

Chapter-8: Orissa R&R Policy 2006, the new mirage

Prelude to the New Policy of 2006-

8.1 Formation of Group of Ministers:

Though the discussion around the need for a comprehensive R&R Policy for the State as a whole was afoot for a long time, it was the bloody episode of Kalinganagar killings on 2nd January 2006 that hastened the process at the official level for its prompt finalisation and eventual notification on the extraordinary gazette of Orissa dated 15th May 2006. Soon after the Kalinganagar episode, the State Government constituted a *Group of Ministers under the Chairmanship of Sri Biswabhusan Harichandan, Minister for Law and Industry, Orissa* to finalise the draft of a comprehensive State policy for R&R as quickly as possible. An 'information sheet' mentioning the past efforts made in respect of R&R policy in the State was brought out by the Government for appraisal of the said Group on the occasion of their first meeting held on 28th January, 2006. From the said information sheet one can reconstruct a trajectory of piecemeal project-related and sector-related packages for compensation and benefits evolving finally into a comprehensive State level policy for resettlement and rehabilitation for project displaced families.

8.2 Absence of any R&R Policy for Hirakud and Rourkela oustees:

The opening passage of the information sheet candidly admits, "In newly independent India, some of the first major development projects involving massive displacement were launched in Orissa. In 1950s, the Hirakud Dam, one of largest hydroelectric dams uprooted over 22,000 families from 250 villages in Orissa and 40 villages in Madhya Pradesh. The construction of giant Rourkela Steel Plant followed and this led to the displacement of over 4000 families from 30 villages. There was however, no policy to manage such large-scale resettlement".

8.3 The first R&R package in the State:

The information sheet continued, "It was Rengali Dam Project, which began in 1971 that brought the resettlement issue into the open. In 1973, the Government of Orissa announced a resettlement policy for the Rengali Dam, which was its first such initiative. Until then there was no resettlement policy in Orissa for people displaced by dams or other projects. In 1977, Orissa for the first time in India, conceded the right of a displaced landless to the land based rehabilitation. This greatly reduced impoverishment risks of the SC and ST, service rendering castes and agricultural labourers, who were mostly landless. *(There is however no corroborating data to prove this official claim- Italics by the author).*

8.4 R&R package for the mining and other sectors:

Further it mentioned, "Mining sector policy came into vogue in 1989 with the introduction of R&R Policy for Mahanadi Coalfields Limited. The policy for the water resources sector that came into force in 1994 marks an important stage in the evolution of resettlement policies from project specific to sector specific policies. The following were the three major Orissa State Sectoral Policies, covering projects in water resources, industries and mining sectors.

- Resettlement and Rehabilitation Policy for one of the largest Public Sector Undertakings in the Country and operating in Orissa, NALCO was framed in the year 1984.
- In the mining sector, uniform guidelines for rehabilitation of the displaced persons/families due to SECL (South Eastern Coalfield Ltd.), presently Mahanadi Coalfields Limited, 1989, popularly known as R&R Policy of MCL, 1989.
- R&R policies have been made for Interim Test Range, Chandipur in the district of Balasore, 1993.

- The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy (Water Resources), 1994.
- Guidelines for Rehabilitation of Displaced Persons/Families in connection with establishment of Steel Plant of Tata Steel at Gopalpur in Ganjam District, 1996.
- R&R policies for Kalinganagar Integrated Industrial Complex at Duburi in the district of Jajpur was framed in the year 1997.
- Policy for Rehabilitation of Displaced Persons/Families in connection with establishment of Major Industrial Projects, 1998.
- Policy for Rehabilitation of Displaced Persons/Families in case of Mining Projects, 1998.
- Aditya Aluminium Project Resettlement and Rehabilitation of Project Affected Persons Policy, 1999.
- R&R policies have been made for Utkal Alumina and Vedanta Alumina in the districts of Rayagada and Kalahandi respectively in the year 2003.
- Revised R&R policies for Kalinganagar Integrated Industrial Complex, Duburi in the district of Jajpur in November, 2005.”

(Source: Information Sheet for the Meeting of Group of Ministers held on 28.01.2006)

8.5 Sectoral R&R Policies:

Besides the above, the website of Orissa Revenue Department has listed out a few other documents that deal with R&R policies/packages for specific projects including defense projects of Govt of India, which are worth mentioning. These are:

- **Payment of Exgratia to the displaced persons of Hirakud Dam Project Resolution No.LA-HKD-1/93-10930/R. dt. 11.3.93**
- **Sanction of Advance for OCF (Rs.1.00 crore) for payment of ex-gratia to the Displaced persons of Hirakud Dam Project LA-HKD-1/93- 35382 dt. 5.8.93**
- **Provision of Homestead land to the land oustees of Hirakud Dam Project, Vide REH-38/2000-5531 dt. 30.1.2002**
- **Rehabilitation policy of the State Govt. relating to estt. Of Ordnance factory at Saintala of Bolangir Dist. Vide Home (SS) Deptt. No.6856/c. dt. 27.12.85**
- **Rehabilitation policy of the State Govt. relating to estt. Of Ordnance factory at Saintala of Bolangir Dist. Vide GE (Bol)-40/86-76946/R. dt. 28.11.1986**
- **Constitution of co-ordination and monitoring committee for rehabilitation of displaced persons of Ordnance factory of Balangir Dist. Vide GE (Bol) 1/90-32099/R. dt. 9.7.90**
- **Rehabilitation Policy for displaced persons on account of A/L for Safety Zone around L-III Complex of the I.T.R., Chandipur in the Dist. of Balasore. Vide No.44364/R. dt. 28.9.1993**
- **Rehabilitation Policy for displaced persons on account of A/L for Safety Zone around L-III Complex of the I.T.R., Chandipur in the Dist. of Balasore. Vide REH-73/93-39543/R. dt. 30.8.1993**
- **Clarification on Rehabilitation Policy for displaced / oustee families on account of A/L for Safety Zone around L.C. III of ITR, Chandipur. Vide REH-4/95-28041/R. dt. 29.6.1995**
- **Clarification on Rehabilitation Policy for displaced / oustee families on account of A/L for Safety Zone around L.C. III of ITR, Chandipur. Vide REH-59/99 – 22772/R. dt. 21.4.1999**

- **Clarification on Rehabilitation Policy for displaced / oustee families on account of A/L for Safety Zone around L.C. III of ITR, Chandipur. Vide REH-59/99-39012/R. dt. 22.7.1999**
- **R&R policy/ package for the project affected persons due to defence establishment at Kodobhatta in the dist of Nabarangapur.**
- **Payment of compensation for land under acquisition for Oil Refinery Project at Paradip vide No.54130/R. dt. 23.10.1999**
- **Policy on grant of mining lease and transfer of land for commercial project in the schedule area (contribution of 5% P.D.I and by various Industries) vide S&M Deptt. Notification No.375 dt. 15.1.2004**
- **Govt. approval of recommendations of Rehabilitation Advisory Committee vide REH-53/03-48273/R. dt. 15.10.2003**
- **Guidelines for PDC for utilization of funds from Industrial Houses/ Mining establishments for periphery development as per R&R policy of Govt. vide No.R&REH-119/04-33167/R. dt. 21.8.2004**
- **Modification of Existing Resolution on Delegation of Powers to RAC/PDC. Vide R&REH-58/05-34731/R. dt. 25.8.2005**

(Source: List of Regulations, Instructions, Manuals and Records vide Website of Orissa Revenue Dept. http://orissa.gov.in/revenue/rti_revenue/rulesregulations.htm)

8.6 Interdepartmental Allocation of R&R responsibilities:

Dealing with the division of responsibility between the departments in respect of R&R policies, the information sheet mentioned, “Revenue Department has formulated Rehabilitation Policy for Major Industrial and Mining Projects coming up in the State vide order No.27313/R dt 01.06.1998 and No.58349 dt 09.11.1998 respectively. The Rehabilitation Policy for Irrigation Projects have been formulated by Water Resources Department vide their Resolution No.25296/W.R. dt 27.08.1994. While Revenue Department is monitoring R&R packages meant for Industrial and Mining Projects, Water Resources Department is monitoring the package relating to Irrigation Projects. Revenue Department has also constituted Rehabilitation Advisory Committees (RACs) and Peripheral Development Committees (PDCs) project-wise to look after the implementation of R&R packages and infrastructure development issues relating to such projects.”

8.7 National R&R Policy-2003:

The information sheet then continued, “In the meanwhile, Government of India in the Ministry of Rural Development have formulated a *National Policy on Resettlement and Rehabilitation for Project Affected Families-2003 (NPPR-2003)* which has been received during May, 2004.”

8.8 Orissa Industrial Policy, 2001:

Then the information sheet deals with the next phase of activities that were undertaken towards the formulation of a State level R&R Policy. It mentions that the Government adopted the Industrial Policy of Orissa, 2001, which had inter alia made the following commitment:

“The State Government intends to facilitate handling of Environment and Social issues involved in setting up of Industrial and Infrastructure projects. For relief and rehabilitation the State Government will put in place a new relief and rehabilitation mechanism after re-examining the current policy. This mechanism will seek to ensure that interest of all stake-holders, in particular, the local people, would be taken into account.”

8.9 UNDP-DFID entrusted to draft the policy:

The State Government then requested UNDP-DFID for providing 'technical assistance to help the Government in bringing an improvement in the existing policies addressing rehabilitation, resettlement, and compensation for affected/displaced people'. According to the above information sheet, the Revenue Department was nominated as the 'Nodal Department for rehabilitation and resettlement matters' and 'a State Level Resettlement and Rehabilitation Advisory and Coordination Committee' was constituted under the Chairmanship of the Chief Secretary, Orissa vide Revenue Department Resolution No.6430/R dated 13.02.2004. This Committee would 'not only review and resettlement matters but also would formulate views and suggest for improvement of existing R&R policies in respect of Irrigation, Industry and Mining projects'. A 'State level Steering Committee' was also constituted under the chairmanship of Principal Secretary, Revenue Department.

8.10 Empirical Studies and Field Visit to Karnataka:

The information sheet further stated, "UNDP incollaboration with Revenue Department was entrusted with the task of formulation of a draft rehabilitation and resettlement policy which would be universally applicable for the whole state. They formed six Empirical Study Groups involving eminent sociologists, administrators and activists who have excelled in the field of rehabilitation and resettlement in different parts of India. Further, a team of key officials was deputed to Karnataka to have a first hand knowledge on rehabilitation and resettlement activities being undertaken in Upper Krishna Irrigation Project. The team was headed by CMD, IDCO. It submitted its report to Government after the study tour. Two divisional consultation workshops have been conducted at Cuttack and Koraput to consult the affected people/R&R officials of the district and to get their response in the policy formulation process".

8.11 Publicity to Draft Policy:

Then the information sheet observed that on the basis of the feedback so received UNDP brought out a set of draft policy on resettlement and rehabilitation of project affected people and put it also on the website for seeking suggestions from interested persons. The Chief Minister Orissa also insisted on early finalisation of the new R&R policy for the State. "After the receipt of feedback/suggestion from different quarters and threadbare examination at Government level a final shape will be given to the draft policy which will be made universally applicable in the entire State for any development project whether public or private".

8.12 Contents of the Information Sheet:

The information sheet contained the following reading materials:

- Draft Orissa R&R Policy
- A Comparative Statement indicating provisions laid down in National R& R Policy-2003 and Draft Orissa R&R Policy
- A Comparative Statement indicating provisions laid down in National R& R Policy-2003 and R&R Policy for Kalinganagar Integrated Industrial Complex-2005
- Guidelines regulating rehabilitation and resettlement of families/persons displaced/affected due to acquisition of land for Kalinganagar Integrated Industrial Complex at Duburi in the dist. of Jajpur (Order No.R&REH-2/04-45425/Rdt 8th Nov.05)
- Guidelines for rehabilitation and resettlement of displaced persons/families in connection with establishment of Duburi Steel Plant complex in the district of Jajpur (Letter No. REH-8/96(Pt)/3963/R dt 24th Jan. 1997)

(Source: Information Sheet for the Meeting of Group of Ministers held on 28.01.2006)

8.13 Some observations on the manner of formulation of the draft policy:

Such was the official version of the background to the formulation of Orissa R&R Policy-2006. While we shall shortly go into a discrete analysis of the provisions made in the new policy, it is worthwhile at the moment to bear in mind some salient findings that emerge from a critical reading of the above mentioned information sheet-

- (a) The hot haste with which the State Government of Orissa hurried to announce a State level R&R policy was instigated by the violent episode of Kalinganagar killings. One should simply look at the short space between the date of Kalinganagar killings (2nd January 2006) and that of the Meeting of Group of Ministers entrusted with the task of organising public consultation on the Draft R&R Policy;
- (b) The real author of the Draft Policy was not the Group of Ministers as such but the UNDP-DFID group in collaboration with top bureaucrats of the State;
- (c) Though the new Policy was proclaimed to be universally applicable, the State Government at that point of time insisted simultaneously on pursuing a separate policy for displaced families of Kalinganagar, a fact which indicates that the Government's frenzied efforts to bring forward a new Policy was more a ploy to assuage the public outcry in the aftermath of genocide at Kalinganagar than a genuine endeavour to provide the State with a long awaited holistic R&R policy.
- (d) A cursory comparison of the draft State policy with Kalinganagar policy at once reveals a big discrepancy between the two. While the Kalinganagar Policy of 2005 provides for both compensation for the land acquired as per L.A.Act, 1894 and an ex-gratia @ Rs.25,000/- (Rupees twenty-five thousand) per acre (vide Para-13), the State Policy has no such provision at all. How to explain such a discriminatory treatment? Perhaps the Government at the moment sought to deliver some tangible advantages to the displaced people at Kalinganagar over the rest of the State, because they were on a warpath since a long time. Though the people at Kalinganagar completely rejected the better looking policy for a variety of reasons, the underlying message of the Government's apparently liberal gesture was loud and clear, the struggle pays.
- (e) The claim made in the information sheet that consultations were held at different levels on the draft policy might be true, but there is no evidence to show that any group of people facing displacement at ground level had extended their support to the new State R&R policy. Rather as we shall see in course of this report, various local groups working among the displaced or would-be displaced communities voiced their serious resentment against it and addressed a series of memoranda of protest to the Governor and Chief Minister of the demanding its immediate withdrawal.

