

ORISSA POLICY ON RESETTLEMENT AND REHABILITATION FOR PROJECT AFFECTED FAMILIES -2006

(A draft paper for consideration by the Committee of Ministers under Government of Orissa entrusted with the task of finalising the State policy on resettlement and rehabilitation for project affected families, by the end of August 2006)

CHAPTER - I: PREAMBLE

1.1 Compulsory acquisition of land for public purpose including infrastructure projects displaces people, forcing them to give up their home, assets and means of livelihood. Apart from depriving them of their lands, livelihoods and resource-base, displacement has other traumatic psychological and socio-cultural consequences. The Government of Orissa recognizes the need to minimize large scale displacement to the extent possible and, where displacement is inevitable, the need to handle with utmost care and forethought issues relating to Resettlement and Rehabilitation of families and persons displaced and affected by the Projects. Such an approach is especially necessary in respect of tribals, dalits, small and marginal farmers and women.

1.2 The system of extending cash compensation does not, by itself, in most cases, enable the displaced and affected families to obtain cultivable agricultural land, homestead and other resources which they have to surrender to the State. The difficulties are more acute for persons who are critically dependent on the acquired assets for their subsistence/ livelihoods, such as landless agricultural workers, forest dwellers, tenants and artisans, as their distress and destitution is more severe, and, yet they are not eligible for cash compensation.

1.3 The Policy essentially addresses the need to provide succour to the assetless rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced. Besides, it seeks to provide a broad canvas for an effective dialogue between the Project Affected Families and the Administration for Resettlement & Rehabilitation. Such a dialogue is expected to enable timely completion of projects with a sense of definiteness as regards costs and adequate attention to the needs of the displaced persons especially the resource poor sections. The intention is to impart greater flexibility for interaction and negotiation so that the resultant Package gains all-round acceptability in the shape of a workable instrument providing satisfaction to all stakeholders/ Requiring Bodies.

1.4 The Orissa Policy on the Resettlement and Rehabilitation of Project Affected Families is meant for the guidance of all concerned and applicable to all kinds of Projects entailing displacement of families en masse in areas that include hilly terrains, and areas mentioned in Schedule V of the Constitution of India. It is expected that the all the concerned executive authorities shall implement this Policy in letter and spirit in order to ensure that the benefits envisaged under the Policy reach the Project affected families, especially resource poor sections including SCs/STs.

Chapter II: Background

2.1 Beginning with the Policy for Resettlement of families displaced by the Rengali dam project, which was formulated as far back as 1973, the Government of Orissa have since then announced several such policies at different points of time in the context of different specific projects, culminating in the 'Guidelines regulating rehabilitation and resettlement of families/persons displaced/affected due to acquisition of land for Kalinga Nagar Integrated Industrial Complex at Duburi in the district of Jajpur' dated 8th of November 2005. However all these policies being of sectoral nature, there stood the imperative need of giving shape to a comprehensive State level policy that could address to the concerns and issues of resettlement and rehabilitation common to

all kinds of projects involving involuntary displacement. The Industrial Policy Resolution of 2001 had therefore inter alia underlined the need for adoption of a Resettlement and Rehabilitation Policy, uniformly applicable to all the projects in the State.

2.2 In view of this, on the request of the Revenue Department, the UNDP in collaboration with DFID formulated in 2005 a Draft Policy on Resettlement and Rehabilitation of Project affected persons, which is applicable for the whole State. While the said draft was being kept under the active scrutiny of the Government, the unfortunate Kalinga Nagar episode took place on the 2nd of January 2006 centring round the accumulated discontentment of the displaced people. This single incident apart from instantly claiming 13 lives on the spot and leaving several others injured and maimed for the whole life, sparked off in its aftermath a chain reaction in the shape of public outbursts throughout the State against the alleged injustice meted out to the displacees of various projects, even including those which were wound up as far as 5 decades back. The mainstream public opinion as voiced in course of the said happenings, has indicated inter alia the need for a paradigmatic shift, that ought to be reflected in any resettlement and rehabilitation policy worth the name, from the post facto compensation and relocation to an all-round resettlement and rehabilitation of the displacees and affectees of a project, to be ensured prior to the eviction. While the draft policy proposed by UNDP-DFID had modeled itself within the parameters of the time-worn Land Acquisition Act 1894 and its Orissa adaptations and amendments, the post-Kalinga Nagar scenario of public opinion has brought to the fore the urgency of transcending the limitations inherent in the existing legal-administrative framework so as to do full justice to the people subject to eviction and involuntary displacement as induced by a project.

2.3 The present document has been formulated in response to and in recognition of the people's expectations and aspirations as reflected in course of the recent march of events in the aftermath of Kalinga Nagar episode.

CHAPTER - III: OBJECTIVES

3.1 The objectives of the Policy are as follows:

- (a) To minimize displacement and to identify non-displacing or least-displacing alternatives;
- (b) To plan the resettlement and rehabilitation of Project Affected Families, (PAFs) including special needs of Tribals and vulnerable sections;
- (c) To provide better standard of living to PAFs, than the one they were enjoying prior to displacement;
- (d) To facilitate harmonious relationship between the Land Requiring Body and PAFs through mutual cooperation.
- (e) To ensure full transparency and justice in the processes of displacement and land acquisition.

