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***The Special Economic Zones Act, 2005:  
Urgent Need for Amendment***

The intended purpose of the SEZ Act, which was passed by the Parliament in 2005, was to provide a stable policy framework for creating Special Economic Zones, which would serve as engines for industrial growth and exports. Although India was the first country in Asia to have set up a free trade zone in Kandla as early as 1965 and seven more Export Processing Zones were set up by the Central Government till 1994, the Indian economy failed to emerge as a leading producer and successful exporter of manufactured goods unlike several other developing countries. The *raison d'être* of the SEZ Act was to bring about an improvement in the situation through a coordinated effort on the part of the Central and State Governments. In an economy marked by severe deficiencies in industrial infrastructure, there exists a case for creating industrial clusters with sound infrastructure facilities, simplified procedures for setting up and running industrial units and a transparent set of tax concessions which would enable export oriented units to take advantage of the economies of scale and other benefits, reduce production and transaction costs and successfully compete in international markets. While plunging into the zero-sum game of export led growth is clearly undesirable, particularly in the present context when global trade imbalances are increasingly becoming precarious and unsustainable, a policy to promote investment and exports geared towards increasing the share of the manufacturing sector in output and employment in India is certainly a reasonable step.

However, the initial objective underlying the SEZ Act has been severely compromised, if not entirely defeated by the subsequent actions of the UPA Government. Several provisions made in the SEZ Rules notified in February 2006, led to apprehensions regarding possible misuse of the SEZ Act, especially in terms of relocating existing units in SEZs in order to derive tax benefits and undertaking real estate ventures instead of building industrial infrastructure. Those apprehensions got strengthened by the way en masse approvals for SEZs were granted by the Board of Approval at the Centre. Concerns were raised in several States regarding fertile agricultural land being acquired for the setting up of SEZs resulting in displacement of farmers and other sections of people. The Finance Ministry also pointed out that revenue losses on account of the tax concessions provided under the SEZ Act would be substantial. The Reserve Bank of India in its Annual Report further warned against the possibilities of uneven development between different regions owing to the proliferation of SEZs. In this backdrop, the Left Parties submitted a detailed note to the UPA Government seeking amendments to the SEZ Act and the SEZ Rules. The Government has recently responded to the Left Parties note through a *Note on the issues raised by Left parties on the Special Economic Zones Act/Rules*. The Government's response to the

demand for amending the SEZ Act and Rules raised in the Left Parties' note can be summed up through the following: "The SEZ Act and Rules have been in force now only for 9-10 months and is at a nascent stage. No abuse of the SEZ Act and Rules has been noticed so far...Any arbitrary change in the SEZ Act and Rules would send a wrong signal to the investors...The Department of Commerce would therefore recommend that no amendments to the SEZ Act be considered for at least 2 years. In so far as amendments to the SEZ Rules are concerned, minor amendments to the Rules would be made from time to time and this would be done in the larger interests of facilitating the Act and Rules". Besides not accepting the demand for amending the SEZ Act, the Government has also failed to respond to many of the concerns raised by the Left Parties. A summary of the demands raised by the Left Parties and the specific responses of the Government is provided in the Annexure. The present article provides a rejoinder to the Government's response and elaborates upon the objectionable aspects of the current SEZ policy which necessitates amendments to the SEZ Act and Rules.

#### PROLIFERATION OF SEZs UNACCEPTABLE

The Government's note states that approval for 237 SEZs have already been sanctioned by the Board of Approval along with "in-principle" approval for another 166 SEZs. Thus overall 403 SEZ proposals have already been granted by the Central Government, a mind-boggling number, given the fact that the total number of SEZs across the world is around 3000 and China has only 6 of them. Moreover, the fact that these 403 proposals have been cleared within less than a year of the promulgation of the SEZ Rules has created a situation entirely different from what was envisaged during the passage of the Act. It is this proliferation of SEZ proposals and their en masse approvals granted by the Government within a matter of a few months which has, quite naturally, given rise to a big public debate in India. Several political parties, mass organizations, civil society groups, academics and experts and even sections of the corporate sector are viewing the entire SEZ policy framework with suspicion.

It needs to be noted that initially there was a cap of 150 on the total number of SEZs to be permitted. Later the Government removed the cap and did away with any restriction on the number of SEZs altogether. The Government's note has cited the official requests made by several State Governments including Haryana, Orissa, West Bengal, Kerala, Tamil Nadu, Punjab, Madhya Pradesh etc. as the reason for the lifting the cap. This logic is specious since the requests were made in a context where en masse approvals had already been granted to set up SEZs in a handful of States, especially Andhra Pradesh, Maharashtra and Karnataka, which had forwarded large numbers of SEZ proposals in the initial phase. Several State Governments made the request to lift the cap simply because they did not want a situation to arise where the first 150 SEZ proposals would be cornered by a few States with the others left out of the race. The Board of Approval should have realized that granting en masse approvals for the setting up of SEZs in a few States would eventually lead to this situation.

