

**AMNESTY INTERNATIONAL INDIA SUBMISSION TO THE JOINT PARLIAMENTARY
COMMITTEE EXAMINING THE RIGHT TO FAIR COMPENSATION AND
TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT
(SECOND AMENDMENT) BILL, 2015**

Amnesty International India welcomes the opportunity to make a submission to the Joint Parliamentary Committee on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 [the Bill] and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [the Act].

Amnesty International India is deeply concerned that the Bill, if passed into law in its current form, will undermine the rights of communities to participation and genuine consultation about issues that affect them, and thereby facilitate and encourage forced evictions, which are prohibited by international law.

This submission analyses some of the provisions of the Bill and the Act in light of India's obligations under international human rights law. Specifically, it focuses on issues concerning human rights impact assessments, the right to consultation, and the right to Free Prior Informed Consent (FPIC) of indigenous communities affected by development projects.

PART I: INTRODUCTION

Development and infrastructure projects in India are estimated to have caused the physical displacement of about 60 million people from 1947 to 2000, of which an estimated 5 million were displaced by mining alone¹. According to government estimates, only 29 per cent of those affected by displacement have been rehabilitated².

Until 2013, land acquisition for development projects in India was carried out under the Land Acquisition Act, 1894. This law's lack of safeguards and loose definition of the 'public purpose' for which land could be acquired led to large-scale forced evictions, uprooting millions of families from their homes without adequate compensation, rehabilitation or remedy³. The law contained no provisions for consulting affected communities, obtaining the consent of indigenous communities, or assessing the human rights impacts of land acquisition.

¹ Walter Fernandes, 'Singur and the Displacement Scenario', *Economic and Political Weekly*, 20 January 2007; Walter Fernandes, 'Rehabilitation for the Displaced', *Economic and Political Weekly*, 20 March 2004.

² Planning Commission (Government of India), Twelfth Five Year Plan (2012-2017): Social Sectors. Available at: http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/XIIFYP_SocialSector.pdf

³ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights: India, UN Doc E/C.12/IND/CO/5, 8 August 2008, para 31. Available at: <http://www.refworld.org/docid/48bbdac42.html>

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force in January 2014, vastly improved on the law of 1894, and contained several progressive provisions related to consultation, consent and social impact assessment.

However the Act stated that its provisions would not apply to land acquisition carried out under 13 other laws – including The Coal Bearing Areas Acquisition and Development Act, 1957; The Railways Act, 1989; The Land Acquisition (Mines) Act, 1885 and The Atomic Energy Act, 1962⁴. Instead, it said that the government “shall, by notification” extend the Act’s provisions on compensation, rehabilitation and resettlement to acquisition under these 13 laws within a year of its coming into force. However it made no provision for other requirements to be extended as well.

On 31 December 2014, the government passed a temporary executive ordinance which introduced major amendments to the Act. While the ordinance extended the Act’s provisions on compensation, rehabilitation and resettlement to acquisition under the 13 laws that had been previously excluded, it limited the applicability of provisions on consultation, consent and social impact assessments to a wide range of projects (see further below).

Despite widespread opposition from communities, civil society organizations, and other political parties, in February 2015, the government introduced a bill in Parliament seeking to make these amendments permanent. The bill was passed with some minor changes on 10 March in the Lok Sabha (lower house). However the bill faced opposition from other political parties in the Rajya Sabha (upper house). On 12 May, the government agreed to refer the Bill to a Joint Parliamentary Committee – a panel comprising members of both houses of Parliament from various political parties.

Since the ordinance is temporary in nature, it has been passed again twice by the government, on 3 April 2015 and 30 May 2015, to extend its validity.

Forced evictions violate the right to adequate housing, and also negatively impact a range of other human rights which India is obligated to respect and protect, including the rights to food, water, health, education, work, security of the person, private and family life, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.

India is obligated under international law to refrain from, and protect against, forced evictions. These obligations flow from several international human rights treaties – to which India is a state party - which protect the human right to adequate housing and other related human rights, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination.

⁴ Fourth Schedule of the Act, List of Enactments regulating Land Acquisition and Rehabilitation and Resettlement. Available at <http://dolr.nic.in/dolr/downloads/pdfs/Right%20to%20Fair%20Compensation%20and%20Transparency%20in%20Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Act,%202013.pdf>

PART II: CONCERNS AND RECOMMENDATIONS WITH RESPECT TO THE BILL

Amnesty International's concerns with respect to some provisions of the Bill are outlined below:

1. Social Impact Assessment

The Act mandates, prior to land acquisition, a social impact assessment (SIA) – a study by independent experts to map a project's impact on people's lands and livelihoods, and its economic, social and cultural consequences, in consultation with affected communities. As stated earlier, projects for which land acquisition is carried out under 13 laws are exempt from this requirement.

