

Land Acquisition, Rehabilitation and Resettlement Bill 2011 (Draft) and Rights of Children



An approach paper and demand note for
Ministry of Rural Development in the
context of proposed LAQ & RR Bill – 2011
for ensuring the inclusion of all provisions
for the protection of rights of the child

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Non-negotiable in the best interests of Children

The land & resources, for which an acquisition law is being finalized, belongs to our children. Society and state are nothing but the trustee and custodian of these resources for future generations. None of us have the authority to spoil what is not ours. Being custodian, for future generations, the state must be accountable to children for any land acquisition process it initiates through law.

Apart from thinking independently about long-term impact of its intended action, the state must go to the children where a project has been proposed. The state must go to children and inform them about the custodian's planned course of action. The custodian must explain the history of what such acquisition has done to communities in the past, and explain the consequences it will have on these children and their future. The children need to be convinced that the project and its displacement is a good idea.

The proposed land acquisition law must ensure that land and resources will not be acquired without the 'full informed consent' of children.

Childhood Displaced in Land Acquisition & Rehabilitation

Background

Displacement, in majority of cases, is a tragedy that is exalted as holy sacrifice by outsiders that benefit. Displacement, when it means the destruction of livelihood and a scattering of resident communities, is catastrophic in its effects on cultural identity and pride for community and ultimately for society. An inevitable outcome of modern development projects (whether they are asphalted highways, dams to generate electricity, national parks for lions and tigers, or 'laboratories' for modern development experiments) is the officially sanctioned devastation of settled populations, cloaked in the civilized terminology of 'displacement' and negotiated away with the carrot of 'rehabilitation and resettlement.' Past experience in India shows that state has been extremely successful in 'displacing' communities, but has not been successful in resettlement with dignity, forget about rehabilitation.

'Displacement' is justified with arguments that it will ultimately benefit the deprived, though the fact is such projects are undertaken only to benefit the privileged. The state continues to shamelessly propagates this deceit of improving lives of the deprived, when even today it has no clue whatsoever of just how many people and families have actually been displaced by development projects, or where exactly these 'displaced beneficiaries', who were sacrificed to undemocratic development without consent reside today. This is more than a hint of the kind of resettlement and rehabilitation witnessed.

An estimated 60-100 millions have been displaced since independence, but the official data painfully collected from disparate departments and sources can only count for 15-20 million. No one knows where the others are living, and in what condition. It's not as if records of these people have not been kept out of oversight or ignorance. Rather, it's the result of a carefully thought out stratagem.

The truth is simple. If records are maintained honestly, the responsibility for rehabilitation inevitably falls on the government. Its promise of improving lives of all displaced would be open to scrutiny. So it's easier to officially, legally, and administratively declare displaced as 'permanently missing.'

By far, the worst affected within displaced communities are children. The draft of the proposed land acquisition law has no provision to consider this most vulnerable group or even enumerate or identify them. Children are those below 18 years of age. They account for around 25 to 45 million of the 'missing' generations. This age-group comprises children of different ages at different stages of growth and development, each with their own special needs. If they are deprived of these needs they are deprived of their right to life, with their physical and mental growth being compromised in the process.

It is stunning hubris, insensitivity, and armchair oversight on the part of planners that no displacement or rehabilitation policy has a single word to say about the rights of these children. And, the latest bill is guilty of the same short shrift. There is no platform for children to highlight

their pitiable plight, when besieged by displacement, nor is there any official provision to address their concerns regarding the destruction of their sustaining environment. Officially, even the token Gram Sabha consultation, sidelines children as 18 years is the minimum age for membership of the body. This is stunning if one thinks about it. It is these children who have the greatest to lose by the hubris of planners and the insensitivity and short-term greed of their guardians, trustees, and custodians.

Displacement and rehabilitation policies may contain provisions for schools and anganwadies. But, never is there any concern expressed by those who so coolly play with millions of lives whether children find these institutions, in their present forms, either useful or enjoyable. For example, no one even stops to think that, as per the census, our children today are reared in around 3,300 mother tongues. But 3,200 of these mother tongues are cut out of their mouths the day they step into a school. This is a routine silencing. But, when displacement happens, it only gets worse, because the community that sustains them loses identity and pride, the primary marker being language. The basic question is: who pays the price for the killing of our lions and tigers? Who ultimately bears the brunt?