The Government's note, moreover, has provided a further justification for the lifting of the cap by suggesting that "It is best to leave it to the market forces to operate. Stipulation of any cap of establishment of SEZ

would only lead to a sort of License Raj and a premium on transfer of SEZ approvals to other parties. The Department of Commerce is therefore of the view that there should be no cap on the number of SEZs to be established". This view is deeply problematic because it fails to grasp the grave implications of such a "market forces" determined SEZ model for balanced regional development, which even the RBI has noted in its latest Annual Report. Moreover, the "license raj" surely cannot be replaced by a free for all. The figures for the total number of proposals received as well as those not granted approval have not been given in the Government's note. It seems all, if not an overwhelming majority of the proposals forwarded by any State Government, received approval from the Centre. This has been the basic flaw in the approach of the Government.

It is the proliferation of SEZ proposals which has already discredited the SEZ policy and given rise to genuine concerns related to large scale acquisition of fertile farmlands, massive displacement, enormous loss of tax revenue and gross misuse for real estate purposes. The Government's note states that out of the 237 formal approvals granted till date, involving 34510 hectares of land, no fresh land acquisition has taken place since land already available with the State Governments, SIDCs or private companies has been utilised for the purpose. This clearly shows that most of these projects were about to come up any way and the SEZ Act is being used to avail tax and other incentives which would not have otherwise accrued to these projects. The apprehension of industrial projects in the pipeline being converted into SEZ projects overnight has actually come true.

**State/UT and the number of SEZs approved**

Andhra Pradesh	<b>45</b>	Chandigarh	<b>2</b>
Delhi	<b>1</b>	Goa	<b>4</b>
Gujarat	<b>18</b>	Haryana	<b>19</b>
Jharkhand	<b>1</b>	Kerala	<b>10</b>
Karnataka	<b>29</b>	Maharashtra	<b>48</b>
Madhya Pradesh	<b>4</b>	Orissa	<b>5</b>
Punjab	<b>4</b>	Pondicherry	<b>1</b>
Rajasthan	<b>3</b>	Tamil Nadu	<b>25</b>
Uttaranchal	<b>3</b>	Uttar Pradesh	<b>8</b>
West Bengal	<b>7</b>		

The State wise distribution of the 237 SEZ proposals approved till date, given in the table above (based on information contained in the Government's note) shows that only four States taken together (Maharashtra, Andhra Pradesh, Karnataka and Tamil Nadu) account for 147 SEZs, i.e. over 60% of the total approvals. On the other hand there are several States not included in the list like Bihar, Chattisgarh, Himachal Pradesh or the North Eastern States. This clearly points towards the lopsided pattern of development, that the first come first served approach adopted by the Government, would bring about. If this approach is continued further based upon blind faith reposed on the "market forces", regional imbalance would be greatly aggravated in the country. The Government would end up pushing the States into an unhealthy competition of attracting more and more SEZ proposals by granting ever greater concessions to private developers. The only beneficiaries of such a race to the bottom would be the private developers.

The Government's note states that the total land area proposed in 166 in-principle approvals given till date is 134587 hectares, which includes 56 multiproduct SEZs. Thus, a huge amount of land, almost four times the amount that has already been approved for 237 SEZs, would have to be

acquired in order to materialize these projects. Serious problems regarding land acquisition and displacement are bound to arise in these cases, in addition to the problems already visible in the case of approved SEZs. Unfortunately, the Government's note, far from visualizing those problems or reflecting any rethink on its part, only reiterates the supposed benefits of the SEZs.

#### ADDRESSING THE LAND QUESTION

Acquisition of agricultural land and displacement of farmers and others dependent upon land have become an issue of immediate concern. The Government's note cites a recent letter sent by the Union Commerce Minister to State Chief Ministers advising them to restrict acquisition of multicrop agricultural land to 10% of the total area acquired for a SEZ. The rest has been left to the States, since land as well as compensation and rehabilitation policy falls within the domain of the State Governments. This response is clearly inadequate. The State Governments should be encouraged to prepare detailed land-use maps and acquire land for industrial projects avoiding fertile farmland and displacement as far as possible. This calls for a Planned approach to industrial development as opposed to a market-led approach currently being promoted by the Central Government. Wherever acquisition of agricultural land is unavoidable, the responsibility of securing adequate compensation and proper rehabilitation for people displaced by SEZs and ensuring their livelihood security has to be shared by the Central Government. Serious questions have already been raised from various quarters vis-à-vis the Land Acquisition Act. This legislation, which was enacted during the colonial period, is a misfit in the current Indian setting and needs to be amended in order to make it congruent with an independent and democratic State. Besides, a National Rehabilitation Policy needs to be adopted by the Central Government, preferably in the form of legislation.

