Dear Sri Deo ji,

As you are aware, the Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes".

2. For sometime the Commission has been rather perturbed by the cavalier disregard exhibited by some Ministries in respect of meaningful consultation with the Commission, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution; and the issue was commented upon at length in the Annual Reports of the Commission for the years 2008-09 and 2009-10, which unfortunately have still to be placed in Parliament. The Commission expects that the Ministry of Tribal Affairs will be vigilant in this regard; and impress the Constitutional requirement upon concerned Ministries, even as they ensure similar observance themselves. Though both the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 and Mines and Minerals (Development and Regulation) Bill, 2011 are important legislative proposals vitally affecting the Scheduled tribes and their land rights, the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines, have processed these Bills wilfully ignoring this Commission and the Constitutional obligation under Article 338A. I am enclosing for your information and action a copy of my DO letter of even no. dated 17 Oct, 2011, addressed to the Prime Minister (Annexure-I), seeking his intervention to have the views of the Commission considered by the Government on the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 even while the matter is engaging the attention of the Standing Committee of the Parliament, for similar action at your end.

3. I also take this opportunity to bring to your kind notice certain important development issues concerning the STs, which the Commission, vide letter No.M-
12052/3/2010-11/SJ&SW dated 02.08.2011, has communicated to the MTA as well as to the Planning Commission, for consideration of the Working Group/Steering Group constituted vide Planning Commission’s letter No.M-12052/3/2010-11/SJ&SW dated 7.04.2011 on ‘Empowerment of Scheduled Tribes (STs)’ for the formulation of the Twelfth Five Year Plan (2012-2017) I would request you kindly to have these suggestions of the Commission (Annexure-II) considered in the process of the formulation of the Twelfth Five Year Plan in relation to the Scheduled Tribes.

With high regards,

Yours Sincerely,

(Dr. Rameshwar Oraon)

Shri V. Krishore Chandra Deo Ji,
Hon'ble Minister for Tribal Affairs,
Shastri Bhavan, New Delhi-110001.

Annexure-I
DO letter No. NCST/2008/REHAB/01 , dated 17 Oct,2011, addressed to the Prime Minister

Annexure-II
I seek to bring to your august attention a grave transgression of Constitutional safeguards affecting Scheduled Tribes, which requires your personal intervention for its rectification.

2. As you are aware, the Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that “The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes”. Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

3. For sometime the Commission has been rather perturbed by the cavalier disregard exhibited by some Ministries in respect of meaningful consultation with the Commission, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution; and the issue was commented upon at length in the Annual Reports of the Commission for the years 2008-09 and 2009-10, which unfortunately have still to be placed in Parliament. The matter was also specifically brought to your kind attention after submitting these reports to the President (D.O. letters No 4/5/2010-Coord dated 9th September, 2010 and No 4/2/11/11-Coord dated 20th July, 2011 refer). However, we are not aware whether any action has subsequently been taken by the Cabinet Secretariat, or the Ministry of Law, in respect of the Commission’s recommendations to ensure consultation with the Commission’s during processing of legislative proposals before they are considered by the Council of Ministers.

4. Recently, the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 has been introduced in the Lok Sabha on 7th September, 2011 while the Mines and Minerals (Development and Regulation ) Bill, 2011 has been approved by the Cabinet on 30th September, 2011 for introduction in the ensuing session of the Parliament. Though both these Bills are important legislative proposals vitally affecting the Scheduled tribes and their land rights, the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines, have processed these Bills wilfully ignoring this Commission and the Constitutional
obligation under Article 338A. Not only this, these Ministries repeatedly disregarded the Commission’s exhortations that, for meaningful consultation as envisaged under Article 338 A(9) of the Constitution, the draft Bills finalized by the Ministry should be referred to the Commission for advice before submission to the Cabinet - impudently suggesting that the Commission may proffer its views on the draft hosted for public comment on their websites; which demonstrates the scant regard in which they hold Constitutional bodies, as well as also the spirit underlying the important constitutional safeguards for Scheduled Tribes. I enclose 2 notices issued by the Commission to the Secretaries of these Ministries (Annexure-I/III) which are self explanatory. I may add that the Ministry of Law have also opined that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft bill affecting Scheduled Tribes (Annexure-III). The Law Secretary has also written to the Cabinet Secretary requesting him to advise all Ministries/Departments to follow strictly the provision contained in the said Article (Annexure-IV).