The cruelest aspect of the tragedy of displacement is in the emotional shock of having to leave ones home and witness the break-up of the community. One can sense this deep shock among children snatched from their cultural roots, rudely separated from the land and meadows they frolicked in, the trees, ponds, and herds that sustained them and gave them belonging. Will new school buildings, be able to rehabilitate their sense of belonging?

Where are the trees, where is the pond that abutted our village school, they ask. You cannot build these for us. Fishing in the streams was not just something we enjoyed; it helped us understand our environment, build relationships with nature. How do we caress nature again?

The loss of livelihoods and the crisis of uncertainty engulfing displaced families is the main reason why majority of youth in New Harsud¹ in south-west Madhya Pradesh have taken to gambling and why most young girls displaced from Kanha national park are entering the flesh trade. This is the bitter truth of displacement – the unconscionable act of breaking up strong communities has ugly ramifications.

Lions were to be trans-located from Gujarat to populate the Palpur Kuno wildlife sanctuary (District Sheopur) in north Madhya Pradesh, which resulted in the dislocation of 27 forest villages in mid 1990s. The displaced Saharia primitive tribal families have become unwelcome and unacceptable interlopers to families of villages where they have been resettled. They have received no alternative means of livelihood; the forest had provided for all their needs. For the first time in their history adults of what were once 27 forest villages have taken to migrant wage labour. A visit to the 'resettled' site shows not even basic infrastructure for rebuilding lives has been provided. The displaced children face an uncertain future, excluded as they are from the schools and anganwadis of these villages.

¹ Harsud is a small town and got submerged fully in one of the big dam built on Narmada – Indira Sagar Dam.

But, it is more than just a question of being given these services. The forcible eviction of people from their roots at bayonet point in Harsud, or the ruthless display of state power against families in Kanha and Palpur Kuno, have left an indelible impression on the minds of children. They no longer have faith in politics and can no longer trust or believe their own government. They see khaki as the most dangerous and sorrowful colour in their lives.

The experience of the past decade tells us that displacement and the rights of children have always been seen from two separate viewpoints: at the policy level, where children's rights tend to be neglected, and even at the level of people's struggles. We are seeing the growing spread of people's struggles against displacement as a result of special economic zones, dams, highways, industries and urbanization. But, rights of children seldom figures in these struggles. They are seen as separate issues and their rights and protection tend to be discussed in isolation.

No dialogue, debate, or analysis is taking place on children's rights in the context of displacement. This is something we will come to regret. Those championing children's rights feel displacement is a political issue linked to the national economy; any discussion would anger the government, so it is considered best to remain silent. Another section feels, showing the direct link between children and displacement requires extra effort. It has been found easier to remain silent and avoid the exercise.

It isn't as if no-one has sought to understand the link between displacement and children's rights better. But, the sad truth is that when it comes to struggles against displacement, children figure nowhere in the picture. This is because displacement of children isn't a big enough and immediate political issue, the way forests, land, and the rights of adults are.

Ten years ago, there was no unified or concerted voice raised against displacement because those living in cities felt it was exclusively an issue of the villages so why should they care. But over the last 10 years, displacement has been taking place in urban areas as well, as a consequence of the implementation of the JNNURM (Jawaharlal Nehru National Urban Renewal Mission). The myth about displacement has thus been shattered. It is clear now that no one is spared the consequences of development structured on a partnership between private capital and state power of eminent domain.

Another myth needs to be dispelled – that the middle class (who earn an income that enables them to live a life of comfort and thus remain silent about exploitation) need not worry about displacement, because it only affects villages and those living in city slums. The truth, however, is that the specter of displacement will inevitably engulf the middle-class too, in the form of laws governing urban habitation, regulation of water and electricity supply, and safety and protection.

Conditions created by displacement force children to work in order to supplement family income. Displacement adds to the inhumanity called child labour. This insecurity makes children targets of exploitation. It is therefore imperative we view displacement through the lens of children's rights, and it is criminal if we don't. We need to question why immature children, unable to exercise discretion, are required to seek work. No decision should be taken or implemented on behalf of

children without their consent. No policy maker, not even a Chahcha Nehru, should appropriate the authority to decide on their behalf.

