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India's Forced Displacement Policy and Practice



Is Compensation up to its Functions?

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Compensation for 'takings' of land and homes has become a routine element in development-caused displacements, but its constant distortions are as routine as the compensation itself. Affected people fight these distortions anyway they can, and researchers and specialists are criticizing them in countless papers. But the very critique of such distortions, and the struggle for obtaining compensation, has diverted the attention of researchers and specialists away from even a more fundamental question. This question is whether compensation in itself, as it is defined in India's Land Acquisition Act (LAA) is able, to begin with, to perform the functions that it is estimated it can perform, primarily the function of restoring those expropriated to their prior situation. This question has been increasingly raised by resettlement researchers in the last decade (Cerne 1999, 2000, and this volume; Kanbur, this volume; Cerne and Kanbur 2002), yet policy makers have not responded to it in any convincing way.

In light of this more fundamental question about the limits and functions of compensation, this article will discuss India's needs not only for a strong policy on population displacement, resettlement and rehabilitation, but also for enacting firm legislation, compelling for government agencies and for private sector corporations and programmes. We'll review India's compensation provisions and discuss whether they reflect well the functions that compensation should play in real life in involuntary displacement and resettlement.

For several decades, development projects in India have expropriated and forcibly displaced scores of people, without giving them the protection that a formal policy and legislation on development-caused



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displacement and resettlement should give to all citizens. The only existing relevant law has been the Land Acquisition Act (LAA) from 1894, which prescribed only how land could be expropriated with payment of compensation, but contains nothing about people's entitlement to being resettled and rehabilitated. Only in the early '80s a process started, largely at the initiatives of civil society organizations, to demand and prepare the formulations and adoptions of a fair resettlement policy for all of India.

After a process lasting about nineteen years, the Ministry of Rural Development of the Government of India published in February 2004 the text of a resettlement and rehabilitation policy that the ministry had formulated. That document, however, was deeply disappointing from the point of view of project-affected families and it was immediately criticized publicly from many quarters. In this paper we shall critique both that policy process and product. In fact, facing a widespread critique and also faced with a new draft policy document prepared in 2006, with civil society participation, by the National Advisory Council (NAC), the Ministry of Rural Development itself set aside its own 2004 policy and announced that it started drafting a new policy document. Therefore, we shall also look at the changes being currently considered by the government that came to power after the elections of May 2004, and will focus in particular on compensation related issues.

Although the 2003 policy is being revised at the time this article is written and going to print, and hopefully a better individual policy will ultimately emerge, it is important, in our view, to analyse the process that led to that first policy statement on resettlement issued at the all-India level, and to examine critically its content, its positive elements and the flaws and fallacies in its content and limited provisions. Such analysis could help assess better whether forthcoming policy documents, and resettlement legislation, will respond better to the country's needs and will overcome what we—and many others—see as unauthorized and inadequate in the 2003 policy (Fernandes 2004).

THE POLICY, DISPLACED PERSONS, AND PROJECT-AFFECTED PERSONS

In order to understand India's stringent need for a national resettlement law, one has to realize the enormous magnitudes of forced displacements in India, as well as the likelihood that further major development-entailed displacements are to be expected. State governments, however, do not maintain any official statistics or database on the total number of

displaced persons (DPs) and project-affected persons (PAPs). This has determined researchers to develop themselves the needed databases. This author has engaged in such a systematic effort over two decades, with the help of several other researchers, and we report below our statistical finding, to date.

MAGNITUDES

In an early attempt at reconstructing the statistics of displacement, in 1998 I made a first estimate of about 21.3 million DPs/PAPs in India for the 1951–90 period (Fernandes 1998: 231). Since then, due to continued research and added information from covering more States, we concluded that for the period 1947–2000 the total number of development-displaced (DP) and others economically deprived of their livelihood without physical relocation (PAP) is more than 60 millions (Fernandes 2007: 203).

On a state-by-state basis, we found that West Bengal has 7 millions of the total number of 60 million (Fernandes, *et al.* 2006: 76) and Assam has 1.9 million (Fernandes and Bharali 2006: 77). The ongoing study carried out in Gujarat by the Centre for Culture and Development points to some 7 million people in that State (Lobo and Kumar 2007).

The same data indicate that only about one-third of the DPs of the people displaced by planned development projects have been resettled in a planned manner. For the other two-thirds, there is no evidence of any organized resettlement. For instance, in Orissa 35.27 per cent of the DPs 1951–95 have been resettled (Fernandes and Asif 1997: 135), in Andhra Pradesh—28.82 per cent (Fernandes, *et al.* 2001: 87) and in Goa 33.23 per cent of the 1965–95 DP (Fernandes and Naik 2001: 62). West Bengal has resettled only about 9 per cent of its 3.7 million DPs (Fernandes, *et al.* 2006: 92), and in Assam we found signs of resettlement in fewer than 10 projects (Fernandes and Bharali 2006: 98).

DEFINITIONS

In the terminology we are using, displaced persons are those who are forced to move out of their habitat, whether it is individually and formally owned, or a traditional, customarily, and collectively owned area. Some of them lose all access to most of their land, but their houses may be left untouched. For instance, many groups that are forest dependants are denied access to their livelihood when their habitat is declared a park or sanctuary, but do not move out physically (Ramanathan 1999: 19–20; and

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Ramanathan, this volume). They are called project-affected persons (PAPs).

CPRs are the resources that are defined with the term of common property resources (CPR). India's laws, however, recognize so far only individually titled land ownership. Land for which there is no formal (either individual or group) title is considered state property. Therefore, those who are physically alienated from such lands, or restricted in their use of lands and resources that are under 'untitled' customary tenure, are neither compensated nor resettled in an organized manner, because the state does not recognize them as the owners of the areas they inhabit. This discrepancy between law and reality is the source of huge social and economic problems.