CHAPTER - IV: GUIDING PRINCIPLES

4.1 Displacement, as a rule, should not be forced, and people should be assured that it is their legal entitlement that, despite inevitable losses, they are on the whole going to be better off.

4.2. Forced displacement of people should only be permitted in the 'rarest of rare' cases, and only after its justification has been established by independent and credible evaluation that the displacing project has the sorts of social benefits that indisputably make it desirable

4.3. Even then, it must be ensured that the number of people displaced is the minimum required, and that no less displacing or non-displacing alternatives are possible. The burden of proof is on the requiring authority to establish that the proposed project is the best among available alternatives to achieve the given objectives, with minimum displacement.

4.4. Each development project (involving transfer or change in land use leading to displacement) must be first subjected to a holistic appraisal as to its desirability and justifiability. The public, and particularly the people likely

to be affected, must be given the 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. The process of such 'social appraisal' of development projects will be legally binding before any new development project is taken up.

4.5. Suitable legislation should come up in place of the existing laws and regulations handed down since colonial times, to enable the people to challenge the claim of 'public interest' mooted behind any act acquisition or eviction. For this to be possible in an informed manner, the provision of the right to information must be incorporated into the legal-administrative processes at each stage. Specifically, the detailed cost benefit analysis, and proposed rehabilitation package should be spelled out preceding the stage of the notification for acquisition itself, and people should have the right to interrogate the claim so made.

4.6. 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 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 and 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 non-literate 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 or content of the plan.

4.7. While determining compensation, replacement value at the operative market rates, not at the officially recorded rate, must invariably be the basic principle. In no case, paying of depreciated value for one's land or homestead lost should be allowed. The compensation should be adequate enough to provide an alternate life-style of the same quality.

4.8 Since the value of the land acquired in connection with a project gets suddenly escalated due to the project itself, it is but natural that the owner of the land should be compensated for the loss of the said land at a rate several times the cost of the prevailing market value. Such a provision should be included in specific terms under the new law proposed to be introduced to give an operational shape to this Policy.

4.9. Also, not only should lost property and assets be compensated for, but lost livelihoods and lost opportunities should also be compensated for. Communities must be adequately and appropriately compensated for common property resources lost because of the project.

4.10. However, it is not enough to just pay cash compensation, various other principles must be followed to ensure that social costs are minimised. 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.

4.11. The principle of 'land for land' must be followed scrupulously and each PAP who loses land must be given land equivalent in productivity to the land lost. The project authorities must also construct 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.

4.12. The process of selecting rehabilitation sites and lands must involve the PAPs and their preferences must be mandatory for the final selection.

4.13. The alternative patches of agricultural land, to be provided to the displaced families, must be contiguous in location, as far as possible, and communities invariably kept together, after displacement, so that their social and cultural identities and bonds are safeguarded.

4.14. Wherever the people are not willing to shift, it must be assumed that the fault is either in the package being offered or in the progress of its implementation.

4.15. The time frame for the displacement process should be sensitively determined and people given enough time to adjust to their new locations and occupations. It should be a mandatory practice to allot alternate agricultural land and house sites to the PAPs at least two years before they are to be displaced, so that they can get used to the new land and house even while they continue to live in their original homes. In any case, all compensation must be paid at least two years before a person is displaced.

4.16. Whereas it must be ensured that 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.

4.17. The PAPs must also have a first right to get employment in the project. The need for trained and experienced personnel should not be a constraint astringing should be organised for interested PAPs even before the project is commissioned. In fact, the availability of sufficient number of trained PAPs should be a precondition to the commissioning of a project.

4.18. 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.

4.19. 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.

4.20. The special needs of particularly vulnerable communities, like isolated tribal groups, dalits, persons with disabilities or other marginalised groups, must be taken care of.

4.21. The compounded plight of those who have been affected by earlier projects must be recognised and they must be properly rehabilitated and compensated on a priority basis before any further dislocation and displacement is effected in a particular area.

4.22. The provisions of an enlightened rehabilitation and compensation policy must have the legal backing so that not only the concerned agencies of the government but affected and interested citizens can ensure enforcement and make legal intervention, as and when need be.

4.23. It is to be ensured that the resettlement site and the resource-base is large enough to accommodate the natural growth in population, over a minimum time perspective of 100 years, and to generate income to provide for a progressive rise in standards of living.

4.24. 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 dalit communities.

CHAPTER - V: LEGAL REFORM

5.1. The Land Acquisition Act 1894 which has remained ever since its enactment during the British rule, the overarching law governing the acquisition of all sorts of land private or Government 'for the public purpose' or 'for companies' was essentially intended to vest absolute powers to acquire land albeit in lieu of the monetary compensation, as and when the Government at Centre or in a State liked to. Though the Act provided for members of the public to get notified about the land to be so acquired and then heard about their objections if any, it was the discretion of the Government that ultimately prevailed in the matter. The Orissa adaptations and amendments to the said Act, which were effected even in the post-independence period, such as 'The Land Acquisition (Orissa Amendment) Act 1948 or 'The Land Acquisition (Orissa Amendment and Validation) Act 1959 far from changing the intent of the original Act did rather reinforce the principle of the prerogative of the State in displacing the people from their hearth and home in the name of this or that developmental project, which in official parlance came to be equated with 'public purpose'. Ironically enough, the 'public purpose' was deemed to be implicit in any project proposed by the State, irrespective of what the members of the public thought about it. With time passing on, the absurdity of the anachronistic principle of 'public purpose', which was quite often couched under the elusive concept of 'eminent domain', and its utter incompatibility with the norms of a democratic polity, were more and more glaringly revealed calling for appropriate reform of the entire legal-administrative regime built up over time around the Land Acquisition Act and its ancillaries. The agenda for such reform have gradually but steadily made its headway into Orissa's public discourse, just like in other parts of the country, due to the ever growing realization that many a developmental project executed in the name of 'public purpose' neither benefited the people who were its 'declared beneficiaries', nor the people who were its 'forced displacees'.