8.14 Who authored the Policy?

Unlike Maharashtra, Madhya Pradesh and Karnataka which have comprehensive State level Acts on resettlement and rehabilitation of project displaced families, Orissa State didn't have a State level policy, let alone an Act until 15th May, 2006 when in the form of a Resolution of the Revenue Department (No-18040/R-R&REH-1/06 dated 14th May 2006) it was notified on Orissa Gazette Extraordinary purportedly to apply for the whole State and to all types of project. The 5-member Group of Ministers that recommended the new policy comprised the following –

1.	Shri Biswabhusan Harichandan, Hon'ble Minister, Rural Development, Industries and Law.	CHAIRMAN
2.	Shri Kalindi Behera,	

	<i>Hon'ble Minister, Scheduled Tribe and Scheduled Caste Development, Minorities and Backward Classes Welfare, and Excise.</i>
3.	<i>3. Srimati Pramila Mallick, Hon'ble Minister, Women and Child Development.</i>
4.	<i>4. Shri Manamohan Samal, Hon'ble Minister, Revenue, Food Supplies and Consumer Welfare</i>
5.	<i>5. Shri Balabhadra Majhi, Hon'ble Minister of State, Scheduled Tribe and Scheduled Caste Development (Scheduled Tribe Development).</i>
<i>Principal Secretary to Government, Revenue Department will be the Secretary to the above Group of Ministers.</i>	

(Source: NO. R&R&H – 1/06 739 /R. Dated the 6th January, 2006, Revenue Department, Govt of Orissa)

8.15 What was the purported mandate of the new Policy?

The Resolution dated 6th Jan. 06 forming the Group of Ministers had announced, *“The issues of adequate and proper rehabilitation and resettlement of persons affected/ displaced due to establishment of various developmental projects in the State have engaged the attention of Government for some time past. At present there are several R&R policies in the State, such as, Orissa Resettlement & Rehabilitation of Project Affected Persons Policy of 1994 for Water Resources Projects, Rehabilitation Policy of 1998 for persons/families displaced due to Major Industrial Projects, and Rehabilitation Policy of 1998 for persons/families displaced for mining projects. There are also industry specific guidelines for resettlement and rehabilitation of the people affected by the projects. A need has arisen to review the existing policies and guidelines to protect the interests of all Stakeholders, especially those of the local population. Government after careful consideration of the matter have been pleased to constitute a Group of Ministers with the following composition to go into the details of the existing R&R policies of the State and to furnish their recommendations within one month to address the related issues in an appropriate manner”*. But while the above words formed the text of the Resolution forming the Group of Ministers with a thrust on reviewing the entire range of sector-specific or project-specific R&R policies, the ‘subject’ which the resolution aimed at addressing sounded somewhat perplexing, ‘Sub: Constitution of Group of Ministers to review the existing R&R policies of the State for different development projects including Kalinga Nagar Integrated Industrial Complex at Duburi (in the District of Jajpur) and furnishing recommendations thereof’.

8.16 Kalinga Nagar precipitated the notification of a State R&R Policy:

As a matter of fact, it was the bloody episode of 2nd January 06, that killed twelve tribals and one police man at Kalinga Nagar on 2nd Jan. 06 and the sudden spurt of an unprecedented rage against displacement in general and displacement of tribals in particular that rocked not only Orissa but sent tremors across the adjacent tribal populated States like Chhatisgarh and Jharkhand, which was so to say the single greatest compulsion behind the Government of Orissa to go for an immediate proclamation of a comprehensive, eye-catching R&R policy in a bid to defuse the explosive anger of the public at large. If one could reconstruct the dominant strand of discourse that unfolded at various levels and reflected in the media following the Kalinga Nagar episode, he or she cannot but notice that almost the whole of the mainstream think-tank of the State including a section of officials targeted the absence of a comprehensive R&R Policy for the State as the most important factor that had been giving rise to violent outburst of displaces over the years. For instance, less than a fortnight after Kalinga Nagar tragedy took place, Sri Prafulla

Das writing under the caption '*Resistance and tragedy*' in *Frontline Volume 23 - Issue 01, Jan. 14 - 27, 2006* echoed the same refrain, "*The absence of a comprehensive policy on resettlement and rehabilitation (R&R) in the State has resulted in long-drawn agitations against upcoming industries in different parts of the State*". And in the then prevailing welter of intellectual confusion the armchair intellectuals with the patronage of officialdom went on peddling their pet theory as if with the onset of a comprehensive R&R policy, the unfortunate tragedies of Kalinga Nagar type could be averted for all time to come. That there is a direct link between Kalinga Nagar episode and the ultimate notification of a State level R&R Policy is not only borne out by the reference to Kalinga Nagar in the above quoted 'subject' of the resolution forming the review group of Ministers, but also by the close proximity of the dates between the occurrence of Kalinga Nagar episode (2nd January 06) and the date of resolution forming the said group of Ministers (6th Jan. 2006). In fine one can say, had there been no Kalinga Nagar tragedy, the notification of a State level R&R Policy for Orissa might not have seen the light of the day even by now.

8.17 Is the Policy of 2006 really comprehensive?

The Para-2 of the Orissa R&R Policy, 2006 says inter alia, "..... (ii) *It shall apply to all those projects, for which acquisition of private land under Land Acquisition Act, 1894 or under any other law's for the time being in force or proclamation inviting objections in case of Government land is notified. (iii) This shall also be applicable to all projects for which land is acquired through negotiation under the provisions of this Policy*". From this provision it is crystal clear that the Policy is applicable to all kinds of projects for which private land is acquired by Government through LA Act or a similar Act or it is acquired through negotiation between the land requiring company and private land holders. The comprehensive ambit of the Policy is further confirmed by its Para- 5, which divides all the projects to be covered into the following categories:

“Project Types : *For the purpose of R & R benefits under this Policy, Development Projects are classified into the following types:*

- A. Industrial Projects;*
- B. Mining Projects;*
- C. Irrigation Projects, National Parks and Sanctuaries;*
- D. Urban Projects and Linear Projects like roads and railways, power lines; and*
- E. Any other Projects.”*

But does the actual practice of the Government follow its own proclamation? Does the Government of Orissa treat all the projects at par as per the provisions of Orissa R&R Policy? In fact, the very web-page that displays the comprehensive State Policy also continues to this day the display therein of some industry-specific R&R Policies, which provide for altogether different kinds of dispensation than the ones envisaged under the State Policy (<http://www.orissa.gov.in/revenue/R&RPOLICIES/RELIEF&REHABILITATION.html>). For instance, all the projects located in Kalinga Nagar Integrated Industrial Complex at Duburi, Jajpur are officially classified as projects belonging to 'Type-A Industry' and the displaced families covered under this Type are not as such entitled to either 'land against land' or 'compensation against land' [vide Para-8(I) of Policy]. But the Order No. R&REH-89/06-16522/R Dated, Bhubaneswar, the 3rd May, 2006 of Orissa Revenue Dept. says, " ... *the minimum compensation per acre of land including ex-gratia amount earlier announced and the additional ex-gratia of Rs.25,000/- currently sanctioned, shall be at least Rs. 1,00,000/-(Rupees one lakh) per acre*". Again, Posco package of projects (steel plant, port, mining, railways,

highway and pipe-line for water supply etc.) has been classified under Type-A (Industry) for the purpose of Environment Impact Assessment and Public Hearing, and as such, strictly speaking as per the letter of the Policy, doesn't qualify a displaced family to receive any compensation against the land of any type lost. But strangely enough, the above webpage offers 'Special R&R benefits to the displaced families of proposed POSCO (ORDER NO. R&REH-123/05 16516/R Dated, Bhubaneswar, the 3rd May, 2006), where it is mentioned, "Persons who are engaged in betel vine cultivation in the Government land proposed to be allotted for the project would be compensated @ Rs.6,000/-(Rupees Six thousand only) only per decimal of such betel vine areas, subject to a minimum compensation of Rs10,000/- per unit of betel vine cultivation".

How can one explain such visible deviations, rather tempting overtures on the part of Govt of Orissa towards the displacees of Kalinga Nagar and Posco project vis-à-vis Orissa R&R Policy, 2006? The answer seems to be pretty common sense; since the local people in these two places have fought virulent battle against the attempt at forcible displacement by the Government-Company combine and are still continuing their resistance in different forms, the Government in order to buy their acquiescence and surrender has held forth the lure of some extra bucks, no matter the new Policy sanctioned it or not, and again no matter the Government was willing or not to extend similar kind of extra benefits for the displaced families of other Type-A projects.

8.18 Did the State Policy spring from a consultation with the affected public?

As we have already noted above, the resolution forming the Group of Ministers for formulating a new, comprehensive policy for the State had inter alia mandated, "A need has arisen to review the existing policies and guidelines to protect the interests of all Stakeholders, especially those of the local population". Again, the Preamble to the Policy mentions inter alia, "*Consultation with various direct and indirect stakeholders including civil society of the state has been conducted.*" But the question arises, whether the said Group of Ministers or for that matter the Government of Orissa had ever held any consultation with the 'local population' or 'direct stake-holders' as mandated. It is true, a few seminars were held at the behest of the Government here and there in a well-orchestrated manner involving pliant sections of media, NGOs and industrialists so as to secure a public sanction behind the officially floated draft policy. But is there any record of the participation of the 'local population' or of 'direct stake-holders' who were already affected or likely to be affected by displacement? The answer is an emphatic no. Rather at that point of time, when the public wrath following the Kalinga Nagar tragedy was at its peak, the affected people, be they from Kalinga Nagar, Posco Project, Sponge Iron infested districts of Sundargarh, Keonjhar or Jharsuguda, or from Alumina Projects at Kashipur or Lanjigarh had stubbornly kept away from the make-believe debate around Orissa R&R Policy out of their deeply ingrained mistrust in any official dispensation. Thus what we see today as the Orissa R&R Policy-2006 is, as we shall shortly see, but a tailor-made instrument of law designed by a coterie of bureaucrats hand-in-glove with the foreign and domestic companies to fleece the displaced people, in broad daylight, of whatever rights and entitlements they enjoyed in earlier existing sectoral policies of the State or assured to them under the haphazardly formulated National R&R Policy of 2003, and that too, ironically enough, using the formidable camouflage of a duly notified State Policy.

8.19 Illusion spreads about the new policy:

While the displaced and affected people all over the State kept an instinctively reasoned distance from the pre-meditated discussions on the Orissa R&R Policy, 2006, the State Government however continued to create a media hype in its favour to win over the opinion leaders of general population. For instance, barely four days before the Policy was notified, an article under the title '*Clearing the Air*' in *Business World*, 10 May, 2006 credited the Govt of Orissa and the real author of

the new policy Sri Tarun Kumar Mishra, Principal Secretary, Revenue thus, *“The Orissa government has announced the much-awaited draft, Rehabilitation & Resettlement (R&R) Policy 2006. The absence of the policy was threatening to derail the 40-odd industrial projects for which Orissa has signed MoUs in the last two years. . . . Orissa revenue secretary Tarun Kumar Mishra, in charge of formulating the new R&R policy, has had five sittings with stakeholders, including tribal leaders, NGOs, the industry, UNDP and academicians. The draft clears up earlier points of confusion (see box).... The compensation package is linked to the kind of industry, the extent of displacement, and the wholesale price index (WPI).*

Box-8.1

Example of Illusion about the new R&R Policy of Orissa

THE KEY FEATURES

- Clear definition of family: Project affected person and his dependants. Unmarried daughter/sister over 25, mentally/physically-challenged person, a divorced woman and widow remaining unmarried are treated as ‘family’.
- Clear definitions for ‘displaced’ and ‘affected’ families.
- Classification of industries into three-industrial and mining projects, ‘linear’ (road & railways) and irrigation projects, national parks and sanctuaries.
- One person from each displaced family to be employed by the project.
- Landless and homestead-less encroachers to also get benefits.
- Rehabilitation grant to be indexed to WPI and revised accordingly.

The Revenue Dept of Govt of Orissa also quickly opened a webpage that exhibited a *‘Statement Indicating the Difference Between the R & R Policy of Govt of India-2003, Kalinga Nagar Policy- 2005 and Orissa Resettlement and Rehabilitation Policy, 2006’*, with an aim to prove superiority of the latter over the previous two. While each of the claims made therein shall be subject to a detail scrutiny in due course, it is interesting to know that in order to befool the readers, the author of the comparative table has resorted to falsehood pure and simple. For instance, it is projected there that the Orissa Policy of 2006 provides for *“Irrigated land 2.5 acres or unirrigated land 5.00 acres for ST/SC and 2 and 4 acres respectively for others”* and *“Cash compensation in lieu of land Rs.1.00 lakh for irrigated and Rs.50000 for unirrigated land per acre”*. Apparently, it would mean that any displaced or affected person who loses agricultural land to a project of any type, depending on his/her status in terms of ST/SC or non-ST/SC shall be entitled to the above acreage of irrigated/non-irrigated land or in lieu of the land above amounts of cash compensation. But if one goes through the text of the policy, he/she would soon realise the falsity of this proposition, since there is absolutely no provision for agricultural land or even monetary compensation against the agricultural land lost for Type-A (Industry) or Type-B (Mining) Projects or Type-D (Urban and Linear Projects). Such provision is applicable only to Type-C Projects (Irrigation Projects, National Parks and Sanctuary).

With such naked indulgence of orchestrated lies going on by the State Government, it is not at all strange either that the Tata Company, which has capital stakes all over the State continues to sing an unqualified praise of the Orissa Policy-2006 in glowing terms. In an article *‘Tata Steel completes acquisition of land for Orissa's Kalinganagar project’ dated 8th October 2007 (http://mjunction.in/marketnews/metals/tata_steel_completes_acquisiti.php), the website of ‘mjunction’, a joint*

venture of SAIL and TATA Steel writes, "Muthuraman (Tata Steel managing director, B. Muthuraman), who had met Orissa chief minister Navin Patnaik, hailed the recently-formulated rehabilitation and resettlement (R&R) policy of the state government and stated that Tata Steel would abide by the policy. "This is one of the best R&R policies, and we will abide by it," he said".

8.20 Who had parented the draft R&R Policy for the State?

In fact, in the wake of Kalinga Nagar massacre what the Group of Ministers circulated as the basis of their frenzied discussions on a comprehensive R&R policy for the State was a draft document which had been prepared by UNDP-DFID long before but gathering dust owing to lack of interest in Govt of Orissa, which was supposed to be its principal taker. Ms.Manipadma Jena writing in the web magazine 'India Together' (<http://www.indiatogether.org/2006/feb/rlf-resettle.htm>) under the title '**Orissa's draft resettlement policy is promising' on 2nd Feb. 2006 revealed**, "Orissa currently resorts to 11 different Rehabilitation and Resettlement (R&R) policies for various sectors. In June 2005, almost six months before the violent tribal protest in Kalinganagar (January 2006), a draft for a comprehensive Resettled and Rehabilitation (R&R) for project-affected people was finalised by the state government, UNDP and the India branch of the UK Government's Department for International Development (DFID). The draft policy is likely to be implemented by March 2006". According to Ms.Jena, the draft policy was informed by a gender study conducted by sociologist Dr.Rita Ray and UNDP's Vikramaditya and had so many progressive features, especially from the standpoint of vulnerable groups like women, BPL families, STs and Dalits etc.