Section 5 of the Bill seeks to amend the Act such that a range of other projects can also be exempted from having to be subject to a social impact assessment. These are:

- Projects “vital to national security or defence of India and every part thereof including preparation for defence or defence production”;
- Rural infrastructure including electrification;
- Affordable housing and housing for poor people;
- Industrial corridors, where land can be acquired “up to one kilometre on both sides of designated railway line or roads for such industrial corridor”; and
- Infrastructure projects including projects under public-private partnership.

These categories cover a wide range of projects, including hospitals, ports, special economic zones, tourism facilities, cold chains, fertiliser factories, roads, airports and urban public transport⁵.

Amnesty International India's concerns:

A social impact assessment is crucial to secure the rights of all potentially affected persons, groups and communities, including their protection against forced evictions. Compensation, rehabilitation and resettlement without a proper social impact assessment is likely to be neither fair, nor transparent nor effective.

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement require states to carry out comprehensive and holistic impact assessments prior to the initiation of any project that could result in eviction and displacement. The Principles state that “eviction-impact” assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. They should also include exploration of alternatives and strategies for minimizing harm⁶.

⁵ Ishan Bakshi and Nitin Sethi, “Land law: Exemptions granted to private firms”, *Business Standard*, 5 February 2015. Available at http://www.business-standard.com/article/economy-policy/land-law-exemptions-extended-to-private-firms-115020500041_1.html

⁶ Principles 32 and 33 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

In a similar vein, under international law binding on India, the government must protect people from human rights abuses by third parties, including private and state-owned companies⁷. Further, under the UN Guiding Principles on Business and Human Rights, states should require human rights due diligence from companies where business operations pose a significant risk to human rights⁸. In this respect, companies should have in place a human rights due diligence process to identify and assess any actual or potential adverse human rights impacts, and take steps to prevent and mitigate them.

An SIA under the Act is envisioned as an exercise meant to not just map the rights and dependencies of all communities impacted by the project, but also to provide a thorough assessment of individual and community assets at stake. This is crucial to determine alternatives, mitigate impacts, and determine compensation, rehabilitation and other remedial measures through informed and meaningful consultation. It is an exercise that can minimise future conflicts between companies and local stakeholders, and avoid delays in the long term.

An SIA can consider the nature of communities at risk, the available land for resettlement, community dependencies on common property resources, and livelihood activities and social cohesion patterns. Yet such assessments have long been missing from land acquisition for development projects in India, where they are often made without clear terms of reference leading to social conflict, litigation, inadequate rehabilitation and unpaid compensation.

While Environment Impact Assessments (EIAs) are important, they are insufficient on their own. EIA reports list the environmental impacts of projects and the pollution they can cause, but they do not account for the loss of common property resources and the impact on livelihoods. While EIA reports include a social impact component, this is often sparse. Additionally, EIA reports are prepared by third parties hired by project proponents, creating a risk that they will not be totally objective and accurate.

The SIA team is supposed to determine whether a project will serve a 'public purpose' through a detailed cost-benefit analysis. However the Bill in effect assumes that certain projects serve a 'public purpose'.

Amnesty International India's recommendations:

All projects which will involve land acquisition must go through a comprehensive and holistic social impact assessment.

Section 2(1) of the Act should be amended to ensure that social impact assessments are required in all cases of land acquisition.

Section 105 of the Act should be amended to remove the exemptions for land acquisition carried out under 13 other laws from being subject to a social impact assessment.

⁷ See, for example, Committee on Economic, Social and Cultural Rights, General Comment 15: The right to water (articles 11 and 12), UN Doc E/C.12/2002/11, 20 January 2003, paras 23–24. Available at <http://www.refworld.org/docid/4538838d11.html>

⁸ Principle 4 of the UN Guiding Principles on Business and Human Rights.

Section 5 of the Bill should be revised to remove the exemptions created for the named categories of projects.

Social impact assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed. They must include specific information on anticipated impacts, and must be used to determine the feasibility of land eviction in a transparent manner. Where land acquisition is the only possible option, impact assessments must be used to inform the entire eviction process as well as compensation, resettlement and other remedial measures.

2. Right to genuine consultation

The Act states that the consent of 70 per cent of affected families is mandatory where land is sought to be acquired for public-private partnership projects, and 80 per cent for private projects.

The Bill states that a range of projects can be exempted from this requirement⁹.

Amnesty International India's concerns:

Forced evictions can result in a range of human rights violations, for individuals, families and communities, impacting their lives and livelihoods. Genuine consultation with affected communities can ensure that alternatives to evictions are explored, and the use of force is minimized or even avoided.