5.2. An imperative need therefore exists to replace the existing Land Acquisition Act 1894 along with its Orissa adaptations and amendments, by a comprehensive law called 'Orissa Resettlement and Rehabilitation (of Project-affected Persons) Act', which shall simultaneously address to both the requirements of a democratic and developing society, such as:

i) An appropriate modus operandi, as befitting a democratic polity, for acquisition of land private or public by the State, to serve the 'public purpose' in genuine sense of the term; and ii) An appropriate modus operandi, as required under a democratic polity, for all-round resettlement and rehabilitation of the persons and families displaced/affected due to the acquisition of land by the State for the 'public purpose'.

5.2. The above said Act should provide inter alia for the following matters: i) Redefining 'public purpose' as 'public good' which must include welfare of the affected people,

ii) While prescribing the minimum legal entitlements of PAPs, the proposed law would override all laws, policies and administrative instructions that give lesser entitlements than those prescribed under this law.

iii) The law should strictly apply only to involuntary acquisition by the state for public purposes, and not for private industry. However, the entitlements of R & R created under the law would be binding on all private parties that acquire land through non-coercive means, and the duty to enforce the provision of these entitlements vests with the state.

iv) The language of the law should be clear and unambiguous so as to make the entitlements transparent and accessible to PAPs.

v) All the relevant information concerning a project that involves involuntary displacement should be proactively shared with PAPs through a prescribed process and clear accountability including PRIs.

vi) PAPs should have the legal right to challenge the 'public purpose' and other notifications. The detailed rehabilitation plan under the provisions of this Act should be spelt out, the community informed and objections invited before any decisions are made about the project. A rehabilitation clearance by the prescribed authority would be mandatory before acquisition proceedings are set in motion.

- vii) For projects that do not have rehabilitation clearance, it should be illegal to extend institutional finance.
- viii) Compensation should be for loss of livelihood, loss of shelter, loss of habitat, loss of cultural resources, loss of access to natural resources, and loss of access to basic amenities, as derived from various common property resources.
- ix) Compensation should be predominantly non-monetary and based on the informed choices of the PAPs.
- xi) Institutional mechanisms for oversight, monitoring and grievance redressal are to be prescribed in the law.
- xii) 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.
- xiii) Informed individual or community consent can be withdrawn in case of infringement of contract obligations by the authority.
- xiv) The law must create personal duties and liabilities for public servants. Failure to fulfill these duties should invite personal penalties for these public servants. In addition, if the failures relate to persons belong to scheduled castes or tribes, the provisions of the Atrocities Act should automatically apply.
- xv) No state action for compulsory acquisition should contravene constitutional protection for STs under Schedules V of the Constitution and laws preventing tribal land alienation.
- xvi) No land shall be acquired under the Act unless the process of land acquisition is preceded by rehabilitation of affected people.
- xvii) 'Affected people' are to be defined as 'those who are either displaced or who substantially lose their assets or income', and 'Rehabilitation' is defined as 'having been achieved when the income of the affected people has been brought above the poverty line and above their previous income, along with an improvement in their access to all social benefits, in accordance with their aspirations.
- xviii) The restricted definition of 'persons having interest in land' as found in the Sec 9 of the LA Act should be widened to include sharecroppers, tenants and sub-tenants, encroachers, and attached agricultural workers.
- xix) The 'emergency clause', which gives the Collector extraordinary powers under LA Act to acquire land must be withdrawn.
- xx) There should be no physical displacement unless full compensation has been disbursed, complete RR package has been fully implemented, and the rehabilitation site completed in all respects.
- xxi) The principle of market value as laid down in Section 23 (1) of the LA Act should be substituted by the replacement value, which is inclusive of value of both land and other habitat entitlements.
- xxii) 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. The rates must also be set by consulting with the Gram Sabha (in rural areas) and Ward Sabhas (urban areas).
- xxiii) Principle of land for land for tribals in all projects and for all agricultural families in the irrigation projects should be incorporated in the Act itself.
- xxiv) The value of solatium shall be increased from the present value of 30% to 100% of the compensation.
- xxv) There should be a provision in law that projects should be able to take land on lease from the farmers by paying an annual lease rent of twice the gross annual produce. This will obviate the need for land acquisition.
- xxvi) Consultation with the gram sabha/panchayat should be mandatory both for scheduled and non-scheduled areas.
- xxvii) In addition to publicity through newspapers, etc., individual registered notices will be served to all the affected population.
- xxviii) It must be ensured that no individual family is displaced more than once, within 2 decades, on account of any developmental project or acquisition of land for public purpose. In case such displacement is absolutely necessary, the entitlement of benefits under all packages shall be doubled.