The '**RESETTLEMENT News**' published by International Network on Displacement and Resettlement (<http://www.displacement.net>) with Sri Hari Mohan Mathur as Editor in its issue dated 10 July, 2004 had carried a story that gave a concise background to the origination of the comprehensive Resettlement and Rehabilitation Policy in Orissa. It is worth quoting the said feature at length for it gives additionally an inkling to the nexus of the new rehab policy to the Orissa Industrial Policy Resolution, 2001, which was also an outcome of a joint project co-financed by DFID/ UNIDO/UNDP:

"UNDP/DFID Assistance in Designing a Resettlement Policy for Orissa State, India- The United Nations Development Programme (UNDP), with funding provided by the UK Government's Department for International Development (DFID), is currently supporting the Indian state of Orissa in formulating a comprehensive resettlement policy. ... The duration of this Project is one year. This UNDP/DFID Resettlement Policy Project has its origins in the Industrial Policy of Orissa Resolution 2001 (supported under a DFID/UNIDO/UNDP co-financed Project in 2001). Designed to attract external investment, this Industrial Policy is expected to transform Orissa into a vibrant industrial state. Until recently, there were no resettlement policies in Orissa. (Even the Government of India issued the national policy on resettlement only early this year!) In the past, development agencies addressed the resettlement issues as they arose in a purely ad hoc manner through the promulgation of instructions that were specific to project causing displacement. ... The broad development goal of this resettlement policy will be to see that the affected people participate in and benefit from the development process, and not end up as its victims, as has generally been the case so far. As part of the Project implementation process, a number of activities have already been completed, which include the following: (a) The Government of Orissa has recently named the Revenue Department as the nodal department for all resettlement & rehabilitation (R&R) affairs. The Project regards building the institutional

capacity of this Department as a matter of high priority, and has initiated the necessary action in this direction. (b) The Government has established a State-level Resettlement and Rehabilitation Advisory and Coordination Committee to review and coordinate R&R activities of all Departments. This Committee headed by the Chief Secretary will be a permanent administrative arrangement. (c) In addition, the Government is setting up a small Project Steering Committee to be headed by the Revenue Secretary, with the specific task of overseeing and guiding implementation of this Project.... Other activities planned to provide inputs to the policy making process, include: (a) A review of state, national and international resettlement policies, (b) A review of the existing R&R studies, (c) Field studies of selected ongoing and completed projects in various sectors involving resettlement, (d) Organization of consultative workshops at district/project levels to understand the people's perspective on resettlement policy issues.... Once inputs from the above studies and consultation workshops with all stakeholders become available, the Project will prepare a draft resettlement policy document. This draft document will be discussed in two stakeholders' workshops and finalized with amendments emanating from the workshops' recommendations. It is expected that the Government will then adopt this resettlement policy, which will be applicable to projects of all development departments.” (Source: <http://www.displacement.net/issue10.htm>)

Thus what the above narration discloses is that the very international organisations like DFID and UNDP, which had given Orissa the Industrial Policy Resolution of 2001 also took up the job of formulating a uniform R&R Policy for the State. Though they promised the discussion of the draft policy with the stake-holder groups before it was finalised, such discussions were not held at all, nor the draft policy was ever disclosed to the public at large for inviting their opinions/suggestions until the aftermath of Kalinga Nagar tragedy which forced the State Government for obvious reasons to go for a debate on the need for a State level R&R Policy. Since the UNDP/DFID's draft policy was ready to hand, the Group of Ministers used it as the basis for discussion at different levels. The final shape of the notified policy as we notice today is largely a replica of the draft policy that was jointly produced by DFID/UNDP, though there are differences in respect of minor matters between the two.

In fine, though formal authorship of the Orissa R&R Policy-2006 rests with the 5-member Group of Ministers that was formed close on the heels of Kalinga Nagar tragedy, it was really parented by a DFID/UNDP think-tank as an adjunct to the Orissa Industrial Policy Resolution-2001, which was parented by the said coterie too.

8.21 Orissa R&R Policy, the world's best one !

The Tata Company apart, a giant MNC like POSCO who has been camping in Orissa for last couple of years following its MoU with Government of Orissa in respect of steel, mining and post have also lauded the Orissa R&R Policy-2006 in hyperbolic terms. As on today (20th Oct. 2007), the website of POSCO-India on its page 'Rehabilitation & Resettlement' (<http://poscoindia.com/website/sustainability/rehabilitation-&-resettlement.htm>) pays it tribute to the new policy thus, “*The government of Orissa's Resettlement and Rehabilitation Policy, 2006 is being hailed as one of the best lucrative policies in R&R so far across the country. The company will give due respect to the guidelines laid down in the policy and will make all possible efforts to provide the locals who are directly and indirectly affected by the project a better life for tomorrow. ... The company is attempting everything possible within its limits to ensure that the policy is implemented in its true spirit and in a highly transparent manner*”.

Such boisterous chorus celebrating the Orissa R&R Policy was soon joined in by a band of politicians who though owing allegiance to the ruling coalition of the State had a definite stake in its industrial fate. *Sri Baijayant Panda, a Rajya Sabha MP from Biju Janata Dal* and the son of Sri Bansidhar Panda, a premier industrialist of Orissa wrote an article ‘Tribe of Nay Sayers’ dated Saturday, November 04, 2006 in the ‘*Anti MNC Forum*’ (<http://samajwadi.blogspot.com/2006/11/tribe-of-nay-sayers-baijayant-panda.html>). In a preemptive bid to lambaste the social activists who might attack the new policy for its omissions and commissions, Sri Panda threw an intellectual challenge at them to prove him wrong if they could. While recognising the unaddressed displacement as a genuine problem that dogged the State’s development efforts over the decades, Sri Panda ultimately lands up at the new R&R Policy as if it were a one-click solution to a social evil that has become chronic and intractable. It is worthwhile to quote the relevant extracts from the said article, “*The more substantive opposition comes from those activists who insist on a fair deal for the oustees. And rightly so. There is a real risk of poor people being dispossessed of their land for a pittance and, without the necessary education and skills, sinking even deeper into despair. Indeed, one of the reasons for cynicism is the poor track record of past land acquisitions. In Orissa, for instance, the people of Sundergarh district displaced in the fifties to make way for the Rourkela Steel Plant were treated extremely shoddily. Large numbers of their descendants are still attempting to secure their compensation. ... But the reality today is that Orissa’s R&R policy — rejigged and improved after the Kalinganagar tragedy where 12 tribals were killed by police firing after a constable was hacked to death during a demonstration — is arguably the best in the country. To any rational sceptic, I would only urge that they take the time to read it before passing judgment. Do check out www.orissagov.nic.in.*

The key features of Orissa’s updated R&R policy, which had inputs from UNIDO and DFID, include much larger cash compensation (far more than the pre-notification market prices), job guarantees along with skills training and even alternate land”.

Anatomy of Orissa R&R Policy-2006

8.22 Towards a comprehensive critique of the new Policy:

Though bureaucrats, media persons, politicians and both domestic and foreign companies went on publicising their respective versions of eulogy for the Orissa R&R Policy, 2006 after it was notified, none of them offered any analytical or elaborate reasoning as to how it effectively addressed to the problems arising from involuntary displacement or how it fared better in its deal with the oustees than each of kindred policies which existed at the moment at national level or in some States. But as expected, the new policy was subject to detail discussion and analysis by those activist groups, who were engaged with local people’s struggles, which were continuing then to protest against displacement as such or to wrest a better deal from the governmental authorities in terms of resettlement and rehabilitation. A few Seminars/Workshops, which were held in different parts of the State under the aegis of the activists groups purportedly to comprehend and review the operative provisions of Orissa R&R Policy-2006 from the standpoint of the displaced and affected populations are listed below:

- 10-12 June, 2006, Meeting on Orissa R&R Policy on at Erasama in Jagatsinghpur district for the activists working in POSCO-affected areas;
- 3-4 July, 2006, Workshop on Orissa R&R Policy at Bhawanipatana, Kalahandi held under the aegis of Sachetan Nagarik Manch for the activists working in the Lanjigarh-Niyamgiri areas affected by Vedanta Aluminium;

- 22 July, 2006, Seminar on Orissa R&R Policy at Deogarh held under Deogarh Basachyut Surakshya Samiti for the activists working among the un-rehabilitated displacees of Rengali and Gohiri Dams completed in the past;
- 26-28 Sept. 06, Training and Orientation Programme on Orissa R&R Policy held at Keonjhar under the aegis of Kendujhar Surakshya Parishad for the activists working among the people displaced and affected by various projects across the district;
- 11 Nov. 2006, Discussion on Orissa R&R Policy in the Adivasi Mela held at Keonjhar under the aegis of Jana Bikash Kendra;
- Series of discussions held on Orissa R&R Policy among the anti-displacement activists of POSCO-affected areas during the one month period preceding the Public Hearing on POSCO on 15 April 2007;
- 3-4 June 2007, Workshop at Jagtsinghpur on Orissa R&R Policy with reference to its provisions for industry-displaced families as applicable to POSCO-affected areas;
- 8-9 Sept. 07, Training and Orientation on Orissa R&R Policy, held at Dhanagodi, Keonjhar under the aegis of Jana Bikash Kendra for the anti-displacement and anti-pollution activists of Keonjhar district; and
- 29 Sept. 07, Meeting of Villagers at Jamukani in Hemgiri Tehsil of Sundargarh district on Orissa R&R Policy with reference to its provisions for mining-displaced families as applicable to the areas affected by Bhushan proposed coal mining project.

Being convinced of the irrelevance and even retrograde features of the new policy, the activists and the representatives from among the project displaced people, such as from Vedanta affected Lanjigarh-Niyamgiri areas of Kalahandi, POSCO affected areas of Jagatsinghpur district and Deogarh Basachyut Surakshya Samiti fighting for the people displaced by Rengali and Gohiri dams addressed memoranda to Governor, Orissa demanding withdrawal of Orissa R&R Policy-2006 and introduction of an appropriate policy for the purpose based upon wide-scale consultation with the affected populations across the State.

To facilitate the discussion among the grassroots level activists, an Oriya translation of Orissa R&R Policy-2006 was made forthwith by Sri Chitta Behera a social activist who also attended the above events as a resource person and offered his inputs on interpretation of various provisions made under the policy.

Besides the above mentioned events which were primarily meant to sensitise the grassroots level activists on a wide range of complexities, ambiguities, deficiencies and contradictions that marked the operative provisions of the new policy, two important Seminars were also held at capital Bhubaneswar on the subject, attended by intellectuals from cross-sections such as politicians, Govt officials, academicians, media persons and NGO activists. Sri Behera who attended both the events as a resource person presented a summary of his comprehensive critique of the new policy, which generated a lot of heat in course of deliberations for obvious reasons. The first one was held on 14th of May, 2006 at Vani Vihar, Utkal University under the collaborative aegis of 'The Humanity', a State level NGO and the University's Dept. of

Journalism, while the second one at Hotel Morrison under the joint aegis of NISWASS and FES convened by Dr.R.K.Nayak an MP from Orissa.

As a result of these brainstorming efforts, the print media which were found earlier to be publishing only one-sided eulogies for the new policy under the hallucinating impact of jointly orchestrated confusion by the bureaucrats and the industrial lobby, slowly but steadily turned in the direction of making a critical appreciation of the said policy. Such dailies and magazines published from Orissa as Prajatantra, Sambad, Matrubhasha, Anupam Bharat, Pragativadi, Paryabekshak, Dainik Bhaskar, Janavani, Shatabdi and Bikash Barta published critical write-ups on the policy authored by Sri Chitta Behera and others.

A very wholesome result sprang from the chain of debates and discourses made at different levels, especially among the displaced people themselves and in the above-mentioned forums i.e. emergence of a comprehensive critique of Orissa R&R Policy-2006, which was given an organised shape by its author Sri Chitta Behera.

8.23 Salient Positions of the comprehensive critique of Orissa R&R Policy-2006:

The comprehensive critique, a 25-page document in English appeared and was circulated for the first time in the Seminar organised jointly by NISWASS and FES at Bhubaneswar on 1st June, 2006 under the title “Orissa Resettlement and Rehabilitation Policy 2006- A Contribution towards an Immanent Critique.” The overall motif of this critique was to deconstruct its semantics to lay bare what it really intended vis-à-vis what it proclaimed as its mission, which in fine means the gap between intention and proclamation. As for the method of its discourse the critique didn’t adopt any ideological matrix borrowed from outside, but simply juxtaposed its one set of provisions to another to derive the resultant meaning or meaninglessness. Throughout its course, it remained engaged with the very words and expressions used in the text of the policy itself. If one finds the discourse taking a detour to the treatment of such apparently extraneous and peripheral legislations as, for instance, LA Act 1894, OPLE Act 1972, Orissa GP Act 1965, PESA 1996 or National Policy for R&R-2003, it is solely because either the text of the policy or an official panegyric on the policy for its tactical convenience has taken referential recourse to them just to buttress its hidden agenda. And that is why, as the introduction to the critique (On the know-why and know-how of the critique) makes it clear, the critique is labeled as ‘immanent’ one, in contrast to a ‘transcendent’ one. A lay reader can also locate the leitmotif that permeates the critique all through from its paragraph-1 itself (*The Preamble and Objectives, the source of optical illusions about the Policy’s intentions*). Referring to the goody-goody words that fill the Preamble and Objectives of the Policy, the critique warns the reader thus, “*No doubt these objectives are quite laudable in themselves. But the moot question arises, whether these objectives are attainable by the provisions made in the Policy?*”

8.24 Orissa R&R Policy has no retrospective effect:

The Section 1 of the Policy makes it clear, “*The Policy ...shall come into effect from the date of its publication in the Orissa Gazettee*” and “*It shall apply to all those projects, for which acquisition of private land under Land Acquisition Act 1894 or under any other laws for the time being in force or proclamation inviting objections in case of Government land is notified.*” All these sentences are in future tense. Needless to say, there are tens and thousands of families all across the State, who were displaced due to various types of projects starting from Hirakud Dam in 1948 on assurances, tall and big, by the various governments for their eventual resettlement and rehabilitation. Yet the disgruntled feeling of these past displacees still lingers on and gets manifest now and then in myriad forms bordering at times on violence. It was however expected

that the new Orissa R&R Policy shall contain also some salutary provisions for settling the pending claims of the past displacees. But as a matter of fact, the new policy provides no space for them, and rather seeks to close the chapter of the past displacement for good, when it inscribes the above expressions right at its inception.

8.25 So called ‘Expanded definition of Family’:

The authors of Orissa R and R Policy 2006 in a separate document on its ‘Key Features’ claim that the definition of "Family" has been expanded for the purpose of rehabilitation assistance. But one should examine how and whether it works out to anything of substance. No doubt, the Section 2(f) while defining the ‘Family’ says inter alia, *‘for the purpose of extending rehabilitation benefits under this policy’* as many as 5 categories of persons (*‘a major son irrespective of his marital status; an unmarried daughter/sister more than 30 years of age; Physically and mentally challenged person irrespective of age and sex; minor orphan; and a widow or woman divorcee’*) who may be living under the same roof and eating from the same kitchen shall each be treated as a separate family besides the root family consisting of the person and his/her spouse and their dependents. On a casual reading, the expanded version of the family appears to entitle each of the 5 separate categories of person to receive the R and R benefits. But the Section 2(j) which invents and defines a new term *‘Original Family’* [*“the family, which at the time of Notification under provisions of relevant Act(s) is living together in a single household with a common kitchen”*] is simply designed to negate the R and R benefits allowable to the separate families. For instance, under Section 8 (I a) that deals with assistance in terms of employment for displaced families coming under Type- A Projects (Industries) it is mentioned, *“Displaced families shall be eligible for employment, by the project causing displacement. For the purpose of employment, each original family will nominate one member of such family. However, the families as mentioned at para 2 (f),(i), (ii), (iii), (iv), or (v) will not be considered separately for employment. Any one from among these categories may, subject to eligibility, be nominated by the family as defined in para 2 (f) for the purpose of employment”*. Thus when the question of providing actual benefits/entitlements to the displaced families arises, it goes solely to the single, so-called ‘original family’ of Section 2(j), not to the separate categories of family of Section 2(f).

