

North East Regional Consultation on the Land Acquisition (Amendment) Bill, 2007 & the Rehabilitation and Resettlement Bill, 2007

(held in Guwahati, Assam on 16-17 February 2008)

Recommendations on the Land Acquisition (Amendment) Bill, 2007

Table of contents

1. INTRODUCTION	2
2. EXECUTIVE SUMMARY	3
3. DISCUSSION AND RECOMMENDATIONS OF THE CONSULTATION.....	6
I. USE “PUBLIC INTEREST”, NOT “PUBLIC PURPOSE”	6
II. BAN ACQUISITION OF LAND FOR COMPANIES	7
A. <i>Recommended mechanism, if provision for “acquiring the land” for companies is to be retained.....</i>	8
III. MAKE SOCIAL IMPACT ASSESSMENT MANDATORY.....	9
IV. PROVIDE COSTS FOR BAN ON TRANSACTION AFTER NOTIFICATION FOR ACQUISITION	10
V. INSERT “REPLACEMENT VALUE” IN PLACE OF “MARKET VALUE”	11
<i>Protection of shares/debentures of the tribals:</i>	12
VI. MAKE THE LAND ACQUISITION AND COMPENSATION DISPUTES SETTLEMENT AUTHORITIES INDEPENDENT AND IMPARTIAL.....	13
VII. DELETE BAR ON JURISDICTION OF CIVIL COURT	16
4. OTHER PROVISIONS NOT CONSIDERED BY THE MINISTRY TO BE AMENDED.....	16

1. Introduction¹

On 11 February 2008, the Parliamentary Standing Committee on Rural Development issued advertisements inviting comments on the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 to be submitted by 22 February 2008.

Both the Bills are intrinsically interlinked and long overdue. However, the short time given for submission of comments and recommendations is a matter of concern.

On 16-17 February 2008, the North East Regional Consultation on the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 was held in Guwahati, Assam. The representatives of 24 civil society organisations (herein after referred to as participants) took part in the consultation.

The participants deeply regretted the manner in which the Parliamentary Standing Committee on Rural Development decided to shape the process of consultation. The participants held the view that the process does not allow sufficient space for external input into a law that will have impact on the lives of the most vulnerable groups (tribals and Dalits). The participants were concerned that the Land Acquisition (Amendment) Bill, 2007 is deeply flawed and the measures contained within the text are not in India's best interest; they were deeply concerned that the Bill would act as a catalyst to India's increasing armed conflicts.

There are two booms in India. India's economy is booming with over 9% growth rate in 2007. But India has witnessed a serious rise in conflict, not least the Naxalites who are now active in 13 States.

The State has a responsibility to resolve conflict. The Naxalite conflicts will not be addressed by the further impoverishment of those who are already victims of the arbitrary powers of the State with regard to land acquisition.

A cursory reading of the Rehabilitation and Resettlement Bill, 2007 raises serious concerns over what the Bill is. The Bill appears to favour further impoverishment of already vulnerable groups at the lowest end of the economic indicators. This will require taking of specific measures to provide welfare but the means of distribution has been ineffective. There are eight different authorities (Clause 9 to 19 of the Rehabilitation and Resettlement Bill, 2007) with often similar and overlapping mandate with no clear command structure. It is difficult to see how victims will be able to realize justice.

¹ . Introduction is common for recommendations for both Land Acquisition (Amendment) Bill, 2007 & the Rehabilitation and Resettlement Bill, 2007

Recommendations on the Land Acquisition (Amendment) Bill, 2007

India, its parliamentarians and citizenry have two stark choices.

- Option 1:** The government can remain arbitrary and undemocratic in function. It can adopt laws like the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 which fail to provide effective means to realize rights, remove judicial oversight, further impoverish the victims of displacement, and catalyse armed conflicts; conflicts that will incur ever greater security expenditure from the public purse.
- Option 2:** India can choose to become democratic in function and adopt laws that make the exercise of sovereign powers an exception, make the State and companies accountable for arbitrary exercise of sovereign power, uphold due process and the supremacy of judiciary and accepts judicial oversight on both for land acquisition and compensation, and include those whose lands are taken away in the name of “national interest”, “public purpose” and ultimately address the root causes of armed conflicts which will allow reduced security and increased welfare expenditures.