There is a major difference between the Indian SEZ Policy and that of China, which had pioneered the creation of SEZs. In the Chinese case, the State acquired the land and developed the required infrastructure, where private enterprises were invited to set up units. The land continued to be owned by the State. In the Indian case, private entities are being involved in developing the SEZ infra-structure. Land is being acquired by the State and handed over to private developers. Some of the proposed SEZs involve huge tracts of land, over 10000 hectares in some cases. If private entities are allowed to own such huge tracts of land, it would amount to the reestablishment of the zamindari system sixty years after independence! The Central Government has to set some limit on such land ownership. The following additional provisions need to be made in the current SEZ policy:

- (a) There should be no transfer of land ownership to the private developer. Private developers should only be allowed to take land on lease.
- (b) The Central Government should set an appropriate ceiling on the total land area under a SEZ, which can be developed by a private entity. SEZ Rules only specify minimum land area requirements for the different classes of SEZs. The maximum land area also needs to be specified.
- (c) SEZs whose land area exceeds the specified ceiling should only be developed by the State (Public Enterprises of the Central or State

Governments). The State can undertake Joint Ventures in developing such SEZs; but in such cases majority stake should lie with the public sector.

(d) A provision limiting the acquisition of multicrop agricultural land should be built into the SEZ Act itself.

(e) Pending amendment of the Land Acquisition Act and adoption of a National Rehabilitation Policy, a model compensation and rehabilitation criteria should be framed by the Central Government and included in the SEZ Rules, following consultation with the State Governments.

(f) The model compensation and rehabilitation criteria for SEZs should ensure that the current owners of land are awarded compensation in line with market prices taking into account the expectation of future land development. A provision must also be made to compensate those with tenancy rights on the acquired land as well as farm labourers. The Central Government should share responsibility for the implementation of the model compensation and rehabilitation criteria.

There are other proposals related to the land question, contained in the Left Parties note, which have been provided in the Annexure.

#### STEPS TO PREVENT MISUSE OF SEZ ACT

The initial cap of 150 on the total number of SEZs was later lifted by the Central Government. Since different classes of SEZs have been envisaged in the SEZ Rules, a cap on the total number of SEZs irrespective of its class and size makes little sense. Therefore, there should be separate caps for the total number of multi-product and sector specific SEZs. Further categorization of SEZs into small, medium and big may also be considered with appropriate caps for the different categories. The RBI has elaborate fit and proper criteria for allowing private entities acquiring shares of a bank beyond a stipulated ceiling. Such fit and proper criteria are stringent, yet transparent, and are meant to ensure that only genuine and competent entities enter into the sensitive banking business. Following a similar approach a transparent and stringent criteria should be set for granting approvals for SEZs. Imbalances should not be allowed to develop between States in terms of the number of SEZs permitted. The Central Government should consider setting up of SEZs through public investment in those States where private investment is not forthcoming. This is important from the point of view of regional balance.

According to the Government's note, 148 out of the 237 SEZs approved so far are IT SEZs. The disproportionately large number of proposals for IT SEZs clearly shows an attempt by new IT units to avail the benefit of the ten year tax break under the SEZ Act which otherwise cannot be availed by the IT companies beyond 2009. In fact demands for further extending the tax holiday for the IT companies for ten more years have already been voiced by a section of the IT industry in order to ensure a level playing field. The Union IT Minister has already endorsed that demand publicly. Thus a situation has been created for the perpetuation of tax breaks for one of the most profitable sectors of the economy, which would also imply giving a go by to the Kelkar Committee recommendation of rationalizing tax expenditures, which has also been advocated by the Left Parties. In this backdrop, the idea of having small SEZs in sectors like IT should be dropped. A decision regarding the extension of tax or other benefits to the IT sector or any other sector which contributes to exports should be taken separately. Projects below a minimum land area should not be granted

approval as a SEZ. The minimum land requirement for a sector-specific SEZ of 100 hectares as specified in the SEZ Rules can provide an appropriate basis.

Section 6 of the SEZ Act says: "The areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as - (a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or (b) the area exclusively for trading or warehousing purposes; or (c) the non-processing areas for activities other than those specified under clause (a) or clause (b)." The Central Government had therefore reserved the right to determine how much of the land area under a SEZ should be allowed as non-processing area. Once the SEZ Rules were framed by the Ministry of Commerce, it was found that while at least 50% of the land area was needed to be earmarked as processing area for sector specific SEZs, the minimum processing area requirement for multi-product SEZs was only 25%. When this provision came under heavy criticism as opening floodgates for real estate ventures in the name of multiproduct SEZs, the minimum processing area for multi-product SEZs was raised to 35%. The anomaly, however, remains. While a developer of a sector specific SEZ of 1000 hectares is required to develop at least 500 hectares of processing area, the developer of a 1000 hectares multi-product SEZ is required to build only 350 hectares of processing area. The justification for having separate minimum processing area requirements for multiproduct and sector specific SEZs is difficult to understand. If both types of SEZs are primarily meant for industrial development, why should they have separate minimum processing area requirements? Unless this anomaly is removed, the apprehension regarding misuse of the SEZ Act for real estate ventures would continue to remain.