Most tribes in India are CPR dependants and as such do not have an 'ownership' title to their customary lands. The same is the case of the fishing communities that depend on the marine or riverine CPRs; of quarry workers and others whose livelihood is their workplace, where they do their productive activities to sustain their livelihoods. Land alienation forces them to move out of their habitat. Some derive their livelihood from land owed by others, working as landless agricultural labourers or performing various service activities. They also sustain themselves by rendering services to the village as a community.

In our definition, the DPs and PAPs include all of these categories. The difference between PAPs and DPs is that PAPs become economically alienated from their resources for livelihood, but are not always forced to relocate physically.

RESETTLEMENT AND REHABILITATION

The above distinction is important because in India, policies or draft policies usually refer to R&R, i.e., Resettlement and Rehabilitation, and speak of all those affected at PAPs or PAFs (project affected families). In reality, however, these are two distinct processes: the first, resettlement, is a one-time event of physical relocation. Only the DPs usually go through it after displacement. The second, rehabilitation, is a long-time process that involves rebuilding people's physical and economic livelihood, their assets, their cultural and social links, and psychological acceptance of the changed situation. Rehabilitation is a process needed by both the DPs and the PAPs, and it must begin long before physical displacement or deprivation, because problems begin as soon as news spreads about the proposed project. Problems continue during the identification and assessment of the assets to be acquired, their physical

acquisition, and people's relocation. As a result, rehabilitation continues for several years after relocation.

All this also validates the need for reliable project statistics and an overall database on DPs/PAPs, because neither resettlement nor rehabilitation can be planned without knowing their numbers. Resettlement sites have to be planned for the DPs. Other processes must be planned for the rehabilitation of the PAPs as well as DPs. Besides, the needs of various categories differ. Landowners may be resettled on land, while those who sustain themselves by rendering services to the village as a community have to be rehabilitated in a different manner. Similarly, the needs of individual landowners are not the same as those of the CPR dependants. Their culture, social relations, and economic needs differ. Thus, they need different types of economic, technical, cultural, social, and psychological preparation (Fernandes 2000: 211–13).

In reality, hardly any R&R policy or policy draft attends to all these specificities. Authorities make no effort to identify the number and category of each type of DPs or PAPs. When projects make some demographic numbers available, most of these count only the losers of individually owned land and ignore the CPR dependants, both among the DPs and PAPs.

Of equal concern is the absence of awareness about their situation in the country. Emphasizing the impoverishment of these high numbers of displaced people, some (e.g., Cernea 2000) defined them as part of the larger category of internally displaced people (IDPs) who are displaced by various causes, not only by development. Indeed, they cannot be defined as internal 'refugees' because they do not cross a national border.

Strong concern about these categories is expressed by the human rights movement and by intellectual circles. The majority in India takes displacement for granted. An important reason of this neglect is probably the fact that most DPs/PAPs are from tribal, Dalit, and other powerless communities. The tribals represented 8.08 per cent of India's total population in 1991, but are estimated to represent much more—some 40 per cent—of the DPs/PAPs (Fernandes 2007: 204). At least 20 per cent are Dalits (Mahapatra 1994) and a big proportion of the rest are other assetless rural poor like marginal farmers, poor fishermen, and quarry workers.

STATUS OF R& R POLICIES IN INDIA

The content of any national policy for resettlement and rehabilitation has to be considered primarily from the perspective of those communities who suffer the brunt of displacement and face terrible risks of getting even poorer. Till now India as a whole has not had a national rehabilitation law or policy. Several states and some public sector companies have adopted their own state policies for displacement and resettlement. In the 1980s, Maharashtra in western India, Madhya Pradesh in central India and Karnataka in south India enacted laws on the rehabilitation of irrigation-displaced persons. In the 1990s, Orissa in eastern India and Rajasthan in western India formulated policies for persons displaced by irrigation projects. Coal India Limited (CIL 1994) and the National Thermal Power Corporation (NTPC 1993) promulgated their sectoral resettlement policies in the 1990s.¹ NTPC has revised it in 2005 and the National Hydro-Power Corporation (NHPC) has finalised its policy in 2006. There are reasons to believe that, except the Maharashtra Act, all the other state as well as sectoral policies were prepared at the suggestion of the World Bank, which co-financed development projects in those states and sectors (Fernandes and Paranjpye 1997: 5).

The Indian government began the policy drafting process only in 1985 when the National Commission for Scheduled Castes (former ‘untouchables’) and Scheduled Tribes indicated that about 40 per cent of the DPs/PAPs were tribals. The Central Ministry of Welfare appointed a committee to prepare a rehabilitation policy for tribal DPs. However, the committee said, correctly, that the policy should cover all the DPs, not tribals alone, that rehabilitation should be integral to every project above a certain size in the public as well as private sectors, and that undertaking rehabilitation must be binding on the state and the project implementing agencies (GOI 1985).

Policy formulation took a new turn in 1993 when in the wake of the World Bank withdrawal from the Sardar Sarovar project on the Narmada, the Ministry of Rural Development prepared a draft, revised it in 1994 and again in 1998. It was finalized in 2003 and published in 2004. That policy was intended to apply to projects displacing 500 or more families (2,500 to 2,750 persons) en masse in the plains and 250 or

¹ For the texts and critiques of all the Acts, policies, and drafts existing in 1997, see Fernandes and Paranjpye 1997.

more (1,250 to 1,350 persons) in the hills or tribal areas known as Schedule V and Schedule VI in the Constitution. Agricultural or cultivable wasteland is to be allotted to each project-affected family (PAF) to the extent of actual loss, but subject to a maximum of 1 ha of irrigated or 2 ha of unirrigated land/cultivable wasteland 'subject to the availability of government land in the district'. Each PAF whose house has been acquired will be allotted a site free of cost but only the families below the poverty line (BPL) will be given a one-time fixed grant of Rs 25,000 for house construction. Land losers will be given a one-time grant of Rs 10,000 per ha for land development and Rs 5,000 per family for agricultural production.