There is no reason as to why there should be such resentment against the Land Acquisition Act if the quality of lives of those who are forced to give their lands for so-called national interest were to improve. The concerns are valid and deserve recognition from the State: for the last fifty years, a section of people – often the poor and most vulnerable - had to pay for the development of others.

With these stark options in mind the participants of the North East Regional Consultation decided (1) to call upon the Parliamentary Standing Committee on Rural Development to extend time for more comments and hold regional/state level public meetings on both the Bills and (2) provide some preliminary comments and recommendations to ensure that the valid concerns of vulnerable groups are put on record.

2. Executive Summary

The participants welcomed the positive provisions of the Land Acquisition (Amendment) Bill, 2007 (hereinafter referred to as the Bill). However, these provisions are largely cosmetic and are undermined by the inclusion of ill defined terminology and the draconian provisions that defeat the Object and Reasons as provided in the Bill.

The summary of the debate and recommendations on the key issues of the Land Acquisition Amendment Bill, 2007 are given below:

Replace “Public Purpose with Public Interest”: Though the government defined “public interest” in the Bill, the definition is so broadly and loosely defined that it

Recommendations on the Land Acquisition (Amendment) Bill, 2007

effectively makes no difference as it can acquire any land in the name of *any other work vital to the State*”, “any other purpose useful to the general public” or so-called infrastructure project like “any project relating to generation, transmission or supply of electricity” and “mining activities”. It fails to make the victims of involuntary displacement as the primary beneficiaries. The Bill as it stands now cannot address the critical issues raised in the Statement of Object and Reasons.

The participants, among others, recommended that the words “Public Purpose” should be replaced with “Public Interest”.

No acquisition for companies: The government agrees that the bill should not be about the acquisition of land for commercial companies. The Bill therefore sought to address these concerns by reducing the percentage of area of land acquisition for a company to 30% of the total area required for a project. Since the definition of “public purpose” includes “any project relating to generation, transmission or supply of electricity” and “mining activities” [Sub-clause (ff) of Clause (f)], it implies that for these activities the government can invoke the Land Acquisition Act. Therefore, since the vast majority of commercial applications relate precisely to these purposes the provision that the government shall acquire only 30% of the total land required for a company is meaningless. The provision reveals that the government wants to ensure the commercial interest of the companies, not public interest, behind the Bill.

The participants, among others, recommended that the government should not acquire any land for companies.

Need for a NEW clause providing the procedure for acquiring 30% land for companies: If the government rejects the recommendation not to acquire any land for companies, the Bill still fails to provide any procedure for the acquisition of land by commercial companies. The Bill currently provides that once a company has acquired 70% of the total land required for a project, the government shall invoke the Land Acquisition Act to acquire the remaining 30%. However, in order to acquire more land, companies might request the government to acquire 30% more land even if they already have sufficient land for the project. The companies can use anti-social elements to forcibly acquire lands. Most importantly, the government has a responsibility to ensure implementation of the laws adopted across the country to prevent alienation of the tribal land. Therefore, private companies must submit the application first to ensure that they respect the existing laws for protection of the tribal lands.

The participants, among others, recommended that if the government retains the 30% provision, it must introduce a **new provision** providing a process for companies wishing to acquire land. This new provision, among others, must provide that the companies must file an application in the prescribed format, which inter-alia shall specify the total area required for the project, with the District Collector before any purchase of land through private contract if the company plans to make a request to the government to invoke the Land Acquisition Act at a later date for acquiring 30% of the land.

Recommendations on the Land Acquisition (Amendment) Bill, 2007

Need for Mandatory Social Impact Assessment irrespective of the number of displaced families: The participants welcomed the provision providing for a Social Impact Assessment (SIA). The participants however also rejected the provision that the SIA shall be carried out only if it involves ‘*physical displacement* of (i) four hundred or more families *en masse* in plain area or (ii) two hundred or families *en masse* in tribal or hilly areas etc”.

