

### **AGENDA NOTE-III**

Subject : Comments on the draft Land Acquisition (Amendment) Bill, 2007

It was decided in the 19th meeting of the Commission held on 06.05.2010 for finalization of the chapter on 'Resettlement and Rehabilitation of displaced Tribals' for the Annual Report for the year 2008-09 that detailed comments of the Commission on the Land Acquisition (Amendment) Bill, 2007 will separately be drafted and put to the Commission for consideration so that NCST's concerns regarding alienation of tribal lands are incorporated into the proposed legislation at a suitable juncture. The provisions of the draft Bill and draft comments of the Commission are enclosed as **Annexure**. Following are the considerations suggested for drafting NCSTs comments (in italics) on the Land Acquisition (Amendment) Bill, 2007.

2. Land transfer regulations in Scheduled Areas generally prohibit transfer of tribal land without the permission of designated authorities. Therefore, surrogate acquisition of tribal land by the Govt. has assumed larger dimension in recent times. Involuntary displacement of the tribals through the government-led acquisition process of their lands, homes and entire ecosystem has emerged as a significant concern. The irony is that the process of deprivation is carried out through the process of law and bears the stamp of the authority of the state in the name of the development of very people whom it debilitates.

3. The principal statutory instrument for resumption of rights over land by the State is the Land Acquisition Act (LA Act), 1894 (There are other enactments also to acquire land for the Railways, construction of Highways, mining of Coal, etc.). The LA Act, 1894 is a statutory statement of the State's power of 'eminent domain', which is considered a necessary adjunct to the doctrine of sovereignty and is to be invoked for the furtherance of public good. This Act denies to the individual, from whom the land is acquired, the right to exercise choice as to whether to part with the land or not, so long as the acquisition is done for the

'public purpose'. The only limitation to the power of 'eminent domain' is the entitlement of compensation to the land loser. Under the LA Act, 1894, compensation is given on the basis of the notional value in the market without considering the social cost of the land and treating the displaced person as a willing seller. Only the claims of land owners or other interest holders filing their claims are considered and landless interest-holders are not taken care of. It is suggested that *land acquisition laws should also recognize the rights of sharecroppers, etc and other persons who derive their livelihood by providing services to land owners.*

4. Section 3(f) of the Land Acquisition Act, 1894 defines public purpose to include carrying out any educational, housing, health or slum clearance scheme, the provision of any premises or building for locating a public office, the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities and so on. It includes provisions for compensation (s.11) and provides for recourse to legal remedies (s.18). The tribal is weak in bargaining strength and cannot negotiate nor exercise available legal remedies. The Act has also been criticized for considering land only as a commodity generating income. However, when a family is settled on a piece of land, not only does it earn its livelihood from it but it also has a whole social network, which is uprooted by displacement.

5. In 1984, the Land Acquisition Act, 1894 was comprehensively amended vide Land Acquisition (Amendment) Act, 1984. Amendment provided that in case payment is made after the declaration of the award, the amount under award should carry an interest of 12% per annum for the period commencing on from the date of publication of the notice under section 4(1) to the date of award of the collector or taking possession of the land, whichever be the earlier (as per section 23(1A)). As per section 23(2), an amount equal to 30 % of the market value determined under section 23(1) was added as 'solatium' due to compulsory nature of acquisition.

6. The Land Acquisition (Amendment) Bill was introduced in the Lok Sabha on 6 December 2007 and was referred to the standing committee of the 14<sup>th</sup> Lok Sabha by the Speaker. The Bill was passed by the Lok Sabha, but could not be tabled in the Rajya Sabha; and, therefore, lapsed. However, NCST was not consulted for its views/ comments. The LA(A), Bill, 2007 gives power to acquire any land (private, forest or government) for the 'public purpose', which as defined in clause 5(V) includes:

- (i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State;
- (ii) the provision of land for infrastructure projects of the appropriate Govt., where the benefits accrue to the general public; and
- (iii) the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project as yet to be required

7. It may be noted that "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 by invoking the LA Act can continue to acquire any amount of land for the companies for "generation, transmission or supply of electricity" and "mining activities". Since the vast majority of commercial applications relate precisely to these purposes, this effectively renders the limit of acquisition of land (up to 30%) for a company under sub-clause (iii) of Clause (f) redundant.

8. Evidently, a project serves a public purpose when it is intended to be used by people and is open to the community/public at large. This, however, may not necessarily serve public interest, for e.g. an amusement park may be open to the public but it is not in public interest. Public interest will have to be determined not by who or how many have access to it, but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used. It is important to emphasize that the land and everything attached to it that is acquired under the LA Act, 1894 in the name of public purpose is very often already serving a public purpose. For instance, forests acquired for a reservoir are also serving a public interest. The LA Act, 1894 treats everything acquired as if it were serving only the limited, individual private interests. The fact that the land proposed to be acquired may already be serving a public interest is significant and merits recognition in law. It also merits recognition in the cost-benefit analysis of the project in terms of, for instance, the marginal utility of the new public interest the project espouses vis-à-vis its present public interest value of the land use. As far as the tribals are concerned, this marginal utility has to be further subordinated to the consequential erosion of social weal even if alternative land can be made available for their resettlement and livelihood.

