

Recommendations of the State level Convention on National LA & RR Draft BILL 2011, organized by Lok Samukhya at Lohia Academy, Bhubaneswar on 20.08.2011

Revisiting the Preamble:

The Preamble should reflect the following concerns-

The acquisition/commissioning of private/ common/ Government land by the State, if at all unavoidable, may be undertaken only in the interest of integrated development of the people concerned, with special attention to the interests of farmers, artisans and those whose livelihoods are dependent on the land to be alienated, which is also the true, defining meaning of the term 'public purpose'. Moreover, alienation of any land by the State can only be undertaken with the free and informed consent of the people concerned, who are going to be affected by the acquisition/commissioning of the concerned land. Under no circumstances can the land of any category be acquired/ commissioned by the State for the purpose of private domestic or foreign companies. Besides the Draft Bill should provide for assessing the potential value of common property resources to be acquired by the State, to the user communities and to the eco-system as a whole; and also put in place a mechanism for compensating the user communities concerned in terms of both monetary and non-monetary benefits on account of alienation of common property resources which they have been using and safeguarding thus far.

Specific Recommendations:

1. The provision for acquisition of land of any category or any acreage by the State for any private domestic/ foreign companies in the name of whatever purposes is not acceptable at all. *(Ref: Section 1A)*
2. The definition of 'public purpose' as mentioned in Section 2 (y) shouldn't cover within its purview the acts of land acquisition by the State for private domestic or foreign companies. *(Ref: 2 Y-IV).*
3. The provision sanctioning the land acquisition by the State in the interest of private domestic and foreign companies for whatever purposes ought to be deleted altogether from the entire body of the Draft Bill including its Section 1A (Applicability of the Law). *((Ref: Section 1A).*
4. Deletion of the provisions relating to 'Companies' from the Section 2 (Definitions). *(Ref: Section 2-j, Section 2-y and Section 2-z).*
5. The affected families concerned should have access to special adjudication machinery in the shape of Fast Track Civil Courts to be put in place for a quick disposal of grievances relating to Compensation, R&R benefits and land acquisition process. *(Ref: Part III and Part IV)*
6. The concept of the 'market value' based on Indian stamp Act 1908 as the basis of determination of amount of compensation / R&R and as defined in Sections 20 has been carried over from the existing LA Act 1894. It is not only ambiguous, but also subject to manipulation and is therefore not acceptable. The value of the land as the basis of compensation should instead be fixed on the basis of the market value based on the use to which the land concerned shall be put following acquisition. *(Ref: Section 20 and Schedule 1)*

7. The provision that the 'market value' of the land to be acquired shall be determined as per the calculation based upon the date of publication of preliminary notice as the cut-off date is detrimental to the interest of the land owner, whose land is proposed to be acquired. It is simply a common sense that the price of the land as it exists on this cut-off date is usually too low, but it starts rising only after the publication of preliminary notice for the land acquisition. It is therefore recommended that instead of using the date of preliminary notice as the cut-off date for determining the 'market value' of the land, the value of the land which gets escalated to a new high on the day of commissioning of the project, ought to be the basis for determining the amount of compensation to the land loser. **(Ref: Section 9).**

8. The land to be acquired for any commercial project should be taken by the State from the concerned land-owner on lease basis without the ownership of the concerned land being transferred to the project-holding entities. The concerned land owners (the lesser), whose lands are thus taken on lease by the State (the lessee) are to receive monthly rent from the latter on the basis of a statutory agreement between the two parties ad infinitum until the surrender by the State of the said lands to the lesser. The amount of monthly rent to accrue to the lesser on account thereof shall be subject to an upward revision in keeping with inflationary spiral of prices of consumer goods. **[Section 2-h (Cost of Acquisition), Part- III (Notification and Acquisition), Schedule-I and Schedule-II]**

9. The present practice of acquisition by the State of common property resources (river, lake, meadows, valleys, forests etc), either for bona fide public-purpose, non-commercial projects or for profit yielding commercial projects, without providing for Compensation or R&R benefits to the affected households and communities is objectionable. The existing LA Act 1894 has no provision concerning the acquisition or compensation for the common property resources. The proposed Draft Bill on LA and R&R 2011 suffers from a great blunder by completely ignoring the issue of State acquiring the CPRs and resultant damage and loss caused to the concerned user communities and the prevailing ecosystem. The Draft Bill should contain a fool-proof, participatory institutional mechanism involving the concerned user communities for deciding on the wisdom, if any for acquisition and as well on the assessment of notional value of common property resources to be acquired along with the terms and conditions of such acquisition including regular returns of both monetary and non-monetary benefits to the user communities and society at large.

