

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

**Sub : Summary record of the 20th meeting of the National Commission for Scheduled Tribes held on 11/06/2010.**

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2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

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4. The Commission discussed all the Chapters and expressed satisfaction that the suggestions made in respect of each Chapter in the last meeting of the Commission have been suitably incorporated in the revised draft. The Commission, however, observed that the Report needed editorial corrections and resetting of the formats of each Chapter in the Report. The Commission authorized the Secretary, National Commission for Scheduled Tribes to incorporate consequential refinements/ modifications to Chapter 3 as

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8 Secretary, National Commission for Scheduled Tribes emphasized that as mentioned in para 7 of the Agenda Note, the definition of public purpose was very wide covering all sorts of infrastructure projects, which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/ developers, etc. has assumed threatening dimension in recent times, because larger extents of land, than required, are being commandeered as a substitute for capital mobilization by the State. In these circumstances, Secretary, National Commission for Scheduled Tribes suggested that the definition of public purpose should preferably be restricted for acquisitions of land for re-development, as in the British law and State owned/ managed institutions only.

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5. The Commission was informed that the Ministry of Tribal Affairs has sought clear view of the Commission about inclusion of 'MEDARA' community as a synonym of 'MEDA' community of Karnataka State. The Commission re-iterated its earlier decision to recommend inclusion of 'MEDARA' community as a synonym of 'MEDA' ST of Karnataka

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6. Secretary, NCST stated that normative definition/ implementation of rehabilitation and resettlement measures through law was a crying need in the country. The Secretary explained in detail the provisions/ processes embedded in the two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007; and indicated that though both the Bills have since lapsed, the same have been placed before the Commission for formulating the Commission's views to be communicated to the concerned Ministry for consideration while re-introducing the Bill in Parliament. The Secretary, National Commission for Scheduled Tribes highlighted that though both the processes were inter-dependent, critical event-relationships appeared to have been overlooked in the Bills, especially with regard to commencement of the rehabilitation programme and its completion, e.g. linkage of (a) SIA (Social Impact Assessment) with the Enquiry into objections/ purpose of acquisition; clearance of (R&R) expert committee and the agreement with the Companies as per Sec 41 of the Act, (b) Full payment of compensation and adequate rehabilitation with actual displacement/ possession of land etc. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both Bills in letter as well as spirit, as proposed in the flow diagram circulated (as ANNEXURE 3.VII of the draft Chapter 3 of the Annual Report for 2008-09).

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12. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions and approved the comments on the Bill as proposed in the Annexure to the Agenda Note, with appropriate modifications as suggested above. In view of above, the Commission also approved corresponding refinements in Chapter 3 on Resettlement and Rehabilitation of Displaced Tribals. The views of the Commission may also be appropriately communicated to the Ministry of Rural Development, Ministry of Tribal Affairs, Ministry of Mining and Ministry of Environment and Forests for taking suitable action.

13. The meeting ended with a vote of thanks to the Chair.

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**ANNEXURE**  
**(w.r.t. Para 1 of the Summary Record)**

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 11/06/2010 in the Conference Room of the Commission- List of participants.

<b><u>S.No.</u></b>	<b><u>Name and Designation</u></b>	
1.	Shri Maurice Kujur, Vice-Chairperson	(In chair)
2.	Shri Tsering Samphel, Member	
3.	Shri Oris Syiem Myriaw, Member	
4.	Shri R.S. Sirohi, Secretary	
5.	Shri Aditya Mishra, Joint Secretary	
6.	Shri R.C. Durga, Director	
7.	Shri R.P. Vasishtha, Dy. Secretary	
8.	Smt. K.D. Bhansor, Deputy Director	
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6. Secretary, NCST stated that normative definition/ implementation of rehabilitation and resettlement measures through law was a crying need in the country. The Secretary explained in detail the provisions/ processes embedded in the two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007; and indicated that though both the Bills have since lapsed, the same have been placed before the Commission for formulating the Commission's views to be communicated to the concerned Ministry for consideration while re-introducing the Bill in Parliament. The Secretary, National Commission for Scheduled Tribes highlighted that though both the processes were inter-dependent, critical event-relationships appeared to have been overlooked in the Bills, especially with regard to commencement of the rehabilitation programme and its completion, e.g. linkage of (a) SIA (Social Impact Assessment) with the Enquiry into objections/ purpose of acquisition, clearance of (R&R) expert committee and the agreement with the Companies as per Sec 41 of the Act, (b) Full payment of compensation and adequate rehabilitation with actual displacement/ possession of land etc. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both Bills in letter as well as spirit, as proposed in the flow diagram circulated (as ANNEXURE 3.VII of the draft Chapter 3 of the Annual Report for 2008-09).

7. Secretary, NCST stated that the Land Acquisition Act was overwhelmingly weighted in favour of the Government, even at the expense of the genuine concerns of land owners, as is evident from the provisions relating to urgency, computation of market value and

inordinately long time limits for the determination/ payment of compensation etc. Since it vests land free of all encumbrances in a country where title documents did not exist, convenience of capital financing seems to have made compulsory acquisition as the preferred mode of mobilizing land for corporate industrial ventures in recent years, instigating frequent resort to this expropriatory law and inciting widespread resentment among tribals. Secretary, National Commission for Scheduled Tribes emphasized that considering the involuntary nature of the transaction, only limited rights of usage for the intended purpose should be acquired through land acquisition (as in a lease), especially in the case of ancestral tribal lands. In this connection, Secretary, National Commission for Scheduled Tribes mentioned that this fundamental change of approach was necessary to facilitate continued profit-sharing from alternative usage of land in future e.g. in case of mining projects, besides land rent a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Cl.22 for the duration of mineral extraction; and land returned to the owners thereafter or future earnings from the land shared if non-agricultural use is considered in another form.

8 Secretary, National Commission for Scheduled Tribes emphasized that as mentioned in para 7 of the Agenda Note, the definition of public purpose was very wide covering all sorts of infrastructure projects, which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/ developers, etc. has assumed threatening dimension in recent times, because larger extents of land, than required, are being commandeered as a substitute for capital mobilization by the State. In these circumstances, Secretary, National Commission for Scheduled Tribes suggested that the definition of public purpose should preferably be restricted for acquisitions of land for re-development, as in the British law and State owned/ managed institutions only.

9 To minimize resort to involuntary acquisition and limit deprivation of tribal land, Secretary, National Commission for Scheduled Tribes suggested that a rigorous 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.

10 Referring to the inordinate delays in payment witnessed in the case of Mapithel Dam (Manipur), Secretary, National Commission for Scheduled Tribes suggested that besides limiting the time taken by the land acquisition process, there should be other safeguards to reduce the monetary/ hardship costs to land owners. The entire process should invariably be completed within 5 years (or started afresh if possession has been taken in advance). Advance possession should invariably be accompanied by advance payment also. In the event of delay in payment of compensation upto three years after taking possession, besides interest payable @15%, a penal interest of similar order should also be paid; and a new award as per prevailing market rate should be made in case payment is delayed beyond 5 years.

12. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions and approved the comments on the Bill as proposed in the Annexure to the Agenda Note, with appropriate modifications as suggested above. In view of above, the Commission also approved corresponding refinements in Chapter 3 on Resettlement and Rehabilitation of Displaced Tribals.

13. The meeting ended with a vote of thanks to the Chair.

11. Referring to the Rehabilitation and Resettlement Bill, 2007, Secretary, NCST suggested that in order to avoid impoverishment of tribals through land alienation, it was necessary to extend the scope of this legislation to voluntary land transfers or changes in land use of agricultural/ forest lands resulting in displacement. Also, to avoid dereliction/fragmentation of responsibility, the onus of resettlement should squarely be placed on the displacers, who should be required to do all which is deemed necessary as per the laws in force, under the supervision of the agencies appointed by the State. Further, these initial efforts should be supplemented by corporate bodies in future through Corporate Social Responsibility endeavours, by allocating a significant part of retained profit comparable with the returns provided to shareholders.

**ANNEXURE**  
**(w.r.t. Para 1 of the Summary Record)**

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 11/06/2010 in the Conference Room of the Commission- List of participants.

**S.No.    Name and Designation**

1. Shri Maurice Kujur, Vice-Chairperson (In chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri R.P. Vasishtha, Dy. Secretary
8. Smt. K.D. Bhansor, Deputy Director
9. Shri N.K. Kaushik, Assistant Director



BY  
HAND/POST

भारत सरकार  
राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- 1/5/10-Coord

दिनांक/ Date: 29/06/2010

To

- 1) Shri Maurice Kujur, Vice-Chairman
- 2) Shri Oris Syiem Myriaw, Member
- 3) Shri Raghuvendra Singh Sirohi, Secretary

**Sub: Summary record of the 20th meeting of the National Commission for Scheduled Tribes held on 11th June, 2010.**

Sir,

I am to refer to the above subject and to say that 20th meeting of the National Commission for Scheduled Tribes was held at 1100 Hrs. on 11th June, 2010 in the Conference room of the Commission at Lok Nayak Bhawan New Delhi. The meeting was presided over by Shri Maurice Kujur, Vice-Chairman, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,

(Aditya Mishra)  
Joint Secretary

Copy with a copy of the Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 15th July, 2010 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (Admn.)
- (iv) Dy. Director (RU-IV)
- (v) AD/ RO In-charge-RU-I/ RU-II/ RU-III/ RU-IV/ Coord/ SO (Admn.) / AD (OL).

Copy with a copy of the Summary Record of the meeting forwarded for information to:

1. PS to Vice-Chairman/ PPS to Secretary/ PS to Joint Secretary.
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi / Shillong.
3. Sr. System Analyst (NIC Cell, NCST) for uploading on the website.

(Director)

(निदेशक)

1. उपर्युक्त के निजी सचिव/सचिव महोदय के प्रधान निजी सचिव/सचिव सचिव के निजी सचिव।
2. निदेशक/ सहायक निदेशक/ अनुसंधान अधिकारी, राष्ट्रीय अनुसंधान जनजाति आयोग के भाषण/ पूर्वसचिव/ जयपुर/ राठी/ विनाग रिजल क्षेत्रीय कार्यालय।
3. वरिष्ठ सिस्टम निदेशक (NIC Cell, NCST)-आयोग की वेबसाइट पर जोड़ने हेतु।

प्रतिनिधि, बैठक के सक्षिप्त अभिलेख की एक प्रति सचिव, सूचनाएं अधिसूचना

- (i) निदेशक (आर०यू०-1 एवं आर०यू०-II)
- (ii) निदेशक (आर०यू०-III एवं समन्वय एकांक)
- (iii) उप सचिव (प्रशासन)
- (iv) उप निदेशक (आर०यू०-IV)
- (v) सहायक निदेशक/अनुसंधान अधिकारी प्रभाषी - आर०यू०-I/ आर०यू०-II/ आर०यू०-III/ आर०यू०-IV/ समन्वय/ अनुसंधान अधिकारी (प्रशासन)/ सहायक निदेशक (राजभाषा)।

प्रतिनिधि, बैठक के सक्षिप्त अभिलेख की एक प्रति सचिव, निम्नलिखित अधिकारियों को इस अनुसंधान के साथ अर्पित कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के संबंध में जानकारी प्रत्येक संबंधित एकांक/ कार्यालय द्वारा दिनांक 15 जून 2010 तक अवश्य ही समन्वय एकांक को भेज दी जाए।

सचिव सचिव  
(आदि सचिव)

महोदय

है।

राष्ट्रीय अनुसंधान जनजाति द्वारा की गई। बैठक के सक्षिप्त अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न कक्ष में दिनांक 11 जून, 2010 को घातः 11:00 बजे हुई थी। बैठक की अध्यक्षता श्री मॉडल कुंवर, उपर्युक्त, मुझे उपर्युक्त विषय का उल्लेख करते हुए यह कहना है कि आयोग की 20वीं बैठक आयोग के सम्मेलन

विषय: राष्ट्रीय अनुसंधान जनजाति आयोग की दिनांक 11 जून, 2010 को हुई 19वीं बैठक का सक्षिप्त अभिलेख।

- 1) श्री मॉडल कुंवर, उपर्युक्त
- 2) श्री वरीषा वीरम मारीयाव, सदस्य
- 3) श्री रघुवंश सिंह शिवाड़ी

प्रति,

संख्या/ No.- 1/5/10-समन्वय

दिनांक/ Date: 29/06/2010

(अनुसंधान जनजातियों को लिए गए अधिकारों और सुरक्षाओं के उल्लंघन से संबंधित सभी मामलों का, अनुसंधान और अनुसंधान करने के लिए, संविधान के अनुच्छेद 338क के अधीन स्थानित एक संबंधित आयोग।)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

GOVERNMENT OF INDIA

राष्ट्रीय अनुसंधान जनजाति आयोग

भारत सरकार



दरती/ लोक द्वारा

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

**Sub : Summary record of the 20th meeting of the National Commission for Scheduled Tribes held on 11/06/2010.**

The 20th meeting of the National Commission for Scheduled Tribes was held at 11:00 hrs. on 11/06/2010 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi and was presided over by Shri Maurice Kujur, Hon'ble Vice-Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at ANNEXURE. There were four Agenda Items for discussion in the meeting. All the Agenda Items were discussed in detail. Agenda Items relating to **Land Acquisition (Amendment) Bill, 2007** and **Rehabilitation and Resettlement Bill, 2007** were taken up first since suggestions made in the Agenda Note on these Items were also part of the Chapter 3 on Rehabilitation and Resettlement of Displaced Tribals and therefore outcome of the discussion on these items would help finalise Chapter 3 of the 4th Report.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

**Agenda Item I To consider and approve the revised draft of the 4th Report of the National Commission for Scheduled Tribes for the period 2008-09.**

3. There are 9 Chapters in the Report as mentioned below:

- 1) Organisational Set up and Functioning of the Commission
- 2) Service Safeguards
- 3) Rehabilitation and Resettlement of displaced tribals
- 4) Scheduled Tribes and Forest Rights
- 5) Scheduled Tribe Certificates-Issues
- 6) Atrocities on Scheduled Tribes
- 7) Case Studies
- 8) Consultation on Policy Related Issues
- 9) Summary of Recommendations

4. The Commission discussed all the Chapters and expressed satisfaction that the suggestions made in respect of each Chapter in the last meeting of the Commission have been suitably incorporated in the revised draft. The Commission, however, observed that the Report needed editorial corrections and resetting of the formats of each Chapter in the Report. The Commission authorized the Secretary, National Commission for Scheduled Tribes to <sup>incorporate consequential</sup> get the refinements/ modifications to Chapter 3 <sup>as</sup> approved by the Commission w.r.t.

Agenda Item III & IV and ~~also to get the needed~~ <sup>make necessary</sup> editorial corrections ~~done~~ in all the Chapters of the Report and submit the final Report to the Hon'ble Vice-Chairperson, alongwith the forwarding letter for submission of the Report to the President of India.

**Agenda Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA'**  
**Item II ST of Karnataka – reconsideration**

5. The Commission was informed that the Ministry of Tribal Affairs has sought clear view of the Commission about inclusion of 'MEDARA' community as a synonym of 'MEDA' community of Karnataka State. The Commission re-iterated its earlier decision to recommend inclusion of 'MEDARA' community as a synonyms of 'MEDA' ST of Karnataka

**Agenda Land Acquisition (Amendment) Bill, 2007.**  
**Item III**

and

**Agenda Rehabilitation and Resettlement Bill, 2007.**  
**Item IV**

~~The Secretary, NCST stated that normative definition / implementation of rehabilitation and resettlement measures through law was a crying need in the country embedded in the provisions of two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007; and indicated that both the Bills have since lapse but the same have been placed before the Commission for formulating the Commission's views so that the same could be communicated to the concerned Ministry for consideration while re-introduction of the Bill in Parliament. The Secretary, National Commission for Scheduled Tribes highlighted that there was no connectivity between two Bills, especially with regard to commencement of the rehabilitation programme and its completion, eg.~~

9 though both the processes were inter-dependant,

~~The Secretary, National Commission for Scheduled Tribes also indicated certain deficiencies in the draft LA Bill like absence of linkage of (a) SIA with other activities, (b) Enquiry regarding purpose of acquisition, clearance of expert committee and the agreement with the National Commission for Scheduled Tribes by the Companies as per Sec 41 of the Act, (c) Full payment of compensation and adequate rehabilitation with actual displacement/possession. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both Bills in letter as well as spirit, as proposed in flow diagram (as ANNEXURE 3.VII of the draft Chapter 3 of the Annual Report for 2008-09)~~

10 8 ~~With reference to para 5 of the Agenda Note regarding delay in payment after declaration of the award, Secretary, National Commission for Scheduled Tribes proposed that interest @ 9% should be paid during the interval between taking possession and~~ <sup>Referring the inordinate delays in payment witnessed in the case of Napthel dam (Mampan)</sup> <sup>other safeguards to reduce the monetary / hardship costs to land owners. The entire process should invariably be completed within 5 years (or started afresh if possession has been taken in advance)</sup>

Advance possession should invariably be accompanied by advance payment also:

making payment <sup>of compensation</sup> which should be enhanced to 15% after a year. 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.