We must accept the existence of children as autonomous, independent, thinking individuals. We are answerable to the 25 to 45 million children who have been displaced till now. We must include them in the category of children covered under the Child Protection Act 1999 to ensure their protection, security, and care. The government needs to make public the true reality and statistics about displacement so that proper steps can be taken to protect the rights of children. The leaders of the nation keep touting the phrase of demographic dividend and keep speaking of ensuring that the 'fruits of development' reach the poor. There will be no 'dividend' if we don't invest in the future of our children by listening to them today when we coolly choose to destroy their homes and hearth and transplant them into alien environments. There will never be any 'fruit' if we cut the tree in the name of development. It is common sense, which we have lost in the quest for capital and short-term greed.

Call for a child-centered approach in LAQ & RR Bill (2011) (Draft)

The draft of the proposed Land Acquisition Bill (2011) has been presented for discussion at a crucial phase in India's developmental history. Today, a climate has been created against the acquisition of land by government, exercising powers of eminent domain for the benefit of private companies. At the same time, a wide-ranging debate is underway on the social, political, and economic status of children and their rights. However, there has been no bridge between the two.

Over the last 20 years, India's progress and development has been increasingly seen solely in terms of the growth rate of its economy. We are repeatedly told that the current growth rate of 7% to 8% needs to be raised to double digits. Leaders cannot see beyond growth, when it is the destruction of forests and of communities that has contributed to India's other growth story – that nearly 50% of our children are stunted today. Our growth rate hides as much as it reveals. It cloaks the reality of children in the country. We are never told that India has the largest number of malnourished children in the world or that 2.3 million of them die before reaching their fifth birthday or that 65% are not properly vaccinated. There are several more indicators of the pitiful plight of our children.

Displacement plays a central role in determining the growth rate of our country. It is by selling our land, forests and water that we have been able to construct the edifice of development. The definition and framework of development we have adopted requires the acquisition of community and agricultural land and other resources for constructing dams to generate electricity, building roads and housing, beautification, urban development (expansion) and so on. That political funding and infrastructure growth go hand in hand shows why leaders are of a singular mind.

The process of acquisition, in which the government or private companies take over the land rights of people, is known as displacement. But displacement is more than merely forced or legal transfer of ownership of land or resources. It is a process that disrupts the harmony that exists in our society, and between the different units that it comprises of.

It was the British government that first enacted an Indian Land Acquisition Act in 1894. They had a clear-cut objective: to exploit the land and forests for infrastructure development and to use India's forest wealth for Britain's development. The law remained unchanged after independence. However, in 1984, its anti-people character was reinforced by the enactment of an amendment that included provisions for acquiring land for the private sector. This introduced a new type of colonial exploitation. The government and private companies focused their attention on gaining control of land and diverting fertile agricultural land for

industrial use. Many of the country's leading feudal and capitalist families exploited the law to gain control of large tracts of land and forests. The colonial law had no provision for seeking the consent or permission of people for acquiring land, the sole authority lying with the government.

Over the past 20 years the country has been witnessing a growing people's struggle to replace this anachronistic law passed under British rule with one that recognizes the land rights of the people, prohibits forcible eviction and gives primacy to society and the community in the land acquisition process, while specifying a supportive role for the government.

The draft of a new land acquisition bill was eventually finalized and put up for public discussion on July 29, 2011. The proposed bill has many new provisions. For example, it states that land can be acquired only if 80% of the affected people give their consent. However, nowhere does it say anything about taking consent of female members of these affected families. In a way, the bill devalues the role of women, with the government once again putting across the message that males are the natural owners of land and resources. It is common knowledge that women are the most efficient users of resources in our male-dominated society that is known for its gender-based discrimination. Women are responsible for 80% of all agricultural work, apart from their work around the house and hearth, which stand to be destroyed in acquisition. So it is to be expected that land acquisition will have the most profound and lasting impact on them. That's why they do not judge the value of land in cash terms, be it a few lakhs or even crores of rupees. After, leaving their parent's home, it is the land of the family they have married into that is the source of their pride and self respect.

But, nowhere in the draft law is there any indication or mention of how the government plans to go about ascertaining the views of women in seeking the agreement of people for land acquisition. Consulting women is important because studies over the past few years clearly reveal that displacement forces them to migrate and sink deeper into poverty, with many often ending up in the flesh trade. They are even smuggled for prostitution. The recent Mungekar Committee report of the Planning Commission reflects how this is the overwhelming norm in affected tribal areas.