9. The Courts in various judgments have also held that the State being a sovereign power has inherent rights to acquire land by paying suitable compensation to those displaced. The Supreme Court in its recent Judgement (dated 05.09.2008 in CA 5509/2008 & other CAs) dismissed a complaint against the Andhra Pradesh Govt. for acquiring land for Andhra Pradesh Infrastructure Investment Corp. (APIIC). The appellants argued that the Government of Andhra Pradesh sought to acquire a large chunk of land in the name of 'public purpose' with oblique motive to transfer valuable land of small farmers, whose only livelihood was dependant on land attempted to be acquired by the respondents, to a foreign company and few selected persons with vested interest. At the same

time, huge land owned and possessed by influential persons and other persons in public life had been excluded. According to the appellants, power of 'eminent domain' has no application to such cases. The respondents submitted that the land was acquired for 'public purpose' and the acquisition was legal. Most of the appellants were not small land-holders or marginal farmers and have converted agricultural lands unauthorizedly into housing plots and sold them to various builders/developers/property dealers/estate agents. No doubt, there were certain small land- owners/farmers also. As per the industrial policy of the State Government, a decision was taken to construct 'Information Technology Park', under the Information Technology and Hardware Industrial Policy 2005-10. The State Govt. designated APIIC as Nodal Agency for development of Integrated Project and Emaar Properties, PJSC, Dubai was selected for implementation of the project. APIIC was having 26% share while Emaar Properties is having 74% share capital. The petitions were filed with a view to delay the proceedings which has resulted in gross injustice to Emaar which has made large investments. **The Hon'ble Court held that prima facie the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge and its decision are not beyond judicial scrutiny. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose'. A writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes 'public purpose'. The court ruled that any project which brings foreign exchange, generates employment opportunities and secure economic benefits to the State and the public at large serves the 'public purpose'.**

10. Such a comprehensive interpretation of public purpose, though it may have been ordained by the highest court on accepted legal principles, will spell doom for the existence of tribals in all regions of the country, especially in view of the current fascination for PPP projects heavily geared in favour of changed land

use as a substitute for public capital/ annuity payments. The NTP, 2006 has also stressed re-examination of the definition of the 'public purpose'. It has also noted that the public purpose for one category of population may result in the trauma of displacement for the tribal people and should be defined in such a manner that the rights of the tribal people are adequately safeguarded. NHRC have also suggested that there should be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities. Particularly, "compelling" and "overriding public interest" should justify any large-scale development project. In all cases of large-scale development projects, authorities should also seek the public consultations with people likely to be displaced.

11. It is essential to develop mechanisms whereby tribal people are not easily deprived from their ancestral lands. The takeover of their land for development purposes should be based on equitable and just considerations. Development efforts should not destroy tribal livelihoods and culture; and should directly benefit them also. *Instead of general usefulness, public purpose may be restricted to developmental activities if the Govt. owns more than 51 % therein, or redevelopment in the interests of area planning. It is suggested that 'public purpose' should be determined through a participatory and transparent process and should incorporate additional safeguards for tribals in which:*

*(i) The general interest of the community as opposed to the particular interest of individuals is directly and vitally addressed.*

*(ii) Displacement should be justified through the benefits of the project option outweighing the costs of loss of land, livelihood, shelter, habitat/culture, environment, capital and operating costs incurred and any public interest value accruing from the existing use of the land and everything attached to it.*

*(iii) The declaration of public purpose under Section 6 of the Land Acquisition Act, 1894 (other similar legislation) should be justiciable.*

*(iv) The rights of the tribals are adequately protected by providing land in lieu of land (even by diversion of forest areas).*

12. The LA (A) Bill, 2007 provides that once a person has purchased 70% of the total land required for a project useful to the general public, the government shall invoke the LA Act to acquire the remaining 30%. In this connection, it is pertinent to mention that the Government has a responsibility to ensure the implementation of the laws adopted across the country to prevent alienation of the tribal land. The authorities competent to permit transfer of tribal land should also be obliged to respect the same considerations which would govern determination of public purpose by the Govt. in the exercise of its right of eminent domain; and since the two activities might proceed in parallel in actual practice, they should attract similar obligations of rehabilitation and resettlement. This can only be ensured if land negotiations are transparent. The interest of tribal people will scarcely be served by legal legerdemain couched in obfuscatory exposition of public purpose to satisfy the letter of the acquisition laws; and , therefore, it would seem best to retain the provisions relating to acquisition of land for companies with clear limitation instead. It is suggested that *the amendment of definition of public purpose to provide for acquisition of lands for a company whose object may only be of general use to the public significantly expands the scope of the Land Acquisition Act for private purposes. In the interest of transparency, retention of Part VII of LA Act, 1894 along with substitution in the scope of the Section 38A to provide for acquisition only in cases where land has been obtained under lawful contract to the extent of 85% of the total area required for the project, may be preferred because it may facilitate pari passu extension of resettlement principles to privately negotiated land deals causing displacement (though voluntary in nature). Agreement with government under Section 41 of the LA Act, 1894 should also include obligations regarding resettlement & rehabilitation, preventing and mitigating the social and environmental impacts & risks of the project and the share of costs thereof to be borne by the company.* A new provision laying down the process to be followed by any requiring body seeking involuntary acquisition of land should be inserted into the Bill. The provision should inter-alia require that the body should justify the minimum total area required for the project to establish, the need for acquisition before any

purchase of land is contracted. This land requirement should be made known through public hearings before tribal land transfers are permitted by concerned authorities respecting the same considerations which would govern determination of public purpose.

13. To be a participatory exercise, the determination of public purpose has to be founded on the informed consent of the displaced persons. *Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed to consequential to displacement; and establish the overriding public interest which demands such sacrifice from them. Therefore, it is suggested that Social Impact Assessment should be conducted in Scheduled areas (including emotional and psychological impacts) irrespective of the quantum of displacement. (or, in cases of urgency, atleast where the number of displaced tribal families exceeds 25.). Besides, all land acquisition process in tribal areas must be held in abeyance till settlement of tribal rights under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. Land regularized under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 must not be alienated/acquired except in the case of emergency wherein same category of land must be provided. Individual notices may be issued to all persons known to have an interest in the land besides public notice so that they may also be enabled to seek judicial determination regarding the public purpose of acquisition.*

14. A commonly held grouse against land acquisition laws is that they vest land free from all encumbrances in the State for all time, depriving value derived from all possible uses of land or the changes in land use in future, which is also a reason for private preference for land acquisition since land titles are not very clear in India. Considering the involuntary nature of the transaction, only limited rights of usage for the intended purpose should be acquired (as in a lease), especially in the case of ancestral tribal lands. It is suggested that *Compensation*



*for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of long term profit sharing of the project derivable from land as a factor of production. Such "sweat" equity must be reasonably relatable to the nature of economic activity of the project and the equity base. Multiple uses of the land acquired must be accounted for in the compensation. For example, if agricultural land is used for mining, then besides compensation for use of land surface, the future earnings from mining activity should also be shared with land owners. 50% sweat equity (share in the future profits) to be provided for land owners in case of land development projects. In case of mining projects, a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Clause.22; for the duration of mineral extraction; and land returned to the owners thereafter or future earnings shared if non-agricultural use is continued in another form. Some land should invariably be provided to the tribals in lieu of land acquired as a source of livelihood for them. Further, tribals should be provided subsistence allowance till such time they start their livelihood on a new piece of land.*

15. It is often observed that the market value of tribal land is quite low, which foster tendency to exaggerate project requirements of land leading to unwarranted displacement. It is suggested that *if the acquired land is not used for the intended purpose or remain unutilized for a period of five years, it should be returned back to the original owner wherever possible, without insisting on the repayment of the compensation amount. Land record of Rights should continue to make mention of land owners to compensate them for alternative usage of land in future (since only limited rights would be transferred). In case the land is subsequently utilized for a different purpose (e.g. for real estate development, mining, etc.), the earnings from such activity should also be shared with the original land owners in similar fashion.*

16. R & R needs of displaced persons cannot possibly be second to any economic benefit derived from the projected land use. It is suggested that

*allotment of land in lieu of agricultural land and essential rehabilitation and resettlement should also be completed before physical possession of land is taken over from tribals. Urgency under Section 17(1) of the LA Act, 1894 should not be equated with emergencies under Section 17(2) for normal purposes; and the provision should either be made justiciable by the court or rescinded. "On-account" payment of 80% of the estimated compensation may also be made in such cases of delay in completion of award proceedings (as for land taken possession of under urgency clauses of Section 17, LA Act, 1894. In the event of delay in payment upto three years after taking possession besides interest payable @15%, a penal interest of similar order should also be levied; and a new award as per prevailing market rate should be made in case payment is delayed beyond 5 years. The cost of Resettlement and Rehabilitation Plan should also form part of the land award if the same is to be implemented by Govt. agencies.* NCST also supports the recommendation of the Parliamentary Standing Committee that

(i) all the benefits provided under the Land Acquisition and Rehabilitation and Resettlement legislation should be doubled at every stage in case of second and subsequent displacement of a family/ person.

(ii) The highest price of sale deed as indicated in the sale deeds of the last three years plus 50 per cent of the said highest price should be the criteria for assessing and determining the market value of the land.

For tribal areas, the highest price of a sale deed of the adjoining non-tribal blocks/village for the last three years plus 50 percent should be the criteria in this regard. Provision should be made to provide some share of the resultant hike due to land acquisition to the persons on whose land the specific project is set up.