8. Secretary, National Commission for Scheduled Tribes emphasized that as mentioned in para 7 of the Agenda Note, the definition of public purpose was very wide to cover all sorts of infrastructure projects which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/

developers, etc. has assumed larger dimension in recent times. These have resulted in the <sup>threatening</sup> ~~problems arising out of acquisition of land by National Commission for Scheduled Tribes,~~ <sup>because larger extents of land are being transferred to requiring body having no responsibility in this regard.</sup> In this connection, Secretary, National Commission for Scheduled Tribes suggested that the public purpose should be restricted for acquisitions <sup>preferable</sup> for re-development <sup>of land</sup> only, as being incorporated in the British System <sup>and State-owned managed institutions only.</sup>

To minimize resort to involuntary acquisition and limit deprivation of tribal land

9. 10 Secretary, National Commission for Scheduled Tribes suggested that a <sup>rigorous</sup> ~~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.

11. Secretary <sup>of the Government</sup> stated that the land Acquisition Act was overwhelmingly weighted in favour of the Government, even at the expense of the genuine concerns of land owners, as is

through land acquisition

12. Secretary, National Commission for Scheduled Tribes emphasized that 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. In this connection, Secretary, National Commission for Scheduled Tribes mentioned that in case of mining projects, <sup>besides land rent</sup> a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Cl.22 for the duration of mineral extraction; and land returned to the owners thereafter or future earnings shared if non-agricultural use is considered in another form.

evident from the provision relating to wage computation of market value inordinate long time for the determination of compensation

this fundamental change of approach was necessary to facilitate continued profit-sharing from alternative usage of land in future. e.g.

11. 12. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions and approved the comments on the Bill as proposed in the Annexure to etc. since it vests land free of all encumbrances in a country where title documents did not exist, convenience of capital financing seems to have made compulsory acquisition the preferred mode of mobilizing land for corporate industrial ventures in recent years, instigating frequent resort to this expropriatory law and inciting widespread resentment among tribals

the Agenda Note, with appropriate modifications as suggested above. In view of above, the Commission also approved <sup>consequently</sup> the following refinements in Chapter 3 on Resettlement and Rehabilitation of Displaced Tribals:

~~(a) Page 52, para 3.5.1, Line 5, after the words "authority of the state", add:~~

Land regulation generally prohibit transfer of tribal land to others except with approval of designated authorities. Therefore, surrogate acquisition by the Government on behalf of industries developers, etc. has assumed larger dimension in recent times.

(b) Page 53, para 3.5.4, Line 6, after the words "nature of acquisition". Add:

beside interest @ 9% payable during the interval between taking possession and making payment would be enhanced to 15% after a year.

(c) Page 66, para 3.9.12, Line 15

*In place of existing entries*

The Commission, therefore, recommends that in respect of any development and infrastructure projects infrastructural projects involving displacement of tribals:

*Proposed amendment*

The Commission, therefore, recommends that keeping in view diversion of forests land for any development and infrastructure projects infrastructural projects involving displacement of tribals:

(d) Page 78, para 3.14.12, sub-para (i), Line 4

*In place of existing entries*

A Social Impact Assessment (SIA), including emotional and psychological impacts in respect of the projects undertaken/planned in Dzongu, North Sikkim, should be conducted by the State Govt.

*Proposed amendment*

A Social Impact Assessment (SIA), including emotional and psychological impacts in respect of the projects undertaken/planned in Dzongu, North Sikkim, should be conducted by the State Govt., considering at least 3 alternative sets/project definitions.

(e) Page 94, para 3.16/24, Line 17

*In place of existing entries*

These companies should also spend a significant part of their retained profit on Corporate Social Responsibility with special attention to health, education, water supply, opportunities for employment of local tribals and infrastructure development.

*Proposed amendment:*

These companies should also spend a significant part of their retained profit comparable with the returns provided to shareholders on Corporate Social Responsibility with special attention to health, education, water supply, opportunities for employment of local tribals and infrastructure development and ecological restoration. The CSR activities should also be undertaken in surrounding areas.

(f) Page 96, para 3.16.27, Line 7

*In place of existing entries*

Compensation in lieu of land should be discouraged in case of tribals.

*Proposed amendment*

Therefore, compensation in lieu of land should be discouraged in case of tribals and, they should invariably be provided with agricultural land in the resettlement area by purchases from private land owners, if necessary.

13. The meeting ended with a vote of thanks to the Chair.

**ANNEXURE**  
**(w.r.t. Para 1 of the Summary Record)**

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 11/06/2010 in the Conference Room of the Commission- List of participants.

**S.No.    Name and Designation**

1. Shri Maurice Kujur, Vice-Chairperson (In chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri R.P. Vasishtha, Dy. Secretary
8. Smt. K.D. Bhansor, Deputy Director
9. Shri N.K. Kaushik, Assistant Director

**GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR SCHEDULED TRIBES  
(COORDINATION UNIT)**

**Sub: Meetings of the National Commission for Scheduled Tribes –  
Agenda Items.**

Last meeting of the Commission was held on 6th and 7th May, 2010 to discuss the draft Chapters of the 4th Report of the Commission for the period 2008-09. The revised Chapters on the basis of the suggestions made in the meeting have to be submitted for consideration of the Commission. The progress of the revision of the Chapters was discussed in the Chamber of the Secretary, NCST on 25/05/2010. It was felt that the revised draft of the Report may be available by the end of 1st Week of June, 2010 and, therefore, the revised draft may be considered for approval by the Commission by end of 2nd Week of June, 2010.

The following other Items are also awaiting consideration by the Commission.

S. No.	Subject	Received from	Concerned F.No. / Circulated with letter/ OM No.	Member concerned	Remarks
1	Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA' ST of Karnataka - reconsideration	Ministry of Tribal Affairs	RU-IV/ Service/ Karnataka-2/ 2007	M(TS)	
2	Land Acquisition (Amend-ment) Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	
3	Rehabilitation and Resettlement Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	

2. File submitted for consideration of Hon'ble Vice-Chairperson with the request to indicate the Agenda Items to be included in the meeting and the date and time convenient for holding the meeting of the Commission.

*R.C. Durga*  
(R.C. Durga)  
Director  
26/05/2010

JOINT SECRETARY

*Adhi*  
26/05

*Secretary*  
*Meeting may be held on 11.6.2010 at 11.00 AM*  
*28/5/2010*  
*26/5/10*

*Secretary*

छठी मंजिल, बी-विंग, लोक नयक भवन, खान मार्केट, नई दिल्ली-110003. दूरभाष: 24620969 फैक्स: 24604689, 24624191  
6th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi - 110003. Ph. 24620969 FAX 24604689, 24624191  
Website: <http://ncst.nic.in>

*28/5 DIR/20*

Some notice of  
Agenda papers to  
be circulated  
in time per rules  
of procedure  
26/5/10



**MOST  
IMMEDIATE  
BY HAND**

**भारत सरकार**

**राष्ट्रीय अनुसूचित जनजाति आयोग**

**GOVERNMENT OF INDIA**

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

**(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)**

**संख्या/ No. 1/5/10-Coord.**

**दिनांक/ Date: 28.05.2010**

To

1) Shri Maurice Kujur, Vice-Chairperson

2) Shri Tsering Samphel, Member

3) Shri Oris Syiem Myriaw, Member

**Sub: 20th Meeting of the Commission to be held at 11:00 AM on 11/06/2010 – NOTICE FOR MEETING.**

Sir/ Madam,

I am directed to say that the next meeting of the Commission will be held on 11/06/2010 at 11:00 AM in the Conference Room of the Commission. The meeting will be presided over by Shri Maurice Kujur, Hon'ble Vice-Chairperson. The Agerida Items for consideration in the meeting are given below:

S. No.	Subject	Received from	Concerned F.No. / Circulated with letter/ OM No.	Member concerned	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1	4th Report of the Commission for 2008-09 – Revised draft for consideration and approval	As per mandate of the Commission	@		
2	Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA' ST of Karnataka - reconsideration	Ministry of Tribal Affairs	RU-IV/ Service/ Karnataka-2/ 2007	M(TS)	
3	Land Acquisition (Amend-ment) Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	
4	Rehabilitation and Resettlement Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	

@ 1st draft was discussed in 19th meeting of the Commission held on 6th and 7th May, 2010. The report has 8 main Chapters and 9th Chapter contains Summary of Recommendations contained in 8 main Chapters.

2. You are requested to kindly make it convenient to attend the meeting.

Yours faithfully,

(Aditya Mishra)  
Joint Secretary

Copy for information and necessary action to: Secretary/ Joint Secretary/ Director (RU -I & RU -II)/ Director (RU - III & Coord.)/ DS (Admn.)/ DD(RU-IV)/ SO(Admn.)

Copy for information and record in F. No. 1/3/10-Coord



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

**MOST  
IMMEDIATE  
BY HAND**

संख्या/ No. 1/5/10-Coord.

दिनांक/ Date: 28.05.2010

To

- 1) Shri Maurice Kujur, Vice-Chairperson
- 2) Shri Tsering Samphel, Member
- 3) Shri Oris Syiem Myriaw, Member

**Sub: 20th Meeting of the Commission to be held at 11:00 AM on 11/06/2010 – NOTICE FOR MEETING.**

Sir/ Madam,

I am directed to say that the next meeting of the Commission will be held on 11/06/2010 at 11:00 AM in the Conference Room of the Commission. The meeting will be presided over by Shri Maurice Kujur, Hon'ble Vice-Chairperson. The Agenda Items for consideration in the meeting are given below:

S. No.	Subject	Received from	Concerned F.No. / Circulated with letter/ OM No.	Member concerned	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1	4th Report of the Commission for 2008-09 – Revised draft for consideration and approval	As per mandate of the Commission	@		
2	Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA' ST of Karnataka - reconsideration	Ministry of Tribal Affairs	RU-IV/ Service/ Karnataka-2/ 2007	M(TS)	
3	Land Acquisition (Amend-ment) Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	
4	Rehabilitation and Resettlement Bill, 2007	Suo-moto proposal of NCST (concerns Min of RD)	RU-II	M(OSM)	

@ 1st draft was discussed in 19th meeting of the Commission held on 6th and 7th May, 2010. The report has 8 main Chapters and 9th Chapter contains Summary of Recommendations contained in 8 main Chapters.

2. You are requested to kindly make it convenient to attend the meeting.

Yours faithfully,

  
(Aditya Mishra)  
Joint Secretary

Copy for information and necessary action to: Secretary/ Joint Secretary/ Director (RU -I & RU -II)/ Director (RU – III & Coord.)/ DS (Admn.)/ DD(RU-IV)/ SO(Admn.)

Copy for information and record in F. No. 1/3/10-Coord

Sl. No. 91 (reserved)

586-



राज्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No. RU-IV/Service/Karnataka-2/2007

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्केट, नई दिल्ली-110003  
6th Floor, 'B' Wing, Lok Nayak Bhawan  
Khan Market, New Delhi-110 003

Dated .....24.05.2010.....

To,

- (1) Shri Maurice Kujur, Hon'ble Vice-Chairperson
- (2) Shri Tsering Samphel, Hon'ble Member
- (3) Shri Oris Syiem Myriaw, Hon'ble Member

Sub: Proposal of Inclusion of 'Medara' community as a synonym of 'Meda' community in the ST list of Karnataka.

Madam/Sir,

I am directed to enclose herewith a copy of Agenda Note on the above proposal for comments, if any.

2. The above proposal is likely to be discussed in the next meeting of the Commission.

Yours faithfully,

(Aditya Mishra)  
Joint Secretary

Copy alongwith copy of the enclosure for information and necessary action to:-

- (i) Secretary
  - (ii) Joint Secretary
  - (iii) Director (RU-I & RU-II)
  - (iv) Director (RU-III & Co-ord.)
  - (v) Deputy Secretary (RU-IV & Admn.)
  - (vi) DD (RU-IV)
  - (vii) PS to Chairperson
- Handwritten notes: "given to DD myself", "Karnataka", "20/05/10"

Agenda Note

Issue : Proposal for including 'Medara' community as a synonym of 'Meda' community in the ST list of Karnataka.

Background

The proposal of the State Govt. of Karnataka for inclusion of 'Medara' community as synonym of 'Meda' community in the ST list of Karnataka had earlier come up for discussion in the Commission's meeting on 12.05.2008 when it was decided to call for certain additional information from the Govt. of Karnataka and the Ministry of Tribal Affairs. On receipt of the requisite information, the issue was again discussed in the meeting of the Commission on 22.01.2009 when it was found that the case need further consideration. Accordingly, the proposal was discussed at length in the Commission's meeting held on 02.09.2009. The gist of deliberations and the views of the Commission on the proposal as given in the minutes of the above meeting are as under:-

"Secretary, NCST referred to the observations made in the judgment of the Madras high Court and pointed out that unlike the 'Meda' who were hillsmen, the 'Medara' community are bomboo workers living in the urban areas and speak a variety of languages including Marathi and Telugu. The Commission noted that the State Govt. of Karnataka first recommended inclusion of four communities namely Medara, Medari, Gauriga and Burud as synonyms of Meda community in the list of Scheduled Tribes of the State vide their letter dated 19.10.1995. The proposal of the State Government was considered by the Government of India. It was, however, found that while the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002, notified on 07.01.2003, included Medari, Gauriga and Burud as synonyms of Meda community, it did not include MEDARA community as synonym of MEDA community. This omission was pointed out by the State Govt. vide their letter dated 19.03.2003. The State Govt. stated that in case the omission was due to oversight, action might be taken by the Govt. of India to include 'Medara' also as synonym of 'Meda'. Apart from the State Govt's above mentioned letter, the Commission took into consideration the following documents/inputs in support of its decision to agree to the proposal of the State Govt:

- (i) Letter dated 27.12.2006 from the office of Registrar General of India, new Delhi specifically recommending inclusion of 'Medara' as synonym of 'Meda' in the ST list of Karnataka.

(ii) Additional inputs provided by the State Govt. vide their letter dated 05.06.08 in reply to the Commission's letter dated 21.09.07 regarding social customs, dialects, way of living, occupation, religious practices and practice of inter-marriage among the people belonging to 'Meda' and 'Medara' communities.

(iii) Additional inputs provided by the report of the Hon'ble Member of the Commission (Shri Tsering Samphel) dated 05.03.08 after his visit to the districts of Dharwar, Belgaum, Haveri and Uttara Kannada regarding the social customs, dialects and educational & economic status of the people belonging to Meda, Medara and Medari communities.

The Commission noted that in his report dated 05.03.2008 (referred to above) the Hon'ble Member, inter-alia, stated that some of the members of 'Medara' community, as in the case of any other Scheduled Tribe community, had shifted to urban areas due to educational needs and in search of source of livelihood, but their original family members continued to live in the original tribal habitats, mostly in hills and therefore, the fact that some of the 'Medara' community members were inhabiting in urban areas and to that extent were not geographically isolated, could not be a valid reason to deny them their due rights admissible as Scheduled Tribes. The commission, therefore, expressed its agreement to the proposal for inclusion of 'Medara' community as a synonym of 'Meda' community in the ST list of Karnataka."

2. The ministry of Tribal Affairs was informed of the above views of the Commission vide letter dated 11.09.2009. In response, the MTA vide letter dated 12016/12/01-TA(RL)/C&LM-I(Part) dated 30.11.2009 (Annexure-1) stated that the criteria for considering any community/tribe for inclusion in the list of Scheduled Tribes of any State/UT is (a) Indications of primitive traits (b) Distinctive Culture (c) Geographical isolation (d) Shyness of contact with the community at large and (e) Backwardness. On the basis of the aforesaid criteria, the MTA expressed the view that the statement of the Commission contained in the last para of the minutes (reproduced above) was contradictory and needed to be clarified.

p.577/c

3. The Commission vide letter dated 14.12.2009 clarified to the Ministry that the views of the Commission were finalized after taking into account all relevant aspects. Copies of the Agenda Note circulated for the meeting held on 02.09.2009 alongwith tour report of Member(TS) and other relevant papers were also sent to MTA for information.

p.585/c

4. Vide their letter, dated 15.03.2010 (Annexure-II), MTA has informed the Commission that the papers sent by the Commission would not help the Ministry for consideration of the recommendations of the Commission. The Ministry has re-iterated their stand that the statement of the Commission as contained in its recommendation was contradictory and has requested for the specific views/comments of the Commission on the proposal of inclusion of **Medara** as synonym of **Meda** in the ST list of Karnataka.

**Proposed suggestion**

5. The Commission may re-iterate that the views of the Commission as communicated to the Ministry vide Commission's letter, dated 11.09.2009 are not contradictory. The Commission has made a clear recommendation for the inclusion of **MEDARA** community as a synonym of **MEDA** community in the ST list of Karnataka.

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F. No. 12016/12/01-TA (RL)/C&LM-I(Part)

Government of India  
Ministry of Tribal Affairs  
\*\*\*\*

Shastri Bahwan, New Delhi-115  
Dated: 30<sup>th</sup> November, 2009.

29.11/2009  
Gadim/2009  
02/12/09

To,  
The Secretary,  
National Commission for Scheduled Tribes  
Lok Nayak Bhawan,  
New Delhi.

