

Towards a Just Resettlement and Rehabilitation Policy for India

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Forcible displacement is perhaps among the worst forms of violence that innocents can be 'legally' subjected to. Even with the best of will, mere 'relocation' can hardly negate the trauma of being thrown out of one's traditional home, denied access to the lands of one's ancestors, and being banished from familiar surroundings where one felt secure, rooted, and in harmony. However, the path of development that many countries have adopted, especially densely populated countries like India, make the forcible displacement of an increasing number of people, especially the poor, inevitable. The current push towards 'globalization, privatization, and liberalization', and the fact that many Indians believe the country to be on the verge of becoming a global economic power, means that it is increasingly a country in a hurry, with less and less patience for seeming constraints, especially of the environmental and social variety. Therefore, the mad rush to attract capital, both foreign and Indian, creates compulsions where additional financial and transactional costs are frowned upon. If foreign investors are to be attracted and China to be competed with, then, many believe, the playing field needs to be tilted in favour of the investor.

However, forced displacement is not a recent phenomenon in India. Historically, huge populations were forced to move because of natural calamities, wars, poverty, foreign conquests, sectarian and communal violence, and political oppression. In the last 200 years or so various 'development' and commercial projects have added to this toll.

Unfortunately, scant attention was paid, till very recently, to the plight of the 'displaced', and this casual

approach is characterized by the almost total absence of historical data. Current estimates of people displaced in about the last 200 years just by large dams vary from 20 to 50 million (Singh and Banerji 2002). Add to these the number displaced by roads, towns, and cities, mines, industry, military establishment, railway lines, etc., and the figure is truly staggering. 'I feel like someone who's just stumbled on a mass grave,' says writer Arundhati Roy (1999)!

Yet, except for the very recent displacements, no one really knows what happened to these people. Most were deemed 'rehabilitated', though in truth they were simply handed cash compensation, if that, and then left to fend for themselves. Overnight, they ceased to be communities, or recognizable social entities, with distinct cultures. Some families migrated to towns and cities, and joined the unorganized and marginalized labour forces. Some became criminals, and others 'encroached' on government lands or forests, once again becoming eligible for 'rehabilitation'. Many families perished altogether. This shameful and mostly unrecorded chapter of Indian history gave birth to a host of popular movements against forced displacements and indifferent rehabilitation, and against the projects that displace people and destroy the environment.

In the 1980s the construction of a series of large dams on the Narmada river (initially supported by the World Bank), and of a huge dam at Tehri in the lower Himalayas (initially supported by the USSR), gave birth to the Narmada Bachao Andolan (movement/agitation to save the Narmada) and a host of popular movements opposing the Tehri Dam. The success of these and other such movements in bringing the displacement issue to centre

stage has once and for all changed the way the people and the government of India look at large projects and the displacement they wreak.

The strength and vibrancy of these two movements resulted in significant improvements to the project's rehabilitation process and package. The Narmada Bachao Andolan famously forced the World Bank to introspect on its own policies regarding dams (essentially through the 'Morse Commission' [World Bank 1992]) and to withdraw from the Narmada project. Activists moved the Supreme Court of India against the Tehri Dam,² mainly against the inadequate rehabilitation and the danger the dam posed due to the site being prone to massive earthquakes. Though the Tehri project has so far survived the legal challenge, the project authorities and the government have been forced by the court to significantly improve the social and environmental safeguards, including the rehabilitation package and process.

However, these struggles—which are ongoing even as we speak—have not been easy ones, and have consumed the lifespan and energies of a generation of exceptional women and men. Yet even today project-affected people (or other 'oustees') of India have little hope of being justly treated. The absence of a rehabilitation policy that is just and enforceable dooms future generations to a lifetime of often interminable struggle.

HISTORY OF RESETTLEMENT AND REHABILITATION (R&R) POLICIES IN INDIA

Over the past 20 years there have been various initiatives, both from the government and from people's groups, to develop an acceptable rehabilitation policy. In 2003 the Ministry of Rural Development announced a National Policy on R&R for Project Affected Families. However, this policy was widely criticized for being inadequate and essentially unjust. Among other things, this policy did not envisage 'land for land', leave alone land for the landless. This was in keeping with an increasing tendency of the government to move away from providing land even to those whose land was being acquired and who had no other means of livelihood. This was despite the fact that in recent projects (like Narmada and Tehri), mainly as a result of people's struggle, the policy was to provide between 1 and 2 hectares of land even to the landless. The government justified its 'change of heart' by arguing that no land was available. In that case, no displacement, the people argued back. Chittaroopa Palit of the Narmada Bachao Andolan, in a critique of the 2003 policy, says that:

In 1995, a draft rehabilitation policy was widely debated by people's organisations and the state government in Madhya Pradesh, though it finally failed to win the latter's acceptance. One of its clauses, which made it controversial in government circles there, was that if the state failed to rehabilitate the oustees within a certain number of years, the displaced people would have an automatic right to occupy government lands or large chunks of private land exceeding ceiling limits in order to resettle themselves. This is the real rehabilitation policy that the oustees must pursue. Large organisations of displaced and landless people in Brazil have systematically and successfully taken over federal lands and settled themselves. So have the Chiapas tribals in Mexico. (Palit 2004, Vol. 39, Issue 27, pp. 2961–3)

But land was not the only issue. Many other principles were debated and gradually an understanding, of what would tantamount to a just rehabilitation policy, began to emerge (Box 3.1).