17. Proposed comments in respect of various clauses of the Bill are annexed for consideration. After the approval of the Commission, the comments of the NCST would be forwarded to the Ministry of Rural Development as well as MTA

for suitable incorporation in the proposed legislation as well as other similar laws which provide for involuntary resumption of private land by the State.

LA (A) Bill, 2007

ANNEXURE

Clause	Provision	Comments of NCST
1	<p>(1) This Act may be called the Land Acquisition (Amendment) Act, 2007.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as reference to the coming into force of that provision.</p>	No Comments
2	<p>In the long title to the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act), the words “and for Companies” shall be omitted.</p>	<p>Land regulations generally prohibit transfer of tribal lands to others except with the approval of designated authorities. Therefore, surrogate acquisition by the Govt. has assumed larger dimension in recent times.</p> <p>The amendment of definition of public purpose to provide for acquisition of lands for a company whose object may only be of general use to the public significantly expands the scope of the Land Acquisition Act for private purposes. In the interest of transparency, retention of Part VII of LA Act, 1894 along with substitution in the scope of the Section 38A to provide for acquisition only in cases where land has been obtained under lawful contract to the extent of 85% of the total area required for the project, may be preferred because it may facilitate <u>pari passu</u> extension of resettlement principles to privately negotiated land deals causing displacement (though voluntary in nature).</p> <p>Agreement with government under Section 41 of the LA Act, 1894 should also include obligations regarding resettlement &amp; rehabilitation, preventing and mitigating the social and environmental impacts &amp; risks of the project and the share of costs thereof to be borne by the company.</p>
3	<p>In the principal Act, in the preamble, the words “and for Companies” shall be omitted.</p>	Same as for Clause 2 above.
4	<p>After section 1 of the principal Act, the following section shall be inserted, namely:—</p> <p>“1A. The provisions of the Rehabilitation</p>	Agreement incorporating rehabilitation and resettlement obligations should be stipulated for all bodies seeking acquisition

	and Resettlement Act, 2007 shall apply in respect of acquisition of land by the appropriate Government under this Act.”.	
5	<p>In section 3 of the principal Act,—</p> <p>(i) for clause (b), the following clause shall be substituted, namely :— ‘(b) the expression “person interested” includes,—</p> <p>(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;</p> <p>(ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;</p> <p>(iii) a person interested in an easement affecting the land; and</p> <p>(iv) persons having tenancy rights under the relevant State laws;’;</p> <p>(ii) after clause (cc), the following clause shall be inserted, namely :— ‘(ccc) the expression “cost of acquisition” includes—</p> <p>(i) compensation awarded including the solatium and other amount and interest payable thereupon;</p> <p>(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;</p> <p>(iii) cost of acquisition of out-project land for settlement of displaced or adversely affected families;</p> <p>(iv) cost of development of infrastructure and amenities at resettlement sites;</p> <p>(v) additional cost of resettlement as may be required after admissible adjustment of rehabilitation and resettlement cost against compensation awarded to affected persons or families;</p> <p>(vi) administrative cost of acquisition of land including both in project and out-project areas lands; and</p> <p>(vii) administrative cost involved in planning and implementation of resettlement and rehabilitation packages for providing physical rehabilitation and resettlement to the entitled and interested families, displaced or adversely affected on account of in-project acquisition of land;’;</p> <p>(iii) clauses (d) and (e) shall be omitted;</p> <p>(iv) for clause (ee), the following clause shall be substituted, namely:— ‘(ee) the expression “appropriate</p>	<p>Land acquisition laws should also recognize the rights of sharecroppers, etc and other persons who derive their livelihood by providing services to land owners.</p> <p>The term ‘cost of acquisition’ is used in part VII of the Act. NCST has commented to retain the part VII of the act with some modifications. The cost of acquisition should also include the compensation for the loss of forest rights due to displacement.</p>

<p>Government” means,—</p> <p>(i) in relation to acquisition of land for the purposes of the Union, the Central Government;</p> <p>(ii) In relation to acquisition of land for the purposes of any infrastructure project in more than one State, the Central Government; and</p> <p>(iii) in relation to acquisition of land for any other purpose, the State Government;’;</p> <p>(v) for clause (f), the following clause shall be substituted, namely:—</p> <p>‘(f) the expression “public purpose” includes,—</p> <p>(i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State;</p> <p>(ii) the provision of land for infrastructure projects of the appropriate Government, where the benefits accrue to the general public; and</p> <p>(iii) the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project as yet to be required.’.</p> <p>Explanation.—The word “person” shall include any company or association or body of individuals, whether incorporated or not.’;</p> <p>(vi) after clause (f), the following clause shall be inserted, namely:—</p> <p>‘(ff) the expression “infrastructure project” shall include,—</p> <p>(i) any project relating to generation, transmission or supply of electricity;</p> <p>(ii) construction of roads, highways, bridges, airports, ports, rail systems or mining activities;</p> <p>(iii) water supply project, irrigation project, sanitation and sewerage system; or</p> <p>(iv) any other public facility as may be notified in this regard by the Central Government in the Official Gazette.’.</p> <p>(vii) in clause (g) for the expression “court”, wherever it occurs, the expression “the Authority for the Centre or, as the case may be, the Authority” shall be substituted;</p> <p>(viii) after clause (g), the following clauses</p>	<p>Instead of general usefulness, public purpose may be restricted to developmental activities if the Govt. owns 51 % therein or redevelopment in the interests of area planning. ‘Public purpose’ should be determined through a participatory and transparent process and should incorporate additional safeguards for tribals in which:</p> <p>(i) The general interest of the community as opposed to the particular interest of individuals is directly and vitally addressed.</p> <p>(ii) Displacement should be justified through the benefits of the project option outweighing the costs of loss of land, livelihood, shelter, habitat/culture, environment, capital and operating costs incurred and any public interest value accruing from the existing use of the land and everything attached to it.</p> <p>(iii) The declaration of public purpose under Section 6 of the Land Acquisition Act, 1894 should be justiciable.</p> <p>(iv) The rights of the tribals are adequately protected by providing land in lieu of land (even by diversion of forest areas).</p> <p>In order to avoid long delays a detailed time-frame should be specified for different stages / elements of acquisition proceedings and defined in this section.</p>
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	<p>shall be inserted, namely:—</p> <p>‘(h) the expression “Authority” means the Land Acquisition Compensation Disputes Settlement Authority established by the State Government under subsection (1) of section 17A;</p> <p>(i) the expression “Authority for the Centre” means the Land Acquisition Compensation Disputes Settlement Authority for the Centre established by the Central Government under sub-section (1) of section 17L;</p> <p>(j) the expression “Member” means a Member of the Authority for the Centre, or as the case may be, the Authority, and includes the Chairperson.’.</p>	
6	Throughout the principal Act, the words “or for a company” along with their grammatical variations, shall be omitted.	Same as for Clause 2 above.
7	Throughout the principal Act except in Explanation to sub-section (1A) section 23, for the words “the Court”, along with their grammatical varieties the words “the Authority for the Centre, or as the case may be, the Authority” shall be substituted.	No comments
8	<p>After section 3 of the principal Act, the following section shall be inserted, namely:—</p> <p>‘3A. Whenever the appropriate Government intends to acquire land for public purpose involving physical displacement of—</p> <p>(i) four hundred or more families <i>en masse</i> in plain area; or</p> <p>(ii) two hundred or more families <i>en masse</i> in tribal or hilly areas or Desert sixth Development Programme blocks or areas specified in V Schedule or Schedule VI to the Constitution, a social impact assessment study shall be carried out in the affected area 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, provision for infrastructural amenities and facilities in the proposed resettlement area in terms of the provisions contained in Chapters II, IV, V and VI of the Rehabilitation and Resettlement Act, 2007, in such manner and within such time as may be prescribed by rules made by the Central Government.’.—</p>	<p>Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would exposed to consequential to displacement; and establish the overriding public interest which demands such sacrifice from them. Therefore, Social Impact Assessment should be conducted in Scheduled areas (including emotional and psychological impacts) irrespective of the quantum of displacement. (or, in cases of urgency, atleast where the number of displaced tribal families exceeds 25.)</p>

9	<p>In section 4 of the principal Act,—</p> <p>(a) in sub-section (1), the following provisos shall be inserted, namely:—</p> <p>“Provided that where no declaration is made consequent upon the issue of a notification under sub-section (1) within the time-limit specified in subsection (1) of section 6, no fresh notification under this sub-section shall, subsequent to the expiry of the period aforesaid, be made for a period of one year in respect of the same land:</p> <p>Provided further that in case a notification issued under sub-section (1) in respect of a particular land lapsed for the second time, no proceeding under subsection (1) shall be initiated at least for a period of five years from the date of such notification.”;</p> <p>(b) After sub-section (1), the following sub-sections shall be inserted, namely:—</p> <p>“(1A) 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 section till the final declaration under section 6, or the award made and paid under section 16 of the Act, whichever is earlier:</p> <p>Provided that the Collector may, on the application made by the land owner in respect of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:</p> <p>Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.</p> <p>(1B) After issuance of notice under sub-section (1), the Collector shall, before issue of declaration under section 6, undertake and complete the exercise of updating of land records, classification of land and its tenure, survey and standardisation of land and property values in respect of the land under acquisition.”.</p>	<p>All land acquisition process in tribal areas must be held in abeyance till settlement of tribal rights under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. Land regularized under The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 must not be alienated/acquired except in the case of emergency wherein same category of land must be provided. Individual notices may be issued to all persons known to have an interest in the land besides public notice so that they may also be enabled to seek judicial determination regarding the public purpose of acquisition.</p> <p>Recorded rights of tribals under the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 should also be updated.</p>
10	<p>In section 6 of the principal Act, in sub-section (1),—</p> <p>(i) the words “subject to the provisions of Part VII of this Act” shall be omitted;</p> <p>(ii) the <i>Explanation</i> 1 shall be omitted.</p>	No comments
11	After section 8 of the principal Act, the following section shall be inserted,	No comments