Subject: Inclusion of 'Medara' as synonym of 'Meda' ST notified at Sl. No. 37 in the list of STs of Karnataka.

Sir,

I am directed to refer to the National Commission for Scheduled Tribes (NCST)'s letter No. RU.IV/Serv./Karnataka-2/2007 dated 11-9-09 on the subject cited above and to say that the criteria for considering any community/tribe for inclusion in the list of Schedule Tribes of any State/UT is:-

- a) Indications of primitive traits;
- (b) Distinctive culture;
- (c) Geographical isolation;
- (d) Shyness of contact with the community at large; and
- (e) Backwardness

RO RULS  
SPIST

2. However, in Commission's aforesaid letter of 11-9-09 in Para 3 it has been stated that 'the Commission further noted that in his report dated 5-3-08 (referred to above), the Hon'ble Member, inter-alia, stated that some of the member of 'Medara' community, as in the case of the any other ST community, had shifted to urban areas due to education needs and in search of source of livelihood, but their original family members continued to live in the original tribal habitats, mostly hills and therefore, the fact that some of the 'Medara' community members were inhabiting in the urban areas and to the extent were not geographically isolated, could not be valid reason to deny them their due rights admissible as ST.

3. This is clearly a contradictory statement and needs to be clarified in view of the criteria laid down for scheduling, as referred above.

Yours faithfully,

Handwritten signature of Dr. N.K. Ghatak

(Dr. N.K. Ghatak)  
Joint Director  
Telefax. 23383965

DD

2/12/09  
J.S. may please  
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May please put up  
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RD (M-IV) / RO IV on file No. 2/12/09

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Amendment 585

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F. No. 12016/12/01-TA (RL)/C&LM-I(Part)  
Government of India  
Ministry of Tribal Affairs  
\*\*\*\*

Shastri Bahwan, New Delhi-115  
Dated: 15<sup>th</sup> March, 2010.

To,

The Secretary,  
National Commission for Scheduled Tribes  
Lok Nayak Bhawan,  
New Delhi.

Subject: Inclusion of 'Medara' as synonym of 'Meda' ST notified at Sl. No. 37 in the list of STs of Karnataka.

Sir,  
65/Gad/12  
17/3/10

I am directed to refer to the National Commission for Scheduled Tribes (NCST)'s letter No. RU.IV/Serv./Karnataka-2/2007 dated 14-12-09 on the subject cited above and to say that the documents / information furnished by the Commission with the aforecited letter are the papers which have been considered by the Commission during the deliberations in the Commission's meeting held on 2.9.09. These documents would not help the Ministry for consideration of the recommendations of the NCST

D.D(KDB)  
S. Post

In this regard it is mentioned that this Ministry has requested the NCST, vide letter of even no dated 30.11.09 to clarify a contradictory statement furnished by the Commission in their letter No. RU.IV/Serv./Karnataka-2/2007 dated 11.09.09. As per the criteria laid down for scheduling a community as Scheduled Tribe, the clear and specific views/comments of the Commission for inclusion of 'Medara' as synonym of 'Meda' ST of Karnataka are required, which are still awaited.

D.S. Singh  
17/3/10

The NCST is therefore, requested to furnish its clear and specific views/ comments for inclusion of 'Medara' as synonym of 'Meda' ST of Karnataka .

J.S.

Please put up in

file

Noma  
17.3.10

Yours faithfully,

(Dr. N.K. Ghatak)  
Joint Director  
Telefax. 23383965

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*DFA*

No. RU-IV/Service/Karnataka-2/2007

25.05.2010

To,  
The Secretary,  
Ministry of Tribal Affairs,  
Shastri Bhawan,  
New Delhi.

**Sub: Proposal of Inclusion of 'Medara' community as a synonym of 'Meda' community in the ST list of Karnataka.**

Madam/Sir,

I am directed to refer to your letter No. 12016/12/01-TA(RL)/C&LM-1(Part) dated 15.03.2010 on the subject mentioned above.

It is requested that a copy of guidelines in which the criteria has been prescribed for inclusion of any community in the list of Scheduled Tribes ~~by the Ministry of Tribal Affairs~~ may kindly sent to this Commission urgently.

Yours faithfully,

*[Signature]*

(Mrs. K.D. Bhansor)  
Deputy Director



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No.NCST/2008/REHAB/01/RR .

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्किट, नई दिल्ली-110003

6th Floor, 'B' Wing, Lok Nayak Bhawan  
Khan Market, New Delhi - 110 003

Dated .....01.06.2010..

To

- 1) Shri Maurice Kujur, Hon'ble Vice Chairperson
- 2) Shri Tsering Samphel, Hon'ble Member
- 3) Shri Oris Syiem Myriaw, Hon'ble Member

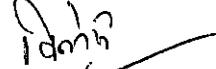
Sub: Comments on the draft Rehabilitation and Resettlement Bill, 2007

Sir,

I am directed to enclose herewith a copy of revised Agenda Note on the subject mentioned above for comments, if any.

2. The subject is likely to be discussed in the next meeting of the Commission.

Yours faithfully,

  
(Vinod Aggarwal)  
Director

Copy alongwith copy of the enclosure for information and necessary action to:-

- i) Secretary
- ii) Joint Secretary
- iii) Director(VA)
- iv) Director(RCD)
- v) Deputy Secretary(A)
- vi) Dy.Director(KDB)

## AGENDA NOTE

Subject : Comments on the draft Rehabilitation and Resettlement Bill, 2007

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 it was decided that detailed comments of the Commission on the Rehabilitation and Resettlement Bill, 2007 will separately be drafted and put to the Commission for consideration so that NCST's concerns regarding displacement of tribals are incorporated into the proposed legislation at an appropriate juncture. The provisions of the draft Bill and draft comments of the Commission are enclosed as **Annexure**. Following are the considerations for drafting the comments on the Rehabilitation and Resettlement Bill, 2007 (R&R Bill).

2. Since independence, as the need for accelerating the pace of planned development in various sectors of the economy started gaining momentum, the pressure to acquire land at various places for construction of dams, hydel projects, industries, mines etc. also started building up. The tribal people had to provide the land for the major part for the simple reason that, through a natural co-incidence, the tribal habitats contained reservoirs of mineral resources and the catchments of streams and rivers possessing enormous irrigation and power potential. Development-induced displacement in the country has brought severe economic, social and environmental problems to the displaced people. Its most important serious consequence for the tribal people has been the dispossession of land, both agricultural and homestead, along with the loss of their traditional occupation, besides traumatic psychological and socio-cultural problems. It is estimated that more than 2 crore people have so far been displaced on account of development projects in the country. Further, it has also been revealed that majority of the people displaced on account of development projects have invariably failed to restore and regain their former standards of livelihood.

3. The exercise of the principle of eminent domain for acquisition of private land has been leading to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio-culture environment. This has resulted in an imperative need to recognize resettlement and rehabilitation issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally-imposed requirements. The socio-economic impact of displacement has also called for a broader concerted effort on the part of the planners to include in the displacement, resettlement and rehabilitation process framework not only those who directly lose land and other assets but also those who are affected by such acquisition of assets.

4. The National Policy of Resettlement and Rehabilitation, which was formulated in 2003 for Project Affected Families, and came into force w.e.f. Feb, 2004, had many issues which needed to be reviewed. These include a clear perception, through a quantification of the costs and the benefits that will accrue to society at large, of the desirability and justifiability of the project and economic, environmental, social and cultural impact on affected families. In the context of new emerging requirements of infrastructure and development projects, which very often require large scale of land, the need to minimize (i) the total area required for a project , (ii) acquisition of agriculture land for non-agriculture use and; (iii) the displacement of people due to acquisition of land also emerged. In respect of the projects, where large number of families are affected, it is essentially desirable to conduct Social Impact Assessment (SIA) and provide all required infrastructural facilities and amenities in the resettlement areas. More particularly, where the Scheduled Tribes are being displaced in sizeable numbers, the need for a well thought out tribal development plan becomes essential. These requirements were taken care in the National Rehabilitation and Resettlement Policy, 2007, which was notified in October 2007.

5. The key features of the National Rehabilitation and Resettlement Policy, 2007 ("NRRP, 2007") are:

- Coverage of all cases of involuntary displacement.
- Social Impact assessment (SIA) introduced for displacement of 400/200 or more families in plain/tribal, hilly, Scheduled areas, etc;
- Consultations with Gram Sabhas or public hearing made compulsory;
- Principle of rehabilitation before displacement;
- If possible, land for land as compensation;
- Skill development support and preference in project jobs (one person per nuclear family);
- Rehabilitation Grant in lieu of land/job;
- Option for shares in companies implementing projects to affected families;
- Housing benefits to all affected families including the landless;
- Monthly pension to the vulnerable, such as disabled, destitute, orphans, widows, unmarried girls, etc;
- Monetary benefits linked to the Consumer Price Index; also to be revised suitably at periodic intervals;
- Necessary infrastructural facilities and amenities at resettlement areas;
- Periphery development by project authorities;
- Committees for each project, to be headed by Administrator for relief and rehabilitation.
- Ombudsman for grievance redressal;
- National Rehabilitation Commission for external oversight.

6. The Govt. has taken further measures in this regard through introduction of the Rehabilitation and Resettlement Bill, 2007 in the Parliament and formulation of a 'National Tribal Policy', which is at the draft stage. The provision for relief & rehabilitation in a special law will help to avoid litigation and consequent delays and prevent cost overrun of the projects. Once the R&R package is provided in the law, there will be uniformity in dealing with the cases by the Courts.

7. The Rehabilitation and Resettlement Bill, 2007 was introduced in the Lok Sabha on 6 December 2007 and was referred to the Standing Committee on Rural Development by the Speaker. The Bill was passed by the Lok Sabha, but could not be tabled in Rajya Sabha; therefore, lapsed. The key provisions of the Bill are:

- Provision for benefits and compensation to people displaced by land acquisition, purchases or any other involuntary displacement. The Bill creates project-specific, state and national authorities to formulate, implement, and monitor the rehabilitation and resettlement process.
- For large scale displacement, the government shall conduct a social impact assessment. It shall appoint an Administrator for Rehabilitation and Resettlement who is responsible for formulating, executing, and monitoring the rehabilitation and resettlement plan.
- Outlining of minimum benefits for displaced families and the criteria for eligibility. Benefits may include land, house, monetary compensation, skills training and preference for jobs.
- Establishment of the post of Ombudsman to address any grievances from the rehabilitation and resettlement process. Civil courts are barred from entertaining any suits related to this matter.
- Creation of monitoring mechanism for Rehabilitation and Resettlement of affected families/persons at project level through R & R Committee, at district level through standing R & R Committee, Oversight Committees at Ministry/Departmental level, at State level through Commissioner for R & R and at national level by constituting a National Monitoring Committee.
- Set up of a National Rehabilitation Commission by Central Government to supervise and exercise general oversight over rehabilitation and resettlement of the affected families covered under this Act.
- Special provisions for rehabilitation and resettlement of members of the STs by preparing a Tribal Development Plan.
- Indexation of rehabilitation grant and other monetary benefits to the Consumer Price Index with reference to the date to be notified.

Even though the R&R Bill, 2007 incorporated special provisions for rehabilitation and resettlement of Scheduled Tribes, NCST was not consulted for its views/ comments at any stage.

8. The key recommendations of the Standing Committee of 14<sup>th</sup> Lok Sabha for the Ministry of Rural Development in its 40<sup>th</sup> Report on the various issues related to the 'The Rehabilitation and Resettlement Bill, 2007' are as under:

- (i) The Land Acquisition (Amendment) Bill, 2007 and The Rehabilitation and Resettlement Bill, 2007 should be studied in detail and it should be ensured that wherever the issues have been duplicated, the language is the same so as to avoid contradictions and legal complications.
- (ii) The nature of involuntary displacement that the Government intend to cover for the purpose of providing Rehabilitation and Resettlement benefits through this legislation should be clearly indicated in the legislation itself.
- (iii) The involuntary displacement due to insurgency-like conditions should also be included for providing rehabilitation and resettlement benefits through the proposed legislation
- (iv) There is an urgent need to have centralized data of land records as well as data base of families in each village/city at taluka and district level.
- (v) The residency period of five years should be reduced to three years to make the provisions proposed in the 'The Rehabilitation and Resettlement Bill, 2007' in line with the Rehabilitation and Resettlement Policy being implemented
- (vi) Minor daughters should also be included in the definition of family to address the gender concerns. The words 'other relatives residing with him or her and dependant on him or her for their livelihood' should be dropped from the definition. Further, widowed/ divorced/abandoned/separated sisters/sister-in-law, daughter/daughter-in-law and the physically handicapped family members need to be covered by the definition of

family.

- (vii) The language of the clauses 3(b)(iii),3(d),3(n) pertaining to Agricultural and non-agricultural labourer should be re-examined thoroughly and brought in consonance so as to avoid any confusion and misinterpretation
- (viii) The words 'preceding the date of declaration of the affected area' may be changed by the words 'immediately before the declaration of the affected area' so as to avoid any confusion or misinterpretation. The above recommendations should be read along with recommendation to change the provision of the five year continuous residence to three years.
- (ix) As per existing Clause 3 (c) read with Clauses 20(1) and 34 indicates that rehabilitation and resettlement benefits would be applicable only when the number of displaced families is more than 400 in plains and more than 200 in hilly, tribal areas etc. Clauses 20(1) and 34 should be suitably modified so that it is absolutely clear that rehabilitation and resettlement benefits would be applicable to each and every affected family irrespective of the total number of families affected.

9. The displacement of tribals from their habitats raises issues not just of monetary compensation but other related issues too which pertain to their sustainable livelihood, preservation of the traditional sense of community, trauma of dislocation and alienation, deforestation and its related social and psychological impacts. Such adverse effects on tribals, as a result of loss of their land and consequent collateral damages are not exclusive to the nature/type of displacement viz. voluntary or involuntary or even to the existing land use, viz agriculture or forest. Further, potential risks of landlessness, joblessness, homelessness, marginalisation, increasing morbidity and mortality, loss of access to common services and social (community) disarticulation are also invariably associated with both voluntary and involuntary displacements. In this connection, it is highlighted that the present scope/ applicability of the R&R Bill, 2007 is limited to involuntary displacements from privately owned lands only. Thus, the voluntary displacements of tribals as a result of the contractual purchase of their

land is not covered under the present scope of the Bill - which is essential, especially because the conjunctive acquisition of land together with negotiated purchases may become default practice if the provisions of the LA (Amendment) Bill, 2007 are enacted into law. *Therefore, it is suggested that besides land acquired by the appropriate Govt., all other land transfers or change in land use of agricultural / forest land for a different purpose which will result in displacement of tribal owners / occupiers should also be brought within the scope of the legislation. Involuntary displacement of permanent nature due to disasters/natural calamity, external/internal and conflicts should explicitly be covered under the R & R legislation. The legislation should also specify that in case of displacement due to disasters/natural calamity and conflicts, the responsibility for resettlement and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility should be of the requiring body (individual/ corporate house/Govt.). In the case of displacement arising from projects implemented by non-government / corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/ corporate house) to avoid fragmentation / dereliction of responsibility. Only in default, the appropriate Govt. may undertake rehabilitation / resettlement (as for Govt. investments) at their cost.*

10. The need for diversion of forest area for non-forest use for development and infrastructural projects like mining, construction of hydro power projects, highways, SEZ etc, involving displacement of tribals will continue as in the past. The adverse effects on tribals, as a result of loss of their land and consequent collateral damages, as well as potential risks are also relevant to their displacement arising from diversion of forest area for non-forest use for development and infrastructural projects, involving displacement of tribals. In all such cases, it is also necessary that rights of the tribal people should be settled as per the provisions of the STs and Other Traditional Forest Dwellers

(Recognition of Forest Rights) Act before implementation of the project. It is suggested that the Commission, therefore, may recommend that:

- (i) *the STs and Other Traditional Forest Dwellers ( Recognition of Forest Rights) Act should have provision for re-settlement of rights of the tribals in cases of involuntary displacement in forests.*
- (ii) *rights of the tribal people should be settled as per the provisions of the STs and Other Traditional Forest Dwellers ( Recognition of Forest Rights) Act before implementation of any developmental / infrastructural project.*
- (iii) *the aforesaid Act should have a general provision for resettlement and rehabilitation of tribals consistent with the spirit/provision of the RR Bill, 2007 (and not only for Critical Wildlife Habitat).*

11. The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006, has no provision regarding resettlement and rehabilitation of tribals displaced due to diversion of forest land for non-forest purpose in the event of the extinguishment of existing rights of the tribals in the forest area. In this connection, it is relevant to mention here that National Mineral Policy, 2008 states that Project Affected Persons will be protected through comprehensive relief and rehabilitation packages in line with the National Rehabilitation and Resettlement Policy. Therefore, it is suggested that **the Commission may recommend that a standard rehabilitation procedure should be drawn for diversion of forest land for mining and other such purposes; and the provisions of National Rehabilitation and Resettlement Policy should be made applicable for tribals displaced due to diversion of forest land for non-forest purpose in the event of the extinguishment of existing rights of the tribals in the forest area under the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. 2006.**

12. In accordance with Clause 4(1) of the R&R Bill, Social Impact Assessment (SIA) has to be made where "there is likely to be displacement of 400 or more families *en masse* in plain areas and or 200 or more families *en masse*" in the hills, scheduled areas or desert development blocks. A large number of projects displace fewer than 400 families, while others displace them in stages too. Since the tribal way of life has close attachment with the environment, habitat and traditional occupation, assessment of social impact on tribals due to their displacement from scheduled areas, irrespective of the number of the displaced families, is essential.