8.26 THE TRUNCATED DEFINITION OF ‘DISPLACED FAMILY’:

As per the Section 2 (d) of the Policy, *“‘Displaced Family’ means a family ordinarily residing in the project area prior to the date of publication of notification under the provisions of the relevant Act and on account of acquisition of his/her homestead land is displaced from such area or required to be displaced”*. Thus the Policy restricts the definition of ‘displaced family’ only to a single class of families i.e. those who have lost their ‘homestead’ (not home as such) only, and thereby deprives the other categories of family who might have lost their agricultural land and occupation etc. due to acquisition of land, of any R and R benefits allowable to ‘a displaced family’. For instance, let us take the case of a family who retains his homestead but loses 5 acres of irrigated land due to land acquisition under Type-A Projects (Industries). How much shall he get in return? Only one-time cash assistance of Rs.1 lakh, and that too, in lieu of employment assistance, and nothing else [Vide Section 8-Ia (3-iv)]. However, it is just a common sense that a displaced person should be adequately and appropriately compensated in proportion to the area and quality of land, homestead or agricultural lost to a project. While the authors of the State Policy make a great fuss about its *‘significant improvement over other policies of similar nature’* including the National Policy (vide ‘Key Features’), it is worthwhile to quote for the purpose of comparison the ‘National Policy for R and R for Project affected Families-2003’, that provides for the space for both ‘Displaced Family’ and ‘Affected Family’ separately as defined hereunder:

“Section 3.1 (i) ‘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;

x x x x x x x x

“(q) ‘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 continuously for a period of not less than three years preceding the date of declaration of the affected zone or practicing any trade, occupation or vocation continuously for a period of not less than three years in the affected zone, preceding the date of declaration of the affected zone.”

But the Orissa Policy-2006 with its highly exclusivist definition of ‘displaced family’, recognizes only the loss of ‘homestead land’ as the criterion of displacement, and thereby shrewdly forecloses the possibility of other categories of displaced/family as mentioned under National Policy getting any R and R benefits as a matter of their legal right.

8.27 A Skewed Definition of ‘Cut-off Date’:

On a spacious plea of removing ‘vagueness’, the authors of Orissa Policy-2006 have defined this, “‘Cut-off Date’ for the purpose of compensation shall be the date on which the notification declaring the intention to acquire land under the relevant Act or under the provisions of this Policy is published”. As a matter of fact, as per the Section 9(1) of Land Acquisition Act 1894, a notice is served by the concerned authority to all the persons having interest in the concerned land which is to be acquired. This date is precedent to the actual acquisition of the land in question. It goes without saying that at a moment when there is no project in an area the price of its land would be minimal, but once the construction works for the project start along with the attendant infrastructural development in the form of road, electricity, market and telephone booth etc, the price of the said land would escalate like anything even after a short gap of a few months. If for instance the Govt or concerned project authorities would ever have to sell away that land to any third party due to non-commissioning of that project for some or other reason, they wouldn’t certainly sell it at the price at which it was purchased from the displacees. Thus defining the ‘cut-off date’ ‘for the purpose of compensation’ as the date of notification for acquiring the land is completely biased against the land-losing displaced people on one hand, and extremely favourable to the Government and industrial magnates on the other.

8.28 No provision for land against land in case of an Industry or Mining Project:

In today’s R&R parlance, it is held barely reasonable that any family/person losing the land of any variety to a project, homestead, agricultural or commercial, should first of all be provided with the land of commensurate acreage and quality. Secondly, if and to the extent such land couldn’t be provided to him despite the best of efforts, then he/she should be paid adequate compensation in monetary terms commensurate with the size and quality of the land lost. The Orissa Policy of 2006 has made a flagrant violation of this well-accepted norm by remaining ambiguous over the basic principle of ‘land against land’. Firstly, except in case of the Type-C Projects (Irrigation Projects/National Parks/Sanctuaries) which mentions some sort of restricted provision called ‘Assistance for Agricultural Land’ [vide Section 8-III(c)], other 4 Types of Project (Industries, Mining, Linera/Urban and Any other) don’t offer, literally speaking, even any such scheme of assistance against the agricultural land lost. Let us take for instance the case of a family/person who has lost, say, 5 acres of agricultural land due to a project falling under any of the above-mentioned 4 Project Types. Is he entitled to 5 acres of agricultural land of

similar quality or in lieu of it, a cash compensation proportionate to the land lost? As per the Orissa Policy-2006, the answer would be an emphatic no. An optical illusion might have been created by a superficial reading of the Sections 8(Ia-3) or 8(IIa-3) that the displacees of the Industrial and Mining Projects who have lost land including agricultural land shall receive, following the given order of preferences, the scales of Rs.5 lakh, Rs.3 lakh, Rs.2 lakh and Rs.1 lakh respectively. But as a matter of fact, and as the sub-title of the concerned provision 'Employment' conclusively suggests, it is not a compensation against the land lost, but strictly speaking, a 'one-time cash assistance in lieu of employment' to be provided by the project authorities against their failure to provide the employment to one member of each displaced 'original family'. But the two separate and independent components, namely i) Employment or cash assistance in lieu of employment, and ii) proportionate Land against land or Cash compensation in lieu of land, each unique in itself, can't be substituted, far less confused between each other. Let's now return to our hypothetical displacee who lost 5 acres of agricultural land due to any industrial or mining project. The moot question that would loom large before him, how much land is he going to get, or how much money in lieu of the said land? The answer is nothing, since the Orissa Policy-2006 hasn't provided for any such dispensation.

8.29 Limited land provision in case of Type C (irrigation etc.) projects:

Section 8 III c of Orissa Policy-2006) says, "*Each Displaced Family belonging to ST category shall be provided two-and-a-half acres of irrigated agricultural land, or five acres of non-irrigated agricultural land. Each Displaced Family belonging to all other categories shall be provided two acres of irrigated agricultural land, or four acres of non-irrigated agricultural land. In case of non-availability of land, cash equivalent will be provided @ of Rs. 1,00,000/- per acre of irrigated land and Rs.50,000/- per acre of non-irrigated land, including the cost of reclamation or at the rate decided by the Government from time to time*". From this it is now absolutely clear that the Policy has given a clean goodbye to the well-acknowledged principle of 'quid pro quo', or the parity in consideration, which is even implicit in the colonial Land Acquisition Act of 1894 (vide Section 23). For instance, as per the Orissa Policy, even a person of ST category loses 5 acres of irrigated land, he would be entitled to only two and half acres; and similarly if a non-ST person loses 5 acres of irrigated land, he would be entitled to only 2 acres of irrigated land, since that is the ceiling fixed once and for all by the Policy. And in case of non-availability of the land, each of them shall be provided only a cash compensation @ Rs.1,00,000/- per acre of irrigated land or @Rs.50,000/- per acre of non-irrigated land to the limited extent of aforementioned two and half acres or two acres only. Thus irrespective of how much agricultural land an ST or a non-ST person loses to a project, he or she shall have to remain content with the ceiling fixed by the policy.

Thus the so-called provision of 'Assistance for Agricultural Land' under Type-C projects is a cunning ploy of the Orissa Policy-2006 to bypass the universally acknowledged principle of 'land against the land' or the time-honoured norm of LA Act 1894 for proportionate cash compensation against the land lost.

8.30 Confusing and Contradictory Definitions of 'Compensation':

Like any other conventional legal instrument concerning land acquisition, the Section 2(b) of the Orissa Policy defines 'Compensation' as possessing '*the same meaning as assigned to it under the Land Acquisition Act 1894*'. As is well known, the Section 23 of the Act of 1894 mentions various components of compensation based upon the market value of the land acquired along with an ex gratia of 30 percent of the said value. Irrespective of whether one agrees or not with such a definition of compensation, it has got a merit of its own i.e. it is calculable and even

negotiable through the mediation of the concerned civil court between the claimants for compensation and the land-acquiring authority. But the Orissa Policy has confused the whole dispensation concerning compensation by bringing into picture an altogether different kind of provision at a later stage. Under Section 6 the Policy says,

“Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation / award”. And further, the word ‘Government’ is defined as ‘Government of Orissa in the Revenue Department’ [vide Section 2(g)]. Now the question arises, has the Revenue Department prescribed any procedure, separate and different from the corresponding procedure as found in the LA Act 1894 in respect of payment of compensation/award? If not, what is then the use of giving a separate status to the ‘*procedure prescribed by the Government*’ in this respect? Based upon the long experience of the arbitrary manner in which State Government is used to handling the compensation issues over the decades, one very plausible explanation of why there is both overlapping and mismatch between Section 6 and Section 2(g) is that the Government might have a hidden agenda of diluting and bypassing the existing, established procedure, which is elaborate, exacting and justiciable and involves at each stage the participation of the land owner, government and court in the matter of settling the compensation for the land acquired. The hidden agenda at the same time aims at legitimising a unilateral and rough-shod procedure that suits best the vested interests of both bureaucracy and land acquiring company.

8.31 Wholesale Price Index, whom does it serve?

Another retrograde feature that the new Policy has sought to legitimize is found under Section 13, which says that the Rehabilitation Grant shall be indexed to Wholesale Price Index (WPI), not to Consumer Price Index (CPI). Needless to say, there exists invariably a substantial difference between WPI and CPI, the latter being invariably higher than the former. Going by the WPI, the Government or the Company as the case may be shall be paying a displaced family much less in terms of compensation or rehabilitation than otherwise. Thus the reference to WPI in the Policy is just indicative of the peculiar mindset of the Government who wants to save itself and the land requiring Company as much as possible against the claims of the displaced people.

8.32 The fog around ‘One-time cash assistance in lieu of Employment’:

Under Section 8, which deals inter alia with Type-A (Industrial Projects) or Type-B (Mining Projects), the ‘*order of preference for payment of one-time cash assistance in lieu of employment*’ is mentioned. Apparently it may seem that a lot of ripe wisdom for fairness must have gone into the framing of such an order of preference. But let us see whether and how fair this order presents itself to various categories of displaced families.

The said order says, the first category, that is a displaced family losing all land agricultural and homestead shall get Rs.5 lakh, followed by Rs.3 lakh for a displaced family losing $2/3^{\text{rd}}$ of agricultural land along with homestead and Rs.2 lakh for a displaced family losing $1/3^{\text{rd}}$ of agricultural land along with homestead. And the remaining two categories, that is, a displaced family losing only homestead but no agricultural land, and a displaced family losing only agricultural land but not homestead, shall each get Rs.1 lakh. Now let us first take up the case of two last categories. Suppose Mr.X loses no agricultural land but his homestead measuring $1/4^{\text{th}}$ of an acre, and Mr.Y loses no agricultural land but his homestead measuring $1/8^{\text{th}}$ of an acre. Each of them shall be given Rs.1 lakh only. Thus in the estimate of the policy-makers $1/4^{\text{th}}$ of an acre of homestead is equal to $1/8^{\text{th}}$ of an acre of homestead. Similarly, let’s assume Mr.A loses no homestead but 5 acres of agricultural land, and Mr.B loses no homestead but 10 acres of irrigated land. As per the Policy each of them shall get only Rs.1 lakh. Thus in the estimate of

Policy makers agricultural land of 5 acres is equal to that of 10 acres. Coming to the category (i), suppose there are 3 families Mr.A, Mr.B, and Mr.C, who own varying acreages of homestead (say 1/3rd, 1/4th and 1/5th of an acre respectively) and varying acreages of agricultural land (say, 3 acres, 4 acres and 5 acres) and lose all of their homestead and agricultural land. As per the Policy prescription each of them shall get an equal amount of Rs.5 lakh as the one-time cash assistance in lieu of employment. It simply means that for the architects of the new Policy, 1/3 acre = 1/4 acre = 1/5 acre so far homestead land is concerned, while 3 acres = 4 acres = 5 acres so far agricultural land is concerned. Such absurd arithmetic runs all through in the Policy wherever it talks of one-time cash assistance in lieu of employment. Is this kind of brutal equality any way fair?

Neither in the National R and R Policy-2003 nor in any other State Policy nor anywhere else in the world, can one notice such a travesty of natural justice and fair play as the Orissa Policy of 2006 seeks to legitimize behind the masquerade of graded dispensation. Strange as it may seem, this single satanic master-stroke that permeates the letter and spirit of Orissa Policy of 2006 has far surpassed even the masterpiece of British rulers, the overarching colonial Land Acquisition Act, 1894 which reigns to this day with all its imperial glory and majesty albeit minor amendments here and there. The latter under its Section 23 at least speaks of the market value of the extent and quality of the acquired land to be paid by way of compensation to the land-owner. But the Orissa Policy has altogether banished this time-honoured principle of parity so far abided by everybody from land acquisition officer to the Supreme Court. And to legitimise this diabolic act of jettisoning the long-established principle of parity, the Orissa Policy-2006 has in its Section 6 (Land Acquisition and Payment of Compensation/Award), as already noted above, inserted the loaded statement, "*Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation / award.*" It simply means that what the Government of Orissa in Revenue Department payment of compensation shall only prevail, and not what the L A Act of 1894 or any other Act might provide for.

8.33 The Government as a middleman and a speculator in land business:

As already indicated, the Orissa Policy-2006 seeks to legitimise the role of the State Government as a middleman and a speculator in the increasingly lucrative field of estate business in the current era of globalization. There are umpteen instances that stalk through the length and breadth of this Policy which provides a safe leverage to the Government to mint money for its depleted exchequer out of the land acquired from the displaced people, or alternatively to those sly officers to enrich their personal coffers by way of clandestine deals with the corporate houses for procuring them land at throw-away price from the displaced families. For instance, as per Section 8 (Ia-3), a family/person who might have lost say, 5 acres of irrigated land due to its acquisition by the Government for an industrial project, he would be awarded neither land nor any monetary compensation in lieu of land, but only a one-time cash assistance of Rs.1 lakh in lieu of employment. The big question therefore arises, shall the Government sell the said 5 acres of land to the land-requiring Company at the lump sum price of only Rs.1 lakh? If yes, then this Government is an extended agency of the said Company, pure and simple. Alternatively, if the said land is sold at a price much higher than Rs.1 lakh the fat surplus arising there-from straight goes to the Government exchequer or to a coterie of its land-dealing bureaucrats at the expense of the displaced people, and behind their back. The same kind of speculative deal is possible in case of Type-B Projects (mining) too.

To take another instance, as per Section 8 III (c), the Government shall provide monetary assistance for agricultural land @ Rs.1 lakh per one acre of irrigated land upto a maximum of

two and half acres to an ST person and upto a maximum of 2 acres to a non-ST person in lieu of whatever acreage of agricultural or homestead land they might have acquired from them for a Type-C Project (irrigation, national parks and sanctuaries). Is only Rs.1 lakh the price of an acre of irrigated land in Orissa? Is not it a case of complete betrayal of the poor, tribal, Dalit and other marginalized sections of people living across the State?

In order to continue to play the role of a speculative middleman between the displaced people on one hand and super-profiteering industrial houses on the other, the State Government in its Policy of 2006 keeps the ultimate control over land acquisition business in its own hands. Its Section 6 inter alia says, "*The Project proponent may opt for direct purchase of land on the basis of negotiated price after issue of notification requiring acquisition of land under relevant Act(s). If acquisition of land through direct purchase fails, other provisions of the relevant Act may be invoked*". Further, the opening sentence of the said Section leaves no doubt in anybody's mind over the intention of the State Government to keep the entire control over the land acquisition process in its own hands: "*Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation/award.*" Another crucial question ensues from the following provision of Section 6: "*Land not utilized by the Project within the prescribed time limit and for the required purposes shall be resumed*". What does the word 'resume' mean? Shall the unused land be straightaway returned to the people from whom the land was acquired? Or shall the Company return the unused land to the Government who had handed it over to them after acquiring from the people. The Policy has intentionally used the ambiguous word 'resume' to enable the Government to re-grab the unused land for their speculative business without having to return it back to the people from whom the said was acquired.