The participants, among others, recommended that SIA must be mandatory for all projects irrespective of the number of families displaced.

Need for a NEW clause for protection of shares of the tribals: The participants welcomed allocation of shares and debentures as part of the compensation to the victims. However, unless the Land Acquisition Amendment Bill includes a new provision to “prevent” fraudulent transfer, sale and or mortgage of the shares and debentures of the tribals akin to protection provided under numerous laws to prevent further alienation of the tribal lands, the shares and debentures can equally be mis-appropriated. A new provision has been recommended to protect the shares of the tribals.

Use “Replacement value” instead of “market value”: The participants rejected the concept of market value as provided under section 11(B) of the Bill. The government itself has accepted the non-applicability of the “market value” in certain situations and therefore it recommends “the floor price per unit area of the said land based on the average higher prices paid for similar type of land situated in the adjoining areas or vicinity”. In many Vth and VIth Scheduled Areas, there is a ban on sale of tribal lands to non-tribals and the actual market value can never be arrived at. In many States, minimum prices for land have not been fixed and lands and properties are often registered at lower price. The market value concept also fails to address common property resources on which majority of the tribal peoples are dependent upon.

The participants, among others, recommended the use of the term “Replacement Value”.

No to Land Acquisition Compensation Disputes Settlement Authorities in present form: The participants rejected the texts/provisions provided for establishment of the State and Central level authorities especially given that the powers of the courts have been taken away. The power, functions, appointment procedure and composition of the Authorities must reflect the issues of land acquisition and compensation.

The participants, among others, have made specific recommendations both for the State and the Central Land Acquisition and Compensation Disputes Settlement Authorities based on the Human Rights Protection Act of 1993.

Other provisions not considered by the Ministry to be amended: The Ministry of Rural Development has failed to recommend repeal of a number of provisions in the principal Land Acquisition Act of 1894. The participants also recommended deletion of

Section 24 of the principal Land Acquisition Act which bars the Court from taking certain issues into consideration. Similarly, the participants recommended deletion of section 45 which makes it mandatory to affix the notice under the Land Acquisition Act to a male member of the family only.

3. Discussion and recommendations of the Consultation

I. Use “Public Interest”, not “public purpose”

The participants welcomed the definition of “public purpose” as provided under **Clause 3(f)** of the Land Acquisition (Amendment) Bill 2007. The Principal Act of 1894 included all and sundry activities including acquisition for the private and State-owned companies under the definition of “public purpose”. In this context, the participants also welcomed the deletion of the words “and for Companies”; “or for a company” and Chapter VII (Acquisition of Land for Companies and Clauses 38 to 44B) as positive measures.

However, the Bill does not address critical issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Ministry of Rural Development in its Statement of Objects and Reasons states, *“Often, such acquisition of land leads to displacement of people, depriving them of their livelihood and shelter, restricting access to their traditional resource base, and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences for the affected population, which call for protecting their rights, including those of the weaker sections of society, particularly tribals, tenants, etc.”*

The amended definition of “public purpose” is too loose, broad and vague. The definition provided under the Bill includes all the activities for which the government acquires land for itself or requiring bodies like the companies. The Bill empowers the government to acquire land for “public purpose” for *“any other work vital to the State”* [included for Sub-clause (i) of clause 3(f) of the principle Act] and “any other purpose useful to the general public” [Sub clause (iii) of clause 3(f)]. In addition, “any project relating to generation, transmission or supply of electricity” and “mining activities” [Sub-clause (ff) of Clause (f)] have been defined as “infrastructure project” which empowers land acquisition. This implies that government can continue to acquire any amount of land for the companies for “generation, transmission or supply of electricity” and “mining activities”. This makes the proposal of the government to acquire land (up to 30%) for a company under sub-clause (iii) of Clause (f) redundant.

There is ambiguity as to whether with regard to “any project relating to generation, transmission or supply of electricity” and “mining activities” the government is required to acquire only 30% of land. This provision shall be misused and abused in the future if not deleted.

