

PERSPECTIVES ON THE R&R POLICY

I. Background

Issues relating to Resettlement and Rehabilitation have been addressed in the past decade by several State Governments and various policies in the water and energy sector. The National Policy on Resettlement and Rehabilitation formulated by the Ministry of Rural Development (2003) drew from many of these experiences, including the recommendations of the Hanumantha Rao Committee (1998) that was constituted by the Ministry of Power to look into rehabilitation in the Tehri Project.

The NPRR stipulated the minimum facilities and compensation to be ensured for the Resettlement and Rehabilitation (R&R) of persons displaced due to acquisition of land for 'public purposes'. It laid down R&R to be the joint responsibility of the State Government and the Project Implementing Authority (PIA) and set up a grievance and monitoring mechanism at the level of the State and Central Government. It has been oriented particularly towards providing support to vulnerable groups- BPL and tribal families, in particular the latter, who risk loss of access to traditional resources and occupations. With the same focus, it also addressed the rights of not only titleholders but also tenants, share croppers and landless agricultural labourers including ensuring compensation for these groups and support based on a minimum agricultural wage. This redresses the earlier tendency to provide resettlement to select populations and ensures minimum R&R support for all affected groups, with the recognition that States and PIA can adopt higher benefit packages.

Nevertheless, while Right to Life is given in the Indian Constitution, displacement and rehabilitation of displaced persons is often not implemented in the right spirit as espoused in the Constitution, as stated by the Supreme Court of India¹:

¹ N.D Jayal Vs Union of India, (2004) 9 SCC 362

“The last condition is rehabilitation which is not only about providing food, clothes or shelter it is also about extending support to re-build livelihood by ensure necessary amenities of life. Rehabilitation of the oustees is a logical corollary of ‘Article 21”. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations”

II Shortcomings in the existing procedures

There have been several issues relating to the implementation of R&R that are still perceived as having been inadequately addressed in the NPRR and in related policies.

1. There is no empowered National Level or State level R&R implementation mechanism in place to address/ ensure:

- (i) that public consultation and cooperation related to R&R issues and implications in a project are addressed,
- (ii) pre- project issues such as revenue record updates,
- (iii) Capacity building of revenue and PIA staff,
- (iv) grievance redressal and auditing.

2. Project planning for R&R also needs to address institutional capacity building of those planning and implementing R&R. Both the PIA and PAFs depend critically upon revenue authorities who do not necessarily have the capacity to cope with the additional workload and also to ensure decentralized decision making and work delivery.

3. The NPRR lays down a monitoring mechanism that comprises the National Monitoring cell; however, its composition and functions are not adequately elaborated.

4. At the pre- clearance stage of the Project the processes of estimating, mitigating and disclosing risks related to social concerns namely, R&R impacts of the Project, are mainly under the purview of the MoEF’s EIA Notification that addresses the processes of public consultation and public hearing.

The new draft EIA Notification (15th Sept.2005), continues the practice of subsuming social impacts, their disclosures and responses from local persons under the process of evaluating 'material, environmental impacts'. The study of social impacts is only a part of the 'additional studies' that are laid down by the MoEF and the expertise and evaluation of social impacts at this stage are limited and seen only in the context of and as derived from the biophysical impacts. This does not satisfactorily addressing the concerns of project-related displacement and rehabilitation at all. There are mandatory and specified checklists in respect of physical elements like land, water, minerals, construction material, forests and timber, storage and other natural resources. However, it is strange that the socio-economic aspects are dealt with only in the case of construction related activities. Further, the three questions in respect of which alone clarifications are required are also to general, sketchy and vague as detailed below:-

- (i) Will the proposal result in any changes to the demographic structure of local population? Provide the details.
- (ii) Give details of the existing social infrastructure around the proposed project,
- (iii) Will the project cause adverse effect on local communities, disturbance to sacred sites or other cultural values? What are the safeguards proposed?

The regulatory authority conducting the Public hearing, namely the State Pollution Control Board and its membership are also by training engineers from the state government who have limited sensitization to social impacts such as PAF concerns regarding R&R. The MoEF's Expert Appraisal Committee (EAC) and the State Level Appraisal Committees (SEAC) that review the report of the public hearing and final layout and feasibility plan also lack expertise in R&R. Though the earlier Notification (EIA Notification, Jan, 1994) had stipulated that the expert committee should consist of an expert from social science disciplines/ rehabilitation, the new notification simply asks for 'risk assessment experts'.

5. Those persons displaced as a result of natural / man-made calamities are not suitably addressed in any of the existing guidelines.

PROPOSED RECOMMENDATIONS:

1. As a Rule, displacement should be preceded by detailed discussions with dissemination of all project related information in the Gram Sabha of those villages, which are likely to be affected by the Project. Specific information on the number of people to be displaced, the compensation package details also ought to be clearly communicated to the Project Affected Persons (PAPs). It is recommended that following such discussions, the consent of the Gram Sabha for displacement should be sought as a rule. However, in specific instances of some Gram Sabhas' refusal to give consent, the project implementing authority will have the freedom to go ahead with the project, following the consultation-even without the consent of the Gram Sabha.

2. It is suggested that in all projects where the number of displaced persons is more than a threshold value or a critical number, which is to be fixed by the Government, the National Policy for Rehabilitation should be invoked.

3. There is a need to ensure the representation of social experts in the EAC at the level of the MoEF and the SEAC in the State Governments. The MoEF application for EIA clearance also needs to specify the need to submit a separate report on social impacts and mitigatory R&R plan rather than including the former as a chapter within the EIA and EMP report of a project. To provide appropriate R&R planning, the emphasis should be not simply on a description of social impacts, such as demographic processes affecting changes in size of population etc. but also to include social change processes that are actually experienced at the level of the household and community.

4. To address all these problems, it is proposed that a Statutory, National Rehabilitation Commission be set up. The National level Commission will also address issues arising out of those projects that are being implemented across two or more States.

5. In respect of those projects implemented entirely within a State, the State level Grievance Redressal authority/ Committee can redress grievances and carry out the audits of all/ specific projects at the State level. However appeals may be referred to the National Commission.

6. Those persons displaced as a result of natural / man-made calamities should be covered under the new guidelines.

7. A time-line would also have to be specified to ensure that while proper and fair rehabilitation should be built into the project, it is equally important that developmental projects get implemented in a time bound manner without unnecessary delays and obstacles.

8. To address the question of convoluted litigation taking a toll on the project implementation schedule, it is suggested that a specific tribunal on the lines of the Tax Tribunal or the Central Administrative Tribunal (CAT) be set up expressly to address those litigations arising out of rehabilitation and displacement due to development projects.
