

National Rehabilitation Commission

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

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

Explanation : Wherever the term 'project' is used in this document, it would include other initiatives and activities that result in displacement.

2. The project authority in every project that is likely to result in displacement shall draw up a plan for giving effect to the Rehabilitation Policy that is extant. Where the Commission proposes an improved plan of rehabilitation, the project authority shall draw up such improved plan. Project authorities shall submit the proposed plan of rehabilitation to the NRC. The NRC shall act as set out in 'A' above, and give its recommendations to government and this report shall be made public.

3. The NRC shall periodically review the implementation of the rehabilitation policy.

Explanation: The term 'project authority' includes the person-in-charge of other initiatives or activities that result in displacement.

4. The NRC may act *suo motu*. The NRC shall act on the complaint of any person displaced by the project. Movements or collectives of persons working with the displaced, or NGOs, shall have the right to represent before, and be heard by, the NRC.

5. The NRC shall ensure that the right to be heard of the project authorities, the community facing displacement and any other person interested in the proceedings be respected.

6. The NRC shall monitor that those falling within the zone of displacement are given information at all stages of the project are consulted, and their concurrence taken, in accordance with the law and the rehabilitation policy or revised policy, if any, and that they are not displaced without the rehabilitation being carried out.

7. The NRC may, inter alia, direct restoration of land, habitat and livelihood where rehabilitation is not done as required by the rehabilitation policy, or improved policy. The NRC may also direct restoration of land in the event of more displacement than the minimum required for the purposes of the project.

8. Where project authorities default in the implementation of the Rehabilitation Policy, or improved policy, and displacement occurs, the NRC may impose sanctions on the project authorities, or launch a prosecution according to the law (if any). Where the project authorities default in implementation of the rehabilitation policy, or improved policy, and restoration is not possible, the NRC may require an alternative agency to carry out the task of implementing the Rehabilitation Policy, or improved policy, and recover the costs of the exercise from the project authorities.

9. While rules are being framed relating to the functioning of the NRC, an additional authority may be appointed under s.3 of the Environment Protection Act, 1986, which will function according to the rules made under that Act.

10. An interim committee shall be set up pending the enactment of a law establishing the NRC, and the experience of the NRC could be drawn upon in setting out the terms of reference of the NRC.

Auditor General of Displacement and Rehabilitation

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

- (i) maintain a record of the projects that result in displacement,
- (ii) maintain a record of the policies of rehabilitation,
- (iii) maintain a register of the rehabilitation work done,
- (iv) maintain a record of unfinished rehabilitation,
- (v) maintain a record of all lands that have been taken over resulting in displacement.

Every project authority shall furnish to the AG-DR information regarding (a) displacement that is likely to result from their projects, (b) the actual extent of displacement, (c) policies and schemes for displacement, (d) the lands taken over for the purposes of the project (e) the rehabilitation effected. Every displaced person, family and community shall be entitled to furnish information of the displacement in a register maintained by the AG-DR. Every displaced person, family and community shall be entitled to the information maintained by the AG-DR.

Public Purpose and Public Interest

A project serves a public purpose when it is intended to be used by people and is open to the community/public at large. This however may not necessarily serve public interest for e.g. an amusement park may be open to the public but is it in public interest? Public interest will have to be determined not by who or how many have access to it but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used.

Present use of land may already be in public interest :

It is important to emphasize that the land and everything attached to it that is acquired under the LA Act in the name of public interest is very often already serving a public interest. For instance forests acquired for a reservoir are also serving a public interest. The LA Act to the contrary treats everything acquired as if it were serving only the limited, individual private interests. The fact that the land proposed to be acquired may already be serving a public interest is significant and merits recognition in law. It also merits recognition in the cost-benefit analysis of the project in terms of for instance the marginal utility of the new public interest the project espouses vis-à-vis its present public interest value of the land use. In several countries (for instance the USA) there is an established practice that determination of public purpose/interest occurs through legislative action rather than executive discretion. And in all cases it is also subject to judicial review.