8.34 Encroachers, get lost !

From a casual glance at Section 9 of Orissa Policy-2006 it may appear that a landless family or a homeless family, who gets displaced by any type of project, and who prior to the date of displacement might be in possession of some Anabadi land by way of encroachment shall get a maximum of one standard acre for occupational purpose and 1/10th of an acre in a rural area or 1/25th of an acre in an urban area for residential purpose. But a minute and critical reading of the said Section shall reveal beyond a shade of doubt that not a single landless or homeless encroacher family shall ever be entitled to anything in terms of kind or cash following the displacement.

Firstly, the worst of the crippling conditions that renders the encroacher-family of any kind (landless or homeless) unfit to avail the benefit of any sort is the qualifying conjunction, '*if the encroachment is unobjectionable*'. In fact it is the *Orissa Prevention of Land Encroachment Act 1972* which in its notorious Section 7 holds that an encroachment, made literally on any sort of land can be termed objectionable. It means that the ambit of 'objectionable' is so wide that the concerned Revenue authorities may declare any kind of encroachment as objectionable and therefore not admissible for compensation. Secondly, if the encroachment at the field level is not recorded in the corresponding revenue files of the concerned Tahasil/RI, then the said encroachment may not be at all considered as such for the purpose of compensation. Thirdly, as per the Section 9 of the Policy, if the encroachment has been continuing for at least 10 years prior to the date of notification issued under the Land Acquisition Act or under a similar Act, and that too with corroboration from the corresponding revenue records, then only the right of an encroacher family to compensation may arise, otherwise not.

Besides, the Policy's use of the word '*homesteadless*' in place of homeless has a negatively slanted design to deprive the displaced families who are actually homeless of any R and R benefit. Because as per Section 3 of OPLE Act 1972, a person in order to be considered a 'homesteadless person' should not only be homeless in actuality, but also be having an annual income not exceeding a particular amount which is to be specified by the Government from time to time. Thus it is the Tahsildar of the concerned area to which the homeless person belongs, who is the final arbiter on the 'homesteadless' status of a person/family by virtue of his power to issue the 'income certificate'. Thus those homeless persons/families who may be dreaming of getting some sort of homestead land or in lieu of it some amount of monetary compensation *suo motu* due to displacement are simply living in a fools' paradise. In a similar refrain, as per the said Section 3 of OPLE Act 1972, an actually landless person in order to be officially declared 'landless' has to fulfill an additional condition i.e. his annual income not to exceed an amount that may be specified by the Government from time to time. Here again, the role of concerned Tahsildar comes in for determining the 'landless' status of the concerned displaced family/person and his consequent eligibility for getting some land or in its lieu corresponding monetary compensation.

Now let us see, if a homeless or a landless person, after overcoming all these legal hurdles can prove his status as such, and how much benefit in kind or cash he shall be entitled to? The said Section 9 inter alia says that "*an encroacher family.... will get ex gratia, equal to compensation for the similar category of homestead land, against the encroached homestead land up to a maximum of 1/10th of an acre in rural areas or 1/25th of an acre in urban areas. ...While determining the extent of land for such compensation the homestead land held by him/her is to be taken into account. The ex-gratia will be in addition to the actual cost of structures thereon. If the encroachment is found to be objectionable, (s)he will be entitled to the cost of structure only.*" Thus a homesteadless person is not going to get either homestead land or monetary compensation commensurate to the land encroached by him for homestead purposes. His total entitlement is subject to a maximum of 1/10th of an acre in a rural area and 1/25th of an acre in an urban area. Again, he may get less than that or nothing at all if and to the extent it is found that he holds some extent of land anywhere. As per this provision, the encroacher family is not entitled to compensation plus ex gratia (30% of the compensation amount) as admissible under Section 23 of L.A.Act 1894, but only to an ex gratia equal to the amount of compensation against the land as determined under Section 23(1) of L.A.Act. Then if the encroachment is objectionable, he shall not get even that ex gratia too, but only the actual cost of structure standing on the 'objectionable' patch of the encroached land. It is worth mentioning here that the 'actual cost of structure' should not be confused with the house building assistance of Rs.1.5 lakh admissible under a project of Type A or B or C. It is easily understandable that the actual cost of a house structure (minus the cost of the land on which the structure stands) would be an insignificant fraction of the above-mentioned amount of house-building assistance, since a poor and homesteadless encroacher family who can't possibly afford a pucca structure is generally found to be putting up with some sort of makeshift earthen, thatched cottage, the actual cost of which is utterly negligible, and that too, when it would be calculated by the Revenue Officials. Thus at the end, a homesteadless encroacher family might not get anything worth mentioning as against his displacement due to any type of project.

Now let us see, whether a landless encroacher family shall get anything? The said Section 9 says, "*An encroacher family, who is landless as defined in the Orissa Prevention of Land Encroachment Act, 1972, and is in possession of the encroached land at least for a period of ten years continuously prior to the date of notification under relevant law(s) declaring intention of*

land acquisition will get ex-gratia equal to compensation admissible under the Land Acquisition Act, 1894 for a similar category of land to the extent of land under his/her physical possession up to a maximum of one standard acre, if the encroachment is unobjectionable. While determining the extent of land for such compensation the rayati land held by him/her is to be taken into account.” Thus a landless encroacher family can't avail any benefit suo motu on the strength of his real status as a landless person. His entitlement is subject to the following vexatious conditions:

- i) He should be defined as 'landless' in the eyes of the OPLE Act 1972,
- ii) He should have encroached the land for a period of ten years,
- iii) His encroachment must be 'unobjectionable' as per OPLE Act 1972
- iv) He is not entitled to land as such in lieu of the encroached land, but monetary compensation against it,
- v) He is entitled to a compensation for land encroached by him subject to a maximum of 1 standard acre [as defined under Section 2 (30) of OLR Act 1960],
- vi) The computation of the extent of land for the purpose of compensation shall be made taking into account the extent of rayati land held by him,
- vii) Above all, the concerned revenue records should have reflected his status as an encroacher and the extent and category of land encroached by him.

Thus the benefits to the landless and homesteadless persons/families displaced under any type of project as described under Section 9 of the Policy -2006 are more illusory than real.

8.35 Vacate the land first, then ask for resettlement !

The Section 7(ii) says, *“No physical displacement shall be made before the completion of resettlement work as approved by the RPDAC. The certificate of completion of resettlement work will be issued by the Collector”*. Thus it appears that no body henceforth can be asked to vacate his land homestead or agricultural before he is resettled in the alternative place. But to know the real intention of the policy, one should juxtapose the above provision to another provision made under the same Section a little afterwards i.e. at sub-section (v) which says, *“Provisions relating to rehabilitation will be given effect from the date of actual vacation of the land”*. It simply means that only after a displaced person vacates his land, he shall be entitled to the provisions relating to rehabilitation, which, as one can see, are mentioned under Section 8 (Rehabilitation Assistance) of the Policy. Thus the latter provision nullifies what is assured in the former one.

Again, if one marks the wording of the former provision, all it says is that no physical displacement shall be made before the completion of 'resettlement work' approved by the RPDAC and finally certified by the Collector. But what is the status of RPDAC (Rehabilitation-cum-Periphery Development Advisory Committee) in the scheme of the new Policy? As mentioned under sub-section (vi) of Section 7, *“Project Authority shall abide by the provisions laid down in this Policy and the decisions taken by RPDAC from time to time provided they are within the ambits of the approved Policy of the Government”*. And now let's be clear about what is meant by the 'Policy of the Government'. The Section 2(g) defines the word 'Government' as 'Government of Orissa in Revenue Department'. Thus the Section 7(ii) and Section 2(g) read together simply mean that the State Revenue Department is not bound by what the RPDAC thinks about the R and R package decided by the Project authority, but the reverse is the case i.e. the RPDAC has to yield to what the State Revenue Department think about the said package. That is why, it is not the Certificate of the RPDAC about the completion of a project that would

matter, but that of the Collector who is the nodal officer of the Government for the purpose of both land acquisition and R and R package.

It is pertinent to ask here, whose opinion should finally count in determining whether an R and R package has been adequately and properly completed or not? Certainly, they are the people, who have been displaced; since it is they who have sacrificed their land and home for a project to come up, and secondly it is they for whom an R and R package has been formulated and who are its end-recipients. But the Policy of 2006 in stead of seeking the opinion of the displaced people about the quantum or quality of the R and R package or about its completion or non-completion, it fully relies upon the District Collector, who is, as the mandate of his portfolio goes, is an official of the Revenue Department and absolutely accountable to the concerned Ministers and bureaucrats at the top, not to the people down below.

Thus the old, obnoxious practice of the Government in displacing the people without prior completion of the award of compensation or prior delivery of R and R package shall continue as before, and that is what the new Policy with its glaring equivocations going to legitimize.

8.36 ‘Convertible Preference Share’, a ploy to rob the displacees:

The Section 8 (Rehabilitation Assistance) mentions inter alia that the displaced people under Type-A (Industries) and Type-B (Mining) Projects shall have the option to invest a maximum of 50% of their cash assistance by way of purchasing the shares and bonds of the very Company from whom they receive the rehabilitation money. A document called ‘*The Key Features*’ brought out by the authors of the Policy-2006 to highlight its so-called new and unique features describes this provision as ‘*The Benefit sharing- preferential share allotment for partnering the growth*’. The relevant extract [vide Section 8 (I-c) or 8 (II-c)] says, “*At the option of the displaced family and, subject to the provisions of relevant law(s) in force for the time being, the project authority may issue Convertible Preference Share(s) or Secured Bond(s) up to a maximum of 50% out of one-time cash assistance as mentioned in sub-para (a) above*”. The sub-para (a) as referred here means the one-time cash assistance that shall be provided to the displaced families in lieu of employment. As has been shown earlier, a displaced family belonging to either Industrial or Mining Project is not entitled to any conventional type of compensation as a matter of right against the loss of his homestead and/or agricultural land as, but a non-descript employment or in its lieu a lump-sum one-time cash assistance from the land acquiring Company. And that displacee is now being tempted to invest 50% of this money after ‘Convertible Preference Share’ of the Company.

The first question arises, who are the people, usually subject to displacement? Needless to say, they are mostly tribals, Dalits and other marginalized sections, and therefore mostly illiterate or semiliterate, having least knowledge about the system and provisions of banking, let alone high risk involved in a share market transaction. As is true in case of any share investment, the shareholder may one fine morning lose everything, if the returns of the Company go down. Thus, the provision of Convertible Preference Share may enable a land-acquiring Company to collect back 50% of cash that it might have handed out towards employment assistance to the displacees. Further such a provision of gathering easy money from the displaced families would greatly obviate the compulsion of the concerned Company to run after the financial institutions in search of loan, which is barely necessary on its part at the initial stage of commissioning of its project. But when the said Company for some reasons or the other goes on incurring losses or is compelled to close down its undertaking, the share-holding displacees might lose everything which they had invested by way of ‘Convertible Preference Share’.

It is one thing on the part of the Company to provide each displaced family suo moto with a share in its capital as a token of recognition of the incalculable loss and sacrifice made by the displacee in the interest of the Company's project, but it is altogether a different, nay a dangerous proposition on the part of the Company to ask the displaced family to pay back 50% of the cash assistance to augment its own capital stock, and that too against an uncertain and unpredictable return for the displacee himself.

8.37 No compensation for the displacees of the Urban/ Linear Projects:

The Section 8 (IV) which deals with the provisions for the displacees of the Urban/Linear Projects says that each 'displaced family' shall get (a) 1/10th of an acre in a rural area or 1/25th of an acre in an urban area or cash equivalent of Rs.50,000/- only; and (b) a house-building assistance of Rs.1,50,000/-. As the Section 2(d) limits the definition of a displaced family to the one who loses his homestead only, a person losing any amount of agricultural land shall not be considered for award of any compensation. Thus irrespective of how much agricultural land or homestead land one may lose, only that family which loses their homestead shall get a grand total of Rs.2 lakh only. There is not only a conspicuous absence of any consideration for the extent of the land lost, but also no consideration for the crops or structures standing on the land so acquired.

The Policy of course speaks of a third component, that is employment for the displacees of Linear projects. It should be first remembered that this third component is not admissible to urban projects, but only to linear projects. This provision being the most ambiguous one in the whole Act, it is worth quoting verbatim: *"If house/ homestead land of any landholder is acquired for linear project or if there is total displacement due to acquisition for such project, the project authority shall provide employment to one of the members of such displaced family in the project. Wherever RPDAC decides that provision of such employment is not possible, one time cash assistance as decided by the Government will be paid by the project authority."* It means that only when a person loses his homestead or if he loses all of his agricultural land besides homestead due to a linear project, then only he may be entitled to a job. It further means that a person who loses, say, 90% of his agricultural land due to a linear project, he shall not be entitled to a job. Again, the provision of job for a total displacee under the linear projects is not an assured entitlement either. There are very formidable ifs and buts to be overcome before he is given any job as such. The RPDAC may say that the job can't be available for the concerned persons, and depending upon the view of RPDAC, the project authority may provide some amount of one-time cash assistance in lieu of employment to the displaced family. And now the cruel joke- the amount of such one-time cash assistance is left to the discretion of the Government. Since the amount is not specified, it may so happen that the Revenue Department (which is equivalent of the Government of Orissa as per Section 2g) shall decide a ludicrously low amount as one-time cash assistance, over which the displacee can't raise any objection. If at all he likes to raise any objection, he shall have to approach again the very Revenue Officials for the purpose since the latter constitute the grievance redressal machinery at State level and District level (vide Section 20). It is thus imaginable what shall be the plight of a displacee under a linear project, who might lose all his landed property due to displacement.

To sum up the case of urban and linear projects, a person losing all his agricultural land due to an urban or linear project shall not receive anything by way of compensation or assistance. Only a family losing his homestead shall be given a total of Rs.200,000/- (Rs.50,000/- towards cost of the homestead + Rs.150,000/- towards house building assistance) irrespective of the size and cost

of his existing homestead and structure standing thereon. Secondly, the Policy contains a highly ambiguous provision for giving job or one-time cash assistance in lieu of job to a displaced family under a linear project, which can't materialize in reality due to very many ifs and buts circumscribing the provision.

8.38 A Big Hoax for the Indigenous and Primitive Tribes:

The Section 12 contains 4 sub-paras that assure 4 kinds of 'Special benefits to displaced indigenous families and primitive tribal groups', such as "(a) *While developing the resettlement plans, the socio-cultural norms of indigenous and primitive tribal groups will be respected, (b) Each displaced family of indigenous category shall be given preferential allotment of land, (c) As far as practicable, indigenous communities should be resettled in a compact area close to their natural habitat, and (d) Indigenous displaced families resettled outside the district shall be given 25 percent higher R&R benefits in monetary terms.*"

As for the first category, since the Policy nowhere defines what constitutes the concept called '*socio-cultural norms of indigenous and primitive tribal groups*' itself, how can one believe that the same shall be honoured by the implementers of the Policy?

As for the second category i.e. '*preferential allotment of land*', the first thing that one should consider whether the indigenous and primitive-tribal families, most of whom live on forest land, shall and can pass the test of '*unobjectionable encroachment*' as mentioned under Section 9 so as to be eligible for getting any land for homestead or agricultural purposes. If the makers of the new Policy had genuinely felt the need for land-based settlement of such indigenous and primitive groups, then they emulating the National Policy for R and R-2003 would have first made a definite provision for the survey of '*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*', followed by a categorical provision saying "*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*" [Vide Sections 5.4(iv) and 6.9 of National Policy respectively].