5.3. Those laws which are usually taken recourse to by the project authorities in course of implementation of the L.A. Act 1894, such as Orissa Prevention of Land Encroachment Act 1972, just to dispute the legitimate entitlements due to a

displaced or affected person, should be reviewed with a view to bring them in correspondence with the letter and spirit of the new, proposed law on land acquisition and resettlement and rehabilitation.

CHAPTER VI: STATE REHABILITATION COMMISSION

6.1. There shall be set up, through an Act of Orissa Legislative Assembly, a State Rehabilitation Commission, consisting of a Chairman and such number of members as may be prescribed, to be selected from among the persons having eminence in the fields of law, governance, science and technology, education, professions and social service. This State Commission must have the statutory responsibility of assessing all projects (and activities, initiatives) that would displace people. It shall have power to give statutory clearance to any project involving involuntary displacement, similar to the statutory clearances being given from the environmental angle under the Environment (Protection) Act of 1986.

6.2. Such a clearance will only be given when the Commission is satisfied that displacement of people is unavoidable for the proposed project (or activity); that the project, nevertheless, involves the minimum possible displacement; that despite the displacement involved, the project is viable; and that the process of rehabilitation and compensation is in keeping with the priorities of this policy.

6.3. The Commission would reject a project if it does not qualify on these or other relevant grounds, or it could give conditional clearance, where the project is cleared subject to certain conditions to be complied with within a deadline. The obtaining of such a clearance from the Commission must be made obligatory under law.

6.4. The Commission would also have the statutory authority to monitor projects to ensure that the undertakings and conditions of clearance are complied with. The Commission shall have both the legal authority and the legal obligation to suspend or revoke the clearance of any project that does not comply with the undertakings and conditions implicit in the clearance, or if the displacement and/or rehabilitation process was found unsatisfactory or in violation of this policy.

6.5. In any case, any clearance given by the Commission would be valid only for one year, or for any period shorter than one year that the Commission might specify, and the requiring agency would have to seek the renewal of clearance prior to its validity period running out, on the grounds shown that they have not been in violation of the conditions of clearance or of any other undertakings and conditions of the relevant policies. The process of renewal must involve public hearings where the affected parties are given an opportunity of deposing, in a manner to be specified by the Commission, about the nature of displacement and rehabilitation.

6.6. The Commission would also have the power to impose sanctions on the requiring agency for lapses in the process of displacement and rehabilitation, including the imposition of monetary fines. The Commission can, if in their opinion the requiring agency or their designated agents are unfit to take up or complete the process of displacement and/or rehabilitation, nominate another agency of their choice to take up/complete the work at the cost of the requiring agency.

6.7. The Commission is to act as the final appellate authority for disposal of all complaints and appeals on the resettlement and rehabilitation matters in the State of Orissa. It shall have penal powers to hold a defaulter public servant subject to both civil and criminal liabilities. The details of the appellate mechanism and penalty provisions shall be worked out and announced by the Commission from time to time.

6.8. The Chief and other members of the Commission shall be chosen by a panel consisting of the Chief Minister, Opposition Leader of the Orissa Legislative Assembly and Chief Justice of Orissa High Court, and the tenure of each Member of

the Commission shall be 5 years from the date of joining the office or until he/she completes the age of 65 years, or whichever is earlier.

6.9. The Commission shall function independently, without being subject to the instructions from any other agency of the State, and no appeal shall lie against the order of the Commission before any court of law. The status of the Rehabilitation Commission shall be like that of the State Information Commission.

6.10. The Government of Orissa shall make adequate budgetary provision for the smooth functioning of the State Information Commission.

CHAPTER VII: DEFINITIONS

7.1 The Definition of various terms used in this Policy Document are as follows:

(a) "Administrator for Resettlement and Rehabilitation" means an officer not below the rank of District Collector of the State Government appointed as per the Resolution of the concerned Zilla Parishad, for the purpose of resettlement and rehabilitation of the Project Affected Families of the Project concerned, provided that if the appropriate Government in respect of the project is the Central Government, such appointment shall be made as per the Resolution of the Zilla Parishad in consultation with both Central Govt. and State Government.

(b) "affected zone", in relation to a project, means area of villages or locality covered by a project for which the land is required to be acquired and/or an area that comes under submergence due to impounding of water in the reservoir of the project or adversely impacted otherwise, such as in terms of the quality and chemical composition of natural resources like water, air, vegetation and wildlife.

(c) "agricultural family" means a family whose primary mode of livelihood is agriculture and includes family of owners as well as sub-tenants of agricultural land, agricultural labourers, occupiers of forest lands and of collectors of minor forest produce;

(d) "agricultural labourer" means a person who has normally resided in the area prior to its declaration as the affected zone, who does not hold any cultivable land in the affected zone or holds such a small patch of land which doesn't sustain him, and who earns his livelihood principally by manual labour on agricultural land belonging to others.