Recommendations:

Unless the Land Acquisition (Amendment) Bill, 2007 makes the affected landowners as the first and primary beneficiaries, it will fail to address the grievances. This will further contribute to the growing protests and violence in the country which ultimately will turn out to be more expensive than the profits made.

The participants recommended:

- *Replace “public purpose” with “public interest” throughout the Bill;*
- *Delete reference to “any other work vital to the State” under clause 3(f)(i) and “any other purpose useful to the general public” under clause 3(f)(i);*
- *Delete all the provisions for acquiring of land for any company;*
- *Delete “any project relating to generation, transmission or supply of electricity” under clause 3(ff)(1);*
- *Delete “mining activities” from the expression “infrastructure project” under clause 3(ff)(iii); and*
- *Define/specify “any other public facility” as provided under clause 3(ff)(iv).*

II. Bar acquisition of land for companies

The participants welcomed the deletion of the words “and for Companies”; “or for a company”; and Chapter VII (Acquisition of Land for Companies and clauses 38 to 44B).

The participants opined that these deletions make little change. Except for the decrease in the quantity of land to be acquired from cent percent to thirty percent of the required area by the appropriate Government [sub clause (iii) of Clause (f)], the government continues to exercise its sovereign power to acquire land causing involuntary displacement.

In addition, the Bill fails to provide the process/procedure for purchase of land by a person including a company under lawful contract to the extent of “seventy per cent” to enable the government to acquire “the remaining thirty per cent of the total area of land required for the project”.

The participants feared that in order to claim more areas, the companies/requiring bodies may often request the government to acquire the so-called remaining 30% of the land required for a project even though they might have already acquired sufficient land for a project. The companies often use anti-social elements to forcibly acquire lands.

Most importantly, the government has a responsibility to ensure the implementation of the laws adopted across the country to prevent alienation of the tribal land.

Recommendations:

The participants among others provided different options in their recommendations as provided below:

Option 1:

- The appropriate Government should not acquire any land for a company and therefore, sub-clause (iii) of Clause 3(f) should be deleted.

Option 2:

- Reduce the areas of land to be acquired by the government for any company to 10% of the total area required for the project;

- Bring acquisition of land for any requiring body including for “generation, transmission or supply of electricity” under clause 3(ff)(1) and “mining activities” under the activities of the companies for which only 10% of the total land required for a project can be acquired;

A. Recommended mechanism, if provision for “acquiring the land” for companies is to be retained

If the government retains the provisions for acquiring land for the companies the following NEW provisions providing for “acquiring the land by the companies should be inserted:

- (i) If any person/requiring body desires the government to acquire 10% of the total land area as provided under sub-clause (iii) of Clause 3(f), the concerned requiring body shall file an application in prescribed format which shall inter-alia provide information about the total area required for a project, with the District Collector before purchase of any land for the project;*
- (ii) the application of the person with the District Collector made under sub-clause (i) shall be published by the concerned persons/requiring body in at least three daily newspapers, two of which shall be in the local vernacular, having circulation in villages or areas which are likely to be affected, and also by affixing a copy of the notification on the notice board of the concerned gram panchayats or equivalent bodies or municipalities and other prominent place or places in the affected area as well as the*

Recommendations on the Land Acquisition (Amendment) Bill, 2007

resettlement area, or by any other method as may be prescribed in this regard by the appropriate Government.

- (iii) *Until the issue of notification by the District Collector and affixing of the notification as provided under clause (ii), no person shall make any transaction or cause any transaction of land specified in the notice of acquisition to create any encumbrances on such land from the date of publication of such notice under this clause;*
- (iv) *After issuance of notice under sub-clause (ii) of this clause, the District Collector shall undertake and complete the exercise of updating of land records, classification of land and its tenure, survey and standardization of minimum values of land and property in respect of the land under acquisition:*
- (v) *In case of land being purchased from members of the Scheduled Tribes, the Collector shall conduct a survey and any alienation of tribal lands in disregard of the laws and regulations for the time being in force shall be treated as null and void; and in the case of purchase of such lands, the sale price shall be available to the original tribal landowners.*
- (vi) *If no application is submitted under sub-clause (i) of this clause prior to purchase of any land by any person, sub-clause (iii) of Clause 3(f) shall not be invoked.*

III. Make Social Impact Assessment mandatory

The participants welcomed the insertion/addition of new provisions providing for a Social Impact Assessment (SIA) study for the purpose of social impact appraisal, incorporation of Tribal Development Plan, plan for giving emphasis for the Scheduled Castes, the Scheduled Tribes and other vulnerable sections of the society, and provision for infrastructural amenities and facilities in the proposed resettlement area.