Box 3.1: Principles Underlying a Just R&R Policy

The extensive consultative process around a people's R&R policy, that has been ongoing in India for the last 30 years or so has not, as can be imagined, thrown up unanimity, or even a consensus, on all issues. When a nation of a billion people takes it upon itself to vigorously debate any issue, there will be many different voices and a plurality of opinion. However, some of the broad principles that attracted more agreement than disagreement included are:

1. Ordinarily, displacement should not be forced and people should only be moved if they want to, and feel confident that on the whole they will be better off than before. Consequently, the prior informed consent of the community should be taken before any project, including a dam project, is approved. Wherever people are not willing to shift, the fault is either in the package being offered, lack of trust in the authorities, or in the way the issue is being approached.
2. Forced displacement of people should only be permitted in the 'rarest of rare case', and only after it has been established that the displacing project has the sorts of social benefits that clearly make it desirable, and that no less displacing or non-displacing alternatives are possible.
3. The LAA must be amended to permit people to challenge the government's claim of 'public interest' and 'eminent domain' while acquiring land.
4. Adult sons and adult unmarried daughters must also be treated as separate families, with an appropriate compensation package.
5. All compensation must be given in the joint name of both the spouses.
6. PAPs must not, as a direct or indirect result of the project, be worse off than they were prior to it. In fact, they must

- invariably be better off, so that they are at least partly compensated for all the non-quantifiable losses.
7. In any case, whatever their status prior to the project, they must, in economic terms, be above the poverty line after displacement.
 8. While determining compensation, replacement value at the operative market rates must invariably be the basic principle. This must be at the market rates that actually operate and at the time of purchase, and not just those that are officially recorded.
 9. Also, paying of depreciated value is manifestly unfair for it often leaves the PAPs without adequate means to replace a critical need.
 10. And not only should lost property and assets be compensated for, but lost livelihoods and lost opportunities as well.
 11. Communities must be adequately and appropriately compensated for common amenities and assets lost because of the project.
 12. Also, all those amenities and assets required for fulfilling basic needs must be provided. This is especially important in order to prevent conflicts with host communities, whose common resources would otherwise be under pressure from the PAPs.
 13. However, it is not enough to just pay cash compensation, various other principles must be followed to ensure that social costs are minimized. For one, payment of large sums of cash might not be in the best interests of those PAPs who are unused to handling large amounts of money.
 14. The principle of 'land for land' must be followed scrupulously, and each PAP that loses land must be given land of equal size, with a minimum of 2 hectares, and of at least equal productivity. Two hectares of land should also be given to other land-dependent families (like agricultural labourers) who might not legally own land.
 15. Agricultural land must be consolidated, as far as possible, and communities invariably kept together after displacement so that their social and cultural identities are safeguarded.
 16. The time-frame for the displacement process should be sensitively determined, and people given enough time to adjust to their new locations and lifestyles.
 17. Whereas it must be ensured that the PAPs are not forced to change their occupations and professions, there must, of course, be the flexibility to allow individual PAPs to choose from among other viable alternatives. Some might not like to go back to the land and might prefer to pursue other professions. They must be helped to do so.
 18. The PAPs must also have a first right to employment in the project. The need for trained and experienced personnel should not be a constraint, as training should be organized for interested PAPs even before the project is initiated and trained PAPs sent to other projects to get the experience

they need. In fact, the availability of sufficient trained PAPs should be a precondition to the initiation of the project.

19. The PAPs must also have the first right to specific benefits arising out of projects. Apart from livelihood opportunities, they must, for example, have the first right on irrigation waters from irrigation projects and to power from hydro-electric projects, and to both in multi-purpose projects.

THE CURRENT INITIATIVE

In 2004 the UPA government came to power. It set up a NAC under the chairpersonship of Congress president Sonia Gandhi, to, among other things, advise the government on legislative and policy matters. Among those nominated to this influential body were some of the committed campaigners for a new and just rehabilitation policy.³ On the encouragement of these NAC members, people's movements once again started the exercise of jointly developing yet another rehabilitation policy, based on earlier drafts and debates.⁴

This process started in September 2004, with a preliminary draft being sent out to a large number of people's movements, activists, academics, and experts, with the request that it be widely disseminated and discussed among various groups of stakeholders. By the first week of November 2004 a second draft was finalized, based on the comments received from people across the country. An informal meeting of representatives of various people's movements and experts was called in mid-November in Delhi to have a second round of discussions. This was followed up by a formal consultation, organized by the NAC, where representatives of various people's movements and other experts interacted with members, and took the discussion on the draft R&R policy further.

Following this, a formal presentation on the draft policy, as it had evolved by then, was made to a full meeting of the NAC, and it was decided to continue the process of public consultation and discussion with and among various groups of stakeholders. The Tata School of Social Sciences organized another consultation in their campus in Mumbai during the end of December 2004 to broaden the debate and bring on board other groups and interests. These debates and discussions continued through much of 2005.

This exercise, involving numerous consultations and meetings of various stakeholders, culminated in a draft policy being presented to the NAC (henceforth referred to as the People's Draft). This draft was endorsed and recommended by the NAC, with some amendments, to the government of India in January 2006.⁵ Unfortunately,

soon after this draft policy was forwarded by Sonia Gandhi to the prime minister, she resigned from the chairpersonship of the NAC, this policy being among the last, if not the very last, NAC documents forwarded by her to the government.

In September 2006 the Ministry of Rural Development finally came out with its own draft R&R policy. However, this draft had little, if anything, of the NACD that had been sent to them some six months earlier, and was by and large an unsatisfactory alternative.

Efforts and lobbying by various groups resulted in a meeting being called on 27 December 2007 by the Ministry of Rural Development to discuss the draft policy with various stakeholders. Unfortunately, at the last moment the minister had to cancel and, consequently, no substantive discussions could take place. However, there was a discussion on the process of consultations that should be followed before finalizing the policy. The suggestions included:

1. The NACD 2005 and the Ministry of Rural Development draft 2006, along with the comments given by the various ministries and departments, should be immediately translated into all major Indian languages and widely circulated.
2. Regional consultation should be held after a month.
3. Meanwhile, a group should visit some of the places around the country where severe displacement has taken place and record experiences, which should be taken into consideration while finalizing the rehabilitation policy.

Unfortunately, even as this is being written, no such process has started though nearly five months have passed. Meanwhile, there is news that the government is in the process of finalizing the policy without any consultations.

ASSESSING THE GOVERNMENT OF INDIA DRAFT NATIONAL REHABILITATION POLICY

The strength and appropriateness of a rehabilitation policy can be assessed in terms of at least five parameters.

1. Whether it effectively *discourages* involuntary or forced displacement.
2. Where such displacement is inevitable, how comprehensively it *defines displaced (or affected) persons*.
3. Is the compensation and mitigation package just?
4. Is the rehabilitation *process* humane, participatory, transparent, appropriately timed, and efficient?

5. And, finally, how *realistically implementable* and enforceable are the provisions of the policy?

DISCOURAGING DISPLACEMENT

Rehabilitation policies must acknowledge that, even with the best of intentions, forced displacement is almost always traumatic. The NACD, in recognizing this, quotes the Supreme Court, which had ruled 'that the agency that seeks to intervene has the onus to prove that its intervention is beneficial, needs to be applied to the case of development projects' (Section B5). The NACD goes on to assert that displacement must only be allowed in the rarest of rare cases where non-displacing or less-displacing options are not available, and larger public interest overwhelmingly justifies the displacement.

The NACD seeks to discourage displacement through one, or more, of many methods (Sections A1, B2, 3, 4, and 6). To start with, it specifies a clear obligation on the requiring agency to publicly, coherently, and convincingly establish to the affected public and to other stakeholders that:

1. no non-displacing alternative is available or feasible;
2. this is the least displacing of all alternatives (in its design, location, or method); and
3. the public interest served overwhelmingly justifies the social costs.

Specifically, the NACD tries to define 'public interest' by stating that:

A project fulfils a public purpose and is in public interest when through a participatory and transparent process it is determined that:

- (i) The project will benefit the community as a body.
- (ii) The project is directly related to functions of government.
- (iii) The project does not have as its primary objective the benefit of a private interest.
- (iv) The benefits of the project option outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred, and
- (v) The public interest thus created outweighs any public interest value accruing from the existing use of the land and everything attached to it (Annexure 3, para 3).

The NACD makes rehabilitation a costly and time-consuming process, so that requiring agencies are discouraged from adopting a displacing alternative.

The Government of India Draft National Rehabilitation Policy (GOI NRP) also lists its first objective to be 'to minimise displacement and to promote, as far as possible, non-displacing or least-displacing alternatives' ('Proposed Provision of NRP 2006', para 2.1[a]). However, having made this politically correct statement, the policy contains little that would operationalize this good intention. It does suggest that a Social Impact Assessment (SI) be done 'considering various alternatives' (para 4.2) and that the administrator for R&R shall perform, among various other functions, the minimization of 'displacement of persons and to identify non-displacing or least displacing alternatives *in consultation with the Requiring Body*' (para 5.5[i], emphasis added).⁶ However, the policy does not indicate how this is to be done, and what means can be used for ensuring compliance.

The NACD also insists that displacement can only be effected when at least 50 per cent of those being displaced agree (as discussed later). The GOI NRP makes no such provision.

DEFINING DISPLACED OR AFFECTED PERSONS

A rehabilitation policy must be willing to acknowledge that any external intervention into the life of communities can cause many direct and indirect impacts, many of which might be adverse and not always easily detectable. Therefore, an emancipated rehabilitation policy must acknowledge the responsibility of the requiring agency towards all those who have been adversely affected.

Where people's homes or surroundings are being acquired, it is essential for the policy to cover not just those who lose everything, but also those who lose anything. Therefore, along with those who lose their homes and agricultural fields must be those who lose just their homes, or just their fields, or parts of their fields, or their roads and paths, or even their access to natural resources and the surrounding wilderness areas, grasslands, or water bodies. Along with these, those who have lost their livelihood options must also be rehabilitated. Many infrastructure and development activities and projects, without physically displacing people, often displace them economically.

In keeping with these principles, the NACD (Section C1) states that:

All those affected by any of the works or activities related to the project must be treated as PAPs. This policy is applicable to all individuals, families and communities that are either physically displaced from their homes or whose livelihood activities or access to natural and common resources is adversely affected because of the application of policies and laws or the location of development and commercial projects or activities.

Urban projects often displace those, poorest of the poor, who have no 'legal' titles to the public land they have 'encroached' on. A similar situation exists in official forests, where people without any legal title have also 'encroached', sometimes even before the laws were formulated. Therefore, an evolved rehabilitation policy must not only recognize legally recorded rights, but customary rights, and those that flow from a fundamental right to life, with dignity. Accordingly, the NACD (Section C2) lays down that: 'The definition of PAPs who are entitled to receive compensation must include the landless, those who are tenants, sub-tenants (with or without written agreements), agriculturists, adult unmarried daughters and sons, adult married sons, and widows, divorcees and women abandoned by their families.'

The GOI NRP defines an 'affected family' as one whose 'place of residence or other properties or source of livelihood are *substantially* affected', 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' (3[1][s]), emphasis added). 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' (3[1][j]). Unfortunately, the term 'substantially' is not defined. This opens the definition of families to subjective interpretation and lays the grounds for corruption and much human suffering.

Further, the GOI NRP only recognizes those families that have resided, worked, owned assets, etc., for at least three years prior to the declaration of affected zones, as opposed to one year from Section 4 (para C7) notification in the NACD. The GOI NRP also excludes unmarried adult daughters,⁷ though it accepts unmarried adult sons. The NACD, unlike the GOI NRP also covers not only all affected persons of ongoing projects, but even those who were displaced up to 10 years prior to the policy coming into effect.

The GOI NRP excludes all those displaced by 'linear acquisition of land' for railway lines, highways,

transmission lines, pipelines, and other such projects. According to it, people whose land has been acquired for such purposes 'will be offered an ex-gratia amount of Rs 10,000 only; no other resettlement & resettlement benefits shall be available to them' (para 7.15). There was no such exclusion in the NACD.

THE REHABILITATION PACKAGE

The general principles applied in determining what a rehabilitation package should contain are subject to much debate. In general, four types of assets need to be compensated for.

1. *Tangible and replaceable.* These are the easiest to handle, and typically include agricultural land and house in rural areas, and a house in urban areas.
2. *Tangible, not replaceable, but capable of reasonably accurate economic and financial valuation.* These are also relatively easier to deal with, and typically could include additional land or houses, beyond the ability to directly replace. For these, the package could calculate true market price or replacement value, though these are not always easy to determine in a manner that is universally acceptable.
3. *Intangible, yet capable of some economic or financial valuation.* These could typically include loss of common property resources, of commercial or job opportunities, or of economically productive time. It could also include increase in costs of production or marketing, decrease in profits, etc. Given the uncertainties involved, especially over extended periods of time, and the difficulty of making accurate predictions even over short periods of time, the economic valuation of these would be challenging to compute. An interesting case is that of the people displaced by the Tehri project in the foothills of the Himalayas. Many of these hill folk were rehabilitated in the plains and complained that whereas they could leave their womenfolk alone in the hills, because of the secure social environment, this was no longer possible in the plains. So many of them had to give up their jobs in towns and cities, and the bright economic future these promised, and come back and live in the village. How is one to calculate the fair compensation for this over generations?
4. *Intangible and incapable of economic or financial valuation.* These include cultural, social, religious, spiritual, and aesthetic losses. For example, a village in a remote forest region refused to shift and make

way for a national park, for they resolutely believed that the gods that protected them resided in the cliff above their village. If they shifted out of sight of the gods, ruination would follow.