5. In view of the position explained above, the Commission is of the view that the concerned Ministries viz. Ministry of Rural Development (MoRD) and Ministry of Mines and their senior officials should be counselled suitably to adopt a more sensitive approach towards the problems of Scheduled Tribes/Scheduled Areas and respect for relevant Constitutional safeguards. The Commission also recommends that the Cabinet Secretariat and the Ministry of Law and Legal Affairs should be tasked with the responsibility of ensuring consultation with the National Commission for Scheduled Tribes before such proposals affecting Scheduled Tribes are placed for consideration before the Council of Ministers; and the Cabinet Secretariat may issue appropriate instructions in this regard under the Rules of Business of the Government.

6. Notwithstanding this, the Commission has finalized detailed comments/views of the Commission on the Land Acquisition, Rehabilitation & Resettlement Bill, which has become available to the Commission only after its introduction in Lok Sabha (Annexure-V). I would request you to have the views of the Commission considered by the Government even while the matter is engaging the attention of the Standing Committee of the Parliament.

With esteemed regards,

Yours Sincerely,

(Dr. Rameshwar Oraon)

Dr. Manmohan Singh,
Hon’ble Prime Minister of India,
South Block,
New Delhi- 110001.

Encl:
Annexure-I/III: Notices issued by the Commission to the Secretary, Ministry of Rural Development and Ministry of Mines
Annexure-III: Ministry of Law and Justice, Deptt. of Legal Affairs letter No. FTS/LS/11 dated 22/09/2011
Annexure-V: Comments/views of National Commission for Scheduled Tribes on the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011
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.)

No NCST/2008/REHAB/01 Date: 14th October, 2011

To

Ms. Anita Chaudhary,  
Secretary,  
Department of Land Resources  
Ministry of Rural Development,  
‘G-Wing’, NBO Building, Nirman Bhawan,  
New Delhi- 110001.


Madam,

The Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, and any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
2. It was understood from news reports that the Government had formulated/introduced the new Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 in Parliament in December, 2007. Subsequently, Ministry of Rural Development processed an integrated Bill, Land Acquisition and Rehabilitation & Resettlement Bill, 2011. As land acquisition as well as rehabilitation & resettlement affect tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and has requested the Deptt. of Land Resources, MoRD, on several occasions, to submit initially the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007 and subsequently, the integrated Bill - Land Acquisition and Rehabilitation & Resettlement Bill, 2011, as finalized, for obtaining the views/comments of the Commission under Article 338A(9) of the Constitution, as detailed below:

Reference No /Date                      Contents in brief

NCST /2008/REHAB/01               MoRD had not sought the comments of the Commission on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007. Notwithstanding this, the Commission had, suo-moto, communicated its views/suggestions to the Minister of Rural Development on the both the Draft Bills vide D.O. letter dated 6th August, 2010. Minister, MoRD apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft legislation as soon it is finalized.

06/08/2010
NCST /2008/REHAB/01 dt 20/05/2011

The (successor) Minister MoRD was again apprised of mandatory consideration with the Commission on all major policy matters affecting the STs, absence of consultation by the Ministry of Rural Development on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007 and urgent consideration of the views of the Commission forwarded on these Bills vide letter dated 06/08/2010.

NCST Letter 2008/REHAB/01 dt:13/07/2011

As above.

MoRD D.O. NO. 2/VIP/OG/M(RD)/11

Minister, MoRD assured the Commission that the views of the Commission would be fully considered before MoRD finalise any new legislation on land acquisition.

Minutes of the Meeting held on 29/07/2011,circulated vide Letter NCST /2008/REHAB/01 dt:10/08/2011

Secretary, Deptt. of Land Resources, MoRD informed that an integrated Bill covering both land acquisition and rehabilitation and resettlement- Land Acquisition and Rehabilitation & Resettlement Bill, 2011, was being processed.

The Commission emphasized that the rights of Scheduled Tribes needed special consideration through a separate Chapter in the Bill keeping in view the provisions of the Constitution applicable to the Scheduled Tribes and the Scheduled Areas. Further, for the consultation with the NCST, as envisaged under Art. 338A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry after inter-Ministerial consultations, may be referred to the Commission; and the observations of the Commission and views of the
Ministry on those observations may also be placed along with the draft Bill for consideration by the Cabinet.