Securing the substance through process :

- (i) Given the challenges of defining public purpose and particularly public interest it is also worth considering a processual rather than a substantive definition.
- (ii) A project fulfils a public purpose and is in public interest when through a participatory and transparent process it is determined that:
- (iii) The project will benefit the community as a body.
- (iv) The project is directly related to functions of government.
- (v) The project does not have as its primary objective the benefit of a
- (vi) private interest.
- (vii) The benefits of the project option outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred and
- (viii) The public interest thus created outweighs any public interest value accruing from the existing use of the land and everything attached to it.

Social Appraisal, Project Planning and People's Participation

1. The planning process must be initiated through a needs assessment involving a participatory process by which the needs of the community / society / area / are determined. This includes the prioritisation of the needs.
2. This is to be followed by a similar participatory process to identify the strategies available to meet a specific social and/or economic needs, the costs and impacts associated with these strategies, and to identify the optimum strategy within this. The selection of the optimum strategy will be guided by a set of criteria emphasising the economic, financial, social and environmental aspects. In particular, objective (1) – identification of the non-displacing or least-displacing options will be a critical criterion.
3. Once this optimum strategy has been identified, then the alternatives available within the strategy (for example, alternate locations, alternate designs, or alternate technologies) are assessed, in a participatory manner, for determining optimality and viability, and *public purpose/ public interest*.
4. At some point in this process, as the strategy / options start to take shape, the people/ groups of people likely to be affected/displaced will emerge. *As and when this group is becomes known, without further loss of time, this group should have the decisive say in the decision making on the strategy / options.*
5. The public purpose / interest of the potential alternative must be established by a well defined informed and transparent process, which has provision for concerned citizens and potentially affected people to legally challenge the same. The establishment of the public purpose / interest of the project is a pre-requisite for moving ahead with the particular alternative.
6. The final decision to go ahead with a specific option is taken only on the basis a *Prior Informed Consent*.
7. The final decision to go ahead with the project will be conditional to the clear and demonstrated establishment of the *feasibility of the approved R&R plan* prepared as per the provisions of this policy given elsewhere.
8. This complete process has to be fully transparent with obligation to reach information to all concerned in a manner and form that is comprehensible to them, including, but not restricted to making all information available in local languages.
9. The promoter/developer will submit the proposal along with the pre-feasibility study indicating the needs and objectives of the project to the NRC. The study will specifically address the possible nature and extent of social and environmental impacts from the project and specify the steps being planned to address the same.
10. The NRC will immediately ensure that all potentially affected people in the area are informed.

11. The NRC will appoint a mutually agreed independent body (consultant) to facilitate a process of participatory comprehensive assessment of needs and monitor the development of a range of project options to meet those needs. The Consultant's report will specifically discuss the social and environmental risks from the project and the nature and costs of addressing them and their impact on the project's overall costs and benefits.

12. The comprehensive assessment of options will involve an examination of the benefits of each of the project option vis-à-vis the short and long term social and environmental costs with a view to minimizing displacement.

13. A participatory process to decide on the option that receives widest public acceptance involving the least social and environmental cost and benefits the largest number of people especially the marginalized communities and the project affected people: Public Hearing

14. Principles of participation: Participation involves (a) full prior information, (b) consultation and deliberation and (c) consent/veto.

15. Specifically, consultation with the concerned communities should be held in two stages, (I) seeking approval for public purpose, that is, for the project itself and (II) the approval for the rehabilitation plan with all details.

16. Stage (I) should take place at least one year before the acquisition begins for a major project and six months for other projects. A *public hearing* should be held at the level of each affected community and the project affected zone both, at least three months after the following information is placed before them : records and maps, a report on assessment of various options with respective social, environmental and economic costs/ impacts and benefits, as also selection and justification for the project, and Maximum possible information pertaining to policy and plan for rehabilitation of PAPs.

Public Hearing : Size of community for public hearing can be 500 families if social composition is mixed and 200 families if it is dalit or adivasi community.

Public hearing must be held by a panel consisting of a retired high court judge and 2 prominent citizens acceptable to both parties (PAP's & acquiring authority). The acquiring authority should be present at the public hearing to address the objections, clarifications and suggestions raised by the PAP's. Considerations of objections, suggestions on options and other aspects of the project by PAPs and dialogue based on written rejoinder to the same by the project authorities should be held to reach a consensus. After such hearing, the panel should try to evolve a consensus failing which they should pass a 'reasoned order'. Such public hearing shall not debar the PAP's from taking legal recourse. The quorum for this public hearing should not be less than 60% of all the PAP's. The PAP's shall have the liberty to appoint counsel on their behalf.