The processing area of SEZs should not be less than 50%. Further, 25% of the non-processing area should be dedicated for infrastructure development. Building of residential and commercial complexes should be permitted only within 25% of the total land area. This is very important since the list of permissible activities inside SEZs provided by the Government include items like hotels, shopping arcades, restaurants and multiplexes which are not directly related to industrial production. The Government's note states that a monitoring mechanism is already in place which would ensure that the activities within the SEZs are in strict adherence to the SEZ rules. The problem, however, lie with the SEZ Rules itself, which currently permits a whole range of real estate activities in 65% of the area of a multiproduct SEZ. Besides revising the minimum processing area requirement for multiproduct SEZs to 50%, there is also a need to lay down regulatory parameters for real estate development within the SEZs. Besides having a list of permissible activities, the SEZ Rules should also contain a Land Use Plan for the SEZs, which would ensure that housing or other commercial complexes constructed within the SEZs do not exceed the supportive infrastructural needs of industrial units in the processing areas. The issue of housing facilities for the workers in the SEZs have to be concretely addressed. Wherever residential complexes would be permitted within the SEZs, they should be built not only for the management and the white-collared employees but also for the workers. A situation where lakhs of workers of the SEZ units would be forced to stay outside the SEZ area leading to a proliferation of shantytowns in neighbouring areas should not be allowed to arise.

## REVIEWING TAX CONCESSIONS

An estimate made by the Finance Ministry based upon the first 70 SEZ proposals which were cleared by the Board of Approval earlier this year, showed a loss of total tax revenue worth Rs 102621 crore from 2006-07 to 2009-10 on account of the tax incentives provided under the SEZ Act. Out of this, loss of direct tax revenue was estimated to be Rs. 53740 crore and loss of indirect tax revenue Rs. 48881 crore. Of course the revenue losses estimated by the Finance Ministry are notional losses based upon certain assumptions regarding the level of investment and exports from the SEZs. However, the figures cannot be ignored simply because they are notional, especially since the Board of Approval has approved over 330 more SEZ proposals since these estimates were made. The Approach Paper to the XI Plan has also observed that "...there are concerns that SEZs primarily focus on real estate, that there is a lack of level playing field between manufacturing units within SEZs and those in domestic tariff area, and that there can be large loss of revenue on account of tax concessions for exports of goods and services that are already been exported without such concessions. These concerns would need to be addressed and where necessary adequate safeguards put in place". Seen in this light, the obstinacy shown in the Government's note, defending all the tax incentives provided in the SEZ Act is quite disturbing.

The Government's note argues that the tax incentives provided in the SEZ Act and the consequent revenue loss will be more than compensated by the gains in terms of additional exports and employment generation. Equivalent tax concessions for the SEZ developers has been justified in terms of the extant income tax concessions provided for investment in infrastructure. However, the RBI has recently raised the interest cost of credit for SEZ developers, which shows that the Central Bank is unwilling to view SEZs as infrastructure development. Besides, the Finance Ministry has already initiated an exercise of rationalizing tax concessions in keeping with the recommendations of the Kelkar Committee. The tax incentives provided in the SEZ Act would sabotage the entire exercise of phasing out myriad corporate tax exemptions and export incentives, in the name of providing a level playing field between the units within and outside the SEZs. In order to avoid such a predicament, which would be a big blow to resource mobilization, tax concessions in some of the areas in Chapter VI of the SEZ Act, under the "Special Fiscal Provisions for Special Economic Zones" need to be reconsidered:

- (a) While customs and excise duty exemptions for units within the SEZs can be understood as measures to ensure price competitiveness of exports, providing 100% exemption from income tax on profits for the first 5 years and 50% for the next 5 years which has been done in the SEZ Act, is clearly excessive. Income tax concessions for a period longer than 2 years should only be provided for the reinvested portion of profits, and that too only for a maximum of 5 years.
- (b) The SEZ Act provides for similar exemptions, drawbacks and concessions for the entrepreneurs setting up units within the SEZ and the developers of the SEZ. Thus private developers will be able to derive tax benefits without contributing to exports since the positive net foreign exchange earning requirement is only valid for units within the SEZs and not the developers. The developers and the entrepreneurs cannot be treated on par as far as tax exemptions and concessions are concerned. Fiscal incentives for developers, if

they have to be provided at all, should be separately specified and should be considerably lesser than the ones provided for the entrepreneurs for income tax as well as customs and excise duties.

(c) The SEZ Rules have imposed the granting of tax and duty concessions upon the State Governments, which is not in keeping with the spirit of the SEZ Act. Either this rule has to be amended or the Central Government should compensate the State Governments on the loss of revenue on account of these tax and duty exemptions.

(d) Exemption from Service Tax has been granted to the developers in a Special Economic Zone in the SEZ Act. Moreover, units in the International Financial Services Centre and Offshore Banking Units have been given income tax exemptions equivalent to those of other units in the SEZs. Securities transactions entered into by non-residents through the International Financial Services Centre under a SEZ have also been exempted from the Securities Transaction Tax. These exemptions, which are unrelated to exports, should not be granted.

Besides reviewing the tax concessions mentioned above, the provision for setting up Offshore Banking Units and International Financial Services Centres in the SEZ Act needs to be qualified. While the need for efficient financial intermediation and credit delivery for the purpose of industrial and export promotion within the SEZs is understandable, utmost care has to be taken to ensure that these financial entities do not develop as tax havens for speculative finance capital. There is no need for providing tax breaks for the financial entities within the SEZs. All financial activities should be subject to the same tax provisions regardless of whether their offices are physically located within the SEZ or the Domestic Tariff Area. Moreover, the RBI needs to ensure that the financial activities permitted within the SEZs are strictly related to the economic activities within the zone.

#### SAFEGUARDING DEMOCRATIC RIGHTS

The most significant amendment which was made to the SEZ Bill before its enactment by the Parliament was the addition of a section in order to provide a safeguard against any dilution of labour laws in the SEZs. Section 49 (b) of the SEZ Act reads:

Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rules or regulations made thereunder or any notification or order issued or direction given or scheme made thereunder so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.

Despite this, there has been an attempt to dilute labour laws while framing the SEZ Rules. Section 5(5) (e), (f) and (g) of the SEZ Rules asks the State Governments to delegate powers under the Industrial Disputes Act to the Development Commissioner and to declare SEZs as Public Utility Services. Despite these provisions of the SEZ Rules being incompatible with the SEZ Act, the Government's note has defended them on the grounds that are quite incomprehensible. The Government's note states:



The delegation of powers to the Development Commissioner by the State Governments under the Industrial Disputes Act is aimed at facilitating early resolution of disputes and has been there much earlier before the enactment of the SEZ Act and Rules. Insofar as the declaration of units in the SEZ as public utilities is concerned, this is done on an year-to-year basis by the State Governments and has been the practice even before the enactment of SEZ Act and Rules. This is to avoid flash strikes and disruption of exports, which are on a time bound basis.

How can something which has been in practice in some other context provide a justification for diluting labour laws within the SEZs contravening the SEZ Act? Moreover, the Model SEZ Act for the State Governments framed by the Centre also contains a long list of exemption clauses in labour laws, including in the Minimum Wages Act and the Contract Labour (Regulation and Abolition) Act, that the States are advised to invoke. This clearly shows that having failed to dilute the labour laws within the SEZs during the passage of the SEZ Act in Parliament, the Central Government is trying to implement it by encouraging the State Governments in that direction. Such deviations of the SEZ Rules as well as the Model SEZ Act for State Governments from the SEZ Act have to be corrected to ensure that no dilution of labour laws occur. The ILO recommendation regarding separation of powers between the Development Commissioner of an Export Processing Zone and the Grievance Redressal Officer should also be seriously considered in this regard.

There is a further issue with SEZs which relates to the administrative structure and the character of local level institutions. While this aspect has not been dealt with in the SEZ Act or Rules, the Model SEZ Policy that the Centre is advocating for the State Governments states that: "The State Government will declare SEZ as Industrial Township and if necessary, relevant Act would be amended so that SEZ can function as a governing and autonomous body as provided under Article 243(Q) of the Constitution." Several States have already adopted position. Now, in a context where private developers are building the SEZs and would have a major say in the administrative affairs, the democratic character of the SEZ authority becomes deeply suspect. For instance, in Maharashtra, as per section 6.1 of the draft Maharashtra Special Economic Zones Act, the "township authority" will consist of three nominees of the private developer and two nominees of the State government - with the developer's nominee chairing the authority. Therefore, private entities would be able to exercise decisive administrative control over the local bodies of the SEZs. A serious question arises whether such an administrative structure for a large industrial township is permissible within the framework of the Indian Constitution.

Besides, several provisions within the SEZ Act seek to concentrate administrative powers in the hands of the Development Commissioner of a SEZ, with no provision to ensure democratic accountability. The operation of criminal law is also set to be restricted within the SEZs; for instance Section 22 of the SEZ Act specifies that no investigation, search or seizure within an SEZ can be undertaken without the permission of the Development Commissioner, except in the case of an agency authorized by the Central government to investigate "notified offences". The Model SEZ Policy for the State Governments has gone further to state that "separate and exclusive arrangements" will be made for "law and order and control of crime" within SEZs. Some of the State Governments have

framed their SEZ Policy on these lines. Question naturally arises as to how the exemption from criminal laws of the country would facilitate the industrial and export objectives for which SEZs are being set up? These provisions have given rise to justifiable concerns regarding the creation of several “countries” within the country in the name of SEZs, where the writ of the Indian Constitution would not run and unaccountable entities like the Development Commissioner or the private developers would enjoy absolute administrative control. Suitable amendments have to be made in the SEZ Act to address these concerns, related to the democratic character of the SEZ Authority, the powers and accountability of the Development Commissioner and whether the Central or State Governments would have the powers to exempt SEZs from the laws of the land, especially those related to labour and crime.

## CONCLUSION

The suggestions made above involve several amendments to the SEZ Act and the SEZ Rules. Unless these changes are brought about, the SEZ Policy would degenerate into a free for all. If the UPA Government continues to move ahead with the current policy, political opposition to it would snowball. In order to avoid such an eventuality, the Government has to change its approach towards SEZs altogether and take the suggestions made by the Left Parties more seriously.

## ANNEXURE

### LEFT PARTIES’ DEMANDS FOR AMENDMENTS IN THE SEZ ACT AND THE GOVERNMENT’S RESPONSES

#### LAND ACQUISITION AND DISPLACEMENT

*Left Parties’ demand:* (a) No transfer of land ownership to private developer (b) Appropriate ceiling on total land area under a SEZ developed by private developer and bigger SEZs to be built by the Public Sector (c) Limiting acquisition of agricultural land (d) Framing National Rehabilitation Policy, amending Land Acquisition Act (e) Including a model compensation and rehabilitation criteria in the SEZ Rules (f) Recycling land blocked in closed units

*Government’s Response:* (a) No Response (b) Central Government does not feel the need. State Governments to decide upon approval and land use stipulation (c) State Governments have been advised to give priority to barren and waste land and limit acquisition of double crop land to 10% of total land area of SEZ. Ministry of Agriculture has also devised a checklist for which opinion from States have been sought (d) & (e) Matter completely within the domain of State Governments. Each State has its own specific land acquisition and relief and rehabilitation package (f) No Response

#### CAP ON THE NUMBER OF SEZS

*Left Parties’ demand:* (a) Apply separate caps on different categories of SEZs (b) Government should consider setting up of SEZs in States receiving no SEZ proposal from private developers

*Government’s Response:* (a) It is best to leave it to the market forces. Cap will lead to license raj. There should be no cap. (b) No response

#### CRITERIA FOR PROCESSING/NON-PROCESSING AREA

*Left Parties’ demand:* (a) Processing Area should not be less than 50%. 25% should be dedicated for infrastructure development.

*Government’s Response:* (a) Minimum processing area for multi-product SEZ will be 35% with a provision of relaxation upto 25% by the BoA. This is in keeping with the guidelines issued by the MoUD for model area utilization for large scale projects. The BoA will assess the size requirement of infrastructural facilities and permit construction in phases, 25% to begin with.

#### LAND USE WITHIN SEZ AREA

*Left Parties’ demand:* (a) Lay down guidelines for real estate development within SEZs. (b) Clearly define the role of SEZ Authority and Development Commissioner in regulating real estate development. (c) Residential facilities for workers should be provided within SEZ Area.

*Government's Response:* (a) A notification containing the list of permissible activities within SEZs. These include items like Hotels, Shopping Arcade/Retail space, Restaurants, Multiplexes besides necessary infrastructure. (b) A monitoring mechanism by the Unit Approval Committee headed by the Development Commissioner and having representatives of State Government and Revenue Department is in place to ensure adherence to SEZ Act and Rules. (c) No Response

#### REVIEW OF TAX CONCESSIONS

*Left Parties' demand:* (a) Review the tax incentives provided in the SEZ Act in order to prevent huge revenue losses. (b) Reduce income tax holiday from 10 years to 2 years (c) Tax incentives for developers have to be considerably lesser than those enjoyed by entrepreneurs (d) Withdraw fiscal incentives unrelated to exports, like service tax exemption for the developers or STT exemption for non-residents operating through the International Financial Services Centre.(e) Concessions to be granted by State Governments should not be imposed through the SEZ Rules(f) Duty concessions on goods sold to the DTA should not be permitted