Alternate approaches, strategies, and methods have been experimented with to determine how best to construct an acceptable rehabilitation package. Perhaps some of the most generally accepted principles include:

1. All tangible assets that will be lost must be replaced as far as possible (for example, land for land, house for house, etc.).
2. However, upper limits need to operate for replacement. Therefore, if a family has a large amount of land, all of it might not be replaced by land, but only some might. The remaining land could be compensated for by cash payment representing the market value of the land.
3. Also, lower limits need to operate. Therefore, people without any agricultural land, or with less than a certain amount, for example 2 hectares, should be given a minimum of 2 hectares.
4. In any case, all those directly or indirectly affected by a project must not be worse off than before, at least in economic terms, and all those below the poverty line must be brought over the poverty line.⁸
5. Replacement value must be based on actual market cost of replacement and not on discounted value, or on outdated or unrealistic cost estimates. This calculation is made more complex because in most of India the publicly declared price of assets like land and houses is usually much less than the actual sale/purchase price, as the real price is hidden in order to save tax.
6. Other intangibles must be compensated by giving an ad valorem lump sum.
7. The process of rehabilitation must try and minimize other intangible costs by ensuring that communities are rehabilitated together, and that people are rehabilitated in areas that are as close as possible to the cultural, social, geographical, and environmental profile of their original homes. The NACD (Section B27-28) specifies that:

For smooth and effective resettlement, the principle of geographical continuity, cultural homogeneity and ready adaptability must be accepted in choosing and planning resettlement units and sites, especially while resettling tribal and dalit⁹ communities.... Any plan of resettlement must... aim at creating afresh a community ethos and a way of life.

It is only such a dynamic living community that can successfully cope with the challenge of mobility and development in the new surroundings.

8. As far as possible, community facilities and structures, like temples, schools, colleges, sanitation facilities, hospitals, community centres and meeting halls, roads, water supply, electricity, market places, and post offices, must be replaced or provided for, even if not present in their original habitations.
9. Another somewhat new and innovative principle mentioned in the NACD (Section A7) is the obligation 'to ensure that benefits to the displaced people are not less, as a ratio to the costs being paid by them, than those that accrue to the people benefiting from that specific project or from the developmental process in general'. Though not spelt out in detail, it provides the basis for moving towards a system where the quantum of compensation for the displaced persons is at the same proportion as the cost-benefit ratio of a project. Therefore, if a project is said to have a cost benefit ratio of 1:2.5, then the compensation to a displaced person would also be 2.5 times the losses calculated.
10. Some of the other provisions in the NACD policy include:
 - allotment of free shares to displaced persons in companies displacing them; and doubling all benefits to families who have already been displaced once or more in the last 20 years.
11. However, despite the people's draft very strongly advocating land for land and for the landless for all displacement in rural areas, the NAC amended this and stipulated land for land only in irrigation projects, and for members of STs and SCs. Specifically, the NACD (Section B12) now specifies that 'the principle of "land for land" must be followed scrupulously and each PAP in irrigation projects, and SC/ST PAPs in all projects, who lose land must be given at least one standard hectare of irrigated land'.

Unfortunately, the GOI NRP is even weaker as far as land goes. It states that land *may* be allotted to an affected family that has lost its *entire land* on replacement cost, subject to a maximum of 1 hectare of irrigated and 2 hectares of un-irrigated 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 farmers¹⁰ due to the acquisition of their land (para 7.4). Even though there are special provisions for

affected families that belong to STs or SCs, as far as land goes they may also be given land for land only if it is available, whatever that means (para 7.18.3).

The GOI NRP also states that for loss of houses people 'may' be provided just a house site, free of cost (para 7.2). Only families below the poverty line will be provided one-time financial assistance to build their house. The NACD, 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. (para 13; also para D[5][v])

The GOI NRP (para 7.11) 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'. The NACD (para D[5][ii], [viii]; Annexure 1, para 44, 46) made this obligatory, along with the obligation on the requiring agency to train the PAPS so that they become suitable for the jobs available.

THE PROCESS OF REHABILITATION

Of fundamental importance is the humane orientation of the package and process, especially towards the weaker segments of the society. Towards this end, the NACD proposes that:

Rehabilitation packages and processes must be gender sensitive. Land and other assets should be provided in the joint names of both spouses. Consultations with the PAPs must also be done keeping in mind the need to consult both men and women, the aged and the young, and members of all castes and communities... The special needs of particularly vulnerable communities, like isolated tribal groups, dalits, persons with disabilities or other marginalised groups, must be catered for. (Section B22, 23)

Great stress needs to be put on the whole process of project selection, approval, design, implementation, and evaluation being participatory. Of particular importance is the involvement of the directly affected people, especially those being displaced. According to the NACD:

It shall be a compulsory obligation on the part of the project planning and implementation authorities to involve and consult the representatives of the affected communities, including women and members of disadvantaged groups, in all phases of planning, execution and monitoring of the RR Plan. The entire decision-making process regarding RR Plans must be completely transparent. The comprehensive draft plans for resettlement must be made

public. It must be proactively brought to the notice and explained to the people likely to be affected, through such channels like the local language media, local exhibitions, local meetings, etc. It is important that the government and the project authority are under an obligation to take the information to the doorstep of the affected population so as to enable even illiterate persons in the most distant area to acquire full knowledge of the plan for their resettlement. It is mandatory and enforceable that the project-affected people must be given the right to participate at this very stage so that they can bring their full weight to bear on the design and content of the plan. Their views must be given full weight, and the plan modified in conformity with their aspirations. (Section B7)

The NACD further stipulates that effective public involvement must start at the initial project justification stage:

Each large development project (involving transfer or change in land use leading to displacement, of one hundred acres of land or more) must be first subjected to a holistic appraisal as to the desirability and justifiability of the project. The public, and particularly the people likely to be affected, must be given due opportunities of information and hearings, and allowed to examine all aspects of the project, including the 'public purpose'... and also the possibilities of achieving the same objectives through non-displacing or less displacing alternatives.... Specifically, the detailed cost benefit analysis, and proposed rehabilitation package as per the norms of this policy, should be spelled out... and people should have the right to interrogate this. (Section B4–5)

Once a project has been justified, then it is essential to interact with the affected people and seek their 'prior informed consent' to the process of displacement and rehabilitation. The NACD specifies that:

Wherever the term consent is used, this will mean that the consent of Gram Sabhas¹¹ of project affected villages will be sought. But, in instances where some of the Gram Sabhas affected do not give consent because their demands are in excess of the provisions of this policy, the project implementation authority (PIA) may go ahead with the project only where the PAPs in such dissenting Gram Sabhas constitute less than 50% of the total number of PAPs. However, the PAPs of these dissenting Gram Sabhas would continue to be entitled to the same rehabilitation benefits as being given to all other PAPs of the same category. In all such cases, detailed written orders will be passed by the PIA, incorporating in full the views of the Gram Sabha, and reasons why these were not accepted. (Section A3, footnote)

The process of displacement and rehabilitation itself needs to be humane, and this is best achieved if it is planned and executed in consultation with the affected people. The NACD accordingly stipulates the setting up of various committees and authorities at the village,

project, and district levels, each of which have, as prominent participants, members of the affected communities.

Reinforcing the provisions of the Indian Right to Information Act, the NACD lays down that:

All PAPs, and other concerned citizens and people's organizations, would enjoy right to information about all aspects of the project which are of public interest, including the detailed project report, financial plan, economic/financial viability studies, social impact-benchmark and other studies, environmental impact assessment and environment rehabilitation plans and the detailed RR plan. This must be in the language of the people and in a form and manner that they can understand. This would enable PAPs to understand in depth issues critically related to their futures, and if necessary to challenge, in an informed way, all aspects of the proposed project including rehabilitation and the public purpose of the project. (Section B8)

The time-frame in which displacement and rehabilitation activities are carried out is also very important. Therefore, it is important that the identification of PAPs and of rehabilitation sites be done much in advance of the actual process of displacement. Compensation should also be paid in time, and in advance of actual displacement, to minimize hardships. Keeping these points in mind, the NACD lays down:

The time frame for the displacement process should be sensitively determined and people given enough time to adjust to their new locations and life styles. It should be a mandatory practice to allot agricultural land to the PAPs at least two years before they are to be displaced, so that they can get used to cultivating this land even while they continue to live in their original homes. Likewise, house-sites should be allocated in fully developed colonies at least 2 years before relocation. This makes the process of displacement more gradual and humane. In any case, all compensation must be paid at least two years before a person is displaced. (Section B17)

Unfortunately, the NACD leaves open the question of who will be responsible for implementing the rehabilitation package and process, and for effecting rehabilitation. So far, in India, this has been the responsibility of the project proponents, along with the local government authorities. However, these agencies do not specialize in managing the displacement and rehabilitation of large numbers of people, and usually do not have access to people who have the right type of skills, experience, and sensitivities. Perhaps it is time now to set up specialized agencies that can professionally and competently handle displacement and rehabilitation of human populations.

The GOI NRP also lays down an elaborate process for R&R. However, in-so-far as it does not retain the

requirement stipulated in the NACD to obtain prior informed consent of the community, it makes much of the prescribed participation and consultation meaningless, and provides no other credible method of community consultation and consent. Further, the GOI NRP leaves many issues to the discretion of the requiring bodies. Perhaps such an approach allows for greater flexibility, but in the past such flexibility has not been advantageous to project-affected people.