17. For stage (II) of the consultation, the procedure of declaring project-affected zones and people and approving the rehabilitation plan, would consist of five steps: Declaration (at community level and also through general notification) of the intention to start the project; Furnishing of detailed records and maps, and a comprehensive plan for resettlement and rehabilitation of all categories of PAPs, inviting objections and suggestions if any. The latter should include a list of PAPs with their property and resources and expected impact on the same, and their entitlements; Organizing a public hearing at the level of each affected

community; Consideration of objections and suggestions of the affected people and initiating a dialogue for finalization of the plan; Final declaration. *Such final declaration cannot debar the PAP's of any legal remedy.*

Planning and Implementation Processes :

18. Knowing fully well that wherever the people are not willing to shift, the fault is either in the package being offered or in the approach to the displaced communities. Alternatively, it could be because the implementation of resettlement and rehabilitation programmes is so unsatisfactory that the affected people do not feel confident of receiving what they have been promised. In any case, this must be recognised as a failure of the rehabilitation process.
19. The process of selecting rehabilitation sites and lands must involve the PAPs and their preferences must have the final say in selection. The plan of project formation and the R & R policy must be coterminous and concurrent. The entire expenditure related to R&R process should be part of the project cost. A full settlement of all rights of PAP's must be addressed as part of planning process.
20. The time frame for the displacement process should be sensitively determined and people given enough time to adjust to their new locations and life styles. It should be a mandatory practice to allot land to the PAPs at least two years before they are to be displaced so that they can get used to cultivating this land even while they continue to live in their original homes. Likewise, house-sites should be allocated in 'fully developed colonies' at least 1 year before relocation. This makes the process of displacement more gradual and humane. In any case, all compensation must be paid at least one year before a person is displaced. Delays in the rehabilitation process and its various components can cause major hardship. Time frames must, therefore, be finalised well in advance and adhered to. Delays must be looked at very seriously and invite serious consequences for the functionaries responsible. If the R&R policy is not proceeding as per schedule, then work on the project should be immediately stalled. The 'politics of inevitability' has got to stop. People affected by auxiliary projects associated with the main project must be also considered as PAP's. In fact, provisions for auxiliary projects must be incorporated as part of the main plan itself.
21. Even delays in finalising the policy related to rehabilitation and other aspects of projects, and delays in initiating the planning process, can seriously affect the well being of the affected people. These must also be done according to a pre-determined time frame that statutorily gives adequate time for the concerned persons to give inputs and intervene in the process of policy formulation and planning.
22. The Planning Process must be with the full participation of the PAPs and other concerned people and based on their informed participation. Special panchayat status must be granted to resettlement sites (grouped together, if possible and necessary, depending on the size) at least for the first five years of resettlement, so that such planning becomes feasible.
23. The provisions of this policy must have appropriate legal backing, so that not only the concerned agencies of the government but affected and interested citizens can ensure enforcement and legal intervention. Towards this end, the Land Acquisition Act of and other concerned acts should be suitably amended.

24. A detailed bench-mark survey (household and communities) by an independent (academic) agency must be completed at least one year before Section 4 Notification is issued. This must include listing of PAPs who were residing in the affected area, and deriving their livelihoods from the affected resource base at least one year prior to the date of notification. Six months before Section 4 Notification is issued, the survey must be completed and made public in understandable local language, both in writing and orally, at each panchayat, tehsil and district headquarters. The PAPs must be given due opportunity to raise objections; and the hearing into the arguments must be completed before finalisation of the project. This process must be treated on par with the economic, financial and technical aspects of planning. The benchmark survey must be conducted in the villages and not in the Tehsil or Taluka office i.e. the authorities should reach out to the PAP's and not the other way round.

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25. Relocation Planning Communities should be relocated as an organic whole, and not fragmented in the process of relocation. Communities invariably kept together, after displacement, so that their social and cultural identities are safeguarded. Communities should be relocated *in-situ* i.e. in similar agro-climatic and bio-geographic zones. Indigenous people and forest dwellers must be relocated within an ecological niche that corresponds their original habitation. They must also be so relocated so as to ensure continued access to the forest and related.

26. Land for land Every adult project affected person will be eligible for two hectares of cultivable agricultural land. Identification of land for compensation must be the responsibility of the acquiring/displacing agency. The PAP's should not be asked to acquire land for themselves through means of cash compensation. Prior to clearance the NRC must be assured of the physical availability of land for the project affected persons. The Agricultural land must be consolidated. Precaution should be taken to ensure that the rights and entitlements over common property resources are not in conflict with other communities in the vicinity. In case of irrigation projects, the land to be provided for R&R of PAP's should be in the command area. The land for the project affected must be granted from government revenue land only or from purchases and must not be (a) common property resources, grazing lands or wastelands (b) ecologically sensitive. In case people are displaced in order to find land for project affected persons they will also be eligible for all the benefits of this policy.

The Implementation Process Implementation Processes and Institutional Structures

Institutional Mechanisms

27. Once the rehabilitation plan has been approved by the requisite bodies and the project is cleared to proceed, each village gram sabha will elect a body, to be called the People's Rehabilitation Implementation and Monitoring Committee (PRIMC). At least half the PRIMC's members must be women; adivasis, dalits, landless workers and other marginalised groups must be represented in proportion to their proportion of the population. The PRIMC's functions and powers will be as follows: The PRIMC will monitor the implementation of the rehabilitation package for villagers from their area. This could include, for instance, verifying official surveys and allocation of compensation. The PRIMC will have the power to request documents, official responses or other information that it will require for its task. Each PRIMC will also choose some of its members to be a Monitoring Cell for the purpose of the annual certification process (see below). The gram sabha will review the progress of implementation on a quarterly basis.

28. At the level of the project, two further bodies will be constituted: A Project PRIMC will be constituted and will consist of elected representatives from village level PRIMC's. A Relief and Rehabilitation Implementation Board, consisting of senior officials from the departments concerned with implementing the rehabilitation package, will also be formed. The Project PRIMC will monitor the work of the officials in the Implementation Board on a regular basis and will be granted the necessary legal powers to do so. The Project PRIMC will also form a Project Monitoring Committee for the purpose of annual certification.

Sequence of Clearances

29. The NRC will be required to evaluate the project at three points during and after the implementation phase. *Financial and Resource Clearance*: The NRC will grant this clearance once the requiring agency demonstrates that it has received the requisite financial and resource guarantees for implementing the rehabilitation package. *Relief and Rehabilitation Completion Certificate*: The NRC will grant this certificate once the implementation of the rehabilitation package is verified to be complete on the basis of the reports of the PRIMC's and other local information. *Retrospective Evaluation*: The NRC will appoint evaluators to conduct an independent public evaluation of the rehabilitation package a number of years (to be specified) after the implementation is complete. The evaluation will cover whether the package has achieved the goals specified in this policy. Should the package have failed to do so, the civil and penal sanctions specified in this policy will be invoked against the public officials in question.

30. Should the project fail to receive any of these clearances, work on the project will be suspended until the required clearance is received. *Certification Process* : On an annual basis, the following steps will be undertaken. The individual Monitoring Cells of the village PRIMC's, as well as the Project PRIMC, will certify whether the implementation of the rehabilitation project is satisfactory up to that point. The manner in which these certifications will be aggregated is to be determined. The NRC will hold a public hearing into the status of the project. The reports of the PRIMC's will be part of the information discussed at this hearing.

31. The NRC will grant clearance only if all the PRIMC's certify that implementation is satisfactory and if no gram sabha has objected. Subject to this condition, the NRC will then decide whether or not to renew the clearance granted to the project on the basis of the opinions of the PRIMC's and the consent of the public hearing.

32. Should clearance not be granted, work on the project will be suspended until the above conditions are complied with.

Liabilities and Sanctions

33. The concerned officials will be held personally liable in the event that the provisions of this policy or the agreed rehabilitation package are violated. This includes, among others, officials whose role is to assess needs, implement the package and monitor implementation. In case the acquisition is on behalf of a private party, that party will also be held liable.

34. The NRC will have the power to hear grievances against officials, pass orders requiring payment of restitution to victims of violations and recover the required amounts (as well as additional fines) from the officials concerned.