Other provisions of the 2004 document are that each PAF will get a monthly allowance of 20 days' minimum agricultural wages (MAW) for a period of one year, not exceeding 250 days of MAW. A PAF whose entire land has been acquired will get one-time financial assistance equivalent to 750 days of MAW for 'loss of livelihood'. PAFs who become marginal or small farmers because of acquisition of a part of their land will get one-time financial assistance equivalent to 500 and 375 days of MAW respectively. Agricultural or non-agricultural labourers will be given 625 days of MAW. Each rural artisan, small trader, and self-employed PAF will get financial assistance of Rs 10,000 for construction of shops or working sheds. Those who lose their customary grazing, fishing, or other rights will get one-time financial assistance equivalent to 500 days of MAW. Tribal PAFs get other R&R benefits. The families resettled out of the district will get higher R&R benefits to the extent of 25 per cent in monetary terms (NPRR 2003).

THE PEOPLE'S ALTERNATIVE

Though most rehabilitation policies and laws were probably prompted by the World Bank that funds many projects of the agencies formulating them, India's civil society has also played an active role in the development of these policies. Already in 1987 the National Working Group (1989) supported by the Narmada Bachao Andolan prepared a draft policy. When civil society leaders obtained the 1993 and 1994 drafts, they launched an eighteen-month process in which over 1,500 social activist groups, legal practitioners, and social researchers joined thousands of DPs/PAPs in reflecting over the drafts, identifying the principles on which a policy or law should be based, and writing on their own alternatives to the policy and to the Land Acquisition Act 1894 (LAA). The alternatives were then presented to the Secretary,

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Ministry of Rural Development, and Government of India in October 1995. The following principles emerged from that broad public debate:

1. 'Minimize displacement': Most policies consider displacement sad but inevitable and make no effort to minimize it. Displacement should be minimized. There can be displacement only for a public interest. Search for non-displacing and least displacing alternatives is essential.
2. The eminent domain on which the laws enabling displacement are based is unacceptable; so are the 'public purpose,' compensation, and other norms emanating from eminent domain. People's livelihood should become the fundamental consideration in all decisions about displacement.
3. The public purpose should be defined in a restrictive manner as 'public interest' as the only principle on which acquisition could be based.
4. No democratic society can accept a decision without the participation of the affected persons. The DPs/PAPs should participate in deciding whether a project is in public interest. Deprivation even for a public interest requires their prior informed consent, based on proper information given in a language and manner they can understand.
5. The policy should recognize 'the historically established rights of the tribal and rural communities' over natural resources, their sustenance. Full compensation and prior consent apply also to the common property resources. The cost-benefit analysis that ignores distribution patterns should be questioned and alternatives evolved to it.
6. The principle of compensation should be 'replacement value' and not the 'market value' or 'present depreciated value' of assets. Replacement compensation includes components for the economic loss, social and psychological trauma, caused dislocation, psychological, cultural, and social preparation to deal with the new system they get into, training them for jobs in the project, preparing the host community to receive them, replacing the human, environmental, and social infrastructure such as the CPRs, and cultural and other community support systems. Its benefits should reach the biggest possible number, beginning with those who pay the cost.
7. Even if the principle is accepted that DPs/PAPs should receive a share in the benefits of projects that displace them, monetary

payments are not adequate for the CPR dependants, since they are not sufficiently in contact with the monetary economy. An alternative is to ensure that they get permanent income from the project, for instance—through becoming shareholders in it. They can be trained to manage it or may get others to manage it on their behalf but they have a right to its permanent benefits.

8. A policy has to have a tribal/Dalit/gender bias and should ensure that their special needs are met and their marginalization prevented. Equal justice to all the DPs/PAPs should be the norm. It also means that no project that irreversibly disrupts the culture of a community can be permitted.
9. Regional planning is required to avoid multiple displacement.
10. Rehabilitation is a right of the DPs so the project that displaces them has a duty to ensure it. It may delegate its implementation to someone else, it may take the form of 'land for land', but people's right is sacred.
11. A policy is not legally binding. So there should be a new law based on its principles (Fernandes and Paranjpye 1997: 22–30).

Silence followed after these principles were posited, until 28 November 1997 when the Committee of Secretaries approved a new draft policy that accepted many principles enunciated in the People's Alternative such as the need to involve DPs/PAPs in identifying the assets to be acquired and the persons to be affected. It broadened the definition of the DP/PAP to include among them the owners as well as other dependants of the assets acquired. It fixed a benchmark for it, to three years before the notification under Section 4.1 of the LAA announcing the state's intention to acquire particular plots of land or a whole village. It suggested replacement value for compensation, recognized the need to rehabilitate people and had special provisions for tribals such as mandatory land for land. It suggested that committees for rehabilitation be formed with the involvement of the DPs/PAPs. On the negative side, it took displacement for granted without the consent of the people affected, made no provision for minimizing it, and did not call rehabilitation a right. Despite these shortcomings, the above alliance considered it a good basis for interaction with the Ministry and began the dialogue again (NPRR 1998).

NPRR 2003 AND THE PRINCIPLES

However, discussion stopped some months later and the ministry finalized the policy in 2003 with no participation of the DPs/PAPs or

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the civil society. That policy left out and ignored many principles accepted even by the ministries during the dialogue. One such principle is that the livelihood of the DP/PAP should be better after the project than before it because they pay the price of development. This principle is based on Article 21 of the Constitution that protects every citizen's right to life. The Supreme Court of India has interpreted it to mean life with dignity, but the benefits announced in the policy can at best keep the victims poor and at worst push them even deeper below the poverty line. Moreover, a 'policy' is not judiciable. Save for some exceptions, the Court recognizes only the law, but there is no sign of one being enacted.

The policy states that displacement should be minimized but does not say how. The notifying authority (the district administrator who issues the notification for land acquisition) is to discuss it with the requiring agency. It includes the affected people in the discussion concerning rehabilitation but not on minimizing displacement. One is yet to hear of an agency reducing its demand without pressure being brought on it by the affected community! Involving the community in negotiations can bring the entity requiring displacement to lower its demand. Without this, very often more land than necessary is acquired. Earlier drafts had in fact acknowledged the injustice done by acquiring more land than required and by not resettling previous DPs/PAPs. However, the 2003 policy ignored the previous history and only recognized that the DPs should be rehabilitated.

Second, no draft had previously set a minimum number of families for the policy to apply. The Maharashtra Act applies to projects that displace fifty families or a full village with fewer families. So the decision to make the policy applicable only to projects that displace 500 families en masse in the plains and 250 in the hills or Scheduled Areas bypasses very many instances of displacement and seems to be aimed at bringing down the cost of the project. In recent years, many large projects have been acquiring only land and leaving the houses untouched. Others focus on the CPRs, for example, in the Kashipur mines in Orissa. By official count the Lower Subansiri dam in Arunachal Pradesh in north-eastern India will displace thirty-eight families, but many more will lose their CPRs to it (Menon 2003). The 2003 policy would not apply to them. Large road and mining projects have been splitting land acquisition into small bits, each of them displacing fewer than 500 families. If it is not considered displacement 'en masse', the policy would not apply to them.

A positive point was that the policy gave a broader definition of DPs/PAPs and 'agricultural family' than earlier documents did. Its Section 1.2 deplored that CPR dependants were not entitled to compensation and included among the PAFs those dependent on CPRs and other landless people living in the affected area for three years before the first notification, giving them some benefits but not compensation. By restricting benefits to those who have lived in the area for three years before the notification, it prevented outsiders buying small plots in the area to be affected, when the news about the project spreads, in order to get benefits meant for the DPs/PAPs.

The policy did not accept rehabilitation as a right. In fact it did not even make rehabilitation mandatory. People may be resettled if the project so desires. The policy only gave some discrete benefits to the PAF, but not a guarantee to resettlement with livelihood improvement.

Even when the project resettles people, the policy puts many limitations on their financial allocations. The first of them is that only individual land losers get land for land and other allowances for developing new land. The landless are given only a free site as replacement for the house they lose. The remaining PAFs will get a one-time allowance of a certain number of days of MAW. So the principle of compensating only individual land owners is maintained in another form, even while recognizing other dependants such as DPs/PAPs.

Other questions too can be raised: 'Subject to the availability of government waste or revenue land' is a substitute for the bureaucratic buck-passing phrase 'as far as possible' that is used in many documents. An agency can get around the obligation to allot land by stating that no land is available. It has happened in other projects including the much talked about Sardar Sarovar Dam. Around 30,000 people from Harsud town, who were displaced for the Indira Sagar dam in Madhya Pradesh starting from 30 June 2004, were given only a housing plot. Besides, the clause that states that a free plot is given to those who own a house seems to exclude tenants and other landless PAFs. Moreover, only families below the poverty line will be given Rs 25,000 to build a house. Field experience and research show that if a PAF is not given a house, it spends all its compensation on building one, leaving nothing with which to begin a new life. To keep above the poverty line, the family needs a permanent job, marketing facilities, and other infrastructural support without which in a short time it is impoverished and, more often than not, it slides into bondage (Fernandes and Raj 1992: 101–4).

The policy can thus legitimize impoverishment by giving a semblance of benefits without providing the infrastructure required for rehabilitation. Besides, earlier drafts had promised 'land for land' to the tribals. The policy promised them some benefits, but not 'land for land'. There will be much displacement in the tribal regions, since the focus today is on mining by private companies in Middle India (the tribal regions of Eastern and Western India) and on building major dams in the Northeast (IWGIA 2004: 316). Around 90 per cent of coal and more than 50 per cent of most other minerals are in the tribal regions (IBM 2000). Most major dams planned in the Northeast are in the tribal majority areas. Besides, the policy stated that in case of long stretches of land such as roads and railways, only compensation and Rs 10,000 as *ex gratia* would be paid. This is based on the fallacy that linear projects do not displace people. In practice they do, as our own research confirmed repeatedly. For example, the broadening of the East Coast Highway displaced around 6,600 persons in the Guntur district of Andhra Pradesh alone (Fernandes, *et al.* 2001: 74). The Konkan Railway displaced officially 185 families in Goa and many more in Karnataka (Fernandes and Naik forthcoming). We know well about several thousands of people being displaced by the Mumbai-Pune Expressway but not resettled, until the High Court ordered the projects authorities to do so.

Thus, the policy did not respond to the principle that those who pay the price of a project through their own displacement should have a better livelihood after it than before it. Thus, the policy was in conflict with the constitutional mandate, under Article 21. It seemed more concerned about the need of the private sector to acquire land easily than about those who pay the price with their livelihood.

COMPENSATION IN THE POLICY

The issue of compensation has to be situated in this context. After acknowledging that the CPR dependants are not given compensation, the policy restricted it to individual land owners alone, and gave only some benefits to other dependants. Compensation continued to be based on the market value, which has not been defined, but was taken to mean an average of three years of registered price in an area. Many regions where the powerless communities live have been administratively neglected and thus considered 'backward'. Therefore, the market price of land is low. For example, in Andhra Pradesh in South India, in 1991, Kumar Cotton industries got 10 acres of land in Adilabad town at

Rs 85,000 per acre. A year earlier Allwyn Industries was given 287.27 acres of land in a rural area of Cuddapah district at an average of Rs 2,070 per acre (Fernandes, *et al.* 2001: 90). In 1986 the National Aluminium Corporation (NALCO) acquired land in the 'backward' tribal majority Koraput district of Orissa at Rs 2,700 per acre. For its second unit it acquired land in the same year in the 'advanced' Angul district for an average of Rs 25,000 per acre (Fernandes and Raj 1992: 92). These are two out of many examples that show the inadequacy of the 'market value' which makes it impossible for the DP/PAP to begin a new life with dignity as they are entitled under the Constitution's Article 21.

Equally unjust is the failure to compensate the CPR that are the livelihood of the marginalized communities. CPRs tend to be the type of land most frequently acquired in the 'backward' regions and their proportion keeps growing. To give a few examples from past acquisitions, in Andhra Pradesh where around 28 per cent of the 3.2 million DPs/PAPs during 1951–95 were tribals, out of 24.4 million acres acquired for which we got documentation, 6.68 per cent were forests and 25.39 per cent were common revenue land (Fernandes, *et al.* 2001: 57). In Orissa, nearly 60 per cent of the 2.4 million acres used in 1951–95 were CPR (Fernandes and Asif 1997). We have similar findings in Jharkhand in eastern India (Ekka and Asif 2000), Goa in Western India (Fernandes and Naik forthcoming), in West Bengal (Fernandes, *et al.* 2006) and in Assam (Fernandes and Bharali 2006). Even in Kerala, with just around 1 per cent tribal population, most land acquired for major schemes such as the Idukki dam are CPRs and the DP/PAP were tribal or Dalit (Murickan, *et al.* 2003: 112–13).

The tribals are predominantly CPR dependants and most Dalits are landless labourers. For example in Orissa 58 per cent of the land acquired for NALCO in the tribal majority Koraput district was CPR, most of it tribal livelihood. They got no compensation for it and received very low compensation for the little private land they owned. So they could not begin life anew. On the other hand, only 18 per cent of the land acquired in the 'advanced' Angul district was common, mostly schools, roads and ponds that were replaced (Fernandes and Raj 1992: 91–4).

In addition, since CPRs are considered state property many projects exclude their inhabitants from the list of DPs/PAPs and count only individual land owners. For example, the Hirakud dam in Orissa, according to its official data, displaced 110,000 persons in the 1950s,

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while social research has assessed their number to be 180,000 (Pattanaik, *et al.* 1987). Most of those excluded from the official list were CPR dependants, like the tribals and fish and quarry workers. Officially the Dumbur dam in Tripura in northeastern India displaced 2,553 tribal families in the 1970s. Another 5,500 to 6,500 families that lived on common land, according to customary law, and were displaced, were not even counted. The 2,553 families received niggardly compensation, and were not resettled. The CPR dependants were not even compensated (Bhaumick 2003: 84).

Besides, how can one calculate the real market value of land in the tribal areas, where the sale of land to non-tribals is banned? Community ownership is also the norm in the 6th Schedule tribal areas of the northeast. How does one calculate individual compensation in this situation? This shows that the provisions about compensation, even if they were applied to their letter, are *in themselves inadequate to the nature and severity of the impoverishment problems* of tribal and Dalit people, caused by their physical or economic dislocation from their places and resources. These populations are thus forced out of their habitat, without their consent, and receive no economic support to begin a new life.

GOING BEYOND COMPENSATION

Even if compensation were just, it would not solve the problem of people's impoverishment and immediate marginalization. Recent analytical studies in the resettlement literature have developed this argument powerfully (see Cernea 1999, 2003, and in this volume). Along the same lines, our own empirical studies show that compensation alone is inadequate for people to begin life anew because most acquisitions are in the 'backward areas' where land price is low. By and large those who are not compensated are from among tribal and Dalit families because they are CPR dependants or sustain themselves by working on someone else's land (Fernandes, *et al.* 2001: 93).

That shows the need to search for alternatives whose first feature has to be to question the need for displacement itself, particularly in the context of what is called economic liberalization, as the private sector increasingly dominates the economy. There might have been some justification to acquire land for the public sector that was meant to build an industrial infrastructure in the country that the colonialists had left underdeveloped. But one sees no reason that the state should acquire land for the profit of private companies, as is being done in India after the 1984 amendment to the Land Acquisition Act, instead of requiring

that such private sector 'projects for profit' undertake the full obligation to restore and improve the productive basis and the livelihood of the population whose lands they take.

We believe that these companies should negotiate with the land owners directly and buy land from them. The state's role should be to regulate these transactions through a law analogous to the labour laws that regulate what is a private deal between the employer and employee. Just as a labour law regulates aspects such as the minimum wage, a land purchase law can regulate issues such as the minimum price, to first ensure that sellers get a price which makes it possible for them to begin a new life, and also get other organized economic and technical assistance in this difficult reconstruction process.

Such a resettlement law can be the first step in ensuring that land is acquired only for a public interest. However, whether it is through private purchase or through acquisition, the basic fact remains unchanged: namely, that what is acquired is the livelihood of the land loser. So compensation should be based on the principle of compensation (discussed in the section on the People's Alternative) that the loser has to be paid replacement value, not the 'market value'. By saying that land is livelihood, one means that land is not merely a market commodity. It is primarily the sustenance of the loser. Such a livelihood cannot be ruled by the market principle of supply and demand. Its basis is Article 21 that confers on every citizen the right to a life with dignity. Compensation should be such that the lifestyle of the family improves after land loss.

Second, in a village land is not merely a place of cultivation or building as it is to the urban real estate dealer. On this resource lives not merely the individual owner, but also the agricultural labourer and others like the barber, tailor, and business person who depend on the village as a community (NCHSE 1986: vi). So all of them have to be included among the DPs/PAPs and their livelihood has to be restored. Thus, compensation should go far beyond the legal owner to those who depend on it for their sustenance. All of them are land losers and the project has to help them to rebuild their life in a new form and improve their lifestyle.

Third, sustenance or livelihood is not only economic support, though this is the most important component. Around land are built the owner's economic, social, and cultural relations and in the case of the tribal communities, their very identity. Thus, alienation from it is an attack on this totality and affects the whole family and even the

community. Whether legal owners or not, landless dependants sustain themselves on what other individuals own. The situation is worse when it comes to the CPR dependants who may be a majority among the DPs/PAPs. As stated earlier, tribals are probably 40 per cent of them, 20 per cent are Dalits and probably around 20 per cent belong to other rural poor communities like fish and quarry workers. They depend on the CPRs such as common land, forests, quarries, and water bodies. So even while speaking about livelihood one has to go beyond land to the other CPRs such as water bodies and ensure that people dependent on all of them are compensated and that their livelihood is replaced. Ways have also to be found of replacing the CPRs.

REPLACEMENT VALUE

When one speaks of a life with dignity, one refers to the totality that the principle of compensation denotes as replacement value. It does not limit itself to replacing land and the house but refers to this totality. So this principle goes beyond monetary compensation to other aspects that can be defined less as compensation and more as what Cernea calls (in this volume) rebuilding their livelihood. Its first feature is the material assets lost, not merely individual land but also the CPRs and other community and individual assets owned according to the rural informal economy. The basic criterion for their compensation should be the replacement of the livelihood lost, and not of just the market value of individual assets. This involves quantifying the loss suffered by the CPR dependants, of the non-timber forest produce like fodder, food, fertilizer, medicinal herbs, etc. and of community resources such as common and pasture land and places of worship. It also involves quantifying the livelihood lost by artisans, barbers, agricultural labourers, nomads, and others who make their livelihood from providing services, and depend on having customers. The cost of enabling them to begin life again must be recognized and covered (Dhagamwar 1997: 116–17).

The next step is quantification of the social and cultural loss the DPs/PAPs suffer. This takes us back to what we have stated about land in general and the CPRs in particular—that these are not merely material assets of the rural poor, particularly tribal, communities. Around these lands they have built their culture, social relations, and their very identity. As a result, their loss results in the break up of family and community institutions and changed lifestyles. Then come social pollution and the new diseases that emerge because of environmental degradation and malnutrition (Mahapatra 1994), not to mention the psychological trauma

of displacement. It remains a trauma even when displacement is with prior, informed consent, because the cultural, social, and other family ties are broken. It is much more so if it is forced and that is the case in most projects. The law provides for *poena doloris* or compensation for the mental agony that a motor vehicle accident victim suffers. One sees no reason that the DPs/PAPs who experience the psychological trauma of alienation from their livelihood should be denied a similar recognition—and benefit. Ways have to be found of quantifying the trauma and of compensating materially the physical and psychological pain suffered.

The replacement of these losses is indispensable for reconstructing livelihoods. That requires technical training, and psychological, cultural, and social preparation of the people to begin a new life, to ensure the re-emergence of social structures in a new form enabling them to adapt themselves to the new society they are pushed into. Such replacement is important because most DPs/PAPs are from the powerless classes whose only source of livelihood is alienated from them. If they are not given adequate cultural and psychological support, as well as social and technical training to deal with the new surroundings, they are unable to cope with the changes. For example, the Rourkela Steel Plant in Orissa gave one job per displaced family. Many such workers were later dismissed for drunken behaviour or indiscipline. In reality, displacement had pushed them from subsistence agriculture to an industrial economy whose understanding of time was different, and they did not adjust to the change. Alcohol was their (inadequate) coping mechanism (Viegas 1992). It shows that the DPs/PAPs from the informal sector have to be prepared culturally and psychologically to their transition to a new economy and the cost of training them on all these fronts has to be added to the project budget.

This totality can thus be considered part of the replacement value when compensation is viewed as integral to the right to a life with dignity. That is why we hold that one should probably think of replacement value less as compensation in the accepted sense of the term and more as what Cernea defines in this volume as reconstructing livelihoods. Compensation is today understood only in financial terms. That aspect is essential but insufficient. Our own studies, as well as those of others, point to the likelihood of both impoverishment and marginalization. For the victims to get their benefits, the project has to go beyond compensation to investment in rebuilding people's livelihood.

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Today most projects tend to remain islands of prosperity in an ocean of poverty, which these projects themselves create around them. The project authorities have to concentrate on social investment to train the displaced people to begin a new life. It includes their training in new techniques as well as social and psychological preparation to face life after displacement. Financial investment is required in recreating a production base and in other units to prevent people's impoverishment and marginalization. Such investment has to be included in the project budget.

BENEFITS TO THE VICTIMS

Impoverishment does not refer to the state of poverty in which many DPs/PAPs already live, prior to their alienation, but to their additional loss of income and assets. Marginalization goes beyond material impoverishment to the social and psychological spheres. Most DPs/PAPs were powerless before their deprivation. Alienation from their resources for livelihood in favour of another class, devaluation of their assets through low compensation and of their culture, increase their sense of powerlessness. They are unable to cope with the new culture and economy into which they are pushed, without preparation. So as another coping mechanism they internalize the ideology of their powerlessness: they lose hope of ever improving their condition and the ability of taking new risks (Heredero 1989: 37–8). That is what we call marginalization.

Rehabilitation has to deal with this aspect too and that requires something more than technical training, which is not excluded. The victims have to get a share of the project benefits. In fact, if planned properly, technical training can minimize displacement and help the DPs/PAPs share the first benefit: employment in project construction. A substantial part of the land acquired for the project is used for creating the new township that has all the facilities and comforts meant for the staff coming from outside the area, on the assumption that urban comforts have to be reproduced since most projects are built in the 'backward' areas that lack such facilities. So the township is being equipped with new educational, sport, medical, and entertainment facilities and many persons are displaced for it. In some cases, for example, the Talcher Fertilizer Plant in Orissa, the township may occupy as much as 40 per cent of the acquired land (Fernandes and Raj 1992: 34).