As regards the third category of benefits (*resettlement in a compact area close to natural habitat*), the smoky proviso '*as far as practicable*' renders the whole assurance into a pompous rhetoric.

As regards the fourth category (*provision for extra 25% of benefits to the outside-district settlers*), the whole assurance again boils down back to the question, whether the indigenous and primitive tribes shall be considered eligible to get any R and R benefit at all? If yes, then only the provision made for extra benefits to the most marginalized section of our society could possibly materialise. Otherwise, the assurance of extra benefit shall remain as hollow as the assurance for the original benefits. As has been shown above, due to the qualifying proviso '*unobjectionable encroachment*' as contained in Section 9 of Orissa Policy-2006 coupled with its lack of a categorical and specific direction like the one contained in the National Policy-2003 for providing R&R benefits to all persons dwelling in forests prior to 1980, the indigenous and primitive populations of Orissa, most of whom for obvious reasons are the occupiers of forest land and exist outside the ken of any official Revenue record, may not at all qualify for the status of 'displaced family' and whatever R&R benefits attendant thereto, let alone getting any extra benefits to the extent of 25% of the original benefits. Precisely because they shall fail to qualify

for whatever meager package of original benefits available to a displaced family, they shall also equally fail to avail the so-called extra benefits to the extent of 25% of the original package.

8.39 No Benefit to the Community against the common property resources lost:

As a matter of fact, a person who is compelled to give up his home, agricultural land or occupation due to the project-induced displacement, he too loses several other benefits, which were automatically accruing to him simply because of the situational factors. The instances of such common property resources could be a forest from where a person used to collect minor forest produce, a river or a stream the water of which was used by him for various purposes, an open ground where the children used to play or local festivals were held, a graveyard where the people used to bury the dead and the like. These are natural resources and no Government has made any investment after their creation or upkeep. But the local people were deriving substantial benefits free of cost from these natural sources. When a person is compelled to change his place of residence and occupation, he ipso facto loses the manifold benefits derived from such sources and resources. Any modern R&R Policy worth the name ought to incorporate into its package the compensation for the loss of such common property resources. But the new Orissa Policy-2006 doesn't offer anything to the displaced people against the loss of such common property resources.

While completely ignoring the common property resources, the Policy in its Section 6 talks however of 'Public Property', which is altogether a different phenomenon. *"As regards 'public property' like School Building, Club House, Hospital, Panchayat Ghar, electrical installation, place(s) of worship, value of such property affected shall be deposited with the concerned District Collector. Either Project or District Administration shall take up construction at the place as would be determined in consultation with representatives of displaced persons"*. These are in fact community assets, after which either the Government or the community have invested money and labour in the past, and which if destroyed due to the land acquisition, need to be rebuilt in the resettlement areas for their use by the community of displaced people. But the Policy doesn't specify how and by whom the value of such 'public property' shall be computed. There is also no accountability fixed on any body for construction of such public properties. The Policy rather equivocally proposes that either the Project Authority or the Government shall take up such construction work. And again, the Policy also doesn't specify the timeline within which the re-construction of 'public property' shall be completed. Thus the Orissa R&R Policy on one hand completely ignores the need for compensating the loss of common property resources, and on the other leaves the issue of re-construction of 'public property' in a hazy and ambiguous state.

8.40 Whither grievance redressal mechanism?:

Section 20 of the Policy says, *"An effective Grievance Redressal Mechanism will be set up at District and Directorate level to deal with grievance of the project displaced people relating to land acquisition, resettlement and rehabilitation. Besides, all the project authorities shall be asked to set up an effective Grievance Redressal Mechanism relating to their project. Effective participation of the displaced communities will be ensured in the process"*. But the question arises, who heads the District level and Directorate level R and R bodies. As the Section 18(B) makes it clear the District and Sub-district level R & R bodies shall work under the overall guidance and supervision of the Collector, who is the principal authority and responsible for land acquisition under LA Act or any other relevant laws. As a matter of fact, most of the grievances among the displaced people shall arise in relation to the manner of land acquisition followed by the Collector himself. Thus, is it not simply a fiasco that the Collector is made to listen to and

dispose of the grievances raised against him? Moreover, the head of the State Directorate of Rand R, shall be the Secretary of Revenue Dept or some such top official of the Revenue Department. Thus the entire grievance redressal machinery is going to remain under the direct control of the very Revenue Department, which conducts A to Z of the land acquisition process. To cap and reinforce this bureaucratic process, the Section 22 of the Policy says in unequivocal language that “*Any issues or doubts regarding this Policy shall be referred to Government in Revenue Department whose decision shall be final and binding on all concerned*”. Moreover, the said Section entrusts the Revenue Department with the power to amend the Policy and issue guidelines and instructions to operationalise the Policy. Under the circumstances, is there any chance for ‘*recognising the voices of the displaced people*’ or ‘*ensuring a participatory and transparent process*’ as glibly dished out in Section 3 (Policy Objectives).

8.41 New web of institutions- to what end and at what cost?

In the name of developing a new institutional mechanism for carrying out the whole range of projected activities from land acquisition down to resettlement and rehabilitation, the Policy of 2006 proposes to set up a new set of agencies and instruments, which at the first instance confuse the already confounded scenario. The most glittering of the lot is the *State Level Council on Resettlement and Rehabilitation (SLCRR)* purportedly to advise, review and monitor the implementation of R and R Policy, and it shall be headed by the Chief Minister and may comprise Ministers, people’s representatives, leading social activists, academicians and experts of national and international repute and senior officials of the Government (Section 17). So far so good. But does this illustrious Committee wield the final authority over the R and R matters, as it may outwardly appear to? Just contrast this with the last Section of the Policy that reads,

22.	<i>Interpretation and Amendment</i>
(a)	<i>Any issues or doubts regarding this Policy shall be referred to Government in Revenue Department whose decision shall be final and binding on all concerned.</i>
(b)	<i>Government in Revenue Department may from time to time amend the provisions as contained in this Policy as considered necessary.</i>
(c)	<i>Government in Revenue Department shall have the powers to issue guidelines and instructions from time to time to operationalise this Policy.</i>

A pertinent question now arises, between the Chief Minister-headed SLCRR and Revenue Department, who has been given the final authority? The answer is obviously he Revenue Dept, not the SLCRR. The Section 21 which gives the power of assessment of policy implementation to the Government [strictly speaking, Revenue Department of Government of Orissa, as defined under Section 2(g) of the Policy] also reinforces the position of Section 21.

Another decorative agency to be set up is the so-called *Rehabilitation-cum-Periphery Development Advisory Committee (RPDAC)*, whose mandate is “*to encourage participation of displaced people and their elected representatives in implementation and monitoring of R&R package, to oversee and monitor periphery development*”. And further, ‘*the Govt. may constitute a Rehabilitation-cum-Periphery Development Advisory Committee (RPDAC) for each or a group of projects falling in one district.*’ The said RPDAC ‘*may include people's representatives, one or two leading NGOs of the affected area and select Government officers, and any other persons*’ including women and ‘*indigenous communities*’ (Section 16). As is absolutely clear from its mandate, its work shall be more propagandistic than recommendatory, and it shall start working only after the R and R package has been decided and launched. And it shall solely focus

its work on gathering support of the public in favour of the R and R package which would have been finalized, for all practical purposes by the Revenue Department. And the Policy makes no secret about the ornamental, toothless nature of the RPDAC, when it says under *Sub-section (vi) of Section 7 (Resettlement and Rehabilitation Plan)*: “Project Authority shall abide by the provisions laid down in this Policy and the decisions taken by RPDAC from time to time provided they are within the ambits of the approved Policy of the Government”. As such the RPDAC has no power to review the package of R and R decided by the Government, if the said package has gone against the interest of the displaced people.

Another new body, called ‘*Compensatory Advisory Committee*’ shall be formed (Section 15), which unlike the ornamental bodies like SLCRR and RPDAC, shall be a real business-like body entrusted to settle the most crucial component of the R and R package i.e. compensation. At the district level, it shall be headed by District Collector, while at State level by the Member Board of Revenue, whose decision in case of any dispute shall be final. As is well known, both Collector and Member Board of Revenue belong to the same Revenue Dept though the latter stands on top of the former in the departmental hierarchy. Be that as it may, the CM-headed Committee SLCRR shall have to abide by the decision of the Member Board of Revenue too on matters of compensation, since the Member commands the finality as per the Policy.

Besides the Policy prescribes the formation of an R and R wing within the existing Governmental set-up, called ‘*LA and R&R Structure*’ (Section 18) to carry out the actual administrative decisions coming from above, especially from the Revenue Department. A Project Director R and R shall operate at the State level, and the Collector shall for all practical purposes ensure the execution of the necessary works at district and sub-district level. The proposed Directorate of R&R at State level with its lowest rung entrusted to the Land Acquisition Officer within the Collectorate is, so to say, the R&R Secretariat within the Revenue Department, which is for all practical purposes the ultimate authority in the matters of land acquisition or compensation.

Thus out of the 4 new bodies as described above, the first two namely CM-headed SLCRR and civil society oriented RPDAC are simply decorative outfits, while the next two namely CAC and Directorate are well-designed appendages to the Revenue Department which in the ultimate analysis holds, as the Policy itself avers, the final authority in all matters relating to land acquisition or compensation.

8.42 No Appellate Mechanism:

In today’s milieu of participatory governance, any policy or law is adjudged to be as good or as bad depending upon whether and to what extent it provides for an appropriate appellate mechanism as one of its in-built features. From this perspective, the Policy lacking as it does in any semblance of an appellate mechanism is inherently biased, faulty and unviable. The question arises, in absence of an ombudsman-like appellate authority existing outside and independent of the mainstream executive hierarchy, whom shall the displaced people approach for undoing of any injustice done to them or of any harm done to the public interest at large? The appellate authority is distinct from the grievance redressal machinery in the sense that the former can question even the very rationale of a project causing displacement or even the very methods of computation of compensation or modus operandi of resettlement and rehabilitation due to the displaced people, while the latter, if properly constituted and oriented, may attend at best to specific issues of disparity and malfeasance within the overall framework of a policy or law in

place. In view of the unhappy experience over several decades past where the executive was found to tackle the land acquisition issues primarily with the help of police and administration on one hand, and the piles of litigations around compensation dragged on in courts and tribunals with no end in sight on the other, it is barely reasonable that an independent, autonomous and statutory appellate authority having the powers of a civil court, under the title 'Orissa State Rehabilitation Commission' needs to be constituted. This Commission which should function more or less in the manner of a Central or State Information Commission, should be vested with the final appellate authority for disposal of any grievance or appeal in the matter of land acquisition or R and R benefits, for penalizing the errant executives, for clearing the pending awards, and moreover for recommending the reform of an R and R package, as and when felt necessary.

In absence of such an independent appellate authority, a proclaimed objective of the Orissa Policy-2006 (vide Section 3 C) *'To help guiding the process of developing institutional mechanisms for implementation, monitoring, conflict resolution and grievance redressal'* shall ever remain a cheap rhetoric only.

8.43 No Right to Know, and no Right to say 'NO' to a Project:

If we survey the history of issues of displacement from British time to date, we find the root cause of people's revolt and protest against a project involving displacement is not the displacement as such, but is rooted in the very dictatorial and even brutal manner in which the people were forced to leave their home and land in the name of some imaginary 'public interest'. As is well-known, the official rationale for such forcible displacement can be traced to the typical concept of 'eminent domain' peculiar to the then British colonial project as codified in the provisions of Land Acquisition Act 1894, which persists to this day with all its overarching significance in the matters of land acquisition. The LA Act in its preamble itself renders the State into an agent of a Private Company- *"An Act to amend the law for the acquisition of land for public purposes and for Companies"*, where there is absolutely no difference between the public purpose as such and interest of Companies. And the modus operandi of land acquisition, as detailed in its Sections 4 to 17 of the LA Act, doesn't allow the public at large, including those members of public whose land is likely to be acquired, to know or raise a basic question as to how the proposed project of the State or Company is going to serve the public purpose in general. True, there is a provision for filing of objections and hearing of objections (Section 5); but such objections can't be raised by any member of the public, but only by the interested persons i.e. whose land is proposed to be acquired and further, they should limit their objection to the sole subject of compensation. And it is well within the power of the land acquisition authority to override every objection so raised and to issue a Declaration stamping finality on the decision of the Government to acquire land. The Section 6 inter alia says, *"The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing"*. [Section 6(3) of LA Act 1894]. It is incontestable that such an arbitrary and unilateral method of acquiring public land by the State under whatever plea won't work in a democracy for long and far less at a time when the Right to Information Act 2005 has been enforced. As is well known, the Section 4(1c) of RTI Act enjoins upon each public authority to consult the members of public suo motu while they would be taking any decision administrative or quasi-judicial that affects the public interest, and as per its next Sub-section 4(1d) to inform the public about the justification of every such decision taken.

It is also a fact that, under the ineluctable impact of the episodes of bloodbath occasioned by forcible acquisition of land from the people, both Central Government and many State Governments are gradually engaging them in a transparent and dialogical process with the public at large right since the conception of a project to its execution in phases, irrespective of the existing LA Act 1894. So to say, the irresistible march of such events and processes does silently but steadily erode into the usurpationist approach of LA Act 1894 and renders it increasingly irrelevant. If the R&R Policy of Upper Krishna Project in Karnataka is considered to be a success story today despite its relatively low-scale R&R package, it is as admitted by all due to a close, continuing rapport that existed between the land-acquisition authority on one hand, and the project-displaced people on the other. Though the Group of Ministers who officially authored the Orissa R&R Policy 2006 visited Upper Krishna Project to look into the reasons for its success story, it seems they have missed to learn its cardinal message i.e. how to take the people into confidence all through a project right since its origination on a conceptual plane down to its materialization at the ground level. Otherwise, how is it that the Orissa Policy-2006 in its Section 6 says that '*the procedure prescribed by Government [strictly speaking, Revenue Department of Government of Orissa, as defined under Section 2(g) of the Policy] shall be followed in acquiring land and other property and for payment of compensation/award..*' And what is the procedure so far followed by the Government in such respects if not the one marked all through by diktat and coercion from above? And again, why the Policy of 2006 has conspicuously desisted from defining the new procedure, if at all it has any?

Thus in absence of a clear definition of the procedure for acquisition of land and for the payment of compensation, the new Policy shall by default adhere to the selfsame procedure of the olden era, when the Government used to keep the people in dark about the groundwork of a project i.e. when the Government and Company negotiate between each other before signing a Memorandum, and then to notify the concerned people all of a sudden about the land to be acquired, followed in quick succession by the actual act of displacing the people by hook or crook. This very procedure that has been pursued right since Hirakud Project in 1948 down to Kalinga Nagar in 2006. And precisely for this reason, it won't be surprising either, if the so-called new Policy of 2006 turns into a further breeding ground of proliferating clashes and conflicts, which may prove more heart-rending than the Kalinga Nagar episode of 2nd January 2006.