	<p>namely:—</p> <p>“8A. The damages caused while carrying out works on land such as survey, digging or boring sub-soil, marking boundaries or cutting trenches or clearing away any standing crop, fence or forest or doing such other acts or things which may cause damages while acting under section 4 particularly relating to land which is excluded from acquisition proceeding, shall be evaluated and compensation shall be paid to the persons having interest in that land, within six months from the completion of the said works.”.</p>	
12	<p>For section 11A of the principal Act, the following section shall be substituted, namely:—</p> <p>“11A. The Collector shall make an award under section 11 within a period of one year from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:</p> <p>Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 2007, the award shall be made within a period of one year from such commencement:</p> <p>Provided further that the Collector may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award within an extended period of six months:</p> <p>Provided also that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five per cent. of the value of the award, for each month of such delay.”.</p>	<p>“On-account” payment of 80% of the estimated compensation may also be made in such cases of delay in completion of award proceedings (as for land taken possession of under urgency clauses of Section 17, LA Act, 1894.</p>
13	<p>After section 11A of the principal Act, the following sections shall be inserted, namely:—</p> <p>“11B.(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land,—</p>	<p>The Net Present Value (NPV) of the expected accruals from the current use of the land should also be compared while arriving at the market value.</p>

<p>(i) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or</p> <p>(ii) the average of the sale price for similar type of land situated in the village or vicinity, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years, where higher price has been paid; or</p> <p>(iii) the average of the sale price, ascertained from the prices paid or agreed to be paid for not less than fifty per cent. of the land already purchased for the project where higher price has been paid, for the purpose of item (iii) of clause (f) of section 3,</p> <p>whichever is higher.</p> <p>(2) Where the provisions of sub-section (1) are not applicable for the reason that:</p> <p>(i) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or</p> <p>(ii) the registered sale deeds for similar land as mentioned in clause (i) of sub-section (1) are not available for the preceding three years; or</p> <p>(iii) the minimum land value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority,</p> <p>the concerned State Government shall specify 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, ascertained from not less than fifty per cent. of the sale deeds registered during the preceding three years where higher price has been paid, and the Collector may calculate the value of the land accordingly.</p> <p>(3) The Collector shall, before assessing and determining the market value of the land being acquired under this Act,—</p> <p>(a) ascertain the intended land use category of such land; and</p> <p>(b) take into account the value of the land of the intended category in the adjoining areas or vicinity, for the purpose of determination of the</p>	<p>The cost of Resettlement and Rehabilitation Plan should also form part of the land award if the same is to be implemented by Govt. agencies.</p> <p>NCST also supports the recommendation of the Paliamentary Standing Committee that :-</p> <p>“(i) all the benefits provided under the Land Acquisition and Rehabilitation and Resettlement legislation should be doubled at every stage in case of second and subsequent displacement of a family/ person.</p> <p>(ii) The highest price of sale deed as indicated in the sale deeds of the last three years plus 50 per cent of the said highest price should be the criteria for assessing and determining the market value of the land</p> <p>For tribal areas, the highest price of a sale deed of the adjoining non-tribal blocks/village for the last three years plus 50 percent should be the criteria in this regard. Provision should be made to provide some share of the resultant hike due to land acquisition to the persons on whose land the specific project is set up.”</p>
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	<p>market value of the land being acquired.</p> <p>(4) In determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, the Collector may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the Collector.</p> <p>(5) The Collector may, for the purpose of determining the value of trees and plants, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.</p> <p>(6) For the purpose of assessing the value of the standing crops damaged during the process of land acquisition proceedings, the Collector may utilise the services of experienced persons in the field of agriculture as he considers necessary.</p> <p>11C. (1) When land is acquired for the purpose of item (iii) of clause (f) of section 3 and the person for whom the land is acquired is a company authorised to issue shares and debentures, such company shall, with the previous approval of the appropriate Government, offer its shares or debentures to the extent of fifty per cent. but in any case not less than twenty per cent. of the compensation amount to be paid to the person whose land has been acquired.</p> <p>(2) On the acceptance of the offer, a part of the compensation amount shall be adjusted by transfer of shares and debentures to the person to whom such compensation is due and on such transfer the liability of the company in respect of such part of the compensation shall stand discharged.</p> <p>(3) The allotment of shares and debentures mentioned in this section shall be made by the company in such manner as may be prescribed.</p> <p>Explanation.—In this section, the expression “shares and debentures” has the same meaning as assigned to it under the Companies Act, 1956.”</p>	<p>Compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of long term profit sharing of the project derivable from land as a factor of production. Such “sweat” equity must be reasonably relatable to the nature of economic activity of the project and the equity base.</p> <p>Multiple uses of the land acquired must be accounted for in the compensation. For example, if agricultural land is used for mining, then besides compensation for use of land surface, the future earnings from mining activity should also be shared with land owners. 50% sweat equity (share in the future profits) to be provided for land owners</p>
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		<p>in case of land development projects.</p> <p>In case of mining projects, a sum equal to royalty be paid to the land owners in perpetuity.</p> <p>Some land should invariably be provided to the tribals in lieu of land acquired as a source of livelihood for them. Further, tribals should be provided subsistence allowance till such time they start their livelihood on a new piece of land.</p>
14	<p>In section 12 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—</p> <p>“(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act.</p> <p>(4) For the purposes of sub-section (3), the summary of the entire proceedings shall include the summary of schedule for payment of compensation, dates of taking possession of the land and such other information as may be prescribed.</p> <p>(5) It shall be the duty of the Collector to ensure that physical possession of the land is taken over and the amount of compensation is paid within a period of sixty days commencing from the date of the award.</p> <p>(6) The possession of the land acquired shall not be taken unless the compensation due under this Act is paid in full or is tendered to the entitled person.”</p>	<p>Allotment of land in lieu of agricultural land and essential rehabilitation and resettlement should also be completed before physical possession of land is taken over from tribals.</p>
15	<p>In section 15 of the principal Act, for the words and figures “sections 23 and 24”, the words, figures and letter, “sections 11B, 23 and 24” shall be substituted.</p>	<p>No comments</p>
16	<p>In section 17 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely :—</p> <p>“(5) Without prejudice to the provisions of sub-section (3) and sub-section (3A), an additional compensation of seventy-five per cent. of the market value as determined under section 11B, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section.”.</p>	<p>Urgency under Section 17(1) of the LA Act, 1894 should not be equated with emergencies under Section 17(2) for normal purposes; and the provision should either be made justiciable by the court or rescinded.</p>
17	<p>After Part II of the principal Act, the</p>	