(e) "agricultural land" includes lands used or capable of being used for the purpose of-

- (i) agriculture or horticulture;
- (ii) dairy farming, poultry farming, pisciculture, breeding or livestock and nursery growing medical herbs;
- (iii) raising of crops, grass or garden produce; and
- (iv) land used by an agriculturist for the grazing of cattle, but does not include land used for the cutting of wood only;

(f) "appropriate Government" means,-

(i) in relation to acquisition of land for the purposes of the Union, the Central Government;

(ii) in relation to a project which is executed by Central Government agency/Central Government undertaking or by any other agency on the orders/directions of Central Government, the Central Government, otherwise the State Government and

(iii) in relation to acquisition of land for other purposes, the State Government.

(g) "Displaced family" means any tenure holder, tenant, Government lessee or owner of other property, who on account of acquisition of his land including plot

in the abadi or other property in the affected zone for the purpose of the project, has been displaced from such land or other property;

(h) "family" means Project Affected Family consisting of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters below 30 years of age, father, mother and other members residing with him and dependent on him for their livelihood.

(i) "holding" means the total land held by a person as an occupant or tenant or as both;

(j) "non-agricultural labourer" means a person who is not an agricultural labourer but is normally residing in an area prior to its declaration as the affected zone and who does not hold any land under the affected zone but who earns his livelihood principally by manual labour or as a rural artisan immediately before such declaration and who is likely to be deprived of his livelihood principally due to such declaration;

(k) "notification" means a notification published in the Official Gazette;

(l) "project" means a project displacing a number of families en masse in plain areas, hilly areas, DDP blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India as a result of acquisition of land for the purpose of the project;

(m) "project affected family" means a family/person whose place of residence or other properties or source of livelihood are substantially affected by the process of acquisition of land for the project and who has been residing and/or practicing any trade, occupation or vocation in the area preceding the date of declaration of the affected zone;

(n) "Resettlement zone", in relation to a project, means the declaration of any area by the appropriate Government acquired or proposed to be acquired for resettlement and rehabilitation of Project Affected Families ;

(o) "Requiring Body" shall mean any company, a body corporate, an institution, or any other organization for whom land is to be acquired by the appropriate Government, and includes the appropriate Government if the acquisition of land is for such Government either for its own use or for subsequent allotment of such land in public interest to a body corporate, institution, or any other organization or to any company under lease, license or through any other system of transfer of land to such agency, as the case may be.;

CHAPTER - VIII: APPOINTMENT OF ADMINISTRATOR AND COMMISSIONER FOR RESETTLEMENT AND REHABILITATION AND THEIR POWERS AND FUNCTIONS

8.1 Where the appropriate Government is satisfied that acquisition of land for any project involves displacement of families en masse in plain areas, hilly areas, DDP blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India as a result of acquisition of land for any project, it shall, by notification, appoint in respect of that project, an officer not below the rank of District Collector of the State Government to be the Administrator for R&R in respect of that project, as per the recommendation of the concerned Zilla Parishad;

Provided that if the appropriate Government in respect of the project is the Central Government, such appointment shall be made in consultation with the Central Government.

8.2 The appropriate Government shall, by notification appoint a State Commissioner for Resettlement and Rehabilitation to supervise and coordinate the functions of the Administrators for R and R working at sub-district, district or inter-district levels; Provided that such officer shall not be below the rank of Principal Secretary of a Department of the State Government; Provided further that the name of the officer recommended by the State Government for the purpose of the said appointment receives the concurrence of the Speaker of the Orissa Legislative Assembly.

8.3 The Commissioner and Administrators for Resettlement & Rehabilitation shall be assisted by such officers and employees as the appropriate Government may provide.

8.4. Subject to the superintendence, directions and control of the appropriate Government, the Commissioner and Administrators for Resettlement & Rehabilitation shall take all measures for the rehabilitation and resettlement of all project affected families (PAF) in respect of the concerned project, and they shall remain accountable for every case of non-compliance to the principles of resettlement and rehabilitation as enunciated in this Policy.

8.5. Subject to clearance of a project and monitoring by the State Rehabilitation Commission, the overall control and superintendence of the formulation of resettlement and rehabilitation plan and execution of the same shall vest in the Commissioner and concerned Administrators for Resettlement & Rehabilitation.

8.6 Subject to any general or special order of the appropriate Government and/or State Rehabilitation Commission, the Commissioner and Administrators for Resettlement & Rehabilitation shall perform the following functions/duties:-

- i) minimize displacement of persons and identify non-displacing or least displacing alternatives in consultation with the requiring body ;
- (ii) hold consultation with the project affected families while preparing a resettlement and rehabilitation scheme/ plan;
- (iii) ensure that interest of the adversely project affected families belonging to Scheduled Castes, Scheduled Tribes, minorities and weaker sections are protected;
- (iv) prepare a draft plan/scheme of resettlement and rehabilitation as required under this Policy;
- (v) prepare a budget including estimated expenditure of various components of acquisition of land, resettlement and rehabilitation activities or programmes in consultation with representatives of the project affected families, respective Panchayat bodies and requiring body for whom the land is acquired;
- (vi) acquire adequate land for the project and also for settling the project affected families;
- (vii) allot land and sanction benefits to project affected families;
- (viii) perform such other functions as the appropriate Government and/or State Rehabilitation Commission may, from time to time, by order in writing, assign.

8.7 Administrator for Resettlement & Rehabilitation may, by order in writing, delegate such of the administrative powers conferred and duties imposed on him by or under this Policy to any officer not below the rank of Tehsildar or equivalent.