8.44 New Policy, Contradictory to Existing Laws:

There already exist a host of laws at both national and State level, which give primacy to the role of PRIs, the epitome of grassroots democracy in respect of approval of a project or implementation of any rehabilitation package. The Orissa R and R Policy-2006 has either blissfully skipped or paid a lip-service to them in its strident zeal to ensure that the bureaucracy-company combine gets further empowered and reinforced at the expense of the rights and entitlements of the people in general and displaced people in particular. One crucial instance shall suffice to establish this apprehension. The Section 6 of the Policy-2006 gives authority to the State Government to acquire the land from any village, to be used for any project. And Section 7(iii) of the Policy simply says, '*Gram Sabha shall be consulted*', and that too in respect of Resettlement and Rehabilitation Plan, but strictly speaking, not in respect of or prior to acquisition of land. In contrast let's see what the time-honoured and still prevalent Orissa Gram Panchayat Act 1964 says in regard to all this. As a matter of fact, the Section 55(1) of Orissa Gram Panchayat Act 1964 says inter alia, "*a Gram Panchayat may notify that no place within the local area of the Gram Sasan shall be used in course of any trade, business or calling without a license granted by it and except in accordance with the condition specified in such*

license”, and the said Section at the Point (w) mentions that this licensing power also covers ‘using for any industrial purpose any fuel or machinery’, and further the Section 55(3) clearly says, ‘The Gram Panchayat may ... grant such license or refuse to grant it’.

In regard to the 5th Schedule Areas, where the tribal population predominates, the Orissa Policy-2006 at Section 4(g) of course says though in a too-reluctant voice, “Gram Sabha or Panchayats at the appropriate level shall be consulted in scheduled areas before initiating Land Acquisition Proposal”. But what does consultation mean, if not a formal notice served to the GP irrespective of the latter’s opinion? Suppose, the whole of a GP in a scheduled area objects to the proposal for an industry and accompanying displacement; will the Government abide by the will of the Gram Panchayat or Gram Sabha, as the case may be?

Further the Section 4 of PESA at sub-section (m) says, “while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specially with-
x x x x x “(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;”

In view of the above, the Orissa R&R Policy 2006 has not only violated a long-established State law called Orissa Gram Panchayat Act 1965 relevant in the context of the functioning of Gram Panchayats in general, but also the subsequently promulgated Central law called Provisions for Panchayat Extension to Scheduled Areas 1996, relevant in the context of the overly tribal areas of the State.

8.45 New Policy’s dominant refrain: Soulless rhetoric:

The Orissa R and R Policy 2006 has been authored by a group of bureaucrats in Revenue Department, though stamped with the approval by the Group of Ministers formed for the purpose. Coming as it did in the backdrop of the bloody episode of Kalinga Nagar and the resultant hue and cry from all corners of the country, the so-called new Policy has excelled in one dubious respect, that is how to camouflage its satanic intentions by a veil of populist phraseology. It requires a studious reading of the Policy and that too between its lines on the part of a person, before he or she is able to deconstruct the Policy and lay bare the hidden agenda that informs its brief but confounding text.

8.46 The hidden sub-texts of the Policy

Broadly speaking, the text of the Policy can be divided into 3 sub-texts,

- i) That which the Policy-makers seek to really achieve in the interest of the bureaucracy-company as is evident from the nature of some decisive provisions made;
- ii) That which the Policy-makers assure to provide under legal duress, but never mean them, as is deducible from the contradictory provisions made and from the absence of any solid, backup provisions; and
- iii) That concerning which the Policy-makers, suffer from real confusion and want the people to remain ever confused about them too.

(i) Real Intentions of the Policy:

The instances of the first kind (the real intentions) can be noticed in the explicit, straight-forward propositions made by the Policy, such as the one which says under Section 8(I), *‘For the purpose of employment, each original family will nominate one member of such family. However, the families as mentioned at para 2 (f),(i), (ii), (iii), (iv), or (v) will not be considered separately for employment. Any one from among these categories may, subject to eligibility, be nominated by the family as defined in para 2 (f) for the purpose of employment’*. In juxtaposition to this proposition one can easily make out the solely populist rhetoric behind the so-called expanded definition of family as mentioned under Section 2(f): *“Each of the following categories will be treated as a separate family for the purpose of extending rehabilitation benefits under this Policy.”* One more instance of the same kind of calculated jugglery can be located in Section 22, where it is said that the Revenue Department shall for all practical purposes be the final arbiter in respect of any matter under this Policy. Just contrast it with the Section 3(Objectives) where the Policy talks of *‘recognising the voices of the displaced’* and *‘ensuring environmental sustainability through participatory and transparent process’*. It is not all understandable, how in absence of a statutory appellate mechanism and independent grievance redressal machinery, *‘the voices of the displaced’* can be recognised, or *‘a participatory and transparent process’* can be ensured. Another instance is the Section 9 that apparently provides for *‘Benefit to landless & homestead-less encroachers common to all categories’*. But the proviso added thereto *‘if the encroachment is unobjectionable’* renders practically invalid any claim by an encroacher to compensation. Still another instance is Section 11 bearing the caption *‘Additional provisions for assistance’*. But there is nothing specifically mentioned about such assistance in the body of that Section. A further instance can be glimpsed from Section 8(IV) dealing with urban/linear projects. There it has been mentioned that the displacees losing homestead under linear projects shall be provided the benefit of employment or one-time cash assistance in lieu of employment. But at the same breath the RPDAC has been authorized to say that the employment can’t be made available, and thereafter the project authority shall provide the one-time cash assistance, the amount of which shall depend upon the discretion of the Revenue Dept. Such indeterminateness of the entitlement of the displacees of a linear project is virtually tantamount to a denial of such entitlement.

(ii) Lip service to legal mandates:

As for an instance of the second kind (contradictory provisions or absence of corollary provisions), both Section 4(g) and Section 7(iii) say, Gram Sabha shall be consulted, but the Policy nowhere defines what constitutes *‘consultation’* or how it shall take place. The said populist provisions have been inserted just to pay lip service to the legal mandate of 73rd Constitution Amendment and especially PESA 1996. The next glaring instance of such sophistry is the Policy’s statement under Section 4-b that *‘The list of displaced families shall be placed before and approved by the respective RPDAC’*. But just a little afterwards, at Section 4-d it is mentioned *‘RDC shall realistically assess the requirement of land for acquisition before issue of notification under the relevant law(s) or under the provisions of this Policy’*. Thus the actual intention of the Policy is to place RDC a high official of the Revenue Dept. as the final authority on the land to be acquired, not the RPDAC, a body comprising among others civil society representatives. Still another instance of Policy’s escapist rhetoric is the Section 14, which says, *“The Project authorities shall be responsible for periphery development as decided by the RPDAC within the guidelines issued from time to time by the State Government”*. As a matter of fact, the theme of *‘Periphery development’* has nowhere been defined in the Policy except through a too sweeping statement as contained under Section 2 (k) - *“Periphery” means the*

district(s) in which the project is geographically situated". While the whole district is taken as the periphery of a project, it is not clear at all what components constitute the 'periphery development'. Thus though the Policy entrusts the RPDAC to decide the matters relating to periphery development, it is the Revenue Department of the State, which shall finally prevail upon the RPDAC, since the latter shall have to work within the guidelines issued from time to time by the former. Another populist rhetoric that the Policy adopts in order to escape the Government's bounden obligation to deliver the whole of R&R package well before the physical displacement of the identified families is the windy words under Section 7(vii) that say, "*District Administration and Project Authorities shall be jointly responsible for ensuring that the benefits of R&R reach the target beneficiaries in a time bound manner*". The question arises, if they fail in their duty, is there any provision of penalty against the concerned authorities? The answer is an emphatic 'no'. In absence of an independent appellate authority and of strong provisions for penalty against the recalcitrant officers and authorities, such superficial manner of allotting responsibility carries no meaning at all. Thus the new Policy is going to perpetuate the selfsame, bizarre phenomenon witnessed all along in the past, non-delivery of R&R package to the displaced families even after 30, 40 or 50 years of their physical displacement. The instance of another empty rhetoric is found under Section 11 (Additional Provisions for Assistance): "*Notwithstanding anything contained elsewhere in the Policy, the Government or the Project Authority may extend any additional benefits and provisions to the displaced families keeping in view the specific nature of displacement*". In absence of any specific mention of the kind of additional assistance to be provided, such words of assurance carry no substance. Moreover, the dispensation to fulfill this assurance has been left to the discretion of both Government (land acquiring authority) and Project Authority (land requiring agency or company), who in their eagerness to save as much money for themselves as possible shall tend to write off as much as they can their obligation to carry out timely and adequately any R and R package worth the name.

(iii) Confused and Confusing:

As for the third kind of instances (Confused and Confusing), the definition of 'compensation' has been differently presented in Section 2(b) from what is mentioned about it in Section 6. The Section 2(b) defines compensation as having "*the same meaning as assigned to it under the Land Acquisition Act, 1894*", whereas the Section 6 (Land Acquisition and Payment of Compensation/ Award) says, "*Procedure prescribed by Government shall be followed in acquiring land and other property and for payment of compensation /award*". Here the word 'Government' means '*Government of Orissa in Revenue Department*' as defined under Section 2(g). As is well-known, the L.A.Act 1894 under its Sections 23 to 28 describes the various considerations and components that ought to determine 'compensation', which both the land acquiring authority and concerned courts are to adhere to while deciding the amount of compensation. Thus a suspicion is raised about the Policy's intention to bypass completely the responsibility of the Government to pay the 'compensation' even in the old, limited sense of the LA Act 1894. The suspicion is further reinforced by the fact that the Policy nowhere describes any provision of 'Compensation for the land acquired' as such, but in its place speaks of '*Assistance for Agricultural Land*' to the people displaced by Type-C (Irrigation/ Sanctuary etc.) Projects [vide Section 8-III-c]. And between the two, the 'Compensation' connotes a definite meaning of entitlement for which the displaced person can enter into bargain with the land acquiring authority, whereas the so-called assistance is a one-time dispensation over which the displaced person can raise no dispute. Another instance of confusing phraseology resorted to by the Policy is the proposition '*Land not utilized by the Project within the prescribed time limit and for the required purposes shall be*

resumed' mentioned under Section 6 (Land Acquisition and Payment of Compensation/ Award). What does the word 'resume' mean? Does it mean that the unutilized land shall return to the original landholder or to the Government who had allotted it to the project authority after acquiring it from the original landholder? It may mean either of the two. As a matter of fact, in order to retain the unutilized land in the hands of the Government instead of returning it to the original landholder, the Policy makers have intentionally used such a confusing term as 'resume'.

8.47 Amendment, an eye wash:

In face of public criticism from various quarters, the Government of Orissa in the Department of Revenue and Disaster Management notified an amendment of Orissa R&R Policy-2006 (vide Orissa Gazette Extraordinary No.990, dated 6 June 2007), which contained only 3 Sections. While the Sections 1 and 3 are merely explanations to the corresponding provisions in the existing Policy, the Section-2 purported to correct an ominous omission in the original policy. As has been already mentioned in course of the above discussion, the Policy in its Section 2(d) gave a highly exclusivist definition of a 'displaced family' by saying that only that family which loses his 'homestead' would be considered as a 'displaced family'. In other words, such a definition unlike its counterpart in national or other State R&R policies didn't recognise a family that loses his agricultural land or occupation to a project as a 'displaced' one. In an effort to obviate this outrageous deficiency in the Orissa R&R Policy, the notified amendment in its Section-2 mentioned, *"In the said policy, in Para. 2 under the heading "definition", after clause (a) the following clause shall be inserted, namely:- "(a-1) 'affected family' means a family whose land is affected by construction of the project but not displaced or required to be displaced."* It may appear at first as if the wrong has been righted by inserting the expression 'affected family' into the text of the policy. But on a close scrutiny we find it is not so. For instance, the Section 8 [I(g)- Shops and Service Units], which remains unaffected by the above amendment reads, *"Project Authorities will also construct shops and service units at feasible locations at their own cost, which will be allotted in consultation with Collector to project displaced families opting for self-employment."* Now let's see, whether 'an affected family' within the meaning of the above amendment, who due to loss of agricultural land and consequent loss of livelihood can be considered eligible to receive the benefit of shops and service units as aforesaid? Since the exclusivist definition of 'displaced family' occurring in the Section 2(d) of the Policy remains unchanged as before, a plain, post-amendment re-reading of the aforesaid provision on shops and service units as admissible to 'displaced families' doesn't automatically enable an 'affected family' (who has lost his agricultural land and may therefore be in the genuine need for an alternative occupation) to receive the benefit of shops and service units. Had the amendment provided for insertion of the expression 'affected family' to occur after wherever the expression 'displaced family' occurred, then only the benefit like shops and service units would have reached both displaced and affected families. Here we have given one instance only just to indicate the irrelevance of the notified amendment to the real entitlement of 'affected family' in terms of R&R benefits. As a matter of fact, not a single farthing of additional value in terms of R&R benefits would accrue either to a displaced family or to an affected family as a result of this thoughtless amendment.

While parting with the treatment of Orissa R&R Policy-2006, it won't be out of place to leave here a general observation on the craftsmanship of the persons who authored this policy. Apart from an attitudinal disposition appropriate for the purpose, what is indispensably required on the part of a policy-maker is an acute measure of updatedness and coherence in understanding of the

entire gamut of existing legal instruments coupled with a focused perception of the roadblocks to overcome in the specific field he or she has been called upon to address to. But the recent exercises made by Govt of Orissa in respect of policy making in different fields, be it framing of State Rules under RTI Act, 2005, or formulating OREGS under the NREG Act, 2005 or be it the making of Orissa R&R Policy-2006 or its Amendment have proved highly frustrating to a wide array of observers of Orissa's public policies. Not only these State instruments are visibly out of tune with the letter and spirit of corresponding Central legislations, but also these exhibit a conspicuous lack of internal consistency and coherence, which are, so to say, sine qua non of any law or policy worth the name. In course of the above discussion, the truth of this observation has been amply borne out in respect of Orissa R&R Policy-2006. Space doesn't permit a digression into the others. Above all, it seems, today's policy makers of the State are too casual and too superficial about any matter that directly concerns the interest of the poor and marginalised sections of the society. Such a lackadaisical attitude adopted by them towards public interest as such gets willy-nilly reflected in their sub-standard craftsmanship of the policy drafts too. A befitting example of such sub-standard output of theirs is the notified version of the Orissa R&R Policy-2006 itself as found in the *Orissa Gazette Extraordinary* (*vide <http://orissa.gov.in/govtpress/pdf/2006/651.pdf>*). Here you shall notice a great discrepancy between the table of contents (listing the title of 22 Sections) and the text that follows (describing the provisions made under 23 Sections). Next, the number allotted to each Section in the text of the Policy as notified in the *website of Revenue Department* (*<http://www.orissa.gov.in/revenue/index.htm>*) is always different from that allotted in the notification made in the Gazette. For instance, the Section 'Short Title, Application and Commencement' is numbered as 1 in the departmental website while it is 2 in the Official Gazette. And strangely enough, both notifications have been published in the name of one Sri Tarun Kanti Mishra, Principal Secretary to Government in Revenue Department by the order of Governor of Orissa. With such glaring discrepancies stalking the whole document, can it be used by any responsible citizen, let alone the Court or Principal Secretary or Governor himself?

What Next?