13. The Rehabilitation and Resettlement Bill treats land as a mere tradable commodity, whereas in practice people's attachment to land goes beyond its commercial value. The marginalization of tribals owing to displacement from their traditional habitat has also led to deterioration not merely in economic condition but also in their social status and psychological attitudes. Apart from depriving them of their material resources, the changes also deprive them of the motivation they require to improve their socio-economic status. When pushed into the powerful external world without adequate preparation, the tribals internalize the value system of the dominant society and begin to consider their own society and culture of little value and incapable of developing themselves. Such internalization makes it impossible for them to rebuild their lives, leave alone improve their lifestyle. So their material standard, social status and psychological attitudes deteriorate. Social Impact Assessment (SIA) should, therefore, include emotional impacts including loss of identity, the disappearance of a whole way of life, the dispersal of close-knit communities, the loss of a centuries-old relationship with nature, the loss of roots etc.

14. It would be quite evident that it *will not be possible to estimate the number of affected persons without a detailed assessment. Therefore, SIA should:*  
*(i) be mandatory for all projects / land transfers / change in land use of agricultural / forest land for a different purpose which will result in the*

*displacement of tribal owners / occupiers, irrespective of the number of families it displaces or the voluntary / involuntary nature of the displacement.*

*(ii) be conducted by multi-disciplinary teams considering the impact that the project will have in terms of Landlessness, Joblessness, homelessness, Marginalization, increased morbidity and mortality, food insecurity, loss of access to common resources and services and social disarticulation.*

*(iii) identify affected areas (including contiguous forest lands, water bodies, wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose' under concerned LA Act.*

*(iv) SIA/EIA should identify collateral effects and remedial measures, which should be undertaken in the short, medium and long-term by the requiring body.*

*(v) focus first on measures to prevent the adverse social and environmental impacts of the project, then measures to minimize, mitigate or compensate for them.*

*(vi) include action plan to implement mitigation measures, corrective actions and monitoring measures necessary to manage the identified impacts and risks of the project.*

*(vii) incorporate views of the concerned elected local bodies in the scheduled areas.*

*Further, land acquisition under urgency provisions of the LA Act, 1894 should not be confused with emergency occupation of land in times of conflict, calamity, etc., since the former only permits occupation of the land without prior payment of compensation but does not dispense with the need to survey the land and make declaration of public purpose, etc. SIAs / EIAs are necessary to provide a good substrate for resettlement planning to address / mitigate ensuing problems. Projects involving land proposed to be acquired under urgency provisions of the LA Act will also be accompanied by the same irreversible adverse effects of environmental degradation / displacement; and should, therefore, not be exempted from the requirements of EIA / SIA or the need to comprehensively weigh public purpose- at the least in cases where the number of displaced tribal*

families exceeds 25. To be a participatory exercise, the expert group to review the SIA and accord clearance should also include a representative of the displaced families. The implications of the SIA / EIA should also be explained to the persons likely to be displaced in public hearings, besides obtaining the views of the concerned elected local bodies, so that their informed concerns are comprehensively deliberated by the expert group.

15. The Bill does not provide any role for the requiring body who will ultimately have to grapple with the problems faced by displaced persons. It is also doubtful whether the proposed administrative structure can undertake turnkey execution of all the regulatory, planning, brick and mortar tasks envisaged in the Act. The responsibility for SIA, preparation of RR plans and implementation should be that of the requiring body which may do the job itself or outsource it to other agencies (NGOs). The RR plan should be approved by the RR Committee constituted as per Clause 12. Baseline survey should essentially aim to enumerate all the affected persons, nature of rights affected by displacement and resettlement requirements which could form the basis of the R & R plan. Even urban areas/population may require to be relocated on occasion. The components of the R & R plan should take into account such contingencies also. The Administrator should be responsible for ensuring the observance of regulatory / development norms and processes prescribed in the R&R law. Since the Bill only prescribes a minimum framework of resettlement, the responsibility of preparation and execution of R&R scheme / plan should actually be that of requiring body or its agency, which should seek the approval of the regulatory bodies, the appropriate Govt. and the informal consent of the displaced persons.

16. The Rehabilitation Scheme under the legislation should spell out a minimum framework of resettlement to be followed by all displacers. Benefits under the act should be applicable to all cases of involuntary and voluntary displacement, by every project owned by Govt. or otherwise. The resettlement site should aim to offer better living conditions to families below the poverty line

*and should recognize subsequent division of joint families / separation of adult members in the matter of benefits till the RR plan is published under Section 24(3). Forest dwellers affected by diversion of forest land should be resettled in the forest area itself. In case of tribals, the policy of land for land should be mandatory. Agricultural land may be purchased and allotted to displaced persons if no Government land is available and Compensation in lieu of land should be discouraged in their case. All factors of production, viz Land, Labour & Capital have to be compensated from the profit. Since land rights are being surrendered in perpetuity, the compensation therefore, should be in the form of sweat equity instead of mere preferential allotment. In cases of land development projects sweat equity @ 50% should be provided to land owners. In case of mining projects, equal royalty should be paid to the land owners in perpetuity as compensation for the surrender of surface rights in land. Displaced ST persons who were in possession of forest land in the affected area prior to 13.12.2005 should be resettled in the forest area and similar rights be granted in resettlement area. Resettled tribals should also continue to enjoy reservation benefits in the resettlement area by concurrent modification of the Scheduled Tribes Reservation Orders.*

17. Since R&R provisions are intended to be applicable to all persons affected by acquisition of land under any law, it is all essential to harmonize key stages of the processes involved to ensure successful implementation both in letter as well as spirit. The responsibility for SIA should devolve on the requiring body so that proceedings for acquisition are not initiated without a holistic consideration of the consequences which may ensue therefrom. Preliminary notification for land acquisition should only be issued thereafter; and all the suggestions and objections received in response thereto should also be considered by the expert group along with the SIA and the views of the concerned local bodies / statutory authorities before a finding on 'public purpose' is arrived and expert clearance accorded. Declaration of public purpose under the concerned land acquisition law should only be made thereafter, which should also be justiciable.

Commencement of R&R proceedings should mark the implementation phase of any project, otherwise the displacement is quite premature and mindless. R&R costs should also be made available by the requiring body in advance, if implementation is the responsibility of the Administrator. In case of tribal people, full payment of compensation and adequate rehabilitation should take place before taking possession of land. Negotiated land transfers / change in land use should be permitted / legally validated by the concerned authority only after the obligations under the R&R law have been discharged to the satisfaction of the R&R Administrator.

18. The Common Property Resources (CPRs) form the basis of livelihood for tribal communities more than in the case of caste based, settled agricultural societies. CPRs are generally community managed. Tribals, especially marginal farmers and landless, heavily depend on CPRs to enhance their household income and to meet their domestic and livestock needs. The loss of women's autonomy right over CPRs and especially the conversion of collective rights of tribals over land to private property ownership during the process of resettlement results in landlessness and deprivation. Resettlement does not ensure the continuation of the historical primacy of CPRs, particularly for tribals, all the more because resettlement generally takes place in non-forest areas and that too on a land-for-land basis. In this connection, it is mentioned that Clause 49(2) of the RR Bill, 2007 pays limited attention to CPRs by requiring development of fuel, fodder and non-timber forest resources in a period of 5 years within the resettlement area but this may remain only a fond hope, besides being quite inadequate to purpose. It is suggested that *may be more appropriate to mandate diversion of forest areas for the resettlement of displaced tribals who are dependant on forest-based CPRs for their existence.*

19. Proposed comments in respect of various clauses of the bill are annexed for the consideration of the Commission. [After 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. It would be useful to address the Ministry of Mines / Environment and Forest also.

Clause	Provision	Comments of NCST
Objective	To provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason, and for matters connected therewith or incidental thereto.	Act should also cover voluntary displacement from lands purchased from tribal owners for large projects
1	(1) This Act may be called the Rehabilitation and Resettlement Act, 2007. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) 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 States and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.	No comments
2	The provisions of this Act shall apply to the rehabilitation and resettlement of persons affected by acquisition of land under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force; or involuntary displacement of people due to any other reason.	Rehabilitation and resettlement of tribals should be mandated in all cases of displacement, whether they part with land in voluntary or involuntary fashion. Involuntary displacement of permanent nature due to disasters/natural calamity, external/internal and conflicts should explicitly be covered under the Act. Act should specify that in case of displacement due to disasters/natural calamity and conflicts, the responsibility for resettlement and rehabilitation lies on the appropriate Government, while in the case of displacement occasioned by development projects, this responsibility should be of the requiring body (individual/corporate house/Govt.)
3	In this Act, unless the context otherwise requires,— (a) "Administrator for Rehabilitation and Resettlement" means an officer appointed for the purpose of rehabilitation and resettlement of affected persons under sub-section (1) of section 9.	In the case of displacement arising from projects implemented by non-government / corporate bodies, the entire onus of implementing rehabilitation and resettlement plans should be that of the requiring body (individual/corporate house) to avoid fragmentation dereliction of responsibility. In default, the appropriate Govt. may undertake

	<p>(b) "affected family" means—</p> <p>(i) a family whose primary place of residence or other property or source of livelihood is adversely affected by the acquisition of land for a project or involuntary displacement due to any other reason;</p> <p>(ii) any tenure holder, tenant, lessee or owner of other property, who on account of acquisition of land (including plot in the abadi or other property) in the affected area or otherwise, has been involuntarily displaced from such land or other property;</p> <p>(iii) any agricultural or non-agricultural labourer, landless person (not having homestead land, agricultural land, or either homestead or agricultural land), rural artisan, small trader or self-employed person; who has been residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area, and who has been deprived of earning his livelihood or alienated wholly or substantially from the main source of his trade, business, occupation or vocation because of the acquisition of land in the affected area or being involuntarily displaced for any other reason;</p> <p>(c) "affected area" means area of village or locality notified by the appropriate Government under sub-section (1) of section 20;</p> <p>(d) "agricultural labourer" means a person primarily resident in the affected area for a period of not less than five years immediately before the declaration of the affected area, who does not hold any land in the affected area but who earns his livelihood mainly by manual labour on agricultural land therein immediately before such declaration and who has been deprived of his livelihood;</p> <p>(e) "agricultural land" means lands being used for the purpose of—</p> <p>(i) agriculture or horticulture;</p> <p>(ii) dairy farming, poultry farming, pisciculture, sericulture, breeding of livestock or nursery growing medicinal herbs;</p> <p>(iii) raising of crops, grass or garden produce; and</p> <p>(iv) land used by an agriculturist for the grazing of cattle, but does not include land used for cutting of wood only;</p> <p>(f) "appropriate Government" means—</p> <p>(i) in relation to acquisition of land for the purposes of the Union, the Central</p>	<p>rehabilitation / resettlement (as for Govt. investments) at their cost. Displacement involves permanent separation from land holdings, livelihood as well as residential habitat. The affected persons may possible include all current residents of the affected area; and, therefore, resident pastoralists and herders also. The prescribed period of continuous residence needs to be reduced for such itinerant persons. As far as tribals are concerned, since they are traditional owners of land, a longer residence period of 5 years will not significantly increase the errors of exclusion.</p> <p>Affected area should cover even the surrounding area of 5-8 Km including pasture lands, forests and water bodies, because displacement would induce extinguishment of such rights also.</p> <p>For the same reason, agricultural land should also include forests, water bodies, etc.</p>
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<p>Government;</p> <p>(ii) in relation to a project which is executed by a Central Government agency or undertaking or by any other agency on the orders or directions of the Central Government, the Central Government;</p> <p>(iii) in relation to acquisition of land for purposes other than (i) and (ii) above, the State Government; and</p> <p>(iv) in relation to rehabilitation of persons displaced due to any other reason, the State Government;</p> <p>(g) "below poverty line or BPL Family" means below poverty line families as defined by the Planning Commission of India, from time to time, and those included in a BPL list for the time-being in force;</p> <p>(h) "Commissioner for Rehabilitation and Resettlement" means the Commissioner for Rehabilitation and Resettlement appointed by the State Government under sub-section (1) of section II;</p> <p>(i) "DDP block" means a block identified under the Desert Development Programme of the Government of India;</p> <p>(j) "family" includes a person, his or her spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother and other relatives residing with him or her and dependent on him or her for their livelihood; and includes "nuclear family" consisting of a person, his or her spouse and minor children;</p> <p>(k) "holding" means the total land held by a person as an occupant or tenant or as both;</p> <p>(l) "land acquisition" or "acquisition of land" means acquisition of land under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force;</p> <p>(m) "marginal farmer" means a cultivator with an un-irrigated land holding up to one hectare or irrigated land holding up to half hectare;</p> <p>(n) "non-agricultural labourer" means a person who is not an agricultural labourer but is primarily residing in the affected area for a period of not less than five years immediately before the declaration of the affected area and who does not hold any land under the affected area but who earns his livelihood mainly by manual labour or as a rural artisan immediately before such declaration and who has been deprived of earning his livelihood mainly by manual labour or as such artisan in the affected area;</p> <p>(o) "notification" means a notification published in the Gazette of India, or as the case may be,</p>	<p>The requiring body may possibly obtain some portion of its total land requirement through direct negotiation with the owners. Therefore, besides land acquired by the appropriate Govt., all other land transfers or change in land use of agricultural / forest land for a different purpose which will result in displacement of tribal owners / occupiers should also be brought within the scope of the legislation. Negotiated land transfers / change in land use should be permitted / legally validated by the concerned authority only after the obligations under the R&amp;R laws have been discharged to the satisfaction of the R&amp;R Administrator.</p>
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	<p>the Gazette of a State;</p> <p>(p) "occupier" means a member of a Scheduled Tribes community in possession of forest land prior to the 13th day of December, 2005;</p> <p>(q) "Ombudsman" means the person appointed under section 14 for redressal of grievances;</p> <p>(r) "prescribed" means prescribed by rules made under this Act;</p> <p>(s) "project" means a project involving involuntary displacement of people, irrespective of the number of persons affected;</p> <p>(t) "requiring body" means a company, a body corporate, an institution, or any other organisation for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to a company, body corporate, an institution, or any other organisation, as the case may be, under lease, licence or through any other mode of transfer of land;</p> <p>(u) "resettlement area" means an area so declared under section 25 by the appropriate Government;</p> <p>(v) "small farmer" means a cultivator with an un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal farmer.</p>	
4	<p>(1) Whenever, it is desired to undertake a new project or expansion of an existing project, which involves involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, the appropriate Government shall ensure that a social impact assessment study is carried out in the proposed affected areas in the manner as may be prescribed.</p> <p>(2) While undertaking a social impact assessment under sub-section (1), the appropriate Government shall, inter alia, take into consideration the impact that the project will have on public and community properties, assets and infrastructure; particularly, roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities, such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, places of worship, land for traditional tribal institutions, burial and cremation grounds.</p>	<p>It will not be possible to estimate the number of affected persons without a detailed assessment. Therefore, SIA should:</p> <p>(i) be mandatory for all projects / land transfers / change in land use of agricultural / forest land for a different purpose which will result in the displacement of tribal owners / occupiers, irrespective of the number of families it displaces or the voluntary / involuntary nature of the displacement.</p> <p>(ii) be conducted by multi-disciplinary teams considering the impact that the project will have in terms of Landlessness, Joblessness, homelessness; Marginalization, increased morbidity and mortality, food insecurity, loss of access to common resources and services and social disarticulation.</p> <p>(iii) identify affected areas (including contiguous forest lands wherein tribals have rights) and enumerate all affected (interested)</p>

	<p>(3) The appropriate Government may specify that the ameliorative measures, which will need to be undertaken for addressing the said impact for a specific component, may not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be the State Government.</p>	<p>persons to facilitate enquiry into objections and subsequent determination of 'public purpose' under concerned LA Act.</p> <p>(iv) focus first on measures to prevent the adverse social and environmental impacts of the project, then measures to minimize, mitigate or compensate for them.</p> <p>(v) include action plan to implement mitigation measures, corrective actions and monitoring measures necessary to manage the identified impacts and risks of the project.</p> <p>(vi) incorporate views of the concerned elected local bodies in the scheduled areas.</p>
5	<p>(1) The social impact assessment report shall be submitted to the appropriate Government for its examination by an independent multi-disciplinary expert group, as may be notified by the appropriate Government.</p> <p>(2) The expert group shall consist of the following persons, namely—</p> <p>(a) two non-official social scientist and rehabilitation experts, to be nominated by the appropriate Government;</p> <p>(b) the Secretary of the departments of the appropriate Government concerned with the welfare of the Scheduled Castes and the Scheduled Tribes or his nominee, ex officio; and</p> <p>(c) a representative of the requiring body, to be nominated by the appropriate Government.</p>	<p>The expert group should also include a representative of the displaced families.</p> <p>The implications of the SIA / EIA should also be explained to the persons likely to be displaced in public hearings, besides obtaining the views of the concerned elected local bodies, so that their informed concerns are comprehensively deliberated by the expert group.</p>
6	<p>(1) Wherever it is required, as per the provisions of any law, rules and guidelines issued thereunder, to undertake environmental impact assessment, the social impact assessment study shall be carried out simultaneously with the Environmental Impact Assessment study.</p> <p>(2) The public hearing undertaken in the project affected area for the environmental impact assessment shall also cover issues relating to social impact assessment.</p> <p>(3) A copy of the social impact assessment report shall be made available to the Impact Assessment Agency authorised in respect of environmental impact assessment by the Central Government in the Ministry of Environment and Forests, and a copy of the environmental impact assessment report shall be shared with the expert group notified under section 5.</p>	<p>No Comments</p>

