ALLIANCE FOR
SUSTAINABLE & HOLISTIC
AGRICULTURE (ASHA)
Food • Farmers • Freedom

LAND ACQUISITION AND R&R BILL 2011: Response from Alliance for Sustainable and Holistic Agriculture (ASHA)

Dear members of the Parliamentary Standing Committee on Rural Development,

We are writing from the Alliance for Sustainable and Holistic Agriculture (ASHA), a network of more than 400 organizations across the nation that came together with the Kisan Swaraj Yatra, to work for farmers' rights over natural resources, to promote ecologically sustainable agriculture and to ensure economic security for all farming families.

The LARR Bill 2011 is a very significant legislation to address the longstanding crisis related to Land Acquisition, and Resettlement & Rehabilitation. There is absolutely no question that both need fresh statutory frameworks and combining both into one law is a positive and requisite step in that direction. However, there are serious shortcomings in the Bill which are cause for deep concern and prevent this Bill from being a truly pro-people legislation that will uphold social and economic justice.

At the outset, while the Ministry of Rural Development placed the draft Bill in public domain for comments, we are very disappointed that despite a great number of requests to strengthen the Bill, the version introduced in the Parliament is a weaker version of the Bill from the point of view of the pro-people provisions.

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- Most importantly, Clause 98 (1) of the Bill says that "the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule." The Fourth Schedule includes 16 Acts including the SEZs Act, Railways Act, Highways Act, Works of Defence Act, Petroleum and Minerals Pipeline Act, Land Acquisition (Mines) Act, Coal Bearing Areas Act, and so on! We believe that it is meaningless to discuss this Bill if most of the chief causes of displacement are exempted from the Bill! Any new LARR Bill adopted should over-ride the other existing Acts, subject to Clause 100.

- We urge you to expand the period and process of deliberation on the Bill – the time provided for comments by the Ministry was too short for a Bill dealing with an issue of such wide-ranging public debate and contentiousness. Many organizations demanded at least 3 months of comment period but this was not granted.

- A Bill of this complexity requires public consultations – written responses and presentations in Delhi before the Standing Committee are grossly insufficient to capture the responses from the people at the grassroots for whom this Bill really

matters. We demand that public consultations be held in several locations across the country to get true inputs from the people.

- The Bill should be provided in local languages to get feedback from the people whose lives would be really affected by the Bill. ASHA member organizations work in more than 20 states; and the Bill has not been available in local languages in most states, especially the non-Hindi speaking states. As things stand, even the limited feedback received in the short time has been from those savvy with English and Hindi.

After this process, the necessary modifications and improvements should be made to the Bill and only then it should be placed before the Parliament. In the context of the events of the past two weeks, we are sure you appreciate that the way to restore trust in the law-making processes is to have extensive public inputs into the draft Bill.

We are placing these major concerns upfront and reiterate the demand for public consultations in regional languages, held by the Standing Committee. Please find attached our detailed comments on the Bill.

With regards,

Kavitha Kuruganti

Convenor

Kavitha_kuruganti@yahoo.com

09393001550

Kiran Vissa

Co-convenor

kiranvissa@gmail.com

09000699702

Detailed Response to the draft LARR Bill

Land Acquisition has always been a contentious issue in India, especially because for all families and communities dependent on land, their rights over the use and ownership of land forms the fundamental underpinning of their livelihood and way of life. The fact that India persisted with the colonial Land Acquisition Act from 1894 further denied justice to the people, and the amendments to the Act and its cavalier application in independent India have only made the situation worse. As for Resettlement and Rehabilitation, there is hardly any case among the thousands of projects in 62 years across the country, where fair and timely R&R have been provided.

There is absolutely no question that both Land Acquisition and R&R need fresh statutory frameworks and combining both into one law is a positive and requisite step in that direction. However, there are serious shortcomings in the Bill that is a cause for deep concern and prevent this Bill from being a truly pro-people legislation that will uphold social and economic justice.

Firstly, there are some improvements over the current system especially in the R&R that ASHA welcomes.

a. The project affected includes not only land-owners, and that the holders of assigned land (mainly Dalits) are also granted full rights for LA and R&R.
b. Restrictions are placed on the acquisition of agricultural land (though not sufficient)
c. Social Impact Assessment process to be completed before determination is made on whether or not the project satisfies "public purpose" (though the process should be made more participatory)
d. Possession of land by the administration can actually take place only after R&R is completed.
e. Some measures for post-implementation social audits (though not sufficient)

However, ASHA has the following deep concerns with regard to the draft legislation:

1. The Bill, as it does expressly state, is about facilitation of land acquisition without addressing more fundamental issues at a larger level, including diversion of agricultural land into non-agricultural uses; without assessing the potential of other sectors to actually absorb and provide sustainable livelihoods to millions who could be potentially displaced in future through these facilitated processes etc. In fact, no cumulative impact assessment at a macro-level has ever been attempted so far, other than the acceptance that industrialization must be supported through facilitated land acquisition. We endorse the demand by other groups including National Alliance of People's Movements (NAPM) for a Development Planning Act which makes participatory development planning as the starting point and then includes provisions for land acquisition and R&R.