8.8 For the purposes of this Policy, the Administrators for Resettlement & Rehabilitation and other officers and employees appointed for the purposes of resettlement and rehabilitation of PAF shall be subordinate to the State Commissioner for Resettlement and Rehabilitation.

8.9 The Commissioner shall be responsible for supervising the formulation of resettlement and rehabilitation plans/schemes, proper implementation of such plans/schemes and redressal of grievances arising in course thereof.

CHAPTER -IX: SCHEMES/PLANS FOR RESETTLEMENT AND REHABILITATION:

9.1 The procedure mentioned in this Chapter shall be followed for declaration of Affected Zone, carrying out survey and census of Project Affected Families, Assessment of Government land available and land to be acquired for the purpose of Resettlement and Rehabilitation, preparation of draft scheme/ plan for R&R and its final publication.

9.2 The appropriate Government may, if it is of the opinion that acquisition of land for a project is likely to displace families en masse in plain areas, in hilly areas, DDP blocks or in areas mentioned in Schedule V and Schedule VI of the Constitution of India declare, by notification in the Official

Gazette, area of villages or localities as a projected-affected zone and thereupon the contents of this Policy shall apply to the project involved.

9.3 Every declaration so made shall be published in at least two daily newspapers, one of which should be in the local vernacular having circulation in villages or areas which are likely to be affected and also by affixing a copy of the notification on the Notice Board of the concerned Gram Panchayats and other prominent place or places in the affected zone.

9.4 Once the declaration is so made, the Administrator for Resettlement and Rehabilitation shall make all necessary arrangements for undertaking a survey for identification of the persons and their families likely to be affected by the project.

9.5 The survey of the project affected families of all categories shall be undertaken and completed by the functionaries of Gram Panchayats at their respective levels, in technical collaboration with the Administrator for Resettlement and Rehabilitation as and where necessary;

9.6 Every survey shall contain inter alia the following village-wise information of the project affected families:-

(i) members of families who are permanently residing, practicing any trade, occupation or vocation in the project affected area;

(ii) Project Affected Families who are likely to lose their house, agricultural land, employment or are alienated wholly or substantially from the main source of their trade occupation or vocation.

(iii) Agricultural labourers and non-agriculture labourers.

(iv) Project Affected Families who are having possession of forest lands prior to 25th October, 1980, that is prior to the commencement of the Forest (Conservation) Act, 1980.

(v) Any other matter which in the opinion of the GP functionaries is worth surveying from the point of view of resettlement and rehabilitation of the project affected families.

9.7 Every survey so undertaken shall be completed within a period of ninety days from the date of declaration of an area as a project affected zone.

9.8 On the expiry of the period of ninety days as aforesaid, the Administrator for Resettlement and Rehabilitation shall, by notification, and also in such other manner so as to reach all persons likely to be affected, publish a draft of the details of the findings of the survey conducted by him for inviting objections and suggestions from all persons likely to be affected thereby.

9.9 On the expiry of thirty days from the date of publication of the draft of the details of survey and after considering the objections and suggestions received by him in this behalf, the Administrator for Resettlement and Rehabilitation shall submit the final details of survey with his recommendations to the concerned Zilla Parishad for latter's approval, and the Zilla Parishad may give its approval to or suggest modifications in the survey report, within 30 days of the receipt of the report from the Administrator.

9.10 Within forty-five days from the date of receipt of the recommendations of the Administrator for Resettlement & Rehabilitation as approved by the concerned Zilla Parishad, the State Government shall publish the final details of survey in the Official Gazette.

9.11 The Administrator for Resettlement & Rehabilitation shall ensure that the Project Affected Families may be settled preferably in group or groups and such sites should form a part of existing gram panchayat as far as possible. However, it has to be ensured that the PAFs may be resettled with the host

community on the basis of equality and mutual understanding, consistent with the desire of each group to preserve its own identity and culture.

9.12 For the purposes of para 9.11 above, the Administrator for Resettlement & Rehabilitation shall draw up a list of lands which may be available in any existing Gram Panchayat for resettlement and rehabilitation of project affected families.

9.13 The lands drawn up under para 9.12 above shall consist of :-

(a) Government waste lands and any other land vesting in the Government available for allotment to project affected families.

(b) If sufficient Government land is not available there, then land to be acquired for the purposes of resettlement and rehabilitation scheme/plan. However, the Administrator for R&R should ensure that such acquisition of land should not lead to another list of affected families.

9.14 The appropriate Government shall, by notification, declare any area acquired or proposed to be acquired for resettlement and rehabilitation of project affected families, as a resettlement zone.

9.15 The Administrator for R&R, on behalf of the appropriate government, may either acquire keeping in view the contents of Para 9.13(b) above any land or purchase land from any person through consent award and may enter into an agreement for this purpose.

9.16 After completion of base line survey and census of Project Affected Families and assessment of requirement of land for resettlement as mentioned above, the Administrator for R&R shall prepare a draft scheme/plan for the Resettlement & Rehabilitation of the Project Affected Families in consultation with representatives of Project Affected Families including women, and Panchayati Raj Institutions within which the Project area is situated.