The GOI NRP envisages a national monitoring committee and cell, state commissioners, and project-level administrators with an R&R committee (essentially in chapter VIII). However, barring a representative each of local women, SC and ST, Non-governmental organization (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 NACD, 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 F1-3 and 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 (Annexure 2, para 11 and 12). These institutions are sadly missing in the GOI NRP.

The GOI NRP lays down that the authority that grants environment clearance to projects will also grant 'social' clearance, on the basis of a social impact assessment (para 4.1). For projects that do not require environmental clearance, and yet need to acquire land, a committee set up by the requiring agency would assess their social impacts (para 4.4). However, as it is, the environmental clearance process is far from satisfactory. Environmental impact assessments are often of a poor quality, or biased in favour of projects because of pressure from the requiring agencies. The clearances that are given on the basis of such assessments are also often as a result of political pressure rather than on merit. Even after a project is cleared, the regulating agencies are seldom able to ensure that the safeguards prescribed are complied with. Therefore, there is no reason to believe that if social assessments and clearances are handled by the same agencies they will not be plagued by the same problems.

IMPLEMENTABILITY

India is a country with many laws and policies, each more progressive than the other, but very few of them are implemented. It is sometimes argued that successive governments have had no hesitation in enacting increasingly radical laws, safe in the knowledge that these laws will, by and large, not be enforced. Therefore, more than the challenge of getting progressive policies and laws, is the challenge of implementing them.

Towards this end, and recognizing the value of having a policy that is justiciable, the NACD states: 'The provisions of an enlightened rehabilitation and compensation policy must have legal backing so that not only the concerned agencies of the government but affected and interested citizens can ensure enforcement and legal intervention' (Section B25).

Specifically, it recommends that 'all rights and entitlements of the displaced and project affected people must be legally enforceable, through individual contracts entered into by the requiring authority with each PAF, or based on a gazette notification declaring the affected area, families, property and entitlements....Failures to implement the policy and law justly for SCs and STs¹² will additionally attract laws relating to prevention of atrocities against these vulnerable sections' (Section D2, 3).

The main instrumentality proposed in the NACD to achieve this is extensive amendment to the LAA, which has for many years been the main legal instrument used by the government to establish its eminent domain over all land and other natural resources, and to acquire these 'in public interest' with little concern for the interests of the affected members of the public. The amendments proposed in the NACD (Annexure 5, Part IV) include:

1. Change the name of the Land Acquisition Act to the Land Acquisition and Rehabilitation Act.
2. Prescribe the minimum legal entitlements of PAPs listed in the R&R policy, and override all laws, policies, and administrative instructions that give lesser entitlements than those prescribed under this law.
3. Explicitly state that the Land Acquisition and Rehabilitation Act derives its legitimacy from Article 21 of the Constitution of India, which declares the right to life, and by implication its derivative right to the means to sustain life, including livelihoods, shelter, and habitat, as a fundamental right.

4. Transform into a law that would principally defend the fundamental and other legal rights of citizens, from one that facilitated the exercise of the eminent domain of the state.
5. Legally require the state to explain the following with reasons: what the nature of public interest proposed is; what the financial, social, and environmental costs and benefits are; and why less or non-displacing alternatives are not technically or geographically available.
6. Make it legally binding to proactively share this and all other relevant information with PAPs through a prescribed process, and with clear accountability.
7. Give PAPs the legal right to challenge the public purpose and other declarations relating to displacing projects and activities.
8. Individual contracts are to be signed (with possibly a bank guarantee) between the acquiring authority and each PAP, listing all their entitlements. This should be available as a public document.
9. Informed individual or community consent can be withdrawn in case of infringement of contractual obligations by the authority.
10. The law must create personal duties and liabilities for public servants. Failure to fulfil these duties should invite personal penalties for the errant public servants.
11. Institutional mechanisms for oversight, monitoring, and grievance redressal are to be prescribed in the law.

The NACD also envisages the setting up of an elaborate institutional structure to oversee the implementation of the policy and to redress grievances. At the village level there would be a People's Rehabilitation Implementation and Monitoring Committee (PRIMC). At least half the PRIMC's members must be women. Adivasis (tribals), dalits, landless workers, and other marginalized groups must have representation in proportion to their population. The PRIMC will monitor the implementation of the rehabilitation package for villagers in their area. This could include, for instance, verifying official surveys and allocation of compensation. The PRIMC will have the power to access documents, information, and official responses that it requires to carry out its functions.

The NACD goes on to prescribe that:

At the level of the project, two further bodies will be constituted: A Project PRIMC will be constituted and will consist of elected representatives from village level PRIMC's. A Relief and Rehabilitation Implementation Board, consisting of senior officials from the departments concerned with implementing the rehabilitation package, will also be formed.... The Project PRIMC

will monitor the work of the officials in the Implementation Board on a regular basis and will be granted the necessary legal powers to do so. The Project PRIMC will also form a Project Monitoring Committee for the purpose of annual certification (Annexure 4, para 48–50).