The Secretary, Deptt. of Land Resources, MoRD mentioned that the MoRD would consider the observations of the NCST and, if considered necessary, the matter will be decided in consultation with the Ministry of Law.

Additional Secretary, Deptt. of Land Resources, MoRD, vide letter dated 19th August, 2011 (received on 29th August, 2011) sought comments of the Secretary, NCST on the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 as available in the public domain. (It was noted from the website that Ministry of Rural Development had given the public time till August 31 to send their comments).

Deptt. of Land Resources, MoRD requested to forward the draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011, after its finalization by the MoRD, for views/suggestions of the Commission under Article 338 A(9) of the Constitution.

Secretary, Deptt. of Land Resources, MoRD, requested to forward a copy of their reference to the Ministry of Law and their views, if received, to the Commission urgently.
Deptt. of Land Resources, MoRD informed that the Land Acquisition and Rehabilitation and Resettlement Bill, 2011 after approval by the Cabinet on 05/09/2011 had been introduced in the Lok Sabha on 07/09/2011.

3. It is mentioned that the Deptt. of Legal Affairs, in response to a reference by the Ministry of Mines have opined vide letter No.FTS/2878/LS/11 dated 22/09/2011 (copy enclosed) that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

4. It is evident from the above that the Deptt. of Land Resources, MoRD have faulted in respect of lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner, as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

5. In view of the obdurate avoidance manifest by the Deptt. of Land Resources, MoRD in respect of the Constitutional obligation to consult the Commission on the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Deptt. of Land Resources, MoRD on 3rd November, 2011 at 1200 hours at the Conference Room of the Commission to:


(b) Explain the reasons for avoiding meaningful consultation with the Commission.
4. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Ministry of Mines on 3rd November, 2011 at 12:00 hours at the Conference Room of the Commission to:

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs, and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission’s requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

5. Secretary, Ministry of Mines, is requested to attend in person.

Yours faithfully,

[Signature]

(Aditya Mishra)
Joint Secretary
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.)

No. 12/2/2009-Coord                                      Date: 13th October, 2011

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Mines, Room No. 320, ‘A’ Wing,
Shastri Bhavan,
New Delhi

Sub: Mandatory consultation with the National Commission for Scheduled
Tribes under Clause (9) of Article 338A by Ministry of Mines with
reference to Mines and Mineral (Development & Regulation) Bill 2010

Sir,

The Constitution of India enjoins upon the National Commission for Scheduled
Tribes to monitor and evaluate all matters relating to the safeguards provided for the
Scheduled Tribes under the Constitution, and any law for the time being in force and
under any order of the Government, and to participate and advise on the planning
process of socio-economic development of the Scheduled Tribes. Clause (9) of Article
338A of the Constitution further provides that “The Union and every State Government
shall consult the Commission on all major policy matters affecting Scheduled Tribes”.
Under Clause 5(d) of the Article the Commission is required to present to the
President, annually and at such other times as the Commission may deem fit, reports
upon the working of those safeguards.

2. It was understood from news reports that the Government was contemplating
the new Mines and Minerals (Development & Regulation) Bill, 2010. As mining affects
tribals in a large measure, particularly their livelihood, settlements, environment and
culture, the Commission was anxious that certain important concerns need to be
adequately addressed in the Bill, and requested the Ministry of Mines, on several
occasions, to submit the Draft MMDR Bill, as finalized, for obtaining the
views/comments of the Commission under Article 338A(9) of the Constitution, as
detailed below:

<table>
<thead>
<tr>
<th>Reference No./Date</th>
<th>Contents in brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>NCST 12/2/2009-Coord dt. 21/05/2010</td>
<td>Secretary, Mines apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft regulation as soon it is finalized.</td>
</tr>
</tbody>
</table>
As a follow up to National Commission for Scheduled Tribes letter dated 21/05/2011, Ministry of Tribal Affairs requested the Ministry of Mines to send the draft legislation, as and when finalized, to the Commission.

Ministry of Mines communicated that new Draft MