

**No.1/8/11-Coord.  
Government of India  
National Commission for Scheduled Tribes**

**6<sup>th</sup> Floor, 'B' Wing,  
Lok Nayak Bhawan,  
Khan Market,  
New Delhi – 110003  
Dated: 22-09-2011**

To

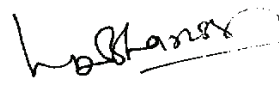
- 1) Dr. Rameshwar Oraon, Chairperson
- 2) Smt. K. Kamala Kumari, Member
- 3) Shri Bheru Lal Meena, Member
- 4)

**Sub:- Summary record of the 28<sup>th</sup> Meeting of the Commission was held at 11:30 hours on 16<sup>th</sup> September, 2011.**

Sir,

I am directed to refer to the above subject and to say that 28<sup>th</sup> Meeting of the National Commission for Scheduled Tribes was held at 11:30 Hrs. on 16<sup>th</sup> September, 2011 in the Conference Room of the Commission at Lok Nayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson of the National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,

  
(K.D. Bhansor) Mrs.  
Dy. Director

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 **7<sup>th</sup> October, 2011** positively.

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

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

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

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

**Subject: Summary record of the 28<sup>th</sup> meeting of the Commission held at 11.30 AM on 16-09-2011**

The 28<sup>th</sup> meeting of the Commission was held at 11.30 AM on 16-09-2011 in the Conference Room of the Commission in Lok Nayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson, NCST. List of participants is enclosed at Annexure.

2. Draft comments on the Land Acquisition and Rehabilitation & Resettlement Bill, 2011, introduced in Parliament, were circulated for discussion in the meeting. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below.

3. Secretary, NCST explained in detail the provisions/processes embedded in the Bill and highlighted the following features, concerning the Scheduled Tribes which required consideration:

3.1 A general law doesn't make suitable discrimination between the nature of land rights of tribals vis-à-vis other categories of landholders. Land is generally owned by the State, and held on the basis heritable tenures in most parts of the country – the concept of freehold being limited to certain urban pockets. Tribals, however, have traditionally enjoyed full ownership of land, which practice is still prevalent in the North – East. Tribal lands are also not transferable to non-tribals – whether by sale, lease or mortgage, etc. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights. Therefore, in order to insulate tribals from the adverse effects of development, provide equitable treatment and also to meet their needs and aspirations, there

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was an imperative need to include a clearly defined perspective of tribal rights in the Bill through a special chapter in respect of Scheduled Areas considering the following major factors:

- (i) In SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. Keeping in view the provisions of Schedule V and the directions in the aforesaid judgment, it would be appropriate to simultaneously legislate special provisions for acquisition of land in Scheduled Areas instead of leaving adaptation of the same entirely to the wisdom and zeal of the Tribal Advisory Councils/ Governors of the Concerned States
- (ii) Land being the primary means of production in the tribal society, acquisition of tribal land, leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to earn their livelihood outside their habitat and pursue economic activity not involving agricultural land. Sensitivity to these tribal needs must be incorporated into legislative treatment; and only leasehold rights may be demanded from them for developmental needs rather than expropriation of ownership.
- (iii) Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed, consequent to displacement; and to establish the overriding public interest which demands such sacrifice from them. In Scheduled Areas, therefore, 'Public purpose' should be determined through a participatory and transparent process incorporating additional safeguards for tribals including judicial review.,
- (iv) The prevailing governance deficit requires that the availability of safeguards for Scheduled Tribes is not dependent on the mercy or alertness of Govt. functionaries, or become fodder for interpretation by legal luminaries.

3.2 The provisions of rehabilitation and resettlement have been integrated with the land acquisition process in the Bill. However, the Bill doesn't explicitly include

acquisition and displacement from lands acquired/purchased from tribal owners by public sector organizations (companies, corporations, boards, authorities, etc.). The Requiring body may possibly obtain some portion of its total land requirement through allotment of Govt. lands. 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.

- 3.3 However, combining provisions of rehabilitation and resettlement with land acquisition procedures in the Bill does not deny the necessity of a separate R&R legislation as, it does not include cases of involuntary displacement of permanent nature due to disasters/natural calamity, external/internal, conflicts and diversion of forest land, etc.
- 3.4 The Bill doesn't explicitly provide land compensation for persons having "title deeds" conferred under the ST other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, whose rights have to be foregone on account of resettlement. Besides clarifying relevant definitions, (Cl 3(r) (ii)), the Bill should specify that all land acquisition process in Scheduled Areas must be preceded by settlement of tribal rights (including community rights) under the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 (which should be kept recorded/updated) and land regularized under this Act must not be dispossessed/acquired except in the case of emergency, wherein same category of land rights must be provided. The Bill should also recognize resettlement/rehabilitation rights of share croppers etc. and other persons who derive their livelihood by providing services to land owners (especially if displacement is involved).
- 3.5 The definition of "infrastructure project" under Cl. 3(o) is too wide and ambiguous, and should be more specific in respect of Scheduled Areas, to ensure that tribals are not displaced to provide for the commercial/residential/entertainment needs of other sections of society. Therefore, purposes like mining activities, sports, tourism, projects for

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preservation and storage of processed agro-products and perishable agricultural commodities, housing, should be included under Clause 3 za(vii), irrespective of ideological bias. Further, Cl 3 (o)(v), which provides flexibility to include "any other project or public facility as may be notified in this regard by the Central Government" has the effect of enlarging the scope of the Act, and should not be extended to Scheduled Areas to avoid temptation to tinker with constitutional safeguards for Scheduled Tribes.

- 3.6 In Scheduled Areas, concern with tribals being primary, all other needs should be considered of secondary importance. Therefore, the need for land acquisition and displacement, even for the Govt. under strategic considerations, should be well proven/amply 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.

To limit deprivation of tribal land for all other non-strategic purposes, while determining "Public purpose", the general interest of the community as opposed to the particular/commercial interest of individuals should be clearly demonstrated, and the livelihood of the tribals should also be adequately protected by providing land in lieu of land (even by purchase of private land/diversion of forest areas) in all cases. Keeping in view the limits on allotment of Govt. land to non-tribals flowing from the Samatha judgment, in Scheduled Areas, instead of general usefulness, public purpose may be restricted to developmental activities or redevelopment in the interests of area planning wherein the Govt. owns at least 51 %. Even for such purposes considering current life cycles of investments, tribal land should be mortgaged/given on lease rather than transfer of ownership, with provision for continued sharing of cost appreciation/windfall gains. Since profit is their overriding consideration, PPP/private owned projects necessarily embed tribal hazard, in that they cannot eschew temptation to substitute cheaply obtained land for more expensive capital requirements. In order to discourage circumventing of constitutional safeguards, the declaration of public purpose should also be justiciable in respect of Scheduled Areas.

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3.7 SIAs / EIAs are necessary to provide a good substrate for resettlement planning to address/ mitigate ensuing problems and also to identify all the environmental / displacement risks which tribals would be exposed to consequential to displacement; and establish the overriding public interest in Scheduled Areas (with record of specific findings on different issues to facilitate testing during judicial review), which demands such sacrifice from them. It is possible that the quantum of land proposed to be secured will be understated (or arranged in creeping increments) to escape R&R obligations. Therefore, in Scheduled Areas, SIA (including emotional and psychological impacts) should 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 quantum of land involved and the number of families it displaces or the voluntary / involuntary nature of the displacement. SIA should also identify affected areas (including contiguous forest lands wherein tribals have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose'.

Projects involving land proposed to be acquired under urgency provisions are also accompanied by the same irreversible adverse effects of environmental degradation / displacement; and should not be exempted from the requirements of EIA / SIA or the need to comprehensively weigh public purpose. This is especially important for Scheduled Areas, because the regularity with which "exceptions" become a "routine" appendage of bureaucratic processes and decision-makers' apathy obscures citizens' miseries by fanciful interpretations of national imperatives have been amply commented upon by the Supreme Court in recent decisions on the subject. Other legislations providing for acquisition of land and/or occupation of the land under emergency in times of conflict, calamity, etc. without prior payment of compensation should also be reviewed/amended to provide rehabilitation and resettlement.

SIAs should be undertaken by the Requiring body to avoid fragmentation/derelection of responsibility, through properly qualified multi-disciplinary teams and should also incorporate views of the affected persons and

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National Commission for Scheduled Tribes  
भारत सरकार / Govt. of India



concerned elected local bodies in the Scheduled Areas. The expert group to consider SIA report should also include a representative of the displaced families (if only as observers). Individual notices may be issued in Scheduled Areas 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.

- 3.8 It is important to ensure that tribals are not dispossessed from their lands and livelihood without ensuring resettlement in advance. Therefore, implementation of the R&R plan should generally be entrusted to the Requiring body so that R&R facilities are integrally conceived with the planning of the project, and come into existence simultaneously with the process of award and payment of compensation; and certain critical elements, like infrastructure, are not staggered thereafter. Closure interaction/flexible understanding between the Requiring; Body and the affected person would mitigate the adverse effects of the project, besides reducing acquisition time/schedule of implementation of projects.
- 3.9 There is no provision in the Bill to regulate compensation in cases farmland is purchased directly by companies. Proxy purchase of tribal land by companies through subterfuge agents have been reported. Since land transfer Regulations in Scheduled Areas generally provide for transfer of tribal land only with the permission of designated authorities, the Collector (Land Acquisition) should also be tasked with certifying reasonability of sale prices (comparable with his award) before private transfers are permitted/registered.
- 3.10 In Scheduled Areas, since data regarding land transfers may be scanty, the Net Present Value (NPV) of the expected accruals from the current/future use of the land for 30 years should also be compared while arriving at the market value.

The Bill should also provide compensation in the award for forest rights which may become unavailable because of displacement and also sub-surface rights (water/minerals etc.) as Scheduled Tribes have been (and also continue to be so in Schedule VI areas) traditional owners of land (rather than tenure holders

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with heritable rights to cultivate land).

Multiple uses of the land acquired must also be accounted for in the compensation. For example, if agricultural land is to be used for mining, then besides compensation for use of land surface, the future earnings from mining activity should also be shared with land owners. The current provision of 20% of land value appreciation in Schedule II of the Bill doesn't take into account all possible situations.

Further, where land is acquired by the Govt. for projects meant for production of goods and services, compensation for land acquired has to be supplemented with (and not adjusted against) allotment of shares and debentures, as part of the long-term profit sharing of the project derivable from land as a factor of production. The quantum of such "sweat" equity must be reasonably relatable to the nature of economic activity of the project and the equity base. 50% developed land/sweat equity/share in the future profits should be provided for land owners in case of land development projects, (instead of 20% developed land as proposed in Schedule II) because land is the principal ingredient of the activity and its value continues to rise exponentially while other appurtenances depreciate.

Development costs should not be charged as part of the profit-sharing mechanism in respect of the land acquired for urbanization purposes, since such costs are open to manipulation and the quantum of 20% reserved for affected families is actually quite arbitrary.

3.11 In the event of the acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the repayment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease). In case the land is subsequently utilized by the Govt. for a different purpose (e.g. for real estate development after mining, etc.), the earnings from such activity should also be shared with the original land owners in similar fashion for appreciation in land values.

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3.12 There is a need to specify to fix timelines for the entire process, involving land acquisition and R &R. The (maximum) period entailed in the process (from SIA upto award) is 5 years, which needs to be shortened to 3 years through larger involvement and devolution of responsibility to the Requiring body for rehabilitation planning and implementation in the interest of project implementation as well as speedy resettlement of affected persons.

4. Secretary, NCST mentioned that the Ministry of Rural Development (MoRD) had not consulted the NCST on the final draft before placing the Bill for consideration by the Cabinet/its introduction in Parliament. Further, the MoRD had also not communicated views of the Ministry of Law, reported to be being sought by them in an earlier meeting taken by the Chairperson, NCST on the Commission's stand that, for meaningful consultation with the NCST as envisaged under Article 338 A(9) of the Constitution, the draft Bill finalized in the Ministry should be referred to the Commission before its submission to the Cabinet. Similarly, the Ministry of Mines had also not consulted the Commission on the draft MMDR Bill, 2010 finalized by the Group of Ministers and sought the advice of the Ministry of Law regarding, inter-alia, need to consult the Commission on the legislation, which was yet to be rendered by the Ministry of Law, as intimated in the meeting taken by the Chairperson on 15-09-201. Secretary, NCST emphasized that the Commission can't ignore important legislations like the Land Acquisition, Rehabilitation & Resettlement Bill and the MMDR Bill 2010, which were important legislation vitally affecting the STs. Secretary, NCST proposed that the proposed reference to the Prime Minister on the issue, as decided in the 27<sup>th</sup> meeting of the Commission, should also include counseling of the concerned Ministries for not adopting sensitive approach to the weaker sections, including STs- which need was evident from their continued avoidance to seek meaningful consultation on these draft Bills, in accordance with Constitutional provisions which cannot rationally be interpreted to suggest that the Commission's mandate is adequately discharged by merely responding to drafts put up in the public domain and urging the Standing Committee of Parliament regarding any leftover concerns which may not have received the Ministry's attention in the final draft.

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नई दिल्ली / New Delhi

5. After detailed deliberations on the Bill, the Commission concurred with the views expressed by the Secretary, NCST and approved clause-wise comments on the Bill as proposed in the Annexure to the Agenda Note and also authorized the Secretary, NCST to modify the comments for better understanding, wherever necessary. The Commission also desired that the comments on the Bill as well as the views of the Commission as mentioned in paragraph 3 above, may be appropriately communicated by the Chairperson to the Prime Minister as well as to the Minister of Tribal Affairs.

6. The Meeting ended with vote of thanks to the Chair.

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New Delhi

F.No.1/8/2011-Coord.

Annexure.

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

**National Commission for Scheduled Tribes**

Meeting of the Commission held on 16-09-2011 at 11.30AM in the Conference Room of the Commission.

S. No.	Name and Designation
1.	Dr. Rameshwar Oraon, Chairperson (In Chair)
2.	Smt. K. Kamala Kumari, Member
3.	Shri Bheru Lal Meena, Member
4.	Shri Raghuvendra Singh Sirohi, Secretary
5.	Shri Aditya Mishra, Joint Secretary
6.	Shri S.P. Meena, Assistant Director