Displacement pushes women into greater insecurity, trapping them in a cycle of poverty and shame. This environment of insecurity is fertile ground for rising maternal mortality rates. That's why it is necessary to ensure that when land is acquired under the provisions of the proposed law, a process for assessing its social repercussions is also initiated, especially the multi-faceted impact on women, their security, health and standard of living. There is also a direct link between the health and status of women and the survival and health of children. That is why it is both women and children, who bear the brunt of such unsettling projects, who must be consulted.

As with many other laws, the proposed land acquisition law also talks about getting the consent of the Gram Sabha. Under the provisions of the Gram Sabha and Panchayati Raj Act,

the Gram Sabha must ensure the presence and participation of a third of the village population in the decisions it makes. But we know that only those above 18 years are eligible to become its members.

So there is no place for children in this decision-making process. This means children do not have the opportunity to voice their opinions about land acquisition and its impact, since they are excluded from the Gram Sabha. Hence there is no way of ascertaining their thoughts and feelings or seeking their consent for land acquisition, when it is children that will face the longest impact.

When residents began opposing construction of the nuclear power facility at Jaitapur in Maharashtra, children from 70 schools in the region joined the protests. They came of their own volition and were not being used as a front by protestors. Their argument for joining the protest was simple: we were taught in school that nuclear energy is environmentally hazardous and has fatal effects on humans. This is why we wish to oppose the project and its land acquisition they said.

Such development, for which this law was specifically made, is of direct concern to children because it affects their present and future. To ignore their opinion is a travesty.

Experience tells us the voices of children are rarely heard in the adult world. There is no scope for them to participate in the decisions made by the adult world, which impact their future. No attempt is made to ascertain what they want, their opinions being summarily dismissed as immature.

This exclusion at the official level has been a matter of concern for the world for several decades now. Twenty years ago many countries came together under the umbrella of the United Nations to fashion and sign an agreement to address this issue.

Article 12 of Part 1 the United Nations Convention on the Rights of the Child (1989) states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Similarly, Article 3 (1) of Part 1 of the Convention states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of Law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

India is a signatory of this Convention that gives children the right to be active participants in society. This makes it incumbent upon the Indian government to ensure the participation of children in any law enacted in the country that directly impacts on their lives.

The biggest contradiction in the draft bill from the point of view of children is that it has no such provision even though children are the most severely affected, both physically and mentally, when the state acquires land by use of its power, and forces the evicted to move elsewhere.

In principle, there have been many such international agreements on children's rights but the reality is that such rights are annulled or have become dysfunctional at different levels. The UN Convention has been operative for 22 years, but is the agreement really operative? Have its provisions been observed in practice? Have we ever seriously considered giving our children the right to think about, discuss, and participate in policy formulation and its implementation? The reality is that there is no place for the voice of children to be heard. They do not have the freedom to enter the world of adults at the official level.

After the victims of the first displacement in Madhya Pradesh were resettled in Pavretha village of Gujarat, there was a surprising increase in the death rate among the displaced population. A study conducted by the Tata Institute of Social Sciences, Mumbai showed that the rate had climbed to 22%. It was as if the displaced had boycotted life itself, a large number among them were children.

Another similar example is of the new Dhai village in Hoshangabad district where people displaced by the Satpura Tiger Reserve were resettled in 2005. Within three years of resettlement, there were 16 deaths in the village. This is the story of Harsud town as well.

These examples only go to prove that when a community is disrupted and upturned, when land is snatched from people and they are sent elsewhere to settle, their whole life is affected. Things cannot be set right by cash compensation because it is improper and unethical to weigh the lives of people in cash, which is anyway almost always inadequate to ensure their livelihood, and is no answer to the most priceless thing snatched away: a stable inter-connected community.

There is need to include a special provision in the draft law to address the plight of especially vulnerable groups that include children, women, SC/ST, the aged, physically challenged and

those suffering from chronic ailments. For this to be made possible, the law should clearly categorise the victims of displacement and ensure protection of these vulnerable sections.

According to Article 3 (2) of the UN Convention:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Since India is a signatory of this agreement it means the country is bound to accept and implement its provisions. As we have seen earlier, Article 12 is explicit on this score, stating that special attention must be paid to children's participation in formulating any national law.

Another shortcoming is that land acquisition, displacement and resettlement may have multidimensional impacts on the lives of children, but these issues are looked at purely from the point of view of providing physical facilities and livelihood resources. The serious emotional repercussions are overlooked and left unaddressed. Many studies have shown increases in child death rates and negative effects on their mental well being.