*Government's Response:* (a) Tax concessions provided in the SEZ Act are similar to those enjoyed by existing SEZs and 100% EOU. Projected revenue loss would be more than compensated by increase in investment and employment (b) Income tax concession to remain as it is. The Chinese case cannot be compared with India since corporate tax rate in China is 15% as compared to 30% in India. There are other disadvantages in India and the fiscal incentive package is meant to attract investors looking for the most globally attractive destinations to invest. (c) Developers already enjoy similar tax benefits for building infrastructure and building SEZ is to be treated as infrastructure activity. Or else, no developer would come forward to invest. (d) & (e) No response (f) 100% duty and taxes have to be paid for sale in DTA

#### WORKERS' RIGHTS

*Left Parties' demand:* (a) Amend those Rules which enables the State Governments to delegate its powers under Industrial Disputes Act to Development Commissioner and to declare SEZs as Public Utility Service

*Government's Response:* (a) Central Government has no authority to relax any labour law. Delegation of powers to DC under IDA is aimed at facilitating early resolution of disputes. Declaration of SEZ as public utilities is done by State Governments on a year-to-year basis. These provisions have been there before the enactment of the SEZ Act.

#### PREVENT SPECULATIVE FINANCE

*Left Parties' demand:* (a) No need to provide tax incentives for financial entities within SEZs (b) All financial activities should be under the regulatory ambit of the RBI. RBI should ensure that financial activities permitted within the SEZs are related to the economic activities of the zone

*Government's Response:* (a) No response (b) Offshore Banking Units are already within the regulatory ambit of the RBI. As of date no proposal for International Financial Services Centre has come to the BoA.

#### AMEND SEZ ACT/RULES

*Left Parties' demand:* (a) Initiate the process of amending the SEZ Act and Rules

*Government's Response:* (a) No amendments to the SEZ Act for at least 2 years. Minor amendments to the Rules would be made from time to time to facilitate the implementation of the SEZ Act. EGoM to review the situation by January third week, 2007.

### GOVERNMENT OF WEST BENGAL

## *The Status of Land Use in West Bengal\**

At no time in West Bengal has the question of the rational use of land assumed the importance that it has today. The importance that the question has gained today is the consequence of years of socio-economic development and of a new agricultural order and the generation of new agrarian surpluses. West Bengal is poised for further and rapid advance into a new phase of industrial modernisation, urbanisation and diversification into different forms of non-agricultural economic activity.

#### GENERAL STATUS OF LAND USE IN WEST BENGAL

Land use statistics in West Bengal at the Block and higher administrative levels are available by the standard nine-fold classification. These data are collected by the Department of Land and Land Reforms under the Establishment for an Agency for Reporting Agricultural Statistics (EARAS) Scheme. Under this scheme, plot-wise information on land use and

cropping pattern are recorded by the amins and bhumisahayaks in 15 per cent of the mouzas in each block in the State. The final estimates of area are calculated by the Department of Agriculture. The total reported area under different categories of land use in West Bengal in 2003-04 was 8.687 million hectares (see Table 1a). Tables 1a and 1b and Figure 1 show the division of land into different land use categories in the State and Districts of West Bengal and the comparative shares of these categories in West Bengal and India.

The main features of the data can be summarised as follows:

1. *Net sown area (or area actually under cultivation) predominates greatly in the reported area of the State.* The share of net sown area in the total area reported is about 63 per cent. In India as a whole, by comparison, 46 per cent of total area is occupied by net sown area.
2. *The share of fallow land, unculturable land and pastures in West Bengal is very low.* It is noteworthy that four categories of land use—namely, fallow other than current fallows, culturable waste land, permanent pasture and other grazing land and barren and unculturable land—constitute 17.6 per cent of land under different uses in India but *only 1 per cent of land under different uses in West Bengal.*
3. *Fallows and unculturable land in the State are concentrated in specific regions of the State.* The district level analysis shows that much of the barren and uncultivable land, culturable waste land and fallows other than current fallow is concentrated in six districts, Birbhum, Bankura, Darjeeling, Paschim Medinipur, Purulia and Bardhaman. Extensive tracts of flat land are, of course, not characteristic of the hilly areas of Darjiling District. In Bardhaman District, the unculturable land is likely to be concentrated in the coal-mining areas (such as Raniganj, Andal, Jamuria, Pandabeswar Blocks).
4. *The area under forests is limited and concentrated regionally.* Of the reporting area, 13.5 per cent is under forest (although, because of the methodology of data collection, this is likely to be an underestimate). As may be expected, forests are concentrated in the western districts of Bankura, West Medinipur and Purulia, in the estuarine areas of South 24 Parganas and in the Himalayan regions of Darjiling and Jalpaiguri.
5. *Interestingly, the extent of land currently under non-agricultural uses is higher in West Bengal than in India.* The comparative data show that the share of land under non-agricultural uses in West Bengal in 2003-04 was 18.5 per cent while the corresponding share for India was 7.7 per cent.
6. *Environments that require special protection occur in all the different categories of land use.* These include wetlands, different types of forest and scrub and the mangrove regions of the south, Himalayan forests, riparian tracts, coastal regions and water bodies.
7. *An inventory of vacant and unutilised lands under all land categories is being compiled by the government.* Such land may occur in any of the nine categories of land use. District Administrations have been asked to prepare such an inventory.