8.48 Accurate and comprehensive data base on land acquisition, displacement, compensation and resettlement and rehabilitation for each project necessary

As a matter of fact, the present study has glaringly revealed that since inception none of the Departments or agencies of the Centre or State Government has published any detail or consolidated figures on the extent of displacement or R&R benefits extended to the affected population under a project. Of course the Study came across one small exception i.e. the extent of land acquisition and payment of compensation in Kalinga Nagar Industrial Complex of Jajpur district, published on the website of State Revenue Dept. In this case also we have shown by way of its comparison with the data culled from different official sources, how the said information given on the website is not only grossly under-reported and backdated but also suppressive of some material facts. And we have also shown how the Government had to put in place a semblance of transparency under the pressure of compelling circumstances flowing from the bloody episode of 2nd January 2006 at Kalinganagar and its aftermath. In absence of accurate, updated and detail data at official level, not only the displaced and affected people, who are directly hit but also various national and international development agencies including the Governmental ones are at a serious loss. A big, uncontrollable chaos at every level follows too.

From a legal angle too, the official misfeasance in upkeep and dissemination of displacement data is not permissible post *Right To Information Act 2005*. As a matter of fact, the information related to displacement and R&R benefits comes under the category of proactive disclosures

covered by Section 4(1b) of RTI, which binds every public authority to disseminate the said kind of information suo motu through various means including the internet, even no body asks for obtaining them.

Moreover, the recently notified *National Policy of Rehabilitation and Resettlement, 2007* mandates that all information on displacement, rehabilitation and resettlement with the names of the affected persons and details of the rehabilitation and resettlement package shall be placed in the public domain on the Internet as well as shared with the concerned *gram sabhas, panchayats*, etc. by the project authorities. **(vide Para-8)**

And when it is very much possible on the part of State Government of Orissa to maintain a day-to-day updating record on the internet in regard to progress in implementation of NREGA or issue of land passbook in every corner of the State, there is no earthly reason as to why the State Government dilate further on the issue of making transparent all the displacement related data through the public domain.

Under the circumstances, it is suggested that-

- a) Both the Central Govt and State Government of Orissa should direct each of the departments and agencies under their respective control to build up a comprehensive data base on displacement, compensation and R&R benefits of each project implemented to this day post independence and disseminate the same on the respective websites of the concerned departments and agencies.
- b) Both Central and State Information Commission, who are the monitoring authorities in the matter of implementation of RTI Act, 2005 ought to direct the Central and State Government respectively to make a suo motu disclosure of the displacement related data on their website within a deadline to comply with the requirements of Section 4(1b) of the Act, failing which they shall be censured and penalised as per the provisions of the Act.
- c) The State Government of Orissa in view of the clear mandate of newly notified National Policy on Rehabilitation and Resettlement, 2007 (Para-8) ought to ensure that the concerned public authority at the level of each project should publicise the names of the affected persons and details of the rehabilitation and resettlement package on the Internet and as well share the same with Gram Sabhas and Gram Panchayats through other means.

8.49 Signing of an MoU involving land acquisition or eco hazards to be preceded by informed consent of the concerned populations.

The Government of Orissa have signed so far with various private and foreign companies 66 Nos. of MoUs during 2003-07 (46 on industry, 2 on Aluminum, 3 on Cement, 13 of on Power, 1 on Auto Ancillary, and 1 on Auto Complex). In such MoUs, depending upon the requirements of the other party, the Government of Orissa has committed itself to provide necessary land including private land and forest land, water sources, power, mines and other infrastructural facilities like road, railway and port etc. Before signing of these MoUs, the Government has not cared to consult the people of the area where the proposed project shall be carried out or from where the land and other common property resources shall be acquired. As a result, the people, who were kept in absolute dark till date break out all of a sudden in open revolt against the project the moment they are served with notice for alienation of their land under the LA Act.

Then opens up a conflict situation in which the Government with its police and administration supported by the leaders and workers of the ruling parties on one side and the general mass of people on the other are drawn into a lingering quarrel that takes ugly turns at times and in the process neither the industrialisation drive makes a genuine headway nor the people of the area are any longer left to live in peace among themselves. Such is the unhappy scenario that stalks the length and breadth of Orissa. Ongoing farmers' protest against diversion of Hirakud water to industries, the movement of tribal people against the proposed bauxite mining of Niyamgiri and Baphlimali Hills, series of protest rallies against the eco-degradation caused by indiscriminate mining in districts of Keonjhar, Sundargarh and Angul, or recent road blockade by the people in protest against the proposed Vedanta University in Puri-Konark Balukhand region are just a few well known instances of how the local people spontaneously react to the reckless manner in which the Government agrees to hand over the private land and community resources to the private and foreign companies without holding any prior consultation with concerned people. The POSCO case is a glaring one. The Government of Orissa signed the MoU with the Company on 22nd June 2005 for a mega steel plant and a captive marine port. About two and half years have since elapsed. But the progress at ground level is dismal and situation is deteriorating day by day with the possibility of an open confrontation between police and looming large. Or take the case of Kalinganagar, where the Tatas have been camping for more than two years for establishing their mega steel plant but are yet to construct even the boundary wall, let alone plant. The local tribals undeterred by the police firing of 2nd Jan. 06 are still deadly resisting any progress of the Tata project. What could be the reason for such a messy state of affairs in which violence and more violence is only visible while development is nowhere seen around.

The principal reason is not that the people are opposed to development or industries as such. Their opposition seems to stem from the very hot-haste and arbitrary manner in which the Government imposes a borrowed scheme of development on them and that too at the expense of the land, water, forests and other common property resources that they have been surviving on for generations. Somehow or the other this top-down approach to development and industrialisation has to be given a break and the local people need to be taken into confidence and their informed willingness generated before any developmental project involving land acquisition and displacement of people is embarked upon. Towards this end it is suggested that-

a) Before the Govt signs an MoU with a company, the project contemplated therein should be thoroughly talked out among the concerned people in whose area it is proposed to be set up and who may have to face displacement or other survival and occupational hazards due to acquisition of their land and common property resources and due to possible eco-degradation by the proposed project.

b) An MoU may be signed for a project, if the Social Impact Assessment (SIA) of the project, followed by a Public Hearing, as envisaged in the recently notified National Rehabilitation and Resettlement Policy 2007 attests to its feasibility from a public interest angle.

c) Informed consent of the Gram Sabhas in the concerned areas on the proposal for setting up any industry involving land acquisition and displacement need to be made available and ought to serve as the formal basis for the Government to sign any MoU with a company on the proposed project.

d) Under the circumstances, the State Government should subject all the controversial MoUs already signed with various companies to a consultation with the concerned populations, a Social Impact Assessment followed by a Public Hearing and above all formal and informed consent by concerned Gram Sabhas in the project area.

Orissa R&R Policy-2006 is not only ridden with ambiguity, ambivalence and contradictions perceptible even to a naked eye, but also congenitally flawed for it limits the definition of 'a displaced family' only to those persons who lose their homestead land (vide Para-2d). Persons who lose the whole or part of their agricultural land but not homestead, and persons who lose their occupation or livelihood due to land acquisition are by definition not 'displaced families' as such and can't claim any compensation or R&R benefits as a matter of right under this policy. The implication of this policy is such that an aggrieved person can't approach a court of law against any injustice done by the land acquisition authorities, but ultimately depend upon the dispensation of the Revenue Dept. (that administers land acquisition matters) 'whose decision is final and binding' (vide Para 22-a). The Orissa Policy doesn't provide even a remote semblance of ombudsman-ship in matters of grievance redressal, it asks the aggrieved persons to seek justice from the very revenue officials, whose unwarranted omissions and commissions gave rise to his grievances (Para-20). Contrary to the mandate of PESA 1996 that Gram Sabha in Schedule-V areas need be consulted in respect of both land acquisition and R&R Plan (vide Section 4-I), the Orissa Policy leaves out the need for any consultation on R&R matters while paying lip-service to the consultation with Gram Sabha on land acquisition proposal only (vide Para 4-g). The Orissa Policy has cunningly avoided the general need for paying compensation against the agricultural land acquired from a family under any project, and wherever in a limited respect it has talked of compensating for the loss of agricultural land (for instance, in case of Type-C Water Resources Projects), it has allowed only a cash assistance (Policy doesn't call it 'compensation') for a maximum of two and half acres of irrigated land to an ST family and two acres of irrigated land to a non-ST family and that too at the paltry rate of Rs.1 lakh per acre of revenue land, even if the concerned family might have possessed more acreage of land than the ceiling so drawn. A basic transactional principle of quid pro quo, which even underlay the colonial L.A.Act 1894 has been given a clear goodbye by the Orissa Policy. Moreover, the Orissa Policy while stipulating the above rate of cash assistance for the water resources projects has jettisoned another time worn principle also i.e. payment of ex-gratia to the land losing family, which as per the amended L.A.Act 1894 (vide Section-23) is now 30% of the land value. Orissa Policy sounds grand when it talks of an expanded definition of family (Para-2f), but comes out ugly when it denies its admissibility in actual practice by resort to another subterfuge called 'original family' (Para 2j). The first definition, which is the tempting one, implies that even if father/mother, an adult son, an unmarried sister of 30 years, a divorcee and a widow, live together under the same roof in a single family, each of them shall be considered as separate families and be therefore entitled to separate R&R benefits. But when it comes to the crash obligation of providing job, the Policy says, only a single nominated member of the 'original family' shall be considered eligible for it (vide Para 8-Ia). Within the parameters of Orissa Policy, provision of employment by the project proponent may mean the wage-labour under the contractor employed by the company (vide Para-7x). The Policy's disdain towards the landless and homesteadless families comes out into the open, when it subjects them to a number of impossible conditions before declaring them eligible to receive any benefit whatsoever (vide Para- 9). A classic example of Orissa Policy's double talk is its assurance that no physical displacement shall take place until the resettlement work is complete (Para-7-ii), followed a little later by the statement that 'Provisions relating to rehabilitation will be given effect from the date of actual vacation of the land' (Para-7v). The Policy has no provisions for the displaced families of the past nor does it treat the displaced families of one project type equitably with those of other types.

One and half years on, there is no evidence to show that the Orissa R&R Policy-2006 has ever served any displaced group to their satisfaction. Under the circumstances, there is an imperative

need to replace the ambivalent and retrograde policy by a new one taking the inputs from a wide-ranging debate across the State involving most of all the primary stake-holders i.e. the groups and associations of displaced families of both past and ongoing projects.

8.51 Reframe Orissa Policy in tune with National Rehabilitation and Resettlement Policy, 2007:

This imperative for framing a new policy for the State has become more urgent in view of the fact that the National National Rehabilitation and Resettlement Policy, 2007, notified recently on 31st Oct. 2007 in its Para 1.7 says inter alia, the benefits provided under the new national policy constitute the bare minimum, which every State or for that matter every PSU or every other public authority must reflect in their respective R&R Policies. It transpires from a cursory glance at Orissa R&R Policy-2006 that it is a congenitally crippled document that grossly lacks in clarity, consistency, realism, impartiality and moreover a concern for the displaced person. This State policy should therefore be replaced by a new one, which accommodates at least the following positive features of the National Policy of 2007.

a) Introduce the category ‘Affected Family’ that includes any family whose residence, property or livelihood is affected; any tenure holder, tenant, lessee or owner of other property who is displaced or affected; any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person who is adversely affected by the acquisition of land or otherwise by the proposed project (**vide Para-3-1b**);

b) Introduce Social Impact Assessment of a proposed project by an accredited agency to study the possible impact on public and community properties, assets and infrastructure, particularly, roads, public transport, drainage, sanitation, sources of safe drinking water, sources of drinking water for cattle, community ponds, grazing land, plantations; public utilities, such as post offices, fair price shops, etc.; food storage godowns, electricity supply, health care facilities, schools and educational/training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds, etc. And subject the SIA separately or along with EIA (Environment Impact Assessment) to a Public Hearing. The EIA should also cover the issues covered under SIA. SIA Report should also be subject to scrutiny by an independent multi-disciplinary group constituted for the purpose (**vide Para-4**);

c) Formulate and disseminate Draft R&R Plan prior to undertaking of any base-line survey and identification of affected families and **invite public objections** on the said plan. The draft rehabilitation and resettlement scheme or plan **shall also be discussed in gram sabhas in rural areas and in public hearings in urban and rural areas** where *gram sabhas* don't exist. The consultation with the *gram sabha* or the *panchayats* at the appropriate level **in the Scheduled Areas under Schedule V of the Constitution** shall be in accordance with the provisions of the Provisions of the *Panchayats* (Extension to the Scheduled Areas) Act, 1996 (40 of 1996). Updating of the land records of the affected area need to be undertaken concurrently. Then only the draft plan can be finalised and thereafter published in the official gazette. 80% of the net income from the lands transferred to a company shall be shared among the persons from whom land was acquired in proportion to the value at which the land was acquired. (**Para-6**);

d) Each affected BPL family that was homesteadless in the affected area shall get a free of cost house in a new place or in lieu of it one-time cash assistance.

In cases where the acquisition of agricultural land or involuntary displacement takes place on account of **land development projects**, in lieu of land-for-land or employment, such affected families would be given site(s) or apartment(s) within the development project, in proportion to the land lost.

The project authorities shall, at their cost, arrange for annuity policies that will pay a pension for life to the **vulnerable affected persons** (disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above fifty years of age etc.)

In case of linear acquisitions, in projects relating to railway lines, highways, transmission lines, laying of pipelines and other such projects, each *khatedar* in the affected family shall be offered by the requiring body an ex-gratia payment in addition to the compensation or any other benefits due under the Act or programme or scheme under which the land, house or other property is acquired: Provided that, if as a result of such land acquisition, the land-holder becomes landless or is reduced to the status of a "small" or "marginal" farmer, other rehabilitation and resettlement benefits available under this policy shall also be extended to such affected family

In case of a project involving land acquisition on behalf of a requiring body, each **Scheduled Tribe affected family** shall get an additional one-time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usages of forest produce.

Any **alienation of tribal lands** in violation of the laws and regulations for the time being in force shall be treated, as null and void. In the case of acquisition of such lands, the rehabilitation and resettlement benefits would be available to the original tribal land-owners.

The affected Scheduled Tribes families, **who were in possession of forest lands in the affected area prior to the 13th day of December, 2005**, shall also be eligible for the rehabilitation and resettlement benefits under this policy. (**vide Para-7**).

e) The Rehabilitation and Resettlement Committee constituted at project level shall include, apart from officers of the appropriate Government, as one of its members, a representative of women residing in the affected area; a representative each of the Scheduled Castes and Scheduled Tribes residing in the affected area; a representative of a voluntary organisation; a representative of the lead bank; Chairperson(s) of the *panchayats* and municipalities located in the affected area, or their nominee(s); Members of Parliament and Members of Legislative Assembly of the area included in the affected area; the Land Acquisition Officer of the project; and a representative of the requiring body.

f) Introduction of a system of Ombudsman for an impartial disposal of grievances of the affected persons vis-à-vis the decisions and orders of the concerned administrator

The disputes related to the compensation award for the land or other property acquired will be disposed of as per the provisions of the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force under which the acquisition of land is undertaken, and will be **outside the purview of the functions of the Ombudsman. (Para 8.3)**.

g) All information on displacement, rehabilitation and resettlement, with names of the affected persons and details of the rehabilitation and resettlement package, shall be placed in the public domain on the Internet as well as shared with the concerned *gram sabhas*, *panchayats*, etc. by the project authorities. (**Para-8**)

h) A National Rehabilitation Commission shall be set up by the Central Government with the power to exercise external oversight over the rehabilitation and resettlement of affected families covered by this policy. **(Para-9)**

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List of Boxes

Box-8.1 Example of Illusion about the new R&R Policy of Orissa