisation of "displacement of persons and to identify non-displacing or least displacing alternatives in consultation with the Requiring Body".<sup>2</sup> However, the policy does not indicate how this is to be done and what means can be used for ensuring compliance. In fact, even this good rhetoric is compromised when one remembers that, in the preamble itself, the GoI draft seeks to assert the state's "eminent domain" (GoI draft, para 1.1) and persuade that "resettlement" is intrinsic to the development process (GoI draft, para 1.2).

In contrast, the NAC draft, apart from stating its commitment to minimising displacement, also lays down specific steps to do so. These include "social appraisals" that give the concerned and affected people a legally enforceable right<sup>3</sup> to question the optimality (in terms of displacement) and public interest<sup>4</sup> of the project. The requirement to get "prior informed consent" of at least 50 per cent of the gram sabhas affected by the project (NAC draft, para A3), and the setting up a National Rehabilitation Commission with the responsibility, among others, of verifying "...the necessity of displacement, and the extent of displacement that is likely to occur"; and assessing "...each referred project that involves displacement to ensure it adopts the least displacing alternative" (NAC draft, Annexures 2(i) and (ii)).

### Defining the Project Affected

The GoI draft 2006 defines an "affected family" as one whose "place of residence or other properties or source of livelihood are substantially affected..." (GoI draft, para 3(i)(s), emphasis added) and who has "...been residing continuously...or practising any trade, occupation or vocation

continuously for a period of not less than three years...preceding the declaration of the affected zone"(ibid). It, further, defines "family" as "...a person, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him/her and dependent on him/her for their livelihood" (GoI draft, para 3(1) (j)).

The first major problem with these definitions is that the term "substantially" has not been defined. This leaves the classification of families as affected to the whims and fancies of the requiring authority, clearly not a satisfactory arrangement. In contrast, the NAC draft had defined "affected people" as "...those who are either displaced or lose 50 per cent or more of their assets, income, shelters or livelihoods (regardless of their legal title)" (NAC draft, para C3).

The GoI draft 2006 only recognises those families that have resided, worked, owned assets, etc, for at least three years prior to the declaration of affected zones. The NAC draft stipulates a more reasonable one year (NAC draft, para C7) from Section 4 notification under the Land Acquisition Act.

Most regrettably, the GoI draft 2006 pointedly excludes unmarried adult daughters from being treated as a family<sup>5</sup>, though it accepts the claim of an unmarried adult son. In contrast, the NAC draft enumerates various categories of affected people including "...landless, those who are tenants, sub-tenants (with or without written agreements), agriculturists, adult unmarried daughters and sons, adult married sons, and widows, divorcees and women abandoned by their families" (NAC draft, para C2, 6). The NAC draft, unlike the GoI draft 2006, also extends the provisions of the policy to cover all affected persons of ongoing projects and even those who were displaced up to 10 years prior to the policy coming into effect, in order to at least partly address the historical injustice done to them.

The GoI draft introduces the notion of a 'khatedar', being the person whose "...name is included in the record of right of the parcel of land..." (para 3(i)(m)). It specifies that ordinarily land allotted as a part of the rehabilitation process, in lieu of land acquired, shall be in the name of the khatedar (GoI draft, para 7.4). However, in a later clause it adds that such land "...may be in the joint names of wife and husband..." (GoI draft, para 7.6, emphasis added). In contrast, the NAC

draft repeatedly stipulated that all land and other benefits will be in the joint name of both spouses (NAC draft, para B22, Annexure 1-para 35, etc).

The GoI draft also excludes all those displaced by "linear acquisition of land" for railway lines, highways, transmission lines, pipelines and other such. According to the GoI draft 2006, people whose land has been acquired "...will be offered an ex-gratia amount of Rs 10,000 only; no other resettlement and resettlement benefits shall be available to them" (para 7.15). There was no such exclusion in the NAC draft.

### The Compensation Package

For obvious reasons, rehabilitation policies are often judged primarily by the compensation they offer. Perhaps the most critical issue is the provision of agricultural land in lieu of land being lost, and also to landless agricultural labourers. Unfortunately, the GoI draft 2006 is very weak on this count. It specifies that land may be allotted to an affected family that has lost its entire land, on replacement cost, subject to a maximum of one hectare of irrigated and two hectares on unirrigated land, but only if government land is available. This benefit is also extendable to other affected families who have been reduced to the status of marginal farmers<sup>6</sup> due to the acquisition of their land (GoI draft, para 7.4).

Even though there are special provisions for affected families that belong to scheduled tribes or scheduled castes, as far as land goes they may also be given land for land only if it is available, whatever that means (GoI draft, para 7.18.3). In short, land would only be given to those who have lost all of their land or enough to become marginal farmers, if government land is available. And to STs and SCs "if available"!

In contrast, the NAC draft stipulates that "The principle of 'land for land' must be followed scrupulously and each (project-affected person) PAP in irrigation projects, and SC/ST PAPs in all projects, who lose land must be given at least one standard hectare of irrigated land" (NAC draft, para B12).<sup>7</sup>

Another worrying provision in the GoI draft 2006 is that for loss of houses people "may" be provided just a house site, free of cost (GoI draft, para 7.2). Only families below the poverty line will be paid one time financial assistance to build their house. The NAC draft, on the other hand, stipulated that "Ordinarily the project authorities

must also construct or have constructed appropriate replacement housing for the PAPs, of designs and locations that are approved by the PAPs within the allocated resources. However, in cases where the PAPs would prefer to construct their own houses, like among some tribal communities, they must be given the freedom to do so" (NAC draft, para 13, para D(5), (v)).