9.17 While preparing a draft scheme/Plan, the Administrator for R&R shall ensure that the cost of R&R scheme/Plan should be an integral part of the cost of the Project for which the land is being acquired and the entire expenditure of R&R benefits and other expenditure for resettlement and rehabilitation of PAFs are to be borne by the requiring body for which the area is being acquired.

9.18 It shall be the responsibility of the requiring body to provide sufficient funds to the Administrator for R&R for proper implementation of Resettlement & Rehabilitation scheme/plan of Project Affected Families. 9.19 The Administrator for R&R shall keep proper books of accounts and records of the funds placed at his disposal and submit periodical returns to the Commissioner for Resettlement and Rehabilitation of the Appropriate Government in this behalf.

9.20 Every draft scheme/Plan of resettlement and rehabilitation prepared shall contain the following particulars, namely:-

(a) the extent of area to be acquired for the project and the name(s) of the corresponding village(s).

(b) a village-wise list of project affected families and likely number of displaced persons family-wise and the extent and nature of land and immovable property in their possession indicating the survey numbers thereof held by such persons in the affected zone;

(c) a list of agricultural labourers in such area and the names of such persons whose livelihood depend on agricultural activities;

(d) a list of persons who have lost or are likely to lose their employment or livelihood or who have been alienated wholly and substantially from their main sources of occupation or vocation consequent to the acquisition of land for the project;

(e) a list of public utilities and Government buildings which are likely to be affected;

(f) a comprehensive list of benefits and packages which are to be provided to project affected families;

(g) details of the extent of land available which may be acquired in settlement area for resettling and allotting of land to the project affected families;

- (h) details of the basic amenities and infrastructure facilities which are to be provided for resettlement;
- (i) the time schedule for shifting and resettling the displaced families in resettlement zones;
- (j) such other particulars as the Administrator for Resettlement & Rehabilitation may think fit to include for the information of the displaced persons.

9.21 The Administrator for Resettlement & Rehabilitation shall, submit the draft scheme/plan for R&R to the State Commissioner for R &R for its approval. It will be the responsibility of the State Commissioner to obtain the consent of requiring body before approving the same, and then to obtain the clearance of the State Rehabilitation Commission. After obtaining the clearance from the Commission, the draft scheme/plan may be published in the Official Gazette to give wide publicity to the same in the affected zone.

9.22 Upon notification of a scheme/plan, the same shall come into force.

CHAPTER - X: R&R BENEFITS FOR PROJECT AFFECTED FAMILIES

10.1 The resettlement and rehabilitation (R&R) benefits shall be extended to all the Project Affected Families (PAF) whether belonging to below poverty line (BPL) or non-BPL.

10.2 Any Project Affected Family (PAF) owning house and whose house has been acquired may be allotted free of cost house site to the extent of actual loss of area of the acquired house.

10.3 Each PAF owning agricultural land in the affected zone and whose entire land has been acquired may be allotted agricultural land to the extent of actual land loss.

10.4 Stamp duty and other fees payable for registration shall be borne by the requiring body.

10.5 The Land allotted shall be free from all encumbrances. The Land allotted may be in the joint names of wife and husband of PAF.

10.6 Each PAF having cattle shall get one-time financial assistance required for construction of cattle shed.

10.7 Each PAF shall get one-time financial assistance towards the transportation cost for shifting of building materials, belongings and cattle etc. from the affected zone to the resettlement zone.

10.8 Each PAF belonging to the class of rural artisan/small trader and self employed person shall get one-time financial assistance required for construction of working shed/shop.

10.9 Each PAF owning agricultural land in the affected zone and whose entire land has been acquired shall get one-time financial assistance equivalent to 750 days minimum agricultural wages for "loss of livelihood" where neither agricultural land nor regular employment to one member of the PAF has been provided.

10.10 Each PAF owning agricultural land in the affected zone and whose entire land has not been acquired and consequently he becomes a marginal farmer shall get one-time financial assistance equivalent to 500 days minimum agricultural wages.

10.11 Each PAF owning agriculture land in the affected zone and who consequently becomes a small farmer shall get one time financial assistance equivalent to 375 days minimum agricultural wages.

10.12 Each PAF belonging to the category of 'agricultural labourer', or 'non-agricultural labourer' shall be provided a one-time financial assistance equivalent to 625 days of the minimum agricultural wages.

10.13 Each displaced PAF shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wages per month for a period of one year upto 250 days of minimum agricultural wages.

10.14 Acquisition of Long Stretches of Land: In case of projects relating to Railway Lines, Highways, Transmission Lines and laying pipelines wherein only a narrow stretch of land extending over several kilometers is being acquired, the Project Affected Families will be offered an ex-gratia amount, twice the cost of the land lost as determined at the operating market rate and no other Resettlement & Rehabilitation benefits shall be available to them.

10.15 The Project Affected Families shall be provided necessary training facilities for development of entrepreneurship to take up self-employment projects at the resettlement zone as part of R&R benefits.

10.16 The Project Affected Families who were in possession of forest lands prior to 25th October, 1980 shall get all the benefits of R & R as given in above paras under the Policy.

10.17 The PAFs of Scheduled Caste category enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone.

10.18 R&R BENEFITS FOR PROJECT AFFECTED FAMILIES OF SCHEDULED TRIBES.

10.18.1 Each Project Affected Family of ST category shall be given preference in allotment of land in an area similar to the one where they lived prior to displacement.