A solution some suggest is to train the local people to take up as many semi-skilled jobs as possible in the project. A large number of DPs/PAPs are illiterate and are not in a position to acquire technical skills required by the project. So the first priority of the project has to be to render those threatened with displacement and deprivation literate and give them technical training for the semi-skilled jobs the project requires. The case of NALCO in the Koraput district of Orissa shows that it is possible for the illiterate to acquire such skills. In this case a voluntary agency trained the displaced tribals in skills such as driving and welding and many of them got semi-skilled jobs in the project (Stanley 1996).

There is no reason why the project itself should not have the obligation to take some such initiatives. It can involve voluntary agencies in this task, but the initiative has to come from the project. This is fully feasible because in most cases there is a long time gap between the first decision and actual land acquisition and an equally long gap between the first notification, displacement, and project construction. This time can be used to make all the DPs/PAPs literate and train them in these skills. If that is done, a full township may not be required since the affected persons can be trained to take up most semi-skilled jobs. Even after it a certain number of outsiders, for example, the managerial staff, may have to come from outside the area. A possible solution is to give loans or subsidies to the local people who lose some of their livelihood, to improve their houses and give them out on rent to the project staff (Dhagamwar 1997: 115–16).

That is one possible way of minimizing displacement. Besides, the local people may also need many of facilities that the project builds for its own staff. For example, it builds educational, medical, sports and entertainment facilities mostly limited to its staff. Even if a township is not built, the project should continue to build them but they should be open to all the people of the region, not merely the project staff. This is one step in ensuring that the livelihood of those who pay the price is better after the project than before it. It can also integrate the project into the local economy instead of remaining an island of prosperity in a sea of poverty, much of it created by the project (Cernea 2000: 12–14).

Also the products of the project can be shared with the people. For example, most irrigation projects don't provide irrigation to those who are displaced for them, nor do hydropower projects electrify the affected villages (Mankodi and Gangopadhyay 1983). There is no reason for a the project to not share some of its products with the victims. For

example, a power plant can supply power to the DPs/PAPs and an aluminium plant can provide aluminium and help them to start small production units on a cooperative basis. Instead of appointing contractors from outside to supply needed services and food to the township, or provide casual labourers, the DP/PAP cooperatives can be given the jobs. One can add to this list such new components will only substantiate what the principle of compensation says about the victims becoming the first to get some benefits from the project. The DPs/PAPs who experience the psychological trauma of alienation from their livelihood can thus be helped to overcome it.

RETHINKING COST-BENEFIT ANALYSIS

That brings us to the final question, concerning the cost–benefit analysis. Some think that acquiring land in the ‘backward’ areas, paying low or no compensation and not resettling people are deliberate ways of reducing project cost (Singh 1989: 96). Whether this allegation is true or not, it is clear that the project authorities work out the technical and financial components in minute details, but do not pay much attention to people’s livelihood, compensation, and rehabilitation.

Besides, studies point to a gap between project planning and implementation. Effort is made to get the project sanctioned by the Planning Commission, according to its criterion of 1:1.5 cost–benefit, but no review is made after it. A study by the Parliament Public Accounts Committee in the 1980s showed that no major dam had been built in India at less than 500 per cent cost overrun a five-year time overrun, and capacity utilization of most of dams was below 50 per cent of what was planned (Singh, *et al.* 1992: 173–4). In Andhra Pradesh, the cost overrun was 1,562.04 per cent and 1,217 per cent respectively in the Vattivagu and Santhala dams in Adilabad district, 997.45 per cent in Nagarjunasagar in Nalgonda, 749.83 per cent in Vamsadhara in Srikakulam district, and around 500 per cent in most others (Fernandes, *et al.* 2001: 179). The Karbi Langpi hydel dam in Assam was to cost Rs 360 million and was to be completed in 1980 (Dutta 2003), but was completed in 2007 after spending Rs 3,000 million.

Second, we have referred to impoverishment, income and work loss, and other social costs. These are heavy social costs caused by the absence of adequate income and other assets to live on (Cernea 2007). For example, in Andhra Pradesh, access to work went down among the DPs/PAPs from around 90 per cent before deprivation to around 45 per cent after it. Environmental cost too was high. Many communities that

had till then depended for their livelihood on the CPRs or other natural resources and had used them in a sustainable manner, began to overuse them for sheer survival since they were deprived of all their other assets. But the environmental and social costs are excluded from the cost–benefit analysis (Fernandes, *et al.* 2001: 178–80). We have also referred to marginalization as another consequence of displacement and alienation of livelihoods. It is not merely economic but also social, cultural, and psychological acceptance of their fate (Good 1996). This is why the social costs have to be quantified and included in the cost–benefit analysis.

Third, the assets acquired are viewed only as market commodities. The fact that they are the livelihood of the communities from whom they are alienated is ignored in cost–benefit analysis. For example, the type of land makes very little difference to the project, since it is used mostly for buildings, but it does make a difference to the people whose livelihood it provides. By and large the project accounts only for the marketable commodities of the formal economy—for example, trees are treated as timber, while the people also get fruits, edible flowers, medicines, and other benefits out of them. That aspect is ignored (Areeparampil 1996: 12–13). Overall, the cost–benefit analysis accounts for only a fraction of the worth of assets lost. Besides, it does not even give the people the value they deserve for their individual or common assets, as we saw while discussing compensation (Dewan and Chawla 1999).

Very few studies on the assets lost have been done till now from the point of view of people's livelihood. We can refer, for instance, to two studies—one on the proposed Mumbai airport (Dewan and Mhatre 1997) and the other on the proposed new seaport (Dewan and Chawla 1999). They show that if what the people used to get from the assets in their informal economy were added to the cost–benefit analysis, it would be difficult to justify the project economically. The preliminary data we collected from 28,000 families threatened with displacement by the proposed Polavaram dam in Andhra Pradesh indicate that the cost–benefit analysis of the project accounts only for around 30 per cent of what the people get out of the land and ignores the remaining benefits.

