



Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]
P.O. Box 9627, Janakpuri, New Delhi-110058, India
Email: aitpn@aitpn.org; Website: www.aitpn.org

Embargoed for: 30 October 2006

A CRITIQUE OF INDIA'S DRAFT NATIONAL REHABILITATION POLICY, 2006

The Draft National Rehabilitation Policy 2006 (NRP) in its preamble recognizes traumatic, psychological and socio-cultural consequences on the displaced populations which calls for affirmative State action for protecting their rights", the need for "the active participation of affected persons", "Social Impact Assessment", "Environmental Impact Assessment", "the desirability and justifiability of each project", "Tribal Development Plan" etc. The preamble of NRP-2006 promises all happiness a displaced person could desire for. But the "Preamble" is necessarily not the actual part of the Policy and hence does not constitute safeguard.

The Preamble has sought to build a castle in the air. But the provisions of the NRP-2006 do not have much to offer in tangible terms.

I. Exclusion of the victims

The call for "the active participation of affected persons" (clause 1.2) in the process of resettlement and rehabilitation is not reflected in the processes of development of the project.

First, the affected persons do not have the right to be consulted prior to finalization of their lands as the project site. Under Clause 6.1, in cases where displacement is 400 or more families en masse in plain areas, or 200 or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in Schedule V and Schedule VI of the Constitution of India, the Appropriate Government shall declare, by notification in the Official Gazette, area of villages or localities as "an affected zone of the project". The affected persons have no say in the process of determination of a project site even if it is on their lands.

Second, the Policy calls for preparation of Social Impact Assessment (SIA) report and Environmental Impact Assessment (EIA) report by the Requiring Body for all projects (except linear projects) involving physical displacement

of 400 or more families en masse in plain areas, or 200 or more families en masse in tribal or hilly areas, DDP blocks and areas mentioned in Schedule V and Schedule VI of the Constitution of India. But there is no provision for inclusion of affected persons or their representatives while conducting EIA and SIA.

The Policy also provides for constitution of a "multi-disciplinary expert group" to examine the SIA and EIA reports. Members are nominated by Central and State governments. There is no accountability, independence and transparency in the process of examination of the SIA and EIA reports.

There is no provision for consultation with the affected families during the final preparation of the SIA and EIA reports prior to their submission to the expert group for examination.

II. Beyond the purview of law

Clause 4.6 of the NRP-2006 gives sweeping powers to the Ministry of Defence to acquire land in connection with national security and the Ministry is exempted from conducting any Social Impact Assessment or Environmental Impact Assessment. Therefore if a nuclear plant is set up for national interest, no one can oppose it.

The Policy also lays stress on the State's power to "compulsorily acquire any land under the Land Acquisition Act, 1894" by application of the emergency clause of the Act. Clause 6.23 of the Policy provides that "Emergency provisions under section 17 of the Land Acquisition Act, 1894 should be used rarely". The application of the Land Acquisition Act since 1894 shows that invocation of the Section 17 of the Act is the rule and its non-application is a rarity.

III. Lowering the grades of Administrator

Wherever there is large-scale displacement, the Policy provides that the State government shall appoint the Administrator for Resettlement and Rehabilitation, who is an officer not below the rank of District Collector, to oversee the resettlement and rehabilitation plan. But the Administrator for Resettlement and Rehabilitation may delegate his/her powers and duties to any officer not below the rank of Tehsildar or equivalent.

This will seriously affect the rights of the affected persons as an officer of the rank of Tehsildar or equivalent usually does not have the knowledge to understand the magnitude of the problems to oversee the resettlement and rehabilitation plan.

IV. Government Commissioner

The Commissioner and the Administrator for Resettlement and Rehabilitation are not independent of the State control. They have been empowered to "take all measures for the resettlement and rehabilitation of the affected families" but are "subject to the superintendence, directions and control of the Appropriate Government".

The Administrator for Resettlement and Rehabilitation performs all his/her powers and functions "subject to any general or special order of the Appropriate Government".

V. More displacement in the name of rehabilitation

One of the principal objectives of the Policy is to "minimize displacement". But one of the notorious provisions of the Policy is that it allows further displacement of non-project affected persons from their land in the process of resettling the project affected families in a particular resettlement zone. Sub-clause (b) of Clause 6.11 states, "If sufficient Government land is not available there, then land may be purchased or acquired under the Land Acquisition Act, 1894 for the purposes of resettlement and rehabilitation scheme/plan".

This implies that the State has the power to evict any body from his/her land in order to resettle the project affected persons. The Policy also states that the State can use its emergency powers under Land Acquisition Act to evict such people. On the other hand, the Policy is silent on the rehabilitation of these displaced persons from the resettlement zones. This will create an endless cycle of displacement, rather than solving the problem.

One of the functions of the Administrator for Resettlement and Rehabilitation is to "acquire adequate land for the project" (sub-clause (vi) of Clause 5.5). This is in conflict with one of the main objectives of the Policy which states,

"To minimize displacement and to promote, as far as possible, non-displacing or least-displacing alternatives" (sub-clause (a) of Claus 2.1). It is clear that the more land is acquired for the project, the more will be the number of the displaced persons.

VI. Inadequate safeguards to displaced persons

The Policy fails to provide adequate safeguards to the displaced persons.

Under sub-clause (iv) of Clause 6.4, only those project affected families who are/were having possession of forest lands prior to the 25th October, 1980 will be included in the survey of the Administrator for Resettlement and Rehabilitation. In effect, only the affected families who are/were having possession of forest lands prior to the 25th October, 1980 will be entitled to the benefits of the NRP-2006. This is not in consonance with the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act of 2006, whose cut off date for ownership of land rights is 13 December 2005.

The Policy does not guarantee land for land or adequate lands to the affected families (AFs). Clause 7.4 states that each AF owning agricultural land in the affected zone and who entire land has been acquired "may be allotted" agricultural land or cultivable wasteland to the extent of actual land lost subject to a maximum of one hectare of irrigated land or two hectares of unirrigated land/cultivable wasteland, "if government land is available". The phrases like "may be allotted" and "if government land is available" give enormous discretionary powers to the governments.

The compensation package is also unsatisfactory. Clause 7.7 provides that in case of allotment of wasteland/ degraded land in lieu of acquired land, each AF shall get a one-time financial assistance of only Rs 10,000 per hectare for land development. In effect, an AF can get maximum of Rs 20,000 compensation. Also, in case of allotment of agricultural land, one-time financial assistance of only Rs 5,000 per AF is provided.

There is little guarantee for employment for the oustees. According to Clause 7.11, employment will be provided by the Requiring Body only to those affected families who have lost their employment due to the project. Also, such employment will be "subject to availability of vacancies and suitability of the affected person for the employment". Clause 7.12.1 states

that Affected Families who have not been granted employment or agricultural land shall be entitled to a rehabilitation grant equivalent to 750 days minimum agricultural wages.

There is absolutely no rehabilitation for PAFs displaced by linear acquisitions. According to Clause 7.15, the victims of linear acquisitions in projects relating to Railway lines, highways, transmission lines, laying pipelines etc, will not be entitled to any resettlement or rehabilitation package. They will be offered an ex-gratia amount of Rs.10,000 only.

VII. No adequate safeguards for STs/SCs

According to the definition of "affected family" as provided in sub-clause (s) of Clause 3.1 of Chapter III, the affected family, among others, must have been "residing continuously for a period of not less than three years preceding the date of declaration of the affected zone". Tribals who practice traditional mode of agriculture, such as shifting cultivation which requires temporarily shifting from one place to another place every year for cultivation of crops, and other nomadic forms of life, may not be "residing continuously for a period of three years" at a particular place and hence may not come under the strict definition of "affected family" to get the benefits under this Policy.

The Draft NRP-2006 has dealt with displacement of Schedule Caste and Scheduled Tribe families separately. But the Policy falls short of expectations. The Policy does not provide for collection of disaggregated data about the number of ST and SC amongst those affected population in the survey to be conducted by the Administrator of R&R.

The Policy provides for setting up a Tribal Development Plan for the development of the SC/ST families in their resettlement zone in cases where the displacement is 400 or more families en masse in plain areas, or 200 or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in Schedule V and Schedule VI of the Constitution of India. But no benefits have been provided to the displaced SC/ST families in projects involving linear acquisitions.

Although the Policy provides that concerned Gram Sabha(s) should be consulted in all cases of acquisition in the 5th Schedule Areas including

acquisition under the emergency clause of Land Acquisition Act, the Policy does not provide such safeguards in cases of land acquisition in the 6th Scheduled Areas.

The Policy also does not provide guarantees for land for land compensation even to the STs and SCs. Clause 7.18.3 states that land would be allotted to STs and SCs only "if available".

VIII. Grievance Redressal Mechanisms

The Resettlement and Rehabilitation Committee to monitor and review the progress of implementation of resettlement and rehabilitation schemes is constituted by the State Government under the chairpersonship of the Administrator of R&R. But the Committee is not independent of the State government, as the State government prescribes the rules and procedures of the Committee.

The Grievance Redressal Cell under the chairpersonship of the Commissioner for Resettlement and Rehabilitation is also not independent. It is constituted by the State Government and all its rules and procedures including composition, powers, functions and other matters relating to the functioning of the Cell are prescribed by the State Government.

The Grievance Redressal Cell is also financially dependent on the Requiring Body. Hence, the Cell may not be able to ensure proper implementation of the R&R plan.

Also, there is no nomination of civil society organizations or of representative from the affected persons into the National Monitoring Committee which is constituted by the Ministry of Rural Development of the Central Government.