   There is also a need for Land Use policy to be debated and adopted in each State, which addresses the issues of diversion of agricultural land for non-agricultural purposes and unplanned urbanization.

2. Clause 98 (1) of the Bill says that "the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule." The Fourth Schedule includes 16 Acts including the SEZs Act, Railways Act, Highways Act, Works of Defence Act, Petroleum and Minerals Pipeline Act, Land Acquisition (Mines) Act, Coal Bearing Areas Act, and so on! We believe that it is meaningless to discuss this Bill if most of the chief causes of displacement are exempted from the Bill. We demand that any new LARR Bill adopted should over-ride the other existing Acts, subject to Clause 100.

3. Further, Clause 98(2) specifies that the Central government can, by notification, add omit or add to any of the enactments specified in Fourth Schedule. This is a provision which makes the situation even worse by leaving it to executive decision to exempt any other laws also from the LARR Act *after it is adopted.*

4. Clause 98(3) specifies that "the Central Government may, by notification, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule"

   While this may give the impression that the government intends to extend the provisions to other Acts at a later date, it is crucial to note that this provides only for applying the R&R provisions to the other enactments. In other words, the process of Social Impact Assessment (SIA), the public hearings before determining the public purpose and whether less displacing alternatives are available, inclusion of possessors of assigned land among the project-affected people, and such other pro-people provisions of the Act do not apply. In other words, even with Clause 98(3) in place, it is very clear that most of the provisions of the new LARR Act *will not apply to a vast majority of the land acquisition cases.*

5. The clause around an absolute NO to irrigated, multi-cropped land will not protect the vast majority of the marginalized agricultural communities in this country living in rainfed belts, somehow surviving on single crop lands and also feeding others. There should be a priority order of land categories for the government for identifying land for acquisition, and there should be special protection for assigned lands and any lands owned by SCs and STs.

6. The biggest problem is with the broad scope and definition of Public Purpose that continues in the draft Bill. 2. (y) defined public purpose to include provision of land for infrastructure, industrialization and urbanization projects, "where the benefits largely accrue to the general public". Further, under infrastructure, Mining, Tourism, Sports, Housing etc., are all being included in the definition of "Infrastructure Project" under 2. (n)! Similarly, Public Purpose is also being defined as 2. (y) (iv) as provision of land for any other purpose useful to the general public, including land for companies! We demand that the definition of 'public purpose' be made more focused and well-defined.

7. ASHA strongly opposes the acquisition of land by the government for private companies. This should not be allowed as part of this Bill. The machinery of the State should simply not be used to acquire land for a private company, whatever the purpose. Any safeguards that are needed to protect the land owners from being exploited by the private companies in case of direct purchase, should be introduced through a separate mechanism that governs the private companies.

8. While it is being argued that there are now elaborate pre-acquisition processes, without the hitherto-arbitrary nature of the urgency clause being invoked often in future etc. etc., there is nothing in the statute that expressly leads to "minimizing of displacement of affected persons". For instance, what kind of social impact assessment would actually lead to a refusal of acquisition of land at a particular location, of a particular community etc.?

9. Social Impact Assessment: While the introduction of Social Impact Assessment process is welcome, it should not be limited to acquisitions of 100 acres or more. The limit should be changed to 25 acres.

10. The Social Impact Assessment (SIA) clauses need to be strengthened much more, for it to be an effective assessment process. The clauses as they exist now do not provide for a participatory assessment of all the dimensions of the proposal, instead they run the danger of making this a bureaucratic rubber-stamping process.

11. Clause 4 (1) stipulates that the government carries out the Social Impact Assessment in consultation with the Gram Sabha. Instead, the SIA should be carried out with the full involvement of the Gram Sabha based on their resolutions. The Social Impact Assessment should not only decide the ameliorative measures to be taken as described in 4 (4) but also whether the public hearing says Yes or No to the public purpose and to the land acquisition.

12. Appraisal of the SIA by an Expert Group – such an expert group should have at least 3 representatives from the affected families, preferably representing different communities and categories of affected people. Similarly, the Chief Secretary Committee should have representation from affected families.