The UN Committee on Economic, Social and Cultural Rights, which monitors state compliance with the International Covenant on Economic, Social and Cultural Rights – to which India is a state party - has identified genuine consultation with affected persons as a fundamental safeguard against forced evictions. The UN Committee has also highlighted that “States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons¹⁰”.

The Committee emphasizes that state parties must use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant, such that they provide the greatest possible security of tenure to occupiers of houses and land, while evictions can only take place under strictly controlled circumstances¹¹.

Similarly, the UN Basic Principles and Guidelines on Development-based Evictions and Displacement state that “all potentially affected groups and persons...have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider¹²”.

⁹ Section 5 of the Bill.

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment 7: The right to adequate housing (articles 11.1), UN Doc E/1998/22, 20 May 1997, para 13.
<http://www.refworld.org/docid/47a70799d.html>

¹¹ CESCR, General Comment 7, para 9.

¹² Principle 38 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

Experience has shown that across India, project-affected communities' concerns regarding rehabilitation and compensation are dismissed at the public hearings held during the environmental clearance process¹³. Their lack of participation in this process is compounded by the fact that environmental data shared with them prior to public hearings can be incomprehensible due to the technical nature of the information.

In contrast, the public hearings held during the consent and social impact assessments under the Act involve sharing the terms and conditions of compensation with communities, as well as allowing for negotiation and developing rehabilitation plans.

Amnesty International India's recommendations:

All projects which require land acquisition must involve a process of informed, meaningful and genuine consultation with affected communities at every stage. The consultations must provide access to relevant project information as well as information on how communities can protect their rights and secure an effective remedy.

Section 5 of the Bill should be revised to remove the exemptions created for the named categories of projects from consulting affected communities.

Social impact assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed. They must include specific information on anticipated impacts, and must be used to determine the feasibility of land eviction in a transparent manner. Where land acquisition is the only possible option, impact assessments must be used to inform the entire eviction process as well as compensation, resettlement and other remedial measures.

3. Right to Free Prior and Informed Consent

The Act contains a provision requiring the consent of communities in 'scheduled areas' - Adivasi regions identified under the Constitution as deserving special protection – before land could be acquired. As stated earlier, projects for which land acquisition is carried out under 13 laws are exempt from this requirement.

Amnesty International India's concerns:

Adivasi communities in India have faced severe violations of their rights caused by development-induced displacement. An estimated 40 per cent of those displaced from 1947 to 2000 were Adivasis¹⁴, who make up about 8 per cent of the country's

¹³ See, for example, the order of the National Green Tribunal – a dedicated environmental court – in *Adivasi Majdoor Kisan Ekta Sangathan and Jan Chetna v. MoEF, Chhattisgarh Environment Conservation Board, M/s Jindal Steel & Power Limited*, Appeal No. 3/2011 (T) (NEAA No. 26 of 2009). Available at http://greentribunal.gov.in/Writereaddata/Downloads/32011%28T%29_20Apr2012_final_order.pdf. The Tribunal said that a public hearing held as part of the environmental clearance process for a private coal mining project was 'nauseating' and a 'farce'.

¹⁴ Planning Commission (Government of India), "Faster, Sustainable and More Inclusive Growth: An Approach to the Twelfth Five Year Plan", October 2011, p.50. Available at: http://planningcommission.gov.in/plans/planrel/12appdrft/approach_12plan.pdf

population. The ability of Adivasi communities to maintain their culture and livelihood often depends on their relationship to ancestral lands.

The right to free prior and informed consent concerning projects and policies that may impact indigenous communities is recognized by several international human rights instruments, including the ICCPR, ICESCR, and the Convention on the Elimination of All Forms of Racial Discrimination, all of which India is a state party to.

In addition, the 2007 UN Declaration on the Rights of Indigenous Peoples, which has been endorsed by India, requires states to obtain the free, prior and informed consent of Indigenous Peoples in a number of situations in which their rights may be significantly affected. In cases relating to land rights, initiatives should not go ahead unless the consent of the community has been obtained.

India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act requires the prior consent of Adivasi communities to be obtained before forest land is put to industrial use.

Amnesty International India's recommendations:

Section 41 of the Act should be amended to ensure that the free prior and informed consent of indigenous communities is sought wherever they may live, and not just in scheduled areas.

Section 105 of the Act should be amended to remove the exemptions for land acquisition carried out under 13 other laws from obtaining the prior consent of affected indigenous communities.

Amnesty International India urges the Joint Parliamentary Committee to consult affected communities and their representative institutions, as well as civil society and other stakeholders over a wider timeline, to ensure that any amendments to the Bill comply with international standards.