following Parts shall be inserted, namely:—

**‘PART IIA  
ESTABLISHMENT OF THE STATE  
AUTHORITY**

**17A.** (1) The State Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, establish, by notification in the Official Gazette, an Authority for the State to be known as the (name of the State) Land Acquisition Compensation Disputes Settlement Authority to exercise the jurisdiction, powers and authority conferred on it by or under this Act with regard to acquisition of land by the State Government:

Provided that a State Government may constitute more than one Authority or the benches thereof, for the purposes of this Act, if considers necessary.

(2) The head office of the Authority shall be at such place as the State Government may, by notification, specify.

(3) The Authority shall consist of not more than three but not less than two Members, including the Chairperson to be appointed by the State Government.

(4) The Members of the Authority shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with the problems relating to land acquisition matters, public administration, finance, economics and law.

(5) A person shall not be qualified to be a Member of the Authority unless he is or has been—

- (i) a judge of a district court;
- (ii) an officer of the State Government not below the rank of District Collector;
- (iii) an officer of the State Government in the Law Department not below the rank of Director.

(6) The Members of the Authority shall not hold any other office.

(7) The Authority shall ensure transparency while exercising its powers and discharging its functions.

**17B.** (1) A Member shall hold office for a term of five years from the date he enters upon his office:

Provided that the Member shall not be eligible for re-appointment in the same

The composition of the Authority should satisfy judicial concerns regarding the number, judicial experience and singular expertise of Members of special Tribunals.

capacity in that Authority in which he had earlier held the office:

Provided further that no Member shall hold office as such after he has attained the age of sixty-seven years.

(2) A Member of the Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that the Member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(3) The salary, allowances and other terms and conditions of service of the Members shall be such as may be prescribed by the State Government:

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.

**17C.** (1) No Member shall be removed from office except in accordance with the provisions of this section.

(2) The State Government may by order remove from office any Member, if he—

(a) has been adjudged an insolvent;

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour.

(3) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.

**17D.** (1) The State Government may specify the numbers, nature and categories of the officers and employees of the Authority.

(2) The salaries and allowances payable to, and other terms and conditions of service of, the officers and employees of

the Authority shall be such as may be prescribed by the State Government.

**17E.** The Authority shall have its sittings at the head office or any other place and at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business in its sittings as it may specify.

**17F.** A casual vacancy in the office of a Member of the Authority shall be filled by the State Government, by notification in the Official Gazette, as soon as may be, after the occurrence of the vacancy.

**17G.** (1) The Authority shall, for the purposes of the settlement of disputes relating to land acquisition compensation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed;

(2) The Authority shall have the powers to pass such interim order in any proceeding, hearing or matter before it as it may consider appropriate.

**17H.** All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

**17-I.** The applications relating to settlement of land acquisition compensation under this Act, shall be decided by the Authority as expeditiously as possible and endeavour shall be made by it to dispose of the disputes finally within a period of six months from the date of receipt of the reference under section 18.