The communities threatened with alienation of their livelihood challenge us to assist them by expanding the knowledge on these issues. That is a challenge to researchers, especially economists. Much of the information on the first two components is available from existing studies and has to be collated. The third part, that is, quantifying the

loss in the informal sector in the language of the formal economy, requires primary data collection. It is clear that cost-benefit analysis as currently practiced is not realistic. It must therefore, be challenged and new criteria must be developed that would do justice to those who are paying the price of development.

THE CHANGES SUGGESTED

It is in this context that one can take a look at the changes to the policy that have been suggested by the National Advisory Council (NAC) of the government that came to power after the elections of May 2004. These amendments attempt to address the most negative aspects of the policy. The NAC states that its first objective is to minimize displacement, but unlike NPRR it also adds that this is to be done through non-displacing or least displacing projects, not merely through discussion with the requiring agency. The NAC wants to minimize also the direct and indirect negative impacts. Where non-displacing or least displacing alternatives are not available, it suggests prior, informed consent. It stipulates that the project should be justified and should obtain clearance from a social angle and be in line with the Environment Protection Act 1986. 'Public interest' must replace the 'public purpose' wording. The project is to be sanctioned only when it establishes that displacement is necessary and that it meets the social needs and expectations of the DPs/PAPs. Its assessment is to be done through a participatory process.

Another objective is to ensure that the affected people will become better off within a reasonable period of time. That demands the integration of rehabilitation with the development of the weak in particular. Its definition of PAF goes beyond NPRR. Every adult member is considered a family, not merely the sons, as the Narmada package does. Thus it attends to gender equality. The definition of the DP/PAP includes people displaced from forests, national parks, sanctuaries, and urban areas. Most important, the NAC policy is to apply also to the DPs ten years prior to its promulgation. The phases of the displacement and resettlement process should be staggered in order to minimize the trauma of uprooting. All the services should continue in the area to be acquired by the project, except those that require major capital investment.

If any land acquired remains unused, it is to be offered back to landless families and is not to be transferred to others without the consent of the PAF. None is to be displaced more than once. Compensation is

to include not merely the market value of the material assets but also lost livelihoods. This clause attends to the landless who depend on the land to be acquired for the project, without being its legal owners. The DPs/PAPs should be among the beneficiaries of the project. Community-based organizations are to be involved in planning rehabilitation and a National Rehabilitation Commission is to be formed.

Thus, the proposed changes respond to most points of criticism but some questions remain. For example, though compensation is extended to the landless, one is not certain that what is suggested is replacement value. Besides, many suggestions have to be concretized. How does one define a better livelihood? What happens if the consent is not unanimous? Can the PAF withdraw their consent if the project deviates from the objectives before its clearance? How does one identify the displaced population of ten years? How does one define public interest?

These are important questions because statements that are not concretized can be abused easily. For example, some project authorities have changed the objectives after getting clearance. So one needs to find concrete ways of enforcing the clause that bans the transfer of land for any other purpose. While not being euphoric about the proposed changes by NAC, at this stage one can only say that they go even beyond the 1998 draft. Researchers and civil society groups need to form an alliance to deal with these questions, create a database on issues such as compensation and assist in the mobilization of the affected persons to deal with the trauma and to avoid impoverishment.

Of greater importance is the fact that the policy has not been sanctioned till May 2007. Today some are speaking of the need to go beyond a policy to a new law that makes rehabilitation mandatory. However, the industrial lobby seems to be resisting even a policy that can attend to all the grievances of the DP/PAPs. In the meantime there has been agitation in different part of the country against the proposed Special Economic Zones that will required massive land acquisition. In response to the agitation the Government of India has promised a policy soon but one is not certain that it will approve one soon because the private sector that wants this land is not ready to pay the price.

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We have critically assessed in this paper the nature of compensation as it exists today and what the Indian civil society feels it should be. What stands out from the alternative suggested is that compensation is

indispensable, but cannot be limited to individual assets or the market value. If taken as replacement of livelihood it goes far beyond the financial aspect and has implications for the type of land and assets acquired. The CPRs, house and occupation have to be replaced whether the PAF has a formal legal right to them or not because until the project turns them into its property, they are not commercial commodities but their livelihood. Thus the first condition of the alternative is to view the assets acquired as people's livelihood.

This approach has implications not merely for monetary compensation but also for other components of deprivation and rehabilitation such as the identification of the DP/PAP, because they have to include all the dependants of the assets acquired. All of them have a right to begin life anew. It also has implications for identifying the assets to be acquired because compensation has to be paid not merely for individual property but also for the CPRs. Besides, it cannot be lowered to the 'market value', but should reflect the replacement value. It must also include the cost of training the DPs/PAPs to begin a new life and improve their livelihood. Thus, it has implications also for rehabilitation. Moreover, what the DP/PAP gets as replacement is not merely financial support but also non-monetary assistance such as psychological, cultural, and social preparation.

One can thus see that our view on compensation is based on a concept of development that is substantially different from its present understanding only as economic growth. People's livelihood is paramount and compensation must be judged accordingly. A development paradigm that gives importance to people's livelihood must keep a balance between economic growth and human growth. Development is understood as a process that results in a better life for the biggest possible number. The amendments being suggested by the NAC try to deal with some of the issues. It is not yet clear even to what extent the reworking by the MRD of the 2003 policy incorporates the justified policy improvements that are advocated in the NAC policy draft. In our view, one has to go even deeper into the definitions and questions raised above before a policy and legislation genuinely reflecting the needs and interests of India's people is finalized and adopted.

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