7	<p>(1) The social impact assessment clearance shall be granted in such manner and within such time as may be prescribed.</p> <p>(2) The conditions laid down in the social impact assessment clearance shall be followed by all concerned, including the Administrator for Rehabilitation and Resettlement while preparing and implementing the rehabilitation and resettlement plan.</p> <p>(3) The concealment of any factual data or submission of false or misleading data or reports, may lead to the social impact assessment clearance being rejected and clearance, if any granted on the basis of data which subsequently found to be false, may be revoked.</p>	<p>SIA clearance should specifically address the question whether the displacement is warranted by overriding public interest, which should then form the basis of subsequent declarations of 'public purpose'.</p>
8	<p>The projects involving emergency acquisition of minimum area of land by the Central Government in for the purpose of defence or national security shall be exempted from the provisions of this Chapter, subject to such institutional safeguards as may be prescribed for protecting the interests of the affected families.</p>	<p>Land acquisition under urgency provisions should not be confused with emergency occupation of land in times of conflict, calamity, etc., since the former only permits occupation of the land without prior payment of compensation but does not dispense with the need to survey the land and make declaration of public purpose, etc.</p> <p>SIAs / EIAs are necessary to provide a good substrate for resettlement planning to address / mitigate ensuing problems. Projects involving land proposed to be acquired under urgency provisions of the LA Act will also be accompanied by the same irreversible adverse effects of environmental degradation / displacement; and should, therefore, not be exempted from the requirements of EIA / SIA or the need to comprehensively weigh public purpose.</p>
9	<p>(1) Where the appropriate Government is satisfied that there is likely to be involuntary displacement of large number of persons due to acquisition of land for any project or due to any other reason, and where there is likely to be displacement of—</p> <p>(a) four hundred or more families en masse in plain areas; or</p> <p>(b) two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, then the State Government shall, by notification, appoint in respect of that project, an officer not below the</p>	<p>The Bill does not provide any role for the requiring body who will ultimately have to grapple with the problems faced by displaced persons.</p> <p>It is also doubtful whether the proposed administrative structure can undertake turnkey execution of all the regulatory, planning, brick and mortar tasks envisaged in the Act.</p>

	<p>rank of District Collector to be the Administrator for Rehabilitation and Resettlement:          Provided that if the appropriate Government in respect of such project is the Central Government, the appointment shall be made in consultation with the Central Government:          Provided further that in case of projects involving displacement of less than four hundred families en masse in plain areas, or less than two hundred families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, the State Government may, by notification, appoint in respect of that project, an officer not below the rank of Deputy Collector or Sub-Divisional Officer to be the Administrator for Rehabilitation and Resettlement.          (2) The Administrator for Rehabilitation and Resettlement shall be assisted by such officers and employees as the State Government may decide.</p>	
10	<p>(1) Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the Administrator for Rehabilitation and Resettlement shall take all measures for the rehabilitation and resettlement of the affected families.          (2) The formulation, execution and monitoring of the rehabilitation and resettlement plan shall vest in the Administrator for Rehabilitation and Resettlement.          (3) Subject to any general or special order of the appropriate Government, the Administrator for Rehabilitation and Resettlement shall perform the following functions, namely:—          (i) minimise displacement of persons and to identify non-displacing or least displacing alternatives in consultation with the requiring body;          (ii) hold consultation with the affected persons while formulating a rehabilitation and resettlement scheme or plan;          (iii) ensure that the interests of the adversely affected persons of the Scheduled Tribes and weaker sections are protected while formulating the rehabilitation and resettlement scheme or plan;          (iv) prepare a scheme or plan of rehabilitation and resettlement as required under Chapter V;          (v) prepare a budget including estimated expenditure of various components of acquisition of land, rehabilitation and resettlement activities or programmes in consultation with representatives of the affected</p>	<p>The responsibility for SIA, preparation of RR plans and implementation should be that of the requiring body which may do the job itself or outsource it to other agencies (NGOs). The RR plan should be approved by the RR Committee constituted as per Clause 12.</p>

	<p>families and the requiring body;</p> <p>(vi) arrange land for rehabilitation and resettlement of the affected families;</p> <p>(vii) allot land and ensure providing of benefits to the affected families; and</p> <p>(viii) perform such other functions as the appropriate Government may, from time to time, by order in writing, assign.</p> <p>(4) The Administrator for Rehabilitation and Resettlement may, by order in writing, delegate such of the functions conferred on him by or under this Act to any officer not below the rank of Tehsildar or equivalent as he may consider appropriate for smooth implementation of the rehabilitation and resettlement scheme or plan.</p> <p>(5) All officers and staff appointed by the State Government under this Chapter to assist the Administrator for Rehabilitation and Resettlement shall be subordinate to him.</p>	
11	<p>(1) The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families under this Act, to be called the Commissioner for Rehabilitation and Resettlement.</p> <p>(2) The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans.</p>	No comments
12	<p>(1) For each project which involves involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, the appropriate Government shall constitute a Committee under the chairpersonship of the Administrator for Rehabilitation and Resettlement, to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of scheme or plan of rehabilitation and resettlement of the affected families, and to carry out post-implementation social audits.</p> <p>(2) The <b>Rehabilitation and Resettlement Committee</b> constituted under sub-section (1) shall include, apart from officers of the appropriate Government, the following members, namely:—</p> <p>(i) a representative of women residing in the affected area;</p> <p>(ii) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area;</p> <p>(iii) a representative of a voluntary organisation working in the area;</p>	No comments

	<p>(iv) a representative of a nationalised bank;</p> <p>(v) the Land Acquisition Officer of the project;</p> <p>(vi) the Chairpersons of the panchayats or municipalities located in the affected area, or their nominees;</p> <p>(vii) the Member of Parliament and Member of the Legislative Assembly of the concerned area; and</p> <p>(viii) a representative of the requiring body.</p> <p>(3) The procedure regulating the business of the Rehabilitation and Resettlement Committee, its meetings and other matters connected thereto shall be such as may be prescribed.</p>	
13	<p>(1) The State Government shall in every district constitute a standing Rehabilitation and Resettlement Committee under the chairpersonship of the District Collector or, as the case may be, Deputy Commissioner of the district, to monitor and review the progress of rehabilitation and resettlement of the affected families in the district excluding those covered by the Rehabilitation and Resettlement Committee at the project level as specified in section 12.</p> <p>(2) The composition, powers, functions and other matters relating to the functioning of the Rehabilitation and Resettlement Committee at the district level shall be such as may be prescribed by the State Government.</p>	No comments
14	<p>(1) The appropriate Government shall appoint, in such manner as may be prescribed, an ombudsman for time-bound disposal of the grievances arising out of the matters covered under this Act.</p> <p>(2) Any affected person, if aggrieved, for not being offered the benefits admissible, may move a petition for redressal of his grievances to the ombudsman.</p> <p>(3) The form and manner in which and the time within which petitions under subsection (2) may be made to the ombudsman and be disposed of in such manner as may be prescribed.</p> <p>(4) The ombudsman shall have the power to consider and dispose of all petitions relating to resettlement and rehabilitation against the decision of the Administrator for Rehabilitation and Resettlement or Resettlement and Rehabilitation Committee and issue such directions to the requiring body, the Administrator for Rehabilitation and Resettlement, the District Collector or Deputy Commissioner of the districts, as he may deem proper for the redressal of such grievances.</p>	No comments
15	<p>(1) In case a project covers an area in more than one State or Union territory where the</p>	No comments

	<p>project affected families are or had been residing, or proposed to be resettled, the Central Government shall, in consultation with the concerned States and Union territories, appoint the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, a common Rehabilitation and Resettlement Committee, and the Ombudsman for the purposes of this Act.</p> <p>(2) The method of implementation of the schemes or plans for rehabilitation and resettlement shall be discussed by the State Governments and the Union territory Administrations, and a common scheme or plan agreed to by them shall be notified by the Administrator for Rehabilitation and Resettlement in the States or Union territories in accordance with the procedure laid down in this Act.</p> <p>(3) If any difficulty arises in the implementation of the schemes or plans, the matter shall be referred to the Central Government for its decision.</p>	
16	<p>(1) The Central Government shall constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.</p> <p>(2) The Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields.</p> <p>(3) The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed.</p> <p>(4) The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning.</p>	No comments
17	The States and Union territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required.	No comments
18	<p>(1) For every major project covered under this Act, there shall be an Oversight Committee for Rehabilitation and Resettlement in the Ministry or the Department of the appropriate Government.</p> <p>(2) The composition, functions and procedures of the Committee referred to in subsection (1) shall be such as may be prescribed.</p>	Major project should be defined as resulting in displacement of four hundred or more families en masse in plain areas, or one hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the the Fifth Schedule or Sixth Schedule to the Constitution. These Oversight Committees may only be formed for projects

		undertaken on behalf of the appropriate Government.
19	<p>(1) A National Rehabilitation Commission shall be set up by the Central Government with the power to supervise and exercise general oversight over rehabilitation and resettlement of the affected families covered under this Act.</p> <p>(2) The terms and conditions of appointment of the Chairperson and Members and the composition, powers and the procedure for transaction of business of the National Rehabilitation Commission shall be such as may be prescribed.</p>	No comments
20	<p>(1) Where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, due to acquisition of land for any project or due to any other reason, it shall, declare, by notification in the Official Gazette, area of villages or lands as an affected area.</p> <p>(2) Every declaration made under sub-section (1) shall be published in at least three daily newspapers, two of which shall be in the local vernacular, having circulation in villages or areas which are likely to be affected, and also by affixing a copy of the notification on the notice board of the concerned gram panchayats or municipalities and other prominent place or places in the affected area as well as the resettlement area, or by any other method as may be prescribed in this regard by the appropriate Government.</p>	<p>The affected area should also include land purchased through negotiation in order to address the total consequences of involuntary/voluntary displacement of tribals. The identification of affected areas should be made during the SIA and made known in public hearings.</p> <p>Land requirements would have to be notified separately in accordance with concerned laws. Cumbersome processes like gazette notification may not be necessary to commence R &amp; R planning since no similar adjudication is involved.</p>
21	<p>(1) Upon publication of a declaration under sub-section (1) of Section 20, the Administrator for Rehabilitation and Resettlement shall undertake a baseline survey and census for identification of the persons and families likely to be affected.</p> <p>(2) Every survey under sub-section (1) shall contain the following village-wise information of the affected families, namely:—</p> <p>(i) members of the family who are permanently residing, engaged in any trade, business, occupation or vocation in the affected areas;</p> <p>(ii) families who are likely to lose, or have lost, their house, agricultural land, employment or are alienated wholly or substantially from the main source of their trade, business, occupation or vocation;</p> <p>(iii) agricultural labourers and non-agricultural labourers;</p> <p>(iv) families belonging to the Scheduled Caste</p>	<p>Affected area may include urban pockets also.</p> <p>Baseline survey should essentially aim to enumerate all the affected persons, nature of rights affected by displacement and resettlement requirements which could form the basis of the R &amp; R plan.</p>

	<p>or Scheduled Tribe categories;</p> <p>(v) vulnerable persons such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above fifty years of age, who are not provided or cannot immediately be provided with alternative livelihood, and who are not otherwise covered as part of a family;</p> <p>(vi) families that are landless (not having homestead land, agricultural land, or either homestead or agricultural land) and below poverty line, but residing continuously for a period of not less than five years in the affected area preceding the date of declaration of the affected area; and</p> <p>(vii) the Scheduled Tribes families who are or were in possession of forest lands in the affected area prior to the 13th day of December, 2005.</p> <p>(3) Every survey undertaken under sub-section (1) shall be completed within a period of ninety days from the date of declaration made under sub-section (1) of Section 20.</p> <p>(4) On completion of the survey under sub-section (3) , or on expiry or a period of ninety days, whichever is earlier, the Administrator for Rehabilitation and Resettlement shall, by notification, publish a draft containing details of the findings of the survey conducted under sub-section (1), in such manner as may be prescribed, and invite objections and suggestions from all persons likely to be affected thereby.</p> <p>(5) On the expiry of a period of thirty days from the date of publication of the draft containing details of survey and after considering the objections and suggestions received under sub-section (4), the Administrator for Rehabilitation and Resettlement shall submit his recommendations thereon along with the details of the survey to the appropriate Government.</p> <p>(6) Within a period of forty-five days from the date of receipt of the details of the survey and recommendations of the Administrator for Rehabilitation and Resettlement, the appropriate Government shall publish the final details of survey in the Official Gazette.</p>	<p>Publication of survey information need not await the adjudication of the claims of the informants at higher levels.</p>
22	<p>(1) The Administrator for Rehabilitation and Resettlement shall draw up a list of lands that may be available for rehabilitation and resettlement of the affected families.</p> <p>(2) The list of lands drawn up under sub-section (1) shall consist of—</p> <p>(a) land available or acquired for the project and earmarked for the purpose;</p>	<p>No comments</p>

	<p>(b) Government wastelands and any other Government land available for allotment to the affected families;</p> <p>(c) lands that may be available for purchase or acquisition for the purposes of rehabilitation and resettlement scheme or plan; or</p> <p>(d) a combination of one or more of the above.</p>	
23	<p>(1) After completion of baseline survey and census of the affected families under section 21, and assessment of the requirement of land for resettlement under section 22, the Administrator for Rehabilitation and Resettlement shall prepare a draft scheme or plan for the rehabilitation and resettlement of the affected families after consultation with the representatives of the affected families including women and the representative of the requiring body.</p> <p>(2) The draft rehabilitation and resettlement scheme or plan shall be made known locally by wide publicity in the affected area and the resettlement area in such manner as may be prescribed by the appropriate Government which shall also be discussed in the concerned gram sabhas and in public hearings in urban and rural areas where gram sabhas do not exist:</p> <p>Provided that the consultation with the Gram Sabha or the Panchayats at the appropriate level in Scheduled Areas under the Vth Schedule shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996:</p> <p>Provided further that, in cases of involuntary displacement of two hundred or more Scheduled Tribes families from the Scheduled Areas, the concerned Tribes Advisory Councils shall also be consulted.</p> <p>(3) The draft rehabilitation and resettlement scheme or plan shall contain the following particulars, namely:—</p> <p>(a) the extent of land to be acquired for the project or lost otherwise and the names of the affected villages;</p> <p>(b) a village-wise list of the affected persons, family-wise, the extent and nature of land and immovable property owned or held in their possession in the affected area, and the extent and nature of such land and immovable property which they are likely to lose or have lost, indicating the survey numbers thereof;</p> <p>(c) a list of agricultural labourers in such area and the names of such persons whose livelihood depends on agricultural activities;</p> <p>(d) a list of persons who have lost or are likely to lose their employment or livelihood or who</p>	<p>The RR plan/scheme should be drawn up by the requiring body or its agency, which should also be responsible for seeking approval of concerned regulatory bodies as well as obtaining informal consent of the displaced persons.</p> <p>The Administrator should be responsible for ensuring the observance of regulatory / development norms and processes prescribed in the Act.</p> <p>The Tribal Advisory Committee's mandate extends largely to policy issues, also its meetings are very irregular and it may not be feasible to organize timely and effective consultation regarding project specific R &amp; R issues.</p> <p>Even urban areas/population may require to be relocated on occasion. The components of the R &amp; R plan should take into account such contingencies also.</p>