**17J.** The Members and officers of the

Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**17K. No civil court** shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

**PART IIB**

**ESTABLISHMENT OF THE AUTHORITY FOR THE CENTRE**

**17L.** (1) The Central Government may, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, by notification, establish one or more Authority to be known as the Land Acquisition Compensation Disputes Settlement Authority for the Centre to exercise jurisdiction, powers and authority conferred on it by or under this Act with regard to the acquisition of land by the Central Government.

(2) The Central Government shall specify in the notification referred to in subsection (1) the matters and places in relation to which the Authority for the Centre may exercise jurisdiction.

(3) The Authority for the Centre shall consist of a Chairperson and not less than two Members to be appointed by the Central Government.

(4) A person shall not be qualified to be a Member of the Authority for the Centre unless he,—

(i) is or has been a Judge of a High Court; or

(ii) has for at least fifteen years held any Legislative or Legal post of the Union and a post in the Grade II of the Indian Legal Service for at least three years; or

(iii) a person who is or has been a member of the Indian Administrative Service having sufficient knowledge of land acquisition and has held the post of Collector of a district and a post equivalent to a Joint Secretary in the Government of India:

Provided that no appointment of a sitting Judge under clause (i) shall be made except after consultation with the Chief Justice of the High Court concerned.

(5) The Authority for the Centre will have a Secretariat consisting a Secretary-General and such other staff as may be

Same as for Clause 17A above.



	<p>decided by the Central Government.</p> <p><b>17M.</b> The provisions of sections 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J and 17K shall apply to the Authority for the Centre and shall have effect, subject to the following modifications, namely:—</p> <p>(a) references to “Authority” shall be construed as references to “Authority for the Centre”;</p> <p>(b) references to “State Government” shall be construed as references to “Central Government”;</p> <p>(c) for the reference “any Member” in sub-section (2) of section 17C, the reference “any Member except a sitting Judge of a High Court” shall be substituted.’.</p>	
18	<p>In section 18 of the principal Act,-</p> <p>(i) in sub-section (1), the following provisos shall be inserted, at the end, namely:—</p> <p>“Provided that the Collector shall, within a period of fifteen days from the date of receipt of application, make a reference to the Authority for the Centre, or as the case may be, the Authority:</p> <p>Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority for the Centre, or as the case may be, the Authority, requesting it to direct the Collector to make the reference to it within a period of thirty days.”;</p> <p>(ii) in sub-section (2), after the proviso, the following proviso shall be inserted, namely :—</p> <p>“Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.”.</p>	No comments
19	<p>In section 23 of the principal Act,—</p> <p>(i) in sub-section (1), in item “first”, after the words “market value of the land”, the words, figures and letter “in terms of section 11B” shall be inserted;</p> <p>(ii) in sub-section (2), for the words “a sum of thirty per centum on such marketvalue”, the words “a sum of sixty per centum on such market-value” shall be substituted.</p>	No comments
20	<p>After section 28A of the principal Act, the following section shall be inserted, namely:—</p>	No comments

	<p>“28B. Where an award is pending or remains unsettled at any stage under the Act, prior to the coming into force of the Land Acquisition (Amendment) Act, 2007, then the amount of compensation payable to the entitled person may be determined on the basis of section 11B as inserted by the said Act.”.</p>	
21	<p>Part VII of the principal Act relating to “Acquisition of Land for Companies” and sections 38 to 44B (both inclusive) shall be omitted.</p>	<p>Same as for Clause 2 above</p>
22	<p>After section 54 of the principal Act, the following sections shall be inserted, namely:—</p> <p>“54A. (1) The land acquired under this Act shall not be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the appropriate Government.</p> <p>(2) When any land or part thereof, acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall return to the appropriate Government by reversion.</p> <p>54B. Whenever any land acquired under this Act is transferred to any person for a consideration, eighty per cent. of the difference in the acquisition cost and the consideration received, which in no case shall be less than the acquisition cost, shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired, and for the purpose, a separate fund may be maintained which shall be administered by the Collector in such manner as may be prescribed.”.</p>	<p>If the acquired land is not used for the intended purpose or remain unutilized for a period of five years, it should be returned back to the original owner wherever possible, without insisting on the re-payment of the compensation amount.</p> <p>Land record of Rights should continue to make mention of land owners to compensate them for alternative usage of land in future.</p> <p>In case the land is subsequently utilized for a different purpose (e.g. for real estate development, mining, etc.), the earnings from such activity should also be shared with the original land owners in similar fashion.</p>
23	<p>In section 55 of the principal Act, in sub-section (1),—</p> <p>(i) the first proviso shall be omitted;</p> <p>(ii) in the second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted;</p> <p>(iii) in the third proviso, for the words “Provided also”, the words “Provided further” shall be substituted.</p>	<p>Same as for Clause 2 above</p>