A very elaborate system of clearances and certifications is also prescribed, to be operated by one or more of these bodies.

At the national level the NACD envisages the setting up of two authorities. First, it states that:

A National Rehabilitation Commission (NRC) shall be set up by an Act of Parliament. The NRC shall consist of: One Chairperson, 4 Deputy Chairpersons (representing four regional clusters), and Members. Their term shall be for a period of 5 years. The NRC shall, for projects referred to it by government,

- I. verify the necessity of displacement, and the extent of displacement that is likely to occur;
- II. assess each referred project that involves displacement to ensure it adopts the least displacing alternative;
- III. ascertain that the rehabilitation policy is capable of being implemented, for eg., by verification that, where the policy of allocation of land as rehabilitation is recommended, land for such rehabilitation is available. (Annexure 2, para 1).

It also envisages that:

There shall be appointed an authority to be known as the Auditor General of Displacement and Rehabilitation (AG-DR), which will function under the Commission. The AG-DR shall

- I. maintain a record of the projects that result in displacement,
- II. maintain a record of the policies of rehabilitation,
- III. maintain a register of the rehabilitation work done,
- IV. maintain a record of unfinished rehabilitation,
- V. maintain a record of all lands that have been taken over resulting in displacement. (Annexure 2, para 11).

Though it is stated that the GOI NRP will also be accompanied by amendments in existing laws and legal coverage for critical clauses, details have not yet been publicly spelled out.

THE CHALLENGES AHEAD

Whatever the final policy might look like, it is unlikely that PAPs will get what is due to them unless they are willing to struggle and fight for justice. And though a good rehabilitation policy will help such struggles, the day is still far when state institutions will automatically guarantee justice to all those under threat of displacement.

But apart from the weaknesses of these institutions, other challenges still remain to be addressed. There is

the vexatious issue that in India between 250 and 300 million people still live below the poverty line. Therefore, when PAPs are rehabilitated along host communities who are well below the poverty line, the conflicts that develop are not easy to manage, and often result in lasting social tensions. Besides, given the pressures on land and natural resources, it is rare that rehabilitation sites can be found where those rehabilitated, apart from being perceptibly better off in economic terms than the original communities, do not compete with them for water, grazing lands, fuel, or even social, cultural, and political space.

Perhaps most heart-rending is the predicament of those who are displaced because of the rehabilitation process itself. It is difficult to find much unencumbered land in India. Even if the land belongs to the government, it most likely has some 'illegal squatters' who live on it or use it for subsistence livelihood. When these lands are diverted (or acquired) to rehabilitate those who have been displaced because of some project, these marginalized and almost invisible people are almost always unseen victims. In an ideal world, these unseen victims would also be recognized as project-affected people and become eligible for all the benefits of compensation and rehabilitation. But seeing how most of these families eke out an existence on minuscule pieces of land, making them eligible for rehabilitation benefits would invariably mean that they would have to be given more land than they surrender. This process would soon become an infinite regress.

In this brave new world a fresh approach is required to the dispensation of distributive justice. It is no longer enough to push a few people above the poverty line every year. The notion of poverty is not an absolute, but a relative one, and the process of 'development' is not static but dynamic. Care has to be taken to ensure that while pushing a few people above poverty you don't end up pushing many more back below it.

NOTES

1. My thanks to Uma Bordoloi for reviewing an earlier version of this paper and giving me many helpful editorial suggestions.
2. *Tehri Bandh Virodhi Sangharsh Samiti v. State of UP*—1992 supp. (1) SCC444; *N.D. Jayal and Shekhar Singh v. Union of India*—2004 (9) SCC 362.
3. Specifically, N.C. Saxena, Aruna Roy and Jean Dreze.
4. The final policy document that emerged out of this exercise owes much to the draft initially developed and subsequently edited by Harsh Mander.
5. Draft National Development, Displacement and Rehabilitation Policy (January 2006), as forwarded by the chairperson, NAC, to the prime minister of India (henceforth referred to in the text as the NAC draft or NACD). A copy of the full document, as approved by the NAC, is available at http://nac.nic.in/communication/draft_national_rehab_policy.pdf.
6. A 'requiring body' is the body that 'requires' the land being acquired.
7. This is all the more regrettable as it is at variance with many of the existing rehabilitation policies and practices.
8. Approximately an income of US\$ 10 per person per month, or the amount needed to access 2,400 calories in rural areas and 2,100 calories in urban areas, per person per day.
9. Member of castes that were historically discriminated against.
10. With irrigated land up to 0.5 hectare or unirrigated land up to 1 hectare.
11. The village community comprising all adult members.
12. SCs were essentially earlier referred to as dalit castes that were historically discriminated against. STs were the nearest Indian equivalent of 'indigenous' people, mostly forest dwellers. Both have special constitutional protection.

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