The GoI draft 2006 stipulates that the requiring body should provide jobs to one member of each of the displaced families "...subject to availability of vacancies and suitability of the affected person" (GoI draft, para 7.11). The NAC draft made this obligatory, along with the obligation on the requiring agency to train the PAPs so that they become capable of doing the jobs available (NAC draft, paras D(5) (ii), (viii) and Annexure I- paras 44, 46).

The NAC draft details the other assets and facilities to be provided to the PAPs (NAC draft, Annexure I- paras 1-68), separately for tribals, self-employed persons and those not adequately rehabilitated in earlier projects. There are detailed stipulations in relation to infrastructural facilities, agricultural land, employment opportunities, allotment of shares in corporate projects, construction and allotment of shops and work sheds, and provision of homesteads. The GoI draft 2006, on the other hand, deals with some of these issues, but far more cursorily,<sup>8</sup> leaving much to the whims and interpretation of the requiring bodies. This is clearly not a satisfactory solution.

### The Process

Both drafts lay down an elaborate process for rehabilitation and resettlement, with similar stipulation regarding participation of affected people, consultation and transparency. However, the GoI draft 2006, insofar as it removes the requirement stipulated in the NAC draft to obtain prior informed consent of the community, makes much of the prescribed participation and consultation meaningless. Specifically, the GoI draft provides no credible method by which the community can ensure that it is consulted and that its views, at least the reasonable ones, are given due importance.

Though most of the issues are acknowledged, the GoI draft appears to leave specific issues to the discretion of the requiring bodies. For example, the GoI draft rightly says that adverse impacts must be assessed in a "participatory and transparent manner" (GoI draft, para 1.3) and that "effective

grievance redressal and monitoring mechanism" should be laid down (op cit). Nevertheless, there are no credible mechanisms prescribed to carry out these noble sentiments. Perhaps such an approach allows greater flexibility, however past experience conclusively establishes that such flexibility is invariably used against the interests of the displaced people. Sadly, the GoI draft is peppered with enlightened remarks that are either contradicted elsewhere in the policy or are not backed with any plausible implementation strategy.

The GoI draft envisages a national monitoring committee and cell, state commissioners and project level administrators with an R&R committee.<sup>9</sup> However, barring a representative each of local women, SC and ST, NGO and bank, the structure remains within the government, which is often an interested party pushing for the project. Besides, the past record of the government at protecting the interests of project-affected people does not engender confidence.

The NAC draft, on the other hand, suggests the Constitution, by an act of Parliament, of an independent and statutory Rehabilitation Commission with the exclusive responsibility of ensuring that displacement is kept to the minimum, that it is in accordance with the policy and that grievances are effectively addressed (para F 1-3, Annexure 2). It also envisages the creation of an Auditor General of Displacement and Rehabilitation with a primary responsibility of maintaining detailed records related to displacement (NAC draft, Annexure 2, paras 11 and 12). These authorities are, sadly, ignored by the GoI.

The GoI draft prescribes that for all projects needing environmental clearance, the same authority that grants environment clearance will also grant "social" clearance, on the basis of a social impact assessment (para 4.1). However, a committee set up by the requiring agency would assess projects that do not require environmental clearance, and yet acquire land (GoI draft,

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para 4.4). This is clearly an unsatisfactory arrangement all around. For one, the environmental clearance process is beset with serious problems. Impact assessments are often faulty or of a poor quality, political pressure to get clearances is rampant, and the ministry of environment and forests is unable to ensure that even the minimal conditions of clearance are complied with, once a project has been cleared. All these problems, and more, will also affect the “social clearance” process, if it is tied to the environmental process. Besides, in those cases where the requiring agencies are themselves asked to clear their own projects, one might as well save the time and expense – for little is likely to be achieved.

### **Ensuring Implementation**

The GoI draft is silent on giving legal teeth to the policy, or of even amending the Land Acquisition Act so that it does not impede the implementation of provisions of the policy. The NAC draft, on the other hand, not only arms the national rehabilitation committee with statutory powers but also envisages amending the Land Acquisition Act to bring it in conformity with the letter and spirit of the policy, and to give legal teeth to many of the critical provisions of the policy. In contrast, the GoI draft is not only toothless but also unconvincing, for its numerous politically correct statements are either accompanied by their own contradictions, or unsupported by any concrete action plan. **EW**

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### **Notes**

- 1 ‘Proposed Provision of NRP–2006’, para 2.1(a).
- 2 Ibid, para 5.5(i), emphasis added. A requiring body is the body that “requires” the land being acquired.
- 3 ‘Draft National Development, Displacement and Rehabilitation Policy’ (NAC draft), para B4, 5.
- 4 The terms ‘public interest’ and “public purpose” are defined in detail in Annexure 3 of the NAC draft.
- 5 This is all the more regrettable as it is at variance with existing rehabilitation policies and practices.
- 6 With irrigated land up to half a hectare or un-irrigated land up to one hectare.
- 7 The draft sent to the NAC by people’s movements stipulated a minimum of two hectares for all displaced rural families, Annexure 4, para 26, December 2005 draft.
- 8 Essentially in chapter VII of ‘Proposed Provision of NRP – 2006’.
- 9 Essentially in chapter VII of ‘Proposed Provision of NRP – 2006’.