10.18.2 Each tribal PAF shall be entitled to get R&R benefits mentioned in above Paras under the Policy.

10.18.3 Each Tribal PAF shall get additional financial assistance equivalent to 500 days minimum agriculture wages for loss of customary rights/usages of forest produce.

10.18.4 Tribal PAFs will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic ,linguistic and cultural identity.

10.18.5 Tribal PAFs shall get land free of cost for community & religious gathering.

10.18.6 Tribal PAFs resettled out of the district/taluka will get 50% higher R&R benefits in monetary terms.

10.18.7 The Tribal Land Alienated in violation of the laws and regulations in force on the subject would be treated as null and void and the R&R benefits would be available only to the original tribal land owner.

10.18.8 The Tribal families residing in the Project Affected Areas having fishing rights in the river/pond/dam shall be given fishing rights in the reservoir area.

10.18.9 Tribal PAFs enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone.

10.19 BASIC AMENITIES TO BE PROVIDED AT SETTLEMENT ZONE:

10.19.1 While shifting the population of the Affected Zone to the Resettlement Zone, the Administrator for R&R may as far as possible, ensure that :

a) In case the entire population of the village/area to be shifted belongs to a particular community, such population/families may be resettled en masse in a compact area so that socio-cultural relations (social harmony) amongst shifted families are not disturbed

b) In case of resettlement of Scheduled Caste PAFs, it may be ensured that they are resettled in sites close to the villages.

10.19.2 The Project Affected Families shall be provided the basic amenities and infrastructural facilities at the resettlement site as per norms specified by the Appropriate Govt. It is desirable that provision of drinking water, electricity, schools, dispensaries and access to the resettlement sites amongst others be included in the resettlement plan formulated by the Administrator for R&R.

CHAPTER - XI: DISPUTE REDRESSAL MECHANISM

11.1 R&R COMMITTEE AT PROJECT LEVEL

11.1.1 In respect of every project to which this Policy applies, the State Government shall constitute a Committee under the Chairmanship of the concerned Zilla Parishad with the Administrator of that Project as the Chief Executive Officer to be called the Resettlement and Rehabilitation Committee to monitor and review the progress of implementation of scheme/ plan of resettlement and rehabilitation of the Project Affected Families.

11.1.2 The Resettlement & Rehabilitation Committee constituted as above shall inter-alia include as one of its members:-

- (i) a representative of women residing in the affected zone;
- (ii) a representative each of the Scheduled Castes and Scheduled Tribes residing in the affected zone;
- (iii) a representative of a voluntary organization;
- (iv) a representative of the lead bank;
- (v) Chairman or his nominee of the PRIs located in the affected zone;
- (vi) MPs/MLAs of the area included in the affected zone;

11.1.3 Procedure regulating the business of the Resettlement & Rehabilitation Committee, its meeting and other matters connected thereto shall be prescribed by the Appropriate Government on the recommendation of the State Rehabilitation Commission.

11.2. GRIEVANCE REDRESSAL CELL:

11.2.1 In respect of every project to which this Policy applies, the State Government shall constitute a Grievance Redressal Cell under the Chairmanship of the Commissioner for Resettlement and Rehabilitation for redressal of grievances of the PAFs.

11.2.2 The composition, powers, functions and other matters relating to the functioning of the Grievance Redressal Cell shall be such as may be prescribed by the Appropriate Government in consultation with State Rehabilitation Commission.

11.2.3 Any Project Affected Family, if aggrieved, for not being offered the admissible R&R benefits as provided under this Policy, may move an appropriate petition for redressal of his grievances to the Grievance Redressal Cell.

11.2.4 The form and manner in which and the time within which complaints may be made to the Grievance Redressal Cell and disposed of shall be such as may be prescribed by the appropriate Government in consultation with State Rehabilitation Commission.

11.2.5 The Grievance Redressal Cell shall have the power to consider and dispose of all complaints relating to resettlement and rehabilitation against the decision of the Administrator/R&R Committee at Project level for Resettlement & Rehabilitation and issue such directions to the Administrator for Resettlement & Rehabilitation as it may deem proper for the Redressal of such grievances.

CHAPTER - XII: MONITORING MECHANISM

12. MONITORING

12.1 The Administrator for R&R and State Commissioner for R&R shall send quarterly reports to the State Rehabilitation Commission on the progress of

implementation of the R&R Scheme/Plan project-wise. The State Rehabilitation Commission shall use the offices of Administrator and Commissioner for R&R and/or that of any other agency of the State Government to inspect as and when they desire the worksite, offices and records related to the implementation of the project and that of the R&R Plan/Scheme for the project-affected families. An annual report of the Commission shall be laid in the Orissa Legislative Assembly at the end of each financial year, detailing the project-wise progress in the implementation of R&R Plan/Scheme and the problems/issues related to it. The said report shall also mention the number and nature of appeals made by the public to the Commission against the governmental or non-governmental authorities on the grounds of infringement of R&R policy, and the kinds of relief provided by the Commission to the appellants concerned.

CHAPTER - XIII: APPLICABILITY

13. The Orissa Policy on the Resettlement and Rehabilitation of Project Affected Families 2006 shall come into effect from the date of its publication in the Gazette of Orissa (Extra-ordinary). **[END]**