	<p>have been or likely to be alienated wholly or substantially from their main sources of trade, business, occupation or vocation consequent to the acquisition of land for the project or involuntary displacement due to any other cause;</p> <p>(e) a list of non-agricultural labourers, including artisans in such area;</p> <p>(f) a list of affected landless families, including those without homestead land and below poverty line families;</p> <p>(g) a list of vulnerable affected persons, as specified in clause (v) of sub-section (2) of section 21;</p> <p>(h) a list of occupiers, if any;</p> <p>(i) a list of public utilities and government buildings which are affected or likely to be affected;</p> <p>(j) details of public and community properties, assets and infrastructure;</p> <p>(k) a list of benefits and packages which are to be provided to the affected families;</p> <p>(l) details of the extent of land available in the resettlement area for resettling and for allotment of land to the affected families;</p> <p>(m) details of the amenities and infrastructural facilities which are to be provided for resettlement;</p> <p>(n) the time schedule for shifting and resettling the displaced families in the resettlement area; and</p> <p>(o) such other particulars as the Administrator for Rehabilitation and Resettlement may consider necessary.</p> <p>(4) While preparing a draft scheme or plan in case of a project involving land acquisition on behalf of a requiring body, the Administrator for Rehabilitation and Resettlement shall ensure that the entire estimated cost of rehabilitation and resettlement scheme or plan is included in the cost of the project for which the land is being acquired on behalf of the requiring body; and the entire expenditure of rehabilitation and resettlement benefits including the expenditure incurred on rehabilitation and resettlement of the affected families are borne by the requiring body.</p> <p>(5) The Administrator for Rehabilitation and Resettlement shall communicate to the requiring body for incorporation in the project cost, the entire cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families.</p>	<p>This assumes that the project is still in the planning stage. Logically, however, the commencement of R&amp;R proceedings should mark the implementation phase of any project, otherwise the displacement is quite premature and mindless. R&amp;R costs should also be made available by the requiring body in advance, if implementation is the responsibility of the Administrator.</p>
24	(1) The Administrator for Rehabilitation and Resettlement shall submit the draft scheme or	

	<p>plan for rehabilitation and resettlement to the appropriate Government for its approval.</p> <p>(2) In case of a project involving land acquisition on behalf of a requiring body, it shall be the responsibility of the appropriate Government to obtain the consent of the requiring body, to ensure that the necessary approvals as required under this Act have been obtained, and to make sure that the requiring body has agreed to bear the entire cost of rehabilitation and resettlement benefits and other expenditure for rehabilitation and resettlement of the affected families as communicated by the Administrator for Rehabilitation and Resettlement, before approving it.</p> <p>(3) The approved scheme or plan for rehabilitation and resettlement shall be published in the Official Gazette by the appropriate Government.</p> <p>(4) On the final publication of notification of the rehabilitation and resettlement scheme or plan, it shall come into force.</p>	<p>Since the Act only prescribes a minimum framework of resettlement, the responsibility of preparation and execution of R&amp;R scheme should be that of requiring body or its agency, which should seek the approval of the regulatory bodies, the appropriate Govt. and the consent of the displaced persons.</p>
25	<p>The appropriate Government may, by notification, declare any area or areas as a resettlement area or areas for the purposes of rehabilitation and resettlement of the affected families.</p>	<p>There is an urgent need to have centralized data of land acquired as well as data base of displaced families in each village/city at taluka /district level.</p>
26	<p>(1) The affected families may, wherever possible, be settled in a group or groups.</p> <p>(2) In case the entire population of the village or area to be shifted belongs to a particular community, such population or the families may, wherever possible, be resettled en masse in the resettlement area.</p> <p>(3) In the case of resettlement of the Scheduled Castes affected families, such families may, wherever possible, be resettled in the areas close to the villages.</p>	<p>No Comments</p>
27	<p>The Administrator for Rehabilitation and Resettlement may, on behalf of the appropriate Government, and subject to such rules as may be prescribed, enter into an agreement with any person for the purchase or exchange of any land required for the purposes of the rehabilitation and resettlement scheme or plan.</p>	<p>No Comments</p>
28	<p>(1) In case of a project involving land acquisition on behalf of a requiring body, it shall be the responsibility of the requiring body to provide requisite funds to the administrator for Rehabilitation and Resettlement for proper implementation of the rehabilitation and resettlement scheme or plan for the affected families.</p> <p>(2) In case of a project involving land acquisition on behalf of a requiring body, as</p>	<p>The execution of RR plan should be the responsibility of the requiring authority.</p>

	<p>soon as the rehabilitation and resettlement scheme or plan is finalised, the requiring body shall deposit one-third cost of the rehabilitation and resettlement scheme or plan with the Administrator for Rehabilitation and Resettlement.</p> <p>(3) The Administrator for Rehabilitation and Resettlement shall keep proper books of accounts and maintain records of the funds placed at his disposal, in such manner as may be prescribed, and submit periodical returns to the appropriate Government in this behalf.</p>	
29	<p>In case of a project involving land acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in rehabilitation and resettlement shall precede the actual displacement of the affected families.</p>	<p>The scope of this section should be extended to cover projects implemented by the Government, since their projects will also be accompanied by the same irreversible adverse effects of displacement</p> <p>The word adequate progress should be replaced by adequate progress as per Rehabilitation and Resettlement Scheme/Plan.</p>
30	<p>(1) In case of involuntary displacement of four hundred families or more en masse in plain areas, or two hundred families or more en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Scheduled or Sixth Schedule to the Constitution, comprehensive infrastructural facilities and amenities notified by the appropriate Government shall be provided in the resettlement area.</p> <p>(2) If relocation takes place in an existing settlement area, the same infrastructure shall also be extended to the host community.</p> <p>(3) In case of involuntary displacement of less than four hundred families en masse in plain areas, or less than two hundred families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution, all affected families shall be provided basic infrastructural facilities and amenities at the resettlement area as per the norms specified by the appropriate Government.</p>	<p>It should be applicable to all cases of involuntary and voluntary displacement.</p>
31	<p>The appropriate Government shall ensure that the resettlement area forms part of a Panchayat or a municipality.</p>	<p>Forest dwellers affected by diversion of forest land should be resettled in the forest area itself.</p>
32	<p>If land is acquired in cases of urgency, under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force, each affected family shall be provided with transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan, in addition to the payment of monthly</p>	<p>No comments</p>

	subsistence allowance and other rehabilitation and resettlement benefits due to them under this Act.	
33	<p>In case of a project involving land acquisition on behalf of a requiring body—</p> <p>(i) the requiring body shall contribute to the socio-economic development of such geographic area on the periphery of the project site as may be defined by the appropriate;</p> <p>(ii) the requiring body shall earmark a percentage of its net profit or, in case no profit is declared by the requiring body in a particular year, for that year, such minimum alternative amount as may be determined by the appropriate Government after consultation with the requiring body, to be spent for the purpose and within the area referred to in sub-section (1); and</p> <p>(3) the requiring body shall coordinate with the Commissioner for Rehabilitation and Resettlement while carrying out the developmental activity under this section.</p>	SIA/EIA should identify collateral effects and remedial measures, which should be undertaken in the short, medium and long-term by the requiring body.
34	The rehabilitation and resettlement benefits shall be extended to the affected families who are eligible as affected families on the date of publication of the declaration under subsection (1) of section 20, and any division of assets in the family after the said date shall not be taken into account.	The resettlement site should aim to offer better living conditions to families below the poverty line and should recognize subsequent division of joint families / separation of adult members in the matter of benefits till the RR plan is published under Clause 24(3).
35	<p>(1) Any affected family owning house and whose house has been acquired or lost, shall be allotted land for house, without requiring him to pay the price for such land, to the extent of two hundred and fifty square metres of land in rural areas or, as the case may be, one hundred and fifty square metres of land in urban areas to each family within the affected family, subject to the actual area acquired or lost:</p> <p>Provided that, in urban areas, a house of up to one hundred square metres carpet area may be provided in lieu thereof.</p> <p>(2) Each below poverty line affected family which is without homestead land and which has been residing in the affected area continuously for a period of not less than five years preceding the date of declaration of the affected area and which has been involuntarily displaced from such area, shall be provided with a house having at least fifty square metres carpet area in rural areas or, as the case may be, twenty-five square metres carpet area in urban areas, in the resettlement area:</p> <p>Provided that any such family which opts not to take the house offered, shall get a one-time</p>	No comments

	<p>financial assistance for house construction, and the amount shall not be less than what is given under any programme of house construction by the Government of India.</p> <p>Explanation.—The houses in urban areas may, if necessary, be provided in multistoried building complexes.</p>	
36	<p>(1) Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, or who has, as a land consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, agricultural land or cultivable wasteland to the extent of actual land loss by the affected family subject to a ceiling of one hectare of irrigated land or two hectares of un-irrigated land or cultivable wasteland, if Government land is available in the resettlement area.</p> <p>(2) In the case of irrigation or hydel projects, the affected families shall be given preference in allotment of land-for-land in the command area of the project:          Provided that such lands may be consolidated and plots of suitable sizes allotted to the affected families, who could be settled there in groups:          Provided further that, in case an affected family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for the lands lost, for purchase of suitable land elsewhere.</p> <p>(3) In case of allotment of agricultural land in lieu of the acquired land, each person whose name is included in the records of rights with regard to the affected family shall be given a one-time financial assistance of such amount as may be prescribed by the appropriate Government subject to a minimum of ten thousand rupees.</p> <p>(4) In case of allotment of wasteland in lieu of the acquired land, each person whose name is included in the records of rights with regard to the affected family shall be given a one-time financial assistance of such amount as may be prescribed by the appropriate Government subject to a minimum of fifteen thousand rupees per hectare of land allotted.</p>	<p>In case of tribals, the policy of land for land should be mandatory. Agricultural land may be purchased and allotted to displaced persons if no Government land is available.</p>
37	<p>(1) In case of a project involving land acquisition on behalf of a requiring body, the stamp duty and other fees payable for registration of the land or house allotted to the</p>	<p>No comments</p>

	<p>affected families shall be borne by the requiring body.</p> <p>(2) The land or house allotted to the affected families shall be free from all encumbrances.</p> <p>(3) The land or house allotted may be in the joint names of wife and husband of the affected family.</p>	
38	Each displaced affected family having cattle shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of fifteen thousand rupees for construction of cattle shed.	No comments
39	Each affected family which is displaced shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of ten thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.	No comments
40	Each affected person who is a rural artisan, small trader or self-employed person and who has been displaced shall get one-time financial assistance of such amount as the appropriate Government may prescribe subject to a minimum of twenty-five thousand rupees for construction of working shed or shop.	No comments
41	<p>In case of a project involving land acquisition on behalf of a requiring body—</p> <p>(i) the requiring body shall give preference to the affected families in providing employment in the project, at least one person per family, subject to the availability of vacancies and suitability of the affected person for the employment;</p> <p>(ii) wherever necessary, the requiring body shall arrange for training of the affected persons, so as to enable such persons to take on suitable jobs;</p> <p>(iii) the requiring body shall give preference to the affected persons or their groups or cooperatives in the allotment of outsourced contracts, shops or other economic opportunities coming up in or around the project site;</p> <p>(iv) the requiring body shall give preference to willing landless labourers and unemployed affected persons while engaging labour in the project during the construction phase;</p> <p>(v) the requiring body shall offer the affected persons the necessary training facilities for development of entrepreneurship, technical and professional skills for self-employment;</p> <p>(vi) the requiring body shall offer scholarships and other skill development opportunities to eligible persons from the affected families, as per such criteria as may be fixed by the</p>	Projects implemented under Government aegis should also bear the responsibility of arranging training of affected persons who are deprived of their means of livelihood.

	appropriate Government.	
42	In case of a project involving land acquisition on behalf of a requiring body, the affected families which have not been provided agricultural land or employment shall be entitled to a rehabilitation grant equivalent to seven hundred and fifty days minimum agricultural wages: Provided that if the requiring body is a company authorised to issue shares and debentures, then, it shall give an option to the affected families of taking up to fifty per cent., but in any case not less than twenty per cent., of their rehabilitation grant amount in the form of shares or debentures, in such manner as may be prescribed.	These provisions should extend to other projects implemented by Govt. agencies also. All factors of production, viz Land, Labour & Capital have to be compensated from the profit. Since land rights are being surrendered in perpetuity, the compensation should be in the form of sweat equity instead of mere preferential allotment.
43	In cases involving land acquisition for land development projects, in lieu of land for-land or employment, the affected families shall be given developed land or built-up space within the development project, in proportion to the land acquired, but subject to limits as may be prescribed.	In such cases sweat equity @ 50% should be provided to land owners.
44	In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government.	In case of mining projects equal royalty should be paid to the land owners in perpetuity as compensation for the surrender of surface rights in land.
45	In case of a project involving land acquisition on behalf of a requiring body, each affected family which is involuntarily displaced shall get a monthly subsistence allowance equivalent to twenty-five days minimum agricultural wages per month for a period of one year from the date of displacement.	It should be applicable to all cases of involuntary and voluntary displacement, by every project owned by Govt. or otherwise.
46	The project authorities shall, at their cost, arrange for annuity policies that will pay a pension for life to the vulnerable affected persons as specified in clause (v) of sub-section (2) of section 21, of such amount as may be prescribed by the appropriate Government subject to a minimum of five hundred rupees per month	No Comments
47	In case of linear acquisitions, in projects relating to railway lines, highways, transmission lines, laying of pipelines and such other projects wherein only a narrow stretch of land is acquired for the purpose of the project or is utilised for right of way, each person whose name is included in the records of rights with regard to the affected family shall be offered by the requiring body an ex-gratia grant of such amount as may be prescribed by the appropriate Government subject to a minimum of twenty thousand rupees, in addition to the compensation and any other benefits due under	No Comments

	<p>the Act or programme or scheme under which the land, house or other property is acquired: Provided that, if as a result of such land acquisition, the land-holder becomes landless or is reduced to the status of a small or marginal farmer, other rehabilitation and resettlement benefits available under this Act shall also be extended to such affected family.</p>	
48	<p>The affected families shall have the option to take a lump-sum amount, in lieu of one or more of the benefits specified in sections 35 to 47 (both inclusive), as may be determined by the appropriate Government in consultation with the requiring body.</p>	<p>Compensation in lieu of land should be discouraged in case of tribals.</p>
49	<p>(1) In case of a project involving land acquisition on behalf of a requiring body which involves involuntary displacement of two hundred or more Scheduled Tribes families, a Tribal Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition.</p> <p>(2) The Tribal Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years sufficient to meet the requirements of tribal communities who are denied access to forests.</p> <p>(3) The concerned Grams Sabhas or the Panchayats at the appropriate level in the Scheduled Areas under the Fifth Schedule or, as the case may be, Councils in the Sixth Schedule Areas shall be consulted in all cases of land acquisition in such areas, including acquisition under the urgency clause, before issue of a notification under the Land Acquisition Act, 1894, as amended from time to time, or any other Act of the Union or a State for the time being in force as per the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and other relevant laws.</p> <p>(4) Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, if Government land is available in the resettlement area.</p> <p>(5) In case of land being acquired from members of the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first installment and the rest at the time of taking over the possession of the land.</p> <p>(6) In case of a project involving land</p>	<p>If the Govt. land is not available in the resettlement area, private land may be purchased and made available to tribal agriculturists.</p> <p>Clause 29 is a better formulation since it mandates full payment of compensation and adequate rehabilitation before taking possession of land.</p>

	<p>acquisition on behalf of a requiring body, each Scheduled Tribes affected family shall get an additional one-time financial assistance equivalent to five hundred days minimum agricultural wages for loss of customary rights or usages of forest produce.</p> <p>(7) The Scheduled Tribes affected families shall be resettled preferably in the same Schedule Area in a compact block, so that they can retain their ethnic, linguistic and cultural identity.</p> <p>(8) The resettlement areas predominantly inhabited by the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government, free of cost for community and social gatherings.</p> <p>(9) In case of a project involving land acquisition on behalf of a requiring body, the Scheduled Tribes affected families resettled out of the district will get twenty-five per cent. higher rehabilitation and resettlement benefits in monetary terms in respect of the benefits specified in sub-sections (3) and (4) of section 36, sections 38, 39, and 40.</p> <p>(10) Any alienation of tribal lands in disregard of the laws and regulations for the time being in force shall be treated as null and void; and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be available to the original tribal landowners.</p> <p>(11) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.</p> <p>(12) All benefits available to the affected families in the affected areas, shall continue in the resettlement area.</p>	<p>The adverse consequences are the same. Hence benefits should not be different in the case of Govt./ requiring body.</p> <p>Resettled tribals should also continue to enjoy reservation benefits in the resettlement area by concurrent modification of the Scheduled Tribes Reservation Orders.</p>
50	The affected Scheduled Tribes families, who were in possession of forest lands in the affected area prior to the 13th day of December, 2005, shall be eligible for the benefits of rehabilitation and resettlement under this Act.	Displaced persons should also be resettled in the forest area and similar rights be granted in resettlement area.
51	The rehabilitation grant and other benefits expressed in monetary terms in this Act shall be indexed to the Consumer Price Index with reference to the date to be notified, and the same shall also be revised by the appropriate Government from time to time.	No Comments
52	If a person, in connection with a requirement or direction under this Act, provides any information or produces any document that the	No comments

	person knows is false or misleading, he shall be liable to be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five lakh rupees, or with both.	
53	The officers of the Central Government, State Governments or Union territory Administrations and the officers or staff of the local bodies or other statutory authorities shall assist the Administrator for Rehabilitation and Resettlement or any other officer duly authorised under this Act, as and when required, for carrying out the purposes of this Act	No comments
54	No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, or the Ombudsman is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.	No comments
55	The Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement and the Ombudsman, appointed under this Act shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.	No comments
56	No Suit, prosecution or other legal proceedings shall lie against the appropriate Government, local body or authority or any officer of the appropriate Government or local body or authority acting under this Act for anything which is in good faith done or purported to be done under this Act or the rules, scheme or plan made thereunder.	No comments
57	The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force (except the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996) or in any instrument having effect by virtue of any law other than this Act.	No Comments.
58	(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (a) the manner in which social impact	No Comments