The participants however also rejected the provision that the SIA shall be carried out only if it involves “*physical displacement* of- (i) four hundred or more families *en masse* in plain area or (ii) two hundred or families *en masse* in tribal or hilly areas etc”. This is absolutely flawed. The elements identified for the Social Impact Assessment are not directly related to “physical displacement”. The effects of a project have been found beyond the areas of actual acquisition and people actually physically displaced.

Moreover, the requirement of (i) four hundred or more families *en masse* in plain area or (ii) two hundred or families *en masse* in tribal or hilly areas etc would deny other victims in case of land acquisition involving displacement of less than 400/200 families. Such a provision will violate the cardinal principles of constitution of India – equality and non-

Recommendations on the Land Acquisition (Amendment) Bill, 2007

discrimination and the right to life as provided under Article 21 of the Constitution. The constitutional validity of such a blatantly discriminatory provision will be questioned if the government incorporates such a discriminatory requirement for conducting SIA. The government should make SIA mandatory irrespective of whether a project is undertaken by the State or “requiring bodies”.

Moreover, there is no provision for participation of the families who might be displaced by the intended acquisition in the Social Impact Assessment study.

Recommendations:

In addition to the appropriate recommendations being made under Chapters II, IV, V and VI of the Rehabilitation and Resettlement Bill, 2007, the participants recommended the following:

- (i) *Delete references to “400 families in plain areas and 200 families in hilly areas” and make the SIA study mandatory irrespective of the number of people affected by the project under clause 3(A);*

IV. Provide costs for ban on transaction after notification for acquisition

The draft Amendment Bill 2007 amended Clause 4 of the Principal Act of 1894.

As per proviso (ii) to sub-clause (1) of Clause 6 of the Land Acquisition Act of 1894, the minimum period of time within which a declaration that the land is required for public purpose under Clause 6(1) can be made after the publication of preliminary notification is at least one year. As stated above, the new Clause 4 (1A) bars the land owners whose lands are notified under Clause (4)(1A) from making any transaction or causing any transaction of land specified in the notice of acquisition to create any encumbrances on such land from the date of publication from the date of publication of such notice under this Clause till the final declaration under clause 6, or the award made or paid under Clause 16 of the Act, whichever is earlier. This simply means that the land owners whose lands has been notified under sub clause (1) to clause (4) cannot make any transaction in respect of the notified land within the period of one year irrespective of whether a declaration under clause 6 that the land is required for public purpose is made by the Collector or not. The Government completely ignores the need to pay compensation or damages to the land owners for not being able to make any transaction of the notified land for one year.

Recommendations:

- (i) *The proposed clause 4 (1A) should be deleted; and*

Recommendations on the Land Acquisition (Amendment) Bill, 2007

(ii) If retained, a provision requiring the appropriate Government to pay compensation to the land owners at the monthly rate of ten percent of the total value of the award for one year in case of not acquiring the land after notification should be inserted.

V. Insert “Replacement Value” in place of “market value”

The participants rejected the concept of market value as provided under clause 11(B). It does not genuinely address the situation of the affected people. The government itself has accepted the non-applicability of the “market value” in certain situations and therefore it recommends “the floor price per unit area of the said land based on the average higher prices paid for similar type of land situated in the adjoining areas or vicinity”.

In many Vth and VIth Scheduled Areas, there is a ban on sale of tribal lands to non-tribals and the actual market value can never be arrived at. In many States, minimum prices for land have not been fixed and lands and properties are often registered at lower price.

The market value concept also fails to address common property resources (CPR) on which majority of the tribal peoples are dependent upon. Therefore, the Bill fails to address the rights of the tribal peoples and only provides lip service on their rights.

If the government is interested in addressing the critical issues defined in the Statement of Objects and Reasons, it must ensure the restoration of the livelihood lost by physical displacement of the victims.

The participants welcomed allocation of shares and debentures as part of the compensation to the victims as provided under 11(C) of the Land Acquisition (Amendment) Bill, 2007. However, unless the Land Acquisition (Amendment) Bill, 2007 includes a new provision to “prevent” fraudulent transfer, sale and or mortgage of the shares and debentures of the tribals akin to protection provided under numerous laws to prevent further alienation of the tribal lands, the shares and debentures can equally be appropriated by non-tribals.

Recommendations:

The participants recommended:

- Insert “Replacement value” in place of “Market value” which shall be defined as “commercial value plus use value” (such as the value of particular property like mango tree must be determined based on its market value but its usage value for a period of 30 years) and cost for restoration of old life style and adaptation in new life style including training/increasing capacities;

Recommendations on the Land Acquisition (Amendment) Bill, 2007

- *Recognise the variations of land and provide for compensation for the loss of bio-diversity; and*
- *the principle of compensation in the form of land for land shall be made mandatory in the V and VI Schedule Areas.*

Protection of shares/debentures of the tribals:

With regard to the allocation of shares and debentures as compensation, the participants recommended insertion of a new clause to protect the shares/debentures of the tribals:

Notwithstanding anything contained in any law for the time being in force any transfer, sale and/or mortgage of the shares allocated as part of compensation under the R&R Bill 2007 by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose and/or educational purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe:

Provided that:-

(i) nothing in this sub-clause shall be construed as to permit any member of a Scheduled Tribe or his successor-in-interest to transfer any share which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force;

(ii) in execution of any decree for realisation of the mortgage money, no property mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and

(iii) a member of a Scheduled Tribe shall not transfer/sale or mortgage if the total extent of his shares remaining after the sale/transfer/mortgage will be reduced to less than 50% of the shares allocated

Explanation-I:- For the purposes of this sub-clause, a transfer of shares:-

(a) in favour of a female member of a Scheduled Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and

(b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.

VI. Make the Land Acquisition and Compensation Disputes Settlement Authorities independent and impartial

The Land Acquisition (Amendment) Bill, 2007 provides for the establishment of the Land Acquisition Compensation Disputes Settlement Authorities at the State and Central level for speedy disposal of the disputes.

However, unless such a State Authority is provided adequate powers, functions, independence and mechanisms for ensuring impartiality, the amendments cannot be accepted. This only strengthens the bureaucracy without sufficient guarantees to efficaciously hear and dispose disputes relating to land acquisition and compensation. It is not necessary that officers of the State Government not below the rank of District Collector or all officers of the State Government in the Law Department not below the rank of Director shall have the legal background and sufficient expertise on the land acquisition matters or compensation issue required for efficacious adjudication.

Recommendations:

The participants recommended the followings for insertion under clause 17 of the Land Acquisition (Amendment) Bill, 2007 with regard to **State Land Acquisition and Compensation Disputes Settlement Authority**

State Land Acquisition Compensation Disputes Settlement Authority:

A. Constitution of a State Land Acquisition and Compensation Disputes Settlement Authority

(1) The State Government shall constitute a body to be known as the State (name of the State) Land Acquisition and Compensation Disputes Settlement Authority to adjudicate, suo motu or on reference or petition filed by the authorities, requiring bodies, any affected person and interested parties on all issues under this Act and exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Authority shall consist of at least five persons:

- (i) a Chairperson who has been a High Court judge;*
- (iv) one representative of the Scheduled Castes*
- (v) one representative of Scheduled Tribes*
- (ii) one non-official social scientist and rehabilitation expert; and*
- (iii) one non-official environmental expert;*

(3) There shall be a Secretary of the Authority who shall be an officer of the State Government in the Law Department not below the rank of Director and who shall exercise such powers and discharge such functions of the Authority as may be delegated to him by the Authority or the Chairperson as the case may be.

