



National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

October 25–26, 2018 | India Habitat Centre

Background Note on 3rd session: 'Social Impact Assessment: from policy to practice'

According to the Preamble of the Act, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 seeks to 'establish a humane, participative, informed and transparent process' of land acquisition in India that would lead to an improvement in the socio-economic conditions of those dispossessed of their land. These ideals are sought to be realized through the provisions of Social Impact Assessment, 'Free Prior, Informed Consent' of land owners, market-linked cash compensation and rehabilitation and resettlement of Project- Affected- Families.

Section 4 of the Act stipulates that whenever the appropriate government intends to acquire land for public purpose, a social impact assessment study will be conducted in consultation with the concerned Panchayat, Municipality or Municipal Corporation, as the case may be. To be conducted by an independent SIA agency from among the list of agencies or practitioners empanelled by the SIA Unit, the social impact assessment report is required to give its findings on whether the project serves public purpose, the extent of land required is the bare minimum, alternate sites have been considered and not found feasible and comment on the effect of the cumulative mitigation cost of adverse social impacts on the total project cost vis-a-vis the benefits of the project.

Further, the SIA team, in consultation with local elected representatives, shall estimate the number of families likely to be affected and those likely to be displaced and extent of public and private land and immovable assets that will potentially be affected. The study shall include a

socio-economic and cultural profile of the affected area and identify the nature, extent and intensity of positive and negative impacts, on the community or communities, as the case may be, along a wide range of indicators - livelihood and income, physical resources, private assets, public services and utilities, infrastructural facilities, health, culture and social cohesion. The SIA study shall, in particular, identify the vulnerable sections and examine the social impacts on these groups. Further, a Social Impact Management Plan (SIMP) listing the ameliorative measures to address the adverse impact on each component (public and community properties, livelihood, assets and infrastructure, public amenities) shall be prepared by the SIA team. At the conclusion of the study, public hearing shall be conducted in each Gram Sabha whose members are directly or indirectly affected by acquisition of land. The 'Jan Sunwai', is intended to provide complete details of the project, share the findings of the SIA study, seek feedback on the report, obtain additional information and specify the entitlement of compensation, resettlement and rehabilitation in respect of affected families. The officials of Requiring Body and the land acquisition, rehabilitation and resettlement functionaries shall be at hand to address public concerns and queries. The additional mitigation measures that the Requiring Body commits to undertake in response to the SIA study and public hearing shall be included in the final Social Impact Management Plan (SIMP) submitted to the government. The proceedings of the public hearing shall be video recorded, transcribed and submitted along with final documents. The consent of land owners shall be obtained along with the SIA study.

The SIMP will describe the institutional structures, key persons responsible for each mitigation measure and the cost and timeline for completion of each activity. The

SIA report and SIMP will be prepared and submitted in accordance with Form II and III respectively, as per The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014.

Transparency has been infused in the process of social impact assessment by way of public disclosure of notification for commencement of SIA study, SIA report, SIMP and constitution of the Expert Group for appraisal of SIA report. All the SIA-related information shall be in the local language and made available in the office of Panchayats, Municipality and Municipal Corporation, as the case may be, and in the office of District Collector, Sub Divisional Magistrate and Tehsil. The information will also be published in local newspapers and uploaded on official websites. The impact study relies heavily on public participation through consultation with various stakeholders and a census or a survey of the families likely to be affected.

Furthermore, Section 6(1) of The RFCTLARR Act, 2013 mandates the uploading of Social Impact Assessment report and Social Impact Management Plan on the websites of the 'appropriate government' as one of the means of public disclosure. Section 3(e) defines 'appropriate government' variously, as the state Government or Central Government or Government of Union Territory, within whose territory the land to be acquired, is situated. It is, thus, incumbent upon the governments of states and Union Territories as well as Ministries to place on their official websites, the SIA reports and the Social Impact Management Plans of projects sited in their territorial jurisdiction.

However, soon after the law came into effect on 1.1.2014, voices began to be raised against the provision of social impact assessment which was deemed to be cumbersome and lengthy, purportedly, causing delay in the land acquisition process. The Ordinance promulgated in May 2014, and re-promulgated twice in 2015, among other things, excluded a category of projects from the purview of social impact assessment. The RFCTLARR (Amendment Bill), 2015, pending with the Joint Parliamentary Committee since May 2015, proposes to curtail the scope of SIA. The RFCTLARR Rules framed by states in accordance with Section 109 of The RFCTLARR Act, 2013 have, to varying extent, diluted the provisions of social impact assessment. The RFCTLARR (Amendment Acts) of Tamil Nadu, Gujarat, Maharashtra, Telangana, Jharkhand and Andhra Pradesh have drastically limited the scope of SIA.

The RFCTLARR (Tamil Nadu Amendment) Act, 2014 stipulates that The RFCTLARR Act, 2013 is not applicable when land is sought to be acquired under three state laws, except for the purpose of compensation. These Acts are: The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, The Tamil Nadu Acquisition of land for Industrial Purposes Act, 1997 and The Tamil Nadu Highways

Act, 2001. Since four-fifth of land acquisition in Tamil Nadu is carried out under the aegis of the aforementioned Acts, social impact assessment is effectively precluded from land acquisition process in a majority of cases. The RFCTLARR (Amendment) Acts of Gujarat, Telangana and Maharashtra notified in 2016, 2017 and 2018 respectively, have empowered state governments to exempt projects related to national security and defence, rural infrastructure including electrification, affordable housing and housing for the poor, industrial corridors, infrastructure projects including those in public-private-partnerships from the requirement of social impact assessment. Maharashtra has further added irrigation projects and industrial area or industrial estates developed by state government to the list. The RFCTLARR (Andhra Pradesh Amendment) Bill, 2017 that has received Presidential assent in May 2018 has SIA exclusionary provisions for similar category of projects as Gujarat, and Telangana. The Jharkhand Amendment Act, 2017 has empowered the state government to exempt, in public interest, infrastructure projects including schools, colleges, universities, hospitals, panchayat buildings, anganwadi centres, rail, road, waterways, electrification projects, irrigation projects, housing for the economically weaker sections, water supply pipelines, transmission and other government buildings from the ambit of social impact assessment.

The requirement of a dedicated website for public disclosure of the entire work flow- from the notification of SIA, decision making, implementing and audit - of each case of land acquisition, as per Section 13 of The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 has been honoured more in breach than in observance, by Ministries, states and Union Territories.

It is pertinent to consider the following issues:

1. Does limiting the affected families' and affected communities' 'Right to be Informed' and the 'Right to be Heard' undermine the objective of establishing a transparent and participative land acquisition regime?
2. In the absence of social impact assessment, what mechanism would be available to identify and address the adverse social and economic consequences of land loss to vulnerable and marginalized sections of communities?
3. Does the existing literature support the contention that SIA delays the acquisition process?
4. Have the states and Union Territories complied with the requirement for an independent organizational structure (SIA Unit) to manage and oversee SIA related activities?
5. Would the preparation of broad Terms of References for SIA in each sector, while leaving room for demographic and geographical uniqueness of each project site, facilitate standardized, quality reporting?