	<p>assessment study is to be carried out under sub-section (1) or section (4);</p> <p>(b) the manner of granting social impact assessment clearance under sub-section (1) or section 7;</p> <p>(c) emergency acquisition of land for the purpose of defence or national security, and its institutional safeguards under section 8;</p> <p>(d) rules of procedure regulating the business of the Rehabilitation and Resettlement Committee under sub-section (3) of section 12; and composition, powers and functions relating to the Rehabilitation and Resettlement Committee under subsection (2) of section 13;</p> <p>(e) the manner of appointment of ombudsman, form and manner in which complaints may be made and disposed by the ombudsman under sub-section (1) and (3) of section 14; and</p> <p>(f) procedures to be followed by the National Monitoring Committee under subsection (3) of section 16; and composition powers and procedure of transaction of business of the National Rehabilitation Commission under sub-section (2) of section 19;</p> <p>(g) the method of notifying affected areas under sub-section (2) of section 20;</p> <p>(h) the manner in which the Administrator for Rehabilitation and Resettlement shall publish a draft details of findings of the survey conducted under sub-section (4) of section 21; and the manner of giving publicity to draft rehabilitation and resettlement scheme or plan under sub-section (2) of section 23;</p> <p>(i) the method of entering into an agreement with any persons under rehabilitation and resettlement scheme or plan under section 27;</p> <p>(j) the manner of keeping books of accounts and records of the funds for rehabilitation and resettlement by the Administrator under sub-section (3) of section 28;</p> <p>(k) specify assistant to affected family under sub-section (3) and (4) of section 36;</p> <p>(l) rules for giving financial assistance to construct cattle shed under section 38; transportation cost for shifting of the family under section 39; construction of working shed for shop under section 40 and the manner in which rehabilitation grant shall be provided under section 42;</p> <p>(m) the manner of providing fishing rights of the reservoirs to the affected families under section 44;</p> <p>(n) the amount of pension payable to vulnerable persons under section 46; and the determination of ex-gratia amount under section 47, the necessary forms for the</p>	
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	<p>purposes specified in section 49; and</p> <p>(o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by the rules.</p> <p>(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p> <p>(4) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses or where such State legislature consists of one House, before that House.</p>	
59	<p>Notwithstanding anything contained in this Act, a scheme or plan for rehabilitation or resettlement of affected persons or families formulated by the requiring body, may provide for benefits higher than the extent and the amount of benefit laid down under this Act.</p>	No Comments.
60	<p>(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary, for removing the difficulty: Provided that no order shall be made under this section after the expiry of the period of three years from the date of commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>	No comments.



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No.NCST/2008/REHAB/01

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्केट, नई दिल्ली-110003  
6th Floor, 'B' Wing, Lok Nayak Bhawan  
Khan Market, New Delhi - 110 003

Dated .....01.06.2010..

To

- 1) Shri Maurice Kujur, Hon'ble Vice Chairperson
- 2) Shri Tsering Samphel, Hon'ble Member
- 3) Shri Oris Syiem Myriaw, Hon'ble Member

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

Sir,

I am directed to enclose herewith a copy of revised Agenda Note on the subject mentioned above for comments, if any.

2. The subject is likely to be discussed in the next meeting of the Commission.

Yours faithfully,

  
(Vinod Aggarwal)  
Director

Copy alongwith copy of the enclosure for information and necessary action to:-

- i) Secretary
- ii) Joint Secretary
- iii) Director(VA)
- iv) Director(RCD)
- v) Deputy Secretary(A)
- vi) Dy.Director(KDB)

## AGENDA NOTE

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 NCST's 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 22(2), an amount equal to 30 % of the market value determined under section 23(i) 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 3(f) 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 well-being 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 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 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.*

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 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. 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 to the land owners in perpetuity. 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. 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. 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>	<p>No Comments</p>
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. 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). 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>	<p>Same as for Clause 2 above.</p>
4	<p>After section 1 of the principal Act, the following section shall be inserted, namely:— "1A. The provisions of the Rehabilitation and Resettlement Act, 2007 shall apply in</p>	<p>Agreement incorporating rehabilitation and resettlement obligations should be stipulated for all bodies seeking acquisition</p>

	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 :—</p> <p>‘(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 :—</p> <p>‘(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:—</p> <p>‘(ee) the expression “appropriate Government” means,—</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>(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:— '(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:— '(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 shall be inserted, namely:—</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>'(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>	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, 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.)
9	In section 4 of the principal Act,—	All land acquisition process in tribal

	<p>(a) in sub-section (1), the following provisos shall be inserted, namely:—  "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:  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:—  “(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:  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:  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.  (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>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),—  (i) the words "subject to the provisions of Part VII of this Act" shall be omitted;  (ii) the <i>Explanation 1</i> shall be omitted.</p>	No comments
11	<p>After section 8 of the principal Act, the following section shall be inserted, namely:—</p>	No comments

	<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>(i) the minimum land value, if any,</p>	

<p>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 market value of the land being acquired.</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 Parliamentary 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>(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 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</p>
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		perpetuity. 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.
14	In section 12 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:— “(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. (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. (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. (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.”	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.
15	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.	No comments
16	In section 17 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:— “(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.”	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.
17	After Part II of the principal Act, the following Parts shall be inserted, namely:— <b>‘PART IIA ESTABLISHMENT OF THE STATE</b>	

<p><b>AUTHORITY</b></p> <p><b>17A.</b> (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:</p> <p>Provided that a State Government may constitute more than one Authority or the benches thereof, for the purposes of this Act, if considers necessary.</p> <p>(2) The head office of the Authority shall be at such place as the State Government may, by notification, specify.</p> <p>(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.</p> <p>(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.</p> <p>(5) A person shall not be qualified to be a Member of the Authority unless he is or has been—</p> <ul style="list-style-type: none"> <li>(i) a judge of a district court;</li> <li>(ii) an officer of the State Government not below the rank of District Collector;</li> <li>(iii) an officer of the State Government in the Law Department not below the rank of Director.</li> </ul> <p>(6) The Members of the Authority shall not hold any other office.</p> <p>(7) The Authority shall ensure transparency while exercising its powers and discharging its functions.</p> <p><b>17B.</b> (1) A Member shall hold office for a term of five years from the date he enters upon his office:</p> <p>Provided that the Member shall not be eligible for re-appointment in the same capacity in that Authority in which he had earlier held the office:</p> <p>Provided further that no Member shall hold office as such after he has attained</p>	<p>The composition of the Authority should satisfy judicial concerns regarding the number, judicial experience and singular expertise of Members of special Tribunals.</p>
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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 decided by the Central Government.

17M. The provisions of sections 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J and 17K shall apply to the Authority for

Same as for Section 17A above.

	<p>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> <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,</p>	No comments

	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.”.	
21	Part VII of the principal Act relating to "Acquisition of Land for Companies" and sections 38 to 44B (both inclusive) shall be omitted.	Same as for Clause 2 above
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>	Same as for Clause 2 above



**CONFIDENTIAL**  
**MOST**  
**IMMEDIATE**

भारत सरकार  
राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ **No. 4/5/10-Coord.**

दिनांक/ Date: **07.06.2010**

To

- 1) Shri Maurice Kujur, Vice-Chairperson
- 2) Shri Tsering Samphel, Member
- 3) Shri Oris Syiem Myriaw, Member

**Sub: Finalization of 4th Report of the National Commission for Scheduled Tribes for the year 2008-09 – Agenda Item I in the 20th Meeting of the Commission to be held at 11:00 AM on 11/06/2010.**

Sir,

I am directed to refer to this Commission's letter No. 1/5/10-Coord. dated 28/05/2010 regarding next meeting of the Commission to be held on 11/06/2010 at 11:00 AM in the Conference Room of the Commission and to enclose a copy of the revised draft of the 4th Report for consideration and approval by the Commission in the proposed meeting. The draft of the Report has been revised on the basis of suggestions made in the discussions on the draft Report held in the Commission on 6th and 7th May, 2010. The revised draft has 9 Chapters including Chapter 9 on Summary of Recommendations made in main 8 Chapters of the Report. Since it is final draft of the Report, + the contents of the report may not be kindly reproduced or made public or shared with any outsider in any form. Similarly, reference to any content or recommendation contained in the report, may also be kindly avoided in any communication in written or verbal form till the same has been placed before Parliament.

Yours faithfully,

(Aditya Mishra)  
Joint Secretary

Copy with a copy of the revised draft Report for information and necessary action to:

1. Secretary
2. Joint Secretary
3. Director (RU -I & RU -II)
4. Director (RU – III & Coord.)
5. DS (Admn.)
6. DD(RU-IV)

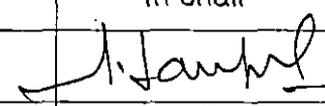
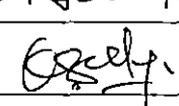
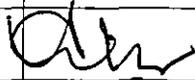
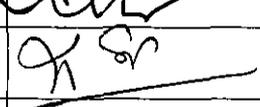
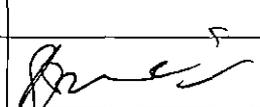
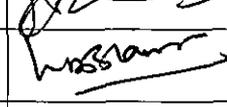
Copy for information and record in F. No. 1/3/10-Coord and 1/5/10-Coord.

5/16/10 CPJ

F.No. 1/4/10-Coord.

**National Commission for Scheduled Tribes**  
(Attendance Sheet)

Sub: 20th Meeting of the National Commission for Scheduled Tribes held on  
11/06/2010 at 11:00 AM – Attendance

S. No.	Name & Designation	Signature
1.	Shri Maurice Kujur, Hon'ble Vice-Chairman	In chair
2.	Shri Tsering Samphel, Member	
3.	Shri Oris Syiem Myriaw, Member	
4.	Shri R.S. Sirohi, Secretary,	
5.	Shri Aditya Mishra, Joint Secretary	
6.	Shri R.C. Durga, Director	
7.	Shri Vinod Aggarwal Director	
8.	Shri R.P. Vasishtha, Dy. Secretary	
9.	Smt. K.D. Bhansor, Dy. Director	
10.	Shri N.K. Kaushik, Asstt. Director.	
11.		
12.		

(निदेशक)

3. वरिष्ठ सिस्टम डिप्लोम (NIC Cell, NCST)-आयान की वेबसाइट पर जोड़ने हेतु।
  2. निदेशक/ सहायक निदेशक/ अनुसंधान अधिकारी, राष्ट्रीय अनुसूचित जनजाति आयोग के मापल/ सुवर्धव/ जयपुर/ रांची/ हिलान स्थित क्षेत्रीय कार्यालय।
  1. उपाध्यक्ष के निजी सचिव/सचिव महोदय के प्रधान निजी सचिव/सुवर्धव सचिव के निजी सचिव।
- प्रतिनिधि, बैठक के साक्षिण अभिलेख की एक प्रति सहित, सूचनाएं अधोलिखित:
- (i) निदेशक (आर०यू०-1 एवं आर०यू०-11)
  - (ii) निदेशक (आर०यू०-III एवं समन्वय एकक)
  - (iii) उप सचिव (प्रशासन)
  - (iv) उप निदेशक (आर०यू०-IV)
  - (v) समन्वय/ अनुसंधान अधिकारी (प्रशासन)/ सहायक निदेशक (राजभाषा)।

प्रतिनिधि, बैठक के साक्षिण अभिलेख की एक प्रति सहित, निम्नलिखित अधिकारियों को इस अनुरोध के साथ अग्रहित कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के संबंध में जानकारी प्रत्येक संबंधित एकक/ कार्यालय द्वारा दिनांक 15 जून 2010 तक अवश्य ही समन्वय एकक को भेज दी जाए।

सुवर्धव सचिव  
(आदित्य मिश्रा)

भारतीय

है।

राष्ट्रीय अनुसूचित जनजाति द्वारा की गई। बैठक के साक्षिण अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न कक्ष में दिनांक 11 जून, 2010 को प्राप्त: 11:00 बजे हुई थी। बैठक की अध्यक्षता श्री मारिस कुंजर, उपाध्यक्ष, मुखे उपसुवर्धव विषय का उल्लेख करते हुए यह कहना है कि आयाम की 20वीं बैठक आयाम के सम्मानन महोदय,

विषय: राष्ट्रीय अनुसूचित जनजाति आयाम की दिनांक 11 जून, 2010 को हुई 19वीं बैठक का साक्षिण अभिलेख।

3) श्री रघुवंश सिंह शिराही

2) श्री वरीस सीम माथियाव, सदस्य

1) श्री मारिस कुंजर, उपाध्यक्ष

प्रति,

संख्या/ No.- 1/5/10-समन्वय

दिनांक/ Date: 29/06/2010

(अनुसूचित जनजातियों को लिए गए अधिकारों और सुधारों के उल्लेखन से संबंधित सभी मामलों का अन्वेषण और अनुवीक्षण करने के लिए संविधान के अनुच्छेद 338क के अधीन स्थापित एक संवैधानिक आयाम)

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

**GOVERNMENT OF INDIA**

राष्ट्रीय अनुसूचित जनजाति आयाम

भारत सरकार



दस्तावेज/ डाक द्वारा



BY  
HAND/POST

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- 1/5/10-Coord

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To

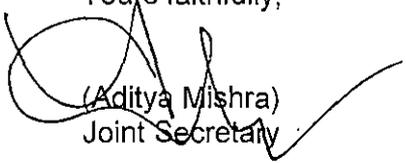
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- 2) Shri Oris Syiem Myriaw, Member
- 3) Shri Raghuvendra Singh Sirohi, Secretary

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Sir,

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Yours faithfully,

  
(Aditya Mishra)  
Joint Secretary

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(Director)

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

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The 20th meeting of the National Commission for Scheduled Tribes was held at 11:00 hrs. on 11/06/2010 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi and was presided over by Shri Maurice Kujur, Hon'ble Vice-Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at **ANNEXURE**. There were four Agenda Items for discussion in the meeting. All the Agenda Items were discussed in detail. Agenda Items relating to **Land Acquisition (Amendment) Bill, 2007** and **Rehabilitation and Resettlement Bill, 2007** were taken up first since suggestions made in the Agenda Note on these Items were also part of the Chapter 3 on Rehabilitation and Resettlement of Displaced Tribals and therefore outcome of the discussion on these items would help finalise Chapter 3 of the 4th Report.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

**Agenda Item I To consider and approve the revised draft of the 4th Report of the National Commission for Scheduled Tribes for the period 2008-09.**

3. There are 9 Chapters in the Report as mentioned below:

- 1) Organisational Set up and Functioning of the Commission
- 2) Service Safeguards
- 3) Rehabilitation and Resettlement of displaced tribals
- 4) Scheduled Tribes and Forest Rights
- 5) Scheduled Tribe Certificates-Issues
- 6) Atrocities on Scheduled Tribes
- 7) Case Studies
- 8) Consultation on Policy Related Issues
- 9) Summary of Recommendations

4. The Commission discussed all the Chapters and expressed satisfaction that the suggestions made in respect of each Chapter in the last meeting of the Commission have been suitably incorporated in the revised draft. The Commission, however, observed that the Report needed editorial corrections and resetting of the formats of each Chapter in the Report. The Commission authorized the Secretary, National Commission for Scheduled Tribes to incorporate consequential refinements/ modifications to Chapter 3 as

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उपाध्यक्ष/Vice-Chairperson  
राष्ट्रीय अनुसूचित जनजाति आयोग  
National Commission for Scheduled Tribes  
भारत, सरकार/Govt. of India

approved by the Commission w.r.t. Agenda Item III & IV and make necessary editorial corrections in all the Chapters of the Report and submit the final Report to the Hon'ble Vice-Chairperson, alongwith the forwarding letter for submission of the Report to the President of India.

**Agenda Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA'**  
**Item II ST of Karnataka – reconsideration**

5. The Commission was informed that the Ministry of Tribal Affairs has sought clear view of the Commission about inclusion of 'MEDARA' community as a synonym of 'MEDA' community of Karnataka State. The Commission re-iterated its earlier decision to recommend inclusion of 'MEDARA' community as a synonym of 'MEDA' ST of Karnataka

**Agenda Land Acquisition (Amendment) Bill, 2007**  
**Item III**

and

**Agenda Rehabilitation and Resettlement Bill, 2007**  
**Item IV**

6. Secretary, NCST stated that normative definition/ implementation of rehabilitation and resettlement measures through law was a crying need in the country. The Secretary explained in detail the provisions/ processes embedded in the two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007; and indicated that though both the Bills have since lapsed, the same have been placed before the Commission for formulating the Commission's views to be communicated to the concerned Ministry for consideration while re-introducing the Bill in Parliament. The Secretary, National Commission for Scheduled Tribes highlighted that though both the processes were inter-dependent, critical event-relationships appeared to have been overlooked in the Bills, especially with regard to commencement of the rehabilitation programme and its completion, e.g. linkage of (a) SIA (Social Impact Assessment) with the Enquiry into objections/ purpose of acquisition, clearance of (R&R) expert committee and the agreement with the Companies as per Sec 41 of the Act, (b) Full payment of compensation and adequate rehabilitation with actual displacement/ possession of land etc. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both Bills in letter as well as spirit, as proposed in the flow diagram circulated (as ANNEXURE 3.VII of the draft Chapter 3 of the Annual Report for 2008-09).

7. Secretary, NCST stated that the Land Acquisition Act was overwhelmingly weighted in favour of the Government, even at the expense of the genuine concerns of

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land owners, as is evident from the provisions relating to urgency, computation of market value and inordinately long time limits for the determination/ payment of compensation etc. Since it vests land free of all encumbrances in a country where title documents did not exist, convenience of capital financing seems to have made compulsory acquisition as the preferred mode of mobilizing land for corporate industrial ventures in recent years, instigating frequent resort to this expropriatory law and inciting widespread resentment among tribals. Secretary, National Commission for Scheduled Tribes emphasized that considering the involuntary nature of the transaction, only limited rights of usage for the intended purpose should be acquired through land acquisition (as in a lease), especially in the case of ancestral tribal lands. In this connection, Secretary, National Commission for Scheduled Tribes mentioned that this fundamental change of approach was necessary to facilitate continued profit-sharing from alternative usage of land in future e.g. in case of mining projects, besides land rent a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Cl.22 for the duration of mineral extraction; and land returned to the owners thereafter or future earnings from the land shared if non-agricultural use is considered in another form.

8 Secretary, National Commission for Scheduled Tribes emphasized that as mentioned in para 7 of the Agenda Note, the definition of public purpose was very wide covering all sorts of infrastructure projects, which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/ developers, etc. has assumed threatening dimension in recent times, because larger extents of land, than required, are being commandeered as a substitute for capital mobilization by the State. In these circumstances, Secretary, National Commission for Scheduled Tribes suggested that the definition of public purpose should preferably be restricted for acquisitions of land for re-development, as in the British law and State owned/ managed institutions only.

9 To minimize resort to involuntary acquisition and limit deprivation of tribal land, Secretary, National Commission for Scheduled Tribes suggested that a rigorous 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

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authorities, respecting the same considerations which would govern determination of public purpose.

10 Referring to the inordinate delays in payment witnessed in the case of Mapithel Dam (Manipur), Secretary, National Commission for Scheduled Tribes suggested that besides limiting the time taken by the land acquisition process, there should be other safeguards to reduce the monetary/ hardship costs to land owners. The entire process should invariably be completed within 5 years (or started afresh if possession has been taken in advance). Advance possession should invariably be accompanied by advance payment also. In the event of delay in payment of compensation upto three years after taking possession, besides interest payable @15%, a penal interest of similar order should also be paid; and a new award as per prevailing market rate should be made in case payment is delayed beyond 5 years.

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12. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions and approved the comments on the Bill as proposed in the Annexure to the Agenda Note, with appropriate modifications as suggested above. In view of above, the Commission also approved corresponding refinements in Chapter 3 on Resettlement and Rehabilitation of Displaced Tribals. The views of the Commission may also be appropriately communicated to the Ministry of Rural Development, Ministry of Tribal Affairs, Ministry of Mining and Ministry of Environment and Forests for taking suitable action.

13. The meeting ended with a vote of thanks to the Chair.







BY  
HAND/POST

भारत सरकार  
राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR SCHEDULED TRIBES

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संख्या/ No.- 1/5/10-Coord

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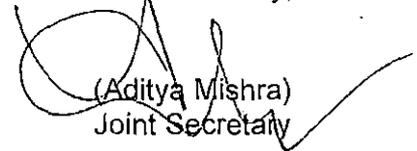
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13. The meeting ended with a vote of thanks to the Chair.

**ANNEXURE**  
**(w.r.t. Para 1 of the Summary Record)**

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 11/06/2010 in the Conference Room of the Commission- List of participants.

**S.No. Name and Designation**

1. Shri Maurice Kujur, Vice-Chairperson (In chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri R.P. Vasishtha, Dy. Secretary
8. Smt. K.D. Bhansor, Deputy Director
9. Shri N.K. Kaushik, Assistant Director

1. उपाध्यक्ष के निजी सचिव/सचिव महोदय के प्रधान निजी सचिव/सचिव महोदय के निजी सचिव।  
2. निदेशक/ सहायक निदेशक/ अनुसंधान अधिकारी, राष्ट्रीय अनुसूचित जनजाति आयोग के भाषण/

प्रतिनिधि, बैठक के सक्षिप्त अभिलेख की एक प्रति सहित, सूचनाएं अधिलेख।

- (i) निदेशक (आर०यू०-1 एवं आर०यू०-11)  
(ii) निदेशक (आर०यू०-III एवं समन्वय एकक)  
(iii) उप सचिव (प्रशासन)  
(iv) उप निदेशक (आर०यू०-IV)  
(v) सहायक निदेशक/अनुसंधान अधिकारी प्रभासी - आर०यू०-1/ आर०यू०-11/ आर०यू०-111/ आर०यू०-114/ समन्वय/ अनुसंधान अधिकारी (प्रशासन) / सहायक निदेशक (राजभाषा)।

प्रतिनिधि, बैठक के सक्षिप्त अभिलेख की एक प्रति सहित, निम्नलिखित अधिकारियों को इस अनुसूचित के साथ अधिलेख कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के संबंध में जानकारी प्रत्येक सक्षिप्त एकक/ कार्यालय द्वारा दिनांक 15 जून 2010 तक अवश्य ही समन्वय एकक को भेज दी जाए।

सचिव महोदय  
(आदित्य मिश्रा)  
महोदय

मुझे उपर्युक्त विषय का उल्लेख करते हुए यह कहना है कि आयोग की 20वीं बैठक आयोग के सम्मेलन कक्ष में दिनांक 11 जून, 2010 को प्रातः 11:00 बजे हुई थी। बैठक की अध्यक्षता श्री मारिस कुंजर, उपाध्यक्ष, राष्ट्रीय अनुसूचित जनजाति द्वारा की गई। बैठक के सक्षिप्त अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न है।

- विषय: राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 11 जून, 2010 को हुई 19वीं बैठक का सक्षिप्त अभिलेख।
- 1) श्री मारिस कुंजर, उपाध्यक्ष  
2) श्री वरीस सीधु मारीयाव, सदस्य  
3) श्री रघुवंश सिंह खिरौली

संख्या/ No.- 1/5/10-समन्वय  
दिनांक/ Date: 29/06/2010

(अनुसूचित जनजातियों को दिए गए अधिकारों और सुरक्षाओं के उल्लंघन से संबंधित सभी मामलों का अन्वेषण और अनुसंधान करने के लिए संस्थान के अनुच्छेद 338क के अधीन स्थापित एक संवैधानिक आयोग।)

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**  
**GOVERNMENT OF INDIA**  
राष्ट्रीय अनुसूचित जनजाति आयोग  
भारत सरकार



दस्तावेज/ डाक संख्या



BY  
HAND/POST

भारत सरकार.  
राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

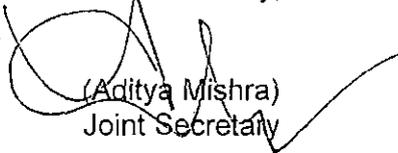
संख्या/ No.- 1/5/10-Coord

दिनांक/ Date: 29/06/2010

To  
1) Shri Maurice Kujur, Vice-Chairman  
2) Shri Oris Syiem Myriaw, Member  
3) Shri Raghuvendra Singh Sirohi, Secretary  
Sub: **Summary record of the 20th meeting of the National Commission for Scheduled Tribes held on 11th June, 2010.**

Sir,  
I am to refer to the above subject and to say that 20th meeting of the National Commission for Scheduled Tribes was held at 1100 Hrs. on 11th June, 2010 in the Conference room of the Commission at Lok Nayak Bhawan New Delhi. The meeting was presided over by Shri Maurice Kujur, Vice-Chairman, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,

  
(Aditya Mishra)  
Joint Secretary

Copy with a copy of the Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 15th July, 2010 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (Admn.)
- (iv) Dy. Director (RU-IV)
- (v) AD/ RO In-charge-RU-I/ RU-II/ RU-III/ RU-IV/ Coord/ SO (Admn.) / AD (OL).

Copy with a copy of the Summary Record of the meeting forwarded for information to:

1. PS to Vice-Chairman/ PPS to Secretary/ PS to Joint Secretary.
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi / Shillong.
3. Sr. System Analyst (NIC Cell, NCST) for uploading on the website.

(Director)

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

**Sub : Summary record of the 20th meeting of the National Commission for Scheduled Tribes held on 11/06/2010.**

The 20th meeting of the National Commission for Scheduled Tribes was held at 11:00 hrs. on 11/06/2010 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi and was presided over by Shri Maurice Kujur, Hon'ble Vice-Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at ANNEXURE. There were four Agenda Items for discussion in the meeting. All the Agenda Items were discussed in detail. Agenda Items relating to **Land Acquisition (Amendment) Bill, 2007** and **Rehabilitation and Resettlement Bill, 2007** were taken up first since suggestions made in the Agenda Note on these Items were also part of the Chapter 3 on Rehabilitation and Resettlement of Displaced Tribals and therefore outcome of the discussion on these items would help finalise Chapter 3 of the 4th Report.

2. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

**Agenda Item I To consider and approve the revised draft of the 4th Report of the National Commission for Scheduled Tribes for the period 2008-09.**

3. There are 9 Chapters in the Report as mentioned below:

- 1) Organisational Set up and Functioning of the Commission
- 2) Service Safeguards
- 3) Rehabilitation and Resettlement of displaced tribals
- 4) Scheduled Tribes and Forest Rights
- 5) Scheduled Tribe Certificates-Issues
- 6) Atrócities on Scheduled Tribes
- 7) Case Studies
- 8) Consultation on Policy Related Issues
- 9) Summary of Recommendations

4. The Commission discussed all the Chapters and expressed satisfaction that the suggestions made in respect of each Chapter in the last meeting of the Commission have been suitably incorporated in the revised draft. The Commission, however, observed that the Report needed editorial corrections and resetting of the formats of each Chapter in the Report. The Commission authorized the Secretary, National Commission for Scheduled Tribes to incorporate consequential refinements/ modifications to Chapter 3 as

*Maurice Kujur*  
 मोरीस कुजुर/MAURICE KUJUR  
 उपाध्यक्ष/Vice-Chairperson  
 राष्ट्रीय अनुसूचित जनजाति आयोग  
 National Commission for Scheduled Tribes

approved by the Commission w.r.t. Agenda Item III & IV and make necessary editorial corrections in all the Chapters of the Report and submit the final Report to the Hon'ble Vice-Chairperson, alongwith the forwarding letter for submission of the Report to the President of India.

**Agenda Proposal for inclusion of 'MEDARA' community as a synonyms of 'MEDA'**  
**Item II ST of Karnataka – reconsideration**

5. The Commission was informed that the Ministry of Tribal Affairs has sought clear view of the Commission about inclusion of 'MEDARA' community as a synonym of 'MEDA' community of Karnataka State. The Commission re-iterated its earlier decision to recommend inclusion of 'MEDARA' community as a synonym of 'MEDA' ST of Karnataka

**Agenda Land Acquisition (Amendment) Bill, 2007**

**Item III**

and

**Agenda Rehabilitation and Resettlement Bill, 2007**

**Item IV**

6. Secretary, NCST stated that normative definition/ implementation of rehabilitation and resettlement measures through law was a crying need in the country. The Secretary explained in detail the provisions/ processes embedded in the two draft Bills i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007; and indicated that though both the Bills have since lapsed, the same have been placed before the Commission for formulating the Commission's views to be communicated to the concerned Ministry for consideration while re-introducing the Bill in Parliament. The Secretary, National Commission for Scheduled Tribes highlighted that though both the processes were inter-dependent, critical event-relationships appeared to have been overlooked in the Bills, especially with regard to commencement of the rehabilitation programme and its completion, e.g. linkage of (a) SIA (Social Impact Assessment) with the Enquiry into objections/ purpose of acquisition, clearance of (R&R) expert committee and the agreement with the Companies as per Sec 41 of the Act, (b) Full payment of compensation and adequate rehabilitation with actual displacement/ possession of land etc. Secretary, National Commission for Scheduled Tribes emphasized that it was necessary to harmonize key stages of the processes involved to ensure successful implementation of both Bills in letter as well as spirit, as proposed in the flow diagram circulated (as ANNEXURE 3.VII of the draft Chapter 3 of the Annual Report for 2008-09).

7. Secretary, NCST stated that the Land Acquisition Act was overwhelmingly weighted in favour of the Government, even at the expense of the genuine concerns of

land owners, as is evident from the provisions relating to urgency, computation of market value and inordinately long time limits for the determination/ payment of compensation etc. Since it vests land free of all encumbrances in a country where title documents did not exist, convenience of capital financing seems to have made compulsory acquisition as the preferred mode of mobilizing land for corporate industrial ventures in recent years, instigating frequent resort to this expropriatory law and inciting widespread resentment among tribals. Secretary, National Commission for Scheduled Tribes emphasized that considering the involuntary nature of the transaction, only limited rights of usage for the intended purpose should be acquired through land acquisition (as in a lease), especially in the case of ancestral tribal lands. In this connection, Secretary, National Commission for Scheduled Tribes mentioned that this fundamental change of approach was necessary to facilitate continued profit-sharing from alternative usage of land in future e.g. in case of mining projects, besides land rent a sum equal to royalty be paid on behalf of the land owners into the fund proposed to be constituted under Cl.22 for the duration of mineral extraction; and land returned to the owners thereafter or future earnings from the land shared if non-agricultural use is considered in another form.

8 Secretary, National Commission for Scheduled Tribes emphasized that as mentioned in para 7 of the Agenda Note, the definition of public purpose was very wide covering all sorts of infrastructure projects, which may not necessarily serve public interest. Under the Public Private Partnership (PPP), surrogate acquisition by the Government on behalf of industries/ developers, etc. has assumed threatening dimension in recent times, because larger extents of land, than required, are being commandeered as a substitute for capital mobilization by the State. In these circumstances, Secretary, National Commission for Scheduled Tribes suggested that the definition of public purpose should preferably be restricted for acquisitions of land for re-development, as in the British law and State owned/ managed institutions only.

9 To minimize resort to involuntary acquisition and limit deprivation of tribal land, Secretary, National Commission for Scheduled Tribes suggested that a rigorous 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

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authorities, respecting the same considerations which would govern determination of public purpose.

10 Referring to the inordinate delays in payment witnessed in the case of Mapithel Dam (Manipur), Secretary, National Commission for Scheduled Tribes suggested that besides limiting the time taken by the land acquisition process, there should be other safeguards to reduce the monetary/ hardship costs to land owners. The entire process should invariably be completed within 5 years (or started afresh if possession has been taken in advance). Advance possession should invariably be accompanied by advance payment also. In the event of delay in payment of compensation upto three years after taking possession, besides interest payable @15%, a penal interest of similar order should also be paid; and a new award as per prevailing market rate should be made in case payment is delayed beyond 5 years.

11. Referring to the Rehabilitation and Resettlement Bill 2007, Secretary, NCST suggested that in order to avoid impoverishment of tribals through land alienation, it was necessary to extend the scope of this legislation to voluntary land transfers or changes in land use of agricultural/ forest lands resulting in displacement. Also, to avoid dereliction/ fragmentation of responsibility, the onus of resettlement should squarely be placed on the displacers, who should be required to do all which is deemed necessary as per the laws in force, under the supervision of the agencies appointed by the State. Further these initial efforts should be supplemented by corporate bodies in future through Corporate Social Responsibility endeavor, by allocating a significant part of retained profit comparable with the returns provided to the shareholders.

12. After detailed deliberations on the Amendment Bills, the Commission agreed to the above suggestions and approved the comments on the Bill as proposed in the Annexure to the Agenda Note, with appropriate modifications as suggested above. In view of above, the Commission also approved corresponding refinements in Chapter 3 on Resettlement and Rehabilitation of Displaced Tribals. The views of the Commission may also be appropriately communicated to the Ministry of Rural Development, Ministry of Tribal Affairs, Ministry of Mining and Ministry of Environment and Forests for taking suitable action.

13. The meeting ended with a vote of thanks to the Chair.

**ANNEXURE**  
**(w.r.t. Para 1 of the Summary Record)**

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 11/06/2010 in the Conference Room of the Commission- List of participants.

**S.No.    Name and Designation**

1. Shri Maurice Kujur, Vice-Chairperson (In chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri R.P. Vasishtha, Dy. Secretary
8. Smt. K.D. Bhansor, Deputy Director
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## NATIONAL COMMISSION FOR SCHEDULED TRIBES

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4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri R.P. Vasishtha, Dy. Secretary
8. Smt. K.D. Bhansor, Deputy Director
9. Shri N.K. Kaushik, Assistant Director



BY  
HAND/POST

भारत सरकार  
राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA  
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

संख्या/ No.- 1/5/10-Coord

दिनांक/ Date: 29/06/2010

To

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- 2) Shri Oris Syiem Myriaw, Member
- 3) Shri Raghuvendra Singh Sirohi, Secretary

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(Director)