Recommendations on the Land Acquisition (Amendment) Bill, 2007

B. Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the Governor of that State by warrant under his hand and seal:

Provided that every appointment under this sub-clause shall be made after obtaining the recommendation of a Committee consisting of

(a) the Chief Minister — Chairperson

(b) Speaker of the Legislative Assembly — Member

*(c) Minister in-charge of the Land and Rural Development in that State —
Member*

(d) Leader of the Opposition in the Legislative Assembly — Member

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

C. Local authorities

There shall be a local authority at project affected area level for dispute resolution. Such a local authority shall have the powers as assigned by the State Authority and consist of the following members:

- (i) a representative of women residing in the affected area;*
- (ii) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;*
- (iii) a representative of a voluntary organisation working in the area or having expertise on that area/affected peoples;*
- (iv) a representative of a nationalised bank;*
- (v) the Land Acquisition Officer of the project;*
- (vi) the Chairpersons of the panchayats or municipalities located in the affected area, or their nominees; and*
- (vii) a representative of the requiring body if relevant.*

The followings should be replaced and/or inserted in the relevant sub clauses of clause 17 of the Amendment Bill with regard to Central Land Acquisition Compensation Disputes Settlement Authority.

Recommendations on the Land Acquisition (Amendment) Bill, 2007

Constitution of a Central Land Acquisition and Compensation Disputes Settlement Authority:

A. Constitution of a Central Land Acquisition and Compensation Disputes Settlement Authority

(1) The Central Government shall constitute a body to be known as Central Land Acquisition and Compensation Disputes Settlement Authority to adjudicate, suo motu or on reference or petition filed by the authorities, requiring bodies, any affected person and interested parties on all the issues under this Act and exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Authority shall consist of at least five persons:

- (i) a Chairperson who has been a judge of High Court;*
- (iv) one representative of the Scheduled Castes*
- (v) one representative of Scheduled Tribes*
- (ii) one non-official social scientist and rehabilitation expert; and*
- (iii) one non-official environmental expert;*

(3) There shall be a Secretary of the Authority who shall be an officer of the Central not below the rank of Secretary to the Government and who shall exercise such powers and discharge such functions of the Authority as may be delegated to him by the Authority or the Chairperson as the case may be.

B. Appointment of Chairperson and other Members

(1) (1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal;

Provided that every appointment under this sub-clause shall be made after obtaining the recommendations of a Committee consisting of—

- (a) The Prime Minister — Chairperson*
- (b) Speaker of the House of the People — Member*
- (c) Minister in-charge of the Ministry of Rural Development in the Government of India — Member*
- (d) Leader of the Opposition in the House of the People — Member*
- (e) Leader of the Opposition in the Council of States — Member*
- (f) Deputy Chairman of the Council of States — Member*

VII. Delete bar on jurisdiction of civil court

The participants of the Regional Consultation lamented clause 17K of the Bill which bars jurisdiction and issuance of injunction by any civil court to entertain any dispute relating to land acquisition in respect of which the District Collector or the relevant Authority is empowered by or under this Bill.

In its Statement of Objects and Reasons, the government cited the providing of speedy disposal of disputes relating to land acquisition compensation. Therefore, the Bill provides for the establishment of State Authorities and Central Authority.

This is a serious attack on independence of judiciary and does not abode well for any country claiming to be democratic. Even the principal Land Acquisition Act of 1894 provided for recourse to the High Court, albeit in matters of compensation. The executive must uphold the majesty of the rule of law.

The bar on the right to approach the Court is legally untenable. The jurisdiction of courts cannot be subsumed by any tribunal or quasi-judicial bodies. In addition, the decisions of the tribunals are subject to review by the relevant courts.

Recommendations:

Clause 17 K should be deleted and the following texts should be inserted in place of clause 18.

4. Other provisions not considered by the Ministry to be amended

The Ministry of Rural Development has failed to recommend repeal of a number of provisions in the principal Land Acquisition Act of 1894.

The participants also recommended deletion of clause 24 of the principal Land Acquisition Act which bars the Court from taking certain issues into consideration. Similarly, the participants recommended deletion of clause 45 which makes it mandatory to affix the notice under the Land Acquisition Act to a male member of the family only.