13. Chief Secretary Committee's guiding principles: principle of minimum displacement of people, minimum disturbance to the infrastructure and ecology and minimum adverse impact on the individuals affected: What needs to be the most important guiding parameter should be as assessment of alternatives for the proposed project ("principle of least-displacing alternative" + "principle of least effect on food security").

14. There is also the question of Common Property Resources being diverted for other uses. The Bill remains silent on this subject (of acquisition of lands beyond private land).

15. The clause requiring the consent of 80% PAFs – should be the case for all projects, not only the acquisition for private companies as the draft Bill provides. The mechanism for establishing the consent is also important. The Bill should require well-informed written consent of the PAFs as well as approval of the Gram Sabha.

16. R&R should accompany all acquisitions and not just if it is equal to or more than 100 acres. One can stop at the magical figure of 99 acres, to circumvent this! Similarly, R&R provisions have to apply to government acquiriing land too, for its own use, to hold and to control. Also, rather than the number of acres of land, the cut-off norm should apply in terms of number of affected families?

17. Schedule II, related to R&R entitlements: Land for Land should apply to all displacements and not just irrigation projects.

18. Section 10 on Payment for Damage: Should be a broad-based committee and not the decision of just the Collector or the Chief Revenue Officer of the district.

19. Section 11: Objections to Preliminary Notification: Once again, a one-member mechanism in the Collector is not adequate since this is the first forum where the PAFs can object to the purpose, extent and the social impact assessment (the first public hearing as per 4 (1) is to ascertain views to be recorded and included in the SIA report). "The decision of the Appropriate Government on the objections shall be final" is also inadequate as laid down in Section 11 (3). There should be an appeal mechanism built in.

20. Section 12: Preparation of R&R Scheme: This should clearly take into account Common Property Resources. *A baseline census survey is being prescribed at this stage. However, this should be part of the social impact assessment report itself, to be verified later by the R&R administrator at this stage. Otherwise, how will the principle of least displacement and least adverse impact be assessed by the CS Committee?*

21. Section 12: Public hearings by the R&R administrator on her/his scheme: What is the purpose of these public hearings? If the R&R plan is not acceptable to a majority of PAFs, how will this be taken into consideration and acted upon?

22. Section 14 (2): Declaration of land acquisition along with R&R summary: The publication should happen only after the full amount for acquisition is deposited and not in part.

23. Section 16 – Notice to persons interested: The time period should not be earlier than thirty days at least, given that some of the PAFs may be landless, migrant households. This applies to Section 17 also.

24. Section 19: Land Acquisition Award to be made within a period of two years : in such a case, the R&R package should also apply to at least two years!

25. Section 29: Power to take possession: The Collector shall take possession, upon full payment of compensation within a period of 3 months and R&R entitlements within a period of 6 months, says the Draft Bill. We believe that the R&R entitlements should be delivered within 3 months too, except for the common amenities.

26. Section 30: Special powers in case of urgency: It would be good to lay down an institutional mechanism to verify and audit the invoking of this clause on an annual basis, along with the PAFs.

27. Section 31: Not clear when an R&R administrator will be appointed – "where there is likely to be involuntary displacement of persons", the draft bill says.

28. Section 33: R&R Committee, where land proposed to be acquired is equal to or more than one hundred acres, whereas provision of infrastructural amenities in the Resettlement Area (Section 23) is being proposed for cases where there are more than 100 families displaced. ASHA believes that this should apply to even 50 families being displaced.

29. Further, R&R Committees should be involved in planning too and not just monitoring and reviewing progress of implementation and post-implementation audits. Like the composition of R&R committees which are broad-based, the committees at the earlier stages of the acquisition and award processes should have broad-based committees.

30. Section 36: LARR Dispute Settlement Authority at the state level: Should have a social activist of repute in the authority.

31. Section 54: Temporary occupation etc: This section to be deleted.

32. Schedule II: R&R Entitlements: Subsistence grant for displaced families for one year: The amount of 3000 rupees is quite low; further the time period should be extended to at least till such time as all R&R amenities become functional. For instance, if the school building or hospital don't come up in time, this subsistence allowance may not be enough for education and health costs. Two lakh rupees in lieu of mandatory employment is too low.

33. Schedule II – 13 – special provisions for Scheduled Tribes: This section should not be just in the case of R&R. There should be special norms for acquisition itself, where displacement of tribal communities should be minimized in the land acquisition itself.

34. While the inclusion of (4) is appreciated for its intent, it is not clear if one third of the compensation amount that is paid at the very outset can be refunded where the possession of land never takes place ultimately for some reason or the other!