When the topic of children came up for discussion in the proposed draft, the only provision made was for infrastructural development of anganwadis and schools. This points to insensitivity on the part of government, which seems to believe that displacement and land acquisition can have no other effects on children and their psyche. There is no context for child psychology here.

The government needs to understand that children have a special emotional attachment to their playgrounds, special meeting spots, the trees they play hide and seek around. When their playgrounds, trees, and meeting spots are snatched from them it is a great emotional shock to them, especially when they realise their property has been seized from them without their consent by powers beyond the people they hold to be the most powerful in their community. This shock has continuing repercussions throughout their life and they are prone to suspect the state in adulthood. If both the government and dominant society are partners in the process of upheaval, land acquisition and displacement breeds loss of faith in government and institutions among children.

That is why it is necessary for children to be included in the consultation process to formulate the proposed law. It should include provisions for compulsory participative dialogue. The required infrastructure needs to be put in place and a manual prepared. The views of children should also find space in specific issues such as what kind of schools and playgrounds should be planned.

Article 3 (3) of Part 1 the United Nations Convention on the Rights of the Child (1989) states:

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The government of India and all the states & UTs are bound to establish institutions and competent authorities for ensuring rights of the child in all spheres. We need to ensure that we take the consent of children who are displaced and mitigate their emotional shock. In addition, the consent of other bodies in the country, such as the National Commission for Protection of Child Rights and National Child Protection Authority should also be sought in formulating the proposed law.

Our consensus is minus the participation of children. We only give importance to the People's Representation Act, which says that only those above 18 years of age can give opinion. We don't give importance to our Citizenship Act, which holds children as citizens of the country.

All our laws impact children and their rights but no attempt has been made reflect an understanding of children's thinking and opinions in these laws. The general attitude is that it is the constitutional responsibility of children to accept what is decided for them in whatever form. Since we do not understand their language, the government simply brooks no discourse with them.

More importantly, since children have the habit of speaking the truth, the government does not want to give them any space to have their say. It knows children won't give permission to destroy forests or dam flowing rivers or set up factories that manufacture chemicals that poison the land.

That's why it does not let them have their say in formulating the proposed land acquisition law nor does it include them in the process. This is crass injustice. The government needs to be more honest with children and give them the right to have their say in the debate on development.

We are all aware of the kind of impact land acquisition and displacement for large-scale development projects has on the life, growth, and emotional well being of children. Malnutrition, infant child mortality rates and child death rates increase sharply as a result. These are the indicators that need to be analysed when assessing social impact of displacement and studying the impact on lives of children. The proposed land acquisition act must have provisions for analyzing these indicators, considering them squarely before a project is sanctioned, and acting accordingly if harmful effects result amongst those displaced.

Child protection is a Non-negotiable to any Development

Points for inclusion in the proposed land acquisition law

- Health, protection, and right to livelihood of women should be ensured
- Consent of 80% of women should be made compulsory when taking community consent.
- Social audits should study the impact on women
- Indicators for the purpose of studying impact on women in audits should be formulated.
- Special legal measures to prevent violence against women, ill treatment, or trade are a must.
- The right of children to education, health, security, and livelihood should be ensured.
- Given emotional shock of displacement on children, consultation and dialogue is essential.
- There should be proper safeguards against child trade and violence against children.
- Displaced children should be included in the category of children who require protection and care under the Juvenile Justice (Care and Protection) Act 2000.
- In assessing social impacts, a system for protecting children should be clearly specified.
- There should be a clear-cut provision under the proposed law for a support structure for children with physical disabilities and for their families. There should be special provisions for children with special needs in social impact assessment and rehabilitation plans.
- The parameters and process for assessing the effects on children with physical disabilities need to be specified under the social assessment process.
- The draft law outlines the institutional infrastructure that needs to be developed in order to carry out the land acquisition and rehabilitation process. It is important that the infrastructure includes a Women and Child Development and Protection Committee and the significance of its recommendations should be highlighted in the law.
- The National Commission for Protection of Child Rights and the State Commission for the Protection of Child Rights should be established as the authority to define the role of children in the land acquisition process and to monitor their involvement.
- A planned protocol for impact assessment and child protection should be developed under an Integrated Child Protection Scheme (ICPS) for children affected by land acquisition. Since there is no scope for children to make

their voice heard in the gram sabha, a Bal Sabha or Community Sabha should be created to permit them to have their say. .