#### URBAN AREAS

According to the Census of India, the total geographical area of West Bengal was 88752 sq km, and the total urban area was 3.7 per cent of the geographical area in 2001. The regional pattern of urbanisation (Table 3) shows that urbanisation is concentrated in the southern districts of

Howrah, North 24 Parganas, Bardhaman, Hugli and Nadia. In the rest of the State, urbanisation is low.

Although the Census data appear to underestimate the extent of urbanisation, the fact remains that further urbanisation and the creation of urban spaces in the State are likely to require the conversion of land from other uses.

#### CRITERIA FOR LAND CONVERSION

As has been seen, land use in West Bengal is characterised by its *intensiveness*, with little utilisable waste or unutilised land. The challenge for land use planning is to achieve concurrently the objectives of protecting and consolidating agriculture, diversifying agricultural production and enhancing rural development *and* moving firmly towards industrialisation and infrastructural development. Our policy must also take into consideration new pressures for urbanisation and the development of urban environments.

The main sources of new demand for land at present are industry, housing, urban spaces and infrastructure. The provision of land for each of these purposes will require the conversion of land from other uses. The factors to be considered when land is converted to any of these uses from other current use include the following :

1. *The current use to which land is being put and the social costs of land conversion.* Where land is agricultural, the factors to be considered are the number of crops grown on the land, irrigation facilities current levels of employment and income generation and the productive potential of land.
2. *The impact of land conversion on the present users of the land, particularly when they belong to the working poor.* Full and just compensation must be provided for any land that is converted to alternative purposes. This is a matter of the people's entitlement.
3. *The benefits from the alternative uses to which the land will be put,* particularly with regard to employment and income generation.
4. *Environmental considerations,* particularly with respect to fragile or endangered ecological zones.
5. *Identify vacant land first.* As stated, the Government has initiated action to create an inventory of land that is not currently in use.

#### ENHANCE AGRICULTURAL PRODUCTIVITY

The demand for land for industrialisation and urbanisation creates a special responsibility with respect to agriculture for the Government. The State can afford to convert land to nonagricultural purposes only if it is able to enhance agricultural productivity, and to implement an agricultural policy that will

- protect and extend the achievements of the State with regard to rice production, thereby contributing to the food and nutrition security of the people of West Bengal;
- improve productivity in food production, thus releasing a significant proportion of cropped area in the State for the diversification of crop production, and, in particular, the production of oilseeds, pulses, fruit, vegetables and flowers and other non-food crops;

- protect bio-diversity in West Bengal and develop agriculture and related activities – and, in general, plan land use – in an ecologically sustainable way; and
- ensure that the development of agriculture and related activities is a key instrument of employment-generation, income-enhancement and, in general, qualitative improvement in the living standards of the working people of the countryside.

#### LAND USE DATA BASE

A rational land use policy requires a modern and scientific data base. In particular, the new demands for land in different spheres of development have brought to the fore the need to reform and update the systems of land statistics in West Bengal. The State Government intends to revamp the statistical system with respect to land use, and to undertake a three-pronged medium-term and short-term programme in this regard:

1. The Government will establish an information system on the land that is based on annual plot-by-plot verification of land tenure, land use, irrigation and cropping. It has been estimated that such a data base can be built over a period of five or six years, and the Government will organise the administration and the arrangements for a changeover to such a system of consolidated land records in the near future.

2. Government has initiated a programme to create, in the short run, a land bank. All district administrations have been asked to provide information on vacant land in the districts in the state sector in the first instance, and on significant and unused tracts of land in the private sector in the next instance. The objective of the State Government is that, in future, when land is required for industrialisation, housing and infrastructural development the State Government be able to specify land identified through rational criteria as being available for industrialisation.

3. The Government of West Bengal will begin an exercise to scientifically evaluate the demand for land in the State for different development activities. Evaluation will be made, in particular, of the demand for land for cultivation and related activity, urbanisation, housing, physical infrastructure, and industry over a five-year and a ten-year period.

\* The tables and charts that accompany this report can be accessed at [http://www.wbgov.com/e-gov/admin/newgovtpublications/upload/Pub-Status\\_on\\_land.pdf](http://www.wbgov.com/e-gov/admin/newgovtpublications/upload/Pub-Status_on_land.pdf)