10. The Draft Bill is afflicted by contradictory provisions in respect of over-riding nature of the proposed Act. While Section 73 clearly provides for over-riding effect of the Act, the Section 71 says, "The provisions of this law are in addition to and not in derogation of, any other law for the time being in force". It is recommended that after giving a final shape to the properly formulated Act, the Act should provide for its over-riding effect vis-a-vis the rest of the laws. **(Ref: Sections 73 and 71).**

11. The provision for temporary occupation of waste or arable land by the Collector on the direction of the Central or State Government for a period of 3 years on the basis of the compensation to be determined by the Government concerned, without giving any scope for protest by any person to such acquisition is not acceptable. **(Ref: Section 54).**

12. The provision for heavy penalty that is, one month imprisonment of either description along with one lakh rupees or with both on account of a person making a false claim is too severe and needs to be deleted. The problems arising from making of false claims by the affected persons It may be dealt with under the existing legal provisions meant for the said purposes. (**Ref: Section 58 -1**).

13. The provision for the disciplinary proceedings liable to be lodged against any government official guilty of any mala-fide action in respect of any provision of this Act is too ambiguous, firstly because there is no provision as such in the concerned Conduct Rules for any disciplinary action against a Government official on account of violation of any provision of the present Draft Bill, and secondly because the extent of punishment or fine has not been prescribed unlike in case of penalty against the common people found guilty of violating any provision of this Act. Moreover, the penalizing authority in case of a guilty official hails from the very Department to which the guilty official belongs; thus there is always the chance of the concerned guilty official getting scot free. It is therefore recommended that the guilty official should be subject to severe penalty, as applicable to a criminal offense, in terms of both imprisonment and monetary fine on account of violation of any provision of this Act, and the penalizing authority should be the same entity, which is entrusted with penal powers over the non-official persons guilty of violating the Act. (**Ref: Section 58 -3**).

14. Keeping in view the obvious drive of corporate entities for playing all sorts of foul tricks for buying the land from the poor and disadvantaged farmers at the throw-away price, the State should put in place an effective mechanism for monitoring the process of negotiation-based direct purchase of land by the private companies from the concerned land holders, especially in areas inhabited by the marginalized communities like PTGs, STs and SCs etc. Clear rules and regulations should be formulated and put in place for the purpose.

15. The provision made under Section 3(1) that the Social Impact Assessment shall be held only in case of a project where at least 100 acres of land is acquired by the Government is not acceptable one. Similarly, the provision made under Section 4 says inter alia that the Public Hearings shall be held only where Social Impact Assessment has been prepared; it implies that Public Hearings shall not be held in case of projects involving acquisition of less than 100 acres of land. This is not acceptable too. The Draft Bill should remove the limitation of 100 acres or more to be the criterion for Social Impact Assessment and Public Hearings, and instead provide for both SIC and PH as and where any such measure is necessary. (**Ref: Sections 3 and 4**).

16. The provision relating to Special Powers of the Government to acquire the land in case of Urgency as mentioned in Section 30 of the Draft Bill, though envisaged to be applied in 'rarest of the rare cases' is likely to be misused by the Government to the neglect and detriment of the interest of the land owners and other sections of concerned communities, and therefore needs to be critically reviewed and recast, especially with a view to ensure a proper and adequate explanation of the expression 'rarest of the rare cases'. (**Ref: Section 30**).

17. Unlike in the existing LA Act 1894 where an aggrieved land owner could get his protest against the Award of Collector heard and adjudicated by the Civil Court, the present Draft Bill has no such provision for any Civil Court to hear and decide such protests. As per Section 11

(Hearing of Objections), the Collector shall hear the objections if any to be raised by an interested person before him and shall submit necessary reports on such objections to the concerned Government, and the decision taken by the concerned Government shall be final and binding. Thus the role of Civil Court in respect of hearing and deciding the objections against the Collector's Award has been ruled out, and the whole process of hearing and deciding on objections is now confined to the two levels of Government administration itself. This bureaucracy-driven adjudication process is not acceptable at all, and instead the Civil Courts should continue to hold the adjudication proceedings in respect of objections against Collector's Award as before, of course subject to observance of a time limit for disposal to be prescribed under this Act in respect of any hearing on the objections against Collector's Award. (**Ref: Section 11**).

18. Until the present draft bill on Land Acquisition and Rehabilitation and Resettlement, on conclusion of a national debate around it, is enacted into a law and its provisions operationalized at different levels in proper sense of the term, the State should desist from initiating any fresh move or from carrying forward any ongoing move for land acquisition under the provisions of existing Land Acquisition Act 1894 or any of its state variants.

Other related suggestions:

1. The Government of India should bring out a status paper on current land use pattern along with a comprehensive draft policy on land use for the purpose of a national debate.
4. An Autonomous Rehabilitation Commission should be established at the national level having the jurisdiction over both Centre and States/UTs as the final appellate authority in respect of any matter concerning land acquisition by the Government. The penal powers over any person or authority violating any provision of the Act should be vested with the said Commission.