

DEVELOPMENT-INDUCED DISPLACEMENT: LEGAL AND HUMAN RIGHTS PERSPECTIVES

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“Most large forced dislocations of people do not occur in conditions of armed conflict or genocide but in routine, everyday evictions to make way for development projects. This “development cleansing” may well constitute ethnic cleansing in disguise, as the people dislocated so often turn out to be from minority ethnic and racial communities.”¹

Introduction

Right to development is a fundamental human right. The developmental projects in different fields are vital for the progress of the nation. At the same time these projects have tremendous impact on the environment as well as the common people. The most significant impact of developmental project is the displacement of population whose land is acquired for the projects. The people are uprooted from their present habitat and have to start their life elsewhere. Each year, millions of persons are forcibly displaced by development projects, whether dams, roads, reservoirs or oil, gas and mining projects. While such projects can bring enormous benefits to society, they also impose costs, which are often borne by its poorest and most marginalized members.² The suffering of those displaced by developmental projects can be very severe and has several dimensions to it. E.g., the displaced people suffer from financial and social insecurity because of their shifting to new set up and face many problems in adjusting to the new environment. More importantly, they have deep emotional attachment to their ancestral land, tradition, culture and way of life and hence the displacement also affects them mentally and psychologically. Development-induced displacement has become a common feature in all countries particularly developing countries.

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¹ See Balakrishnan Rajagopal, *The Violence of Development*, WASHINGTON POST, Aug. 9, 2002.

² W. Courtland Robinson, *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement* (Feb. 2, 2013), <http://www.internal-displacement.org/8025708F004CFA06/may03.pdf>.

In India massive developmental projects have been undertaken since independence in order to achieve socio-economic progress. India has invested in numerous industrial projects, dams, roads, mines, power plants and new cities. These projects have been made possible through large scale acquisition of land. As a result around 50 million people have been displaced due to development projects in over 50 years.³ The rehabilitation of these displaced people is one of the most complex and sensitive issue and needs to be viewed from socio-economic as well as human rights perspectives.

This paper seeks to examine the meaning and concept of the development induced displacement and impacts on common people. Further this paper examines the human rights violations involved in development-induced displacement and attempts to strike a balance between the development and the rights of displaced persons.

Development-Induced Displacement: The Concept

Development-induced displacement (hereinafter DID) occurs when people are forced to abandon lands or relocate because of development.⁴ It can be defined as the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development. Use of coercion or force of any nature by the state is central to the idea of DID. At the international level, it is viewed as a violation of human rights.⁵ It is a subset of forced migration. DID has occurred throughout history and is commonly associated with the construction of large dams for hydroelectric power and irrigation purposes, mining, and industrial projects. So also DID may occur due to military installations, airports, weapon testing grounds, railways and road developments, urbanization, conservation projects, forestry, etc. DID is a social problem affecting multiple levels of human organization, from tribal and village communities to well-developed urban areas.⁶

DID may be divided into two categories—direct and indirect. Direct displacement refers to those cases, where due to the initiation and construction of developmental projects there is a direct displacement

³ Nalin Singh Negi & Sujata Ganguly, *Development Projects v. Internally Displaced Populations in India: A Literature Based Appraisal* (Feb. 2, 2013), http://www.uni-bielefeld.de/tdrc/ag_comcad/downloads/working_paper_103_negi_ganguly.pdf.

⁴ Jay Drydyk, *Unequal Benefits: The Ethics of Development-Induced Displacement*, 8 GEO. J. INT'L AFF. 105 (2007).

⁵ Kelly A. Dhru, *Acquisition of Land for "Development" Projects in India: The Road Ahead* (Feb. 2, 2013), <http://www.rfgindia.org/publications/LandAcquisition.pdf>.

⁶ See www.wikipedia.org. (last visited Feb. 20, 2013).

of people who have inhabited these sites for generation together. E.g., displacement due to projects such as mines dams and industries, wildlife and other projects. Indirect displacement occurs when the people are forced to leave the area due to the functioning of those developmental projects. This is because the functioning of the projects consumes the natural and environmental resources in the surrounding and deprives their traditional means of livelihood. It is to be noted that these types of displacements affects mostly indigenous people who depend on their natural surrounding for their livelihood.⁷

DID can again be classified as physical, economic, or both depending on the impacts of such displacement on people. Thus the actual relocation of individuals, families or communities from one place to another is termed as physical displacement, and when people lose access to vital natural resources that they need to sustain their livelihoods such as forests, grazing lands, and fresh water, it is termed as economic displacement. The causes or categories of DID may include water supply (dams, reservoirs, irrigation), urban infrastructure, transportation (roads, highways, canals), energy (mining, power plants, oil exploration and extraction, pipelines), agricultural expansion, parks and forest reserves, and population redistribution schemes.⁸ The vast majority of DID is involuntary, with government authorities, security forces, or private militias forcing people from their homes and lands.⁹

Impacts of Development-Induced Displacement

The impacts of DID are of varied nature and can range from loss of livelihood to mental and psychological impacts. According to a research conducted by Michael Cernea, a sociologist based at the World Bank, the forcible displacement from one's land and habitat carries with it the risk of becoming poorer than before the displacement. Those displaced "[a]re supposed to receive compensation of their lost assets, and effective assistance to re-establish them productively; yet this does not happen for a large portion of oustees". The research points out that: "[t]he onset of impoverishment can be represented through a model of 8 interlinked potential risks which are intrinsic to displacement".

⁷ See *supra* note 3, at 8.

⁸ ASHIRBANI DUTTA, DEVELOPMENT-INDUCED DISPLACEMENT AND HUMAN RIGHTS 19 (2007).

⁹ Kate Hoshour & Jennifer Kalafut, *A Growing Global Crisis: Development-Induced Displacement and Resettlement* (Feb. 2, 2013), <http://www.accountabilityproject.org/downloads/IAP%208.10%20Briefer.pdf>.

They are, landlessness, joblessness, homelessness, food insecurity, marginalization,¹⁰ increased morbidity and mortality,¹¹ loss of access to common property, and social disintegration. In addition to these impacts, there are some other risks of DID such as loss of access to schooling for school-age children, and the loss of civil rights or abuse of human rights.¹²

Displacement from one's habitual residence and the loss of property without fair compensation can, in itself, constitute a violation of human rights. In addition to violating economic and social rights, listed above, arbitrary displacement can also lead to violations of civil and political rights, including arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and the loss of one's political voice. Finally, displacement carries not only the risk of human rights violations at the hands of state authorities and security forces but also the risk of communal violence when new settlers move in amongst existing populations.¹³ Most importantly these impacts are very severe in case of indigenous people.

Development-Induced Displacement in India

DID is not new in India. It has existed since the colonial era. The most common reasons for DID are water resource development projects, mining, industrial and rail and road transport. The available data on some of the notable developmental projects in India reveals the plight of displaced people and the utter violation of their human rights. E.g., it took more than 25 years to resettle the people due to the construction of Bhakra Nangal Dam, and that to only 730 out of 2108 families. Most of oustees of big projects, like the Hirakud Dam in Orissa or the Rihand Dam in Utter Pradesh, Narmada Dam in the 3 states of Gujarat, Maharashtra and Madhya Pradesh, etc., have not been officially resettled till now. So also the situation of the oustees of the Pong Dam in Himachal Pradesh, who were displaced in the late 1960s, is very poignant. Out of the 30,000 families, only 16,000 were

¹⁰ Marginalization occurs when families lose economic power due to loss of their land and job. Many individuals cannot use their earlier acquired skills at the new location and face difficulties in adjusting. Economic marginalization is often accompanied by social and psychological marginalization, loss of confidence in society and in themselves, a feeling of injustice, and deepened vulnerability.

¹¹ Massive population displacement threatens to cause serious decline in health levels. Displacement-induced social stress and psychological trauma are sometimes accompanied by the outbreak of relocation related diseases. Unsafe water supply and unhygienic living conditions in new location systems increase vulnerability to epidemics.

¹² See *supra* note 2.

¹³ *Id.*

found eligible for compensation and in the end only 3756 were moved hundreds of miles to a completely different cultural, linguistic and ecological zone in Rajasthan. Some of the land meant for their occupation had already been occupied, while remaining land was uncultivable. As it was not enough, the host villagers were not prepared for their arrival and finally over 75% returned to Himachal only to find little support for their re-establishment. Thus, the displaced people face lot of problems due to improper rehabilitation and resettlement and suffer severe violations of basic human rights.¹⁴

Development-Induced Displacement and Indian Laws

The most important feature which is common to all developmental projects is the acquisition of land including private land by the state. The Indian state has the power to compulsorily acquire private land for such developmental projects without the consent of the owner of such land. The only law applicable all over the country with respect to the issue of induced displacement is the colonial Land Acquisition Act, 1894 (hereinafter LAA). The most important principle underlying LAA is the “doctrine of eminent domain”, according to which the state enjoys ultimate power over all land within its territory. It follows that the state has the right to invoke this right for the “public good”, and the consequent compulsory acquisition of land cannot be legally challenged or resisted by any person or community. In India, the only national law regarding displacement is LAA, which places no legal obligation on either the project authorities or the state, beyond a limited conception of adequate “compensation”.

Thus the displaced were only granted compensation under LAA for the land acquired and the notion of rehabilitation was not known under LAA. However, after the independence, more and more developmental projects were implemented by the Indian government and as a result large scale displacement occurred. The deplorable conditions of these displaced people (hereinafter DPs) compelled the government to think about rehabilitation programmes.

In 1985, a committee of the Ministry of Welfare prepared a policy for tribal DPs and suggested that a national policy be prepared for all the DPs. It suggested that rehabilitation should be integral part of the plan of every project above a certain size in the public as well as the private sectors and that the policy should be binding on the government and the implementing authority.

¹⁴ Parshuram Ray, *Development-Induced Displacement in India*, 2(1) SARWATCH (July 2000).

However, it took 8 years for the Ministry of Rural Development to formulate a policy draft in 1993¹⁵ and it was further revised and re-revised without any success. The discussion of a draft internally displaced people (hereinafter IDPs) policy continued and it was only in 2004 that a National Policy for Resettlement and Rehabilitation of Project Affected Families (hereinafter NPRR-2003) was passed with minimal debate. NPRR-2003 only applies to those displaced due to development projects and is primarily meant to safeguard the interests of resource-poor landless agricultural labourers, forest dwellers, artisans and *adivasi* groups. This draft policy was again revised in the year 2006 and was notified on October 31, 2007 with the title “National Rehabilitation and Resettlement Policy” (hereinafter NRRP-2007). This policy is the currently applicable in the country for rehabilitation and resettlement of displaced persons. However, it suffers from various drawbacks and is severely criticized.

Firstly, though the main aim of the policy is to minimize displacement, it is silent about the measures to be followed for minimizing displacement and thus does not provide clear guidance to the authorities. Secondly, NRRP-2007 provides for land-for-land compensation and declares that it is subject to the availability of government land in resettlement areas. Also, preference for employment in the project for at least one member in the nuclear family is subject to the “availability of vacancies and suitability of affected person”. Such qualifying words only favour the project developers so that they can evade responsibility on the pretext that, the land is not available or the person is not suitable for employment. Further, even though the Preamble of NRRP-2007 states that it will apply to all cases of involuntary displacement, Clause 6.1 proclaims that the appropriate government has the authority to declare which regions are affected depending on the number of people being displaced, such that a particular locality will not be declared affected if the number of families being displaced is below 400 in plain areas and below 200 in hilly areas. This implies that NRRP-2007 will not be applicable even if the number of families is just below the mark specified. Thus the policy suffers from various drawbacks.

In addition to the measures taken by the Central Government of India, the government of different states has also taken legislative measures. E.g., Maharashtra Project Affected Persons Rehabilitation

¹⁵ Walter Fernandes, *Development Displaced and the Right to Life: Implications for the Northeast*, in PROBLEMS OF INTERNALLY DISPLACED PERSONS IN ASSAM WITH SPECIAL REFERENCE TO BARAK VALLEY 3-27 (Tanmoy Bhattacharjee ed., Silchar: Department of Political Sciences, Assam University, Mar. 2003).

Act, 1999, Law of Resettlement of Project Displaced Persons in Madhya Pradesh, 1985, Karnataka Rehabilitation Act, 1987, Rehabilitation and Resettlement (R&R) Policy for Government of Andhra Pradesh, 2005, Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994, Orissa Resettlement and Rehabilitation Policy, 2006 etc.

Recently, the Central Government has prepared, the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (LARR Bill, 2011). LARR Bill, 2011 has 107 clauses and is currently in public domain and India's Parliament for review. LARR Bill, 2011 seeks to repeal and replace India's Land Acquisition Act, 1894. LARR Bill, 2011 seeks to enact a law that will apply when, government acquires land for its own use, hold and control; and government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR Bill, 2011 includes public-private-partnership projects, but excludes land acquired for state or national highway projects. It aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India.

Response of Indian Judiciary in the Protection of DID

In the absence of any specific law on rehabilitation, the Indian judiciary has taken a dynamic stand and interpreted Article 21 of the Constitution of India, 1950 to provide relief to people affected by DID. The apex court has interpreted the term life in Article 21 to include the right to live with dignity¹⁶ and a life more than a mere animal existence¹⁷. In the context of DID, the judiciary have interpreted that, right to live with dignity includes the right to rehabilitation and resettlement. In *B.D. Sharma v. Union of India*¹⁸, the court held that: “[T]he overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted”. Further, the court provided a time frame by which the rehabilitation must be complete: before 6 months of submergence. Such a time limit fixed by the court was reiterated in the Narmada's case¹⁹.

¹⁶ See Francis C. Mullin v. The Administrator, Union Territory of Delhi and Others, A.I.R. 1981 S.C. 746; Olga Tellis and Others v. Bombay Municipal Corporations, [1985] 2 Supp. S.C.R. 51 etc.

¹⁷ *Id.*

¹⁸ 1992 Supp. (3) S.C.C. 93.

¹⁹ Bulbul Khaitan & Nitya Priya, *Rehabilitation of the Displaced Persons in India*, 2 NUJS L. REV. 111(2009).

In *Narmada Bachao Andolan v. Union of India*²⁰, the court went a step forward and emphasized that: “[R]ehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is hence a logical corollary of Article 21”. Further, in *N.D. Jayal and another v. Union of India*²¹, the court held that: “[T]he right to development encompasses in its definition the guarantee of fundamental human rights”. Thus, the courts have recognized the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21.²²

Application of International Law for Protection of DID

The people affected by DID do not cross the borders of the country and may migrate from one state to another state within the country itself and are thus internally displaced. These IDP’s possess all rights that have been guaranteed by the Constitution of India. Though, normally the people affected by the DID do not cross the boundaries of the country, the United Nations (U.N.) has expressed its concern for protection of the rights of internally displaced persons. These guidelines can be made applicable for the protection of people affected by DID.

The IDP definition in the Guiding Principles does not specifically mention development projects as a possible cause of displacement, the words “in particular” introducing the listed examples of causes indicate that this list is not exhaustive. It can be argued that development projects, such as the construction of hydroelectric dams, leaving communities without adequate resettlement and compensation, could be considered a “human-made disaster” and a human rights violation, and therefore that those development induced displaced people all within the definition in the Guiding Principles.

Furthermore, Guiding Principle 6 explicitly covers DID by restating the prohibition of displacement in cases of large-scale development projects “which are not justified by compelling and overriding interests”. So also, the Guiding Principles ensure that: “[D]evelopment cannot be used as an argument to disguise discrimination or any other human rights violation by stressing that development-related displacement is permissible only when compelling and overriding

²⁰ A.I.R. 2000 S.C. 3751.

²¹ (2004) 9 S.C.C. 362.

²² See *supra* note 19.

public interests justify this measure”. The words “compelling” indicate the notion of proportionality whereas the word “overriding” demands the balancing of public and private interests. Principle 6 does not mean that persons displaced by justifiable and lawful projects are not internally displaced. In fact, the Guiding Principles describe anyone as an IDP who is coerced to leave his or her habitual residence, regardless of whether the displacement was illegal or not.²³

Though the Guiding Principles do not address all specific issues of DID, they are nonetheless relevant and applicable to situations of displacement caused by development projects. E.g., Principle 7 mentions about proper treatment of IDPs by the authorities when displacement does occur, in particular in situations other than armed conflicts. It also states that, efforts should be made to avoid, and minimize displacement and its adverse effects²⁴; minimum conditions to be met: proper accommodation, satisfactory conditions of safety, nutrition, health and hygiene, and protection from family break-up.²⁵ Further, Principle 9 states that, authorities must take special care to protect against the displacement of indigenous people, minorities, peasants, pastoralists and others with special attachment to their lands. Further the guidelines provides that, IDPs have a right to an adequate standard of living²⁶; authorities are responsible for facilitating the durable resettlement and integration of IDPs²⁷; and upon resettlement, IDPs shall not be discriminated against, in particular with regard to access to public services and participation in public affairs; the authorities are responsible for ensuring that IDPs receive appropriate compensation for lost properties²⁸. Thus these guidelines can also be considered by the authorities while formulating plans for dealing with DID.

Conclusion and Suggestions

The developmental projects are very essential for achieving economic growth of the country as well as for providing and enhancing basic amenities of people. At the same time, the adverse impacts of developmental projects on the displaced people and their human rights cannot be ignored. The basic rights like right to life, live with dignity and right to livelihood are often violated due to major

²³ Walter Kalin, *Guiding Principles on Internal Displacement* (Feb. 2, 2013), <http://www.asil.org/pdfs/stlp.pdf>.

²⁴ See princ. 7.1.

²⁵ See princ. 7.2-3.

²⁶ See princ. 18.

²⁷ See princ. 28.

²⁸ See princ. 29.

developmental projects. Therefore it is very essential to include specifically, rehabilitation and resettlement policy in the plans of developmental projects. There is a need to strike a balance between the developmental concerns and the human rights of displaced peoples. The following suggestions are put forward for protecting the rights of peoples affected by DID:

1. A specific legislation should be enacted laying down clearly, the basic obligations of the government towards the rehabilitation of displaced persons.
2. The Principles of Sustainable Development, Polluter Pays Principle and Precautionary Principle should be applied while implementing the developmental projects.
3. Compulsory environmental impact assessment (EIA) including social impact assessment (SIA), should be carried out for fixing the compensation to be given to the displaced people. So also EIA and SIA should be carried out even at later stages for assessing rehabilitation and resettlement.
4. Consultation with affected people should be made mandatory while adopting any rehabilitation provisions. All the important segments of displaced community including woman, indigenous people should be properly represented and their interests should be considered.
5. Any developmental projects which involve displacement should be initiated only after properly rehabilitating each and every one affected. It should include identification of the problems of displaced people, the measures required for helping the displaced people to settle in the new area, the measures to be adopted for reducing conflicts between communities by convening consultations between internally displaced persons and populations residing in areas of resettlement, considering the needs of the resident as well as relocated populations in program design and taking steps to prevent stigmatization or resentment.
6. Disseminate information about the rights of displaced persons during displacement to displaced persons and to relevant authorities. The authorities should mandatorily disclose to the public regarding various measures adopted for ensuring the rights of displaced people.

7. Any rehabilitation and resettlement policy should give due importance to provide economic opportunities to the displaced people. It should also include provisions for community services.

Development is a right but it also carries risks to human life, livelihood, and dignity and these impacts of developmental projects must be avoided so that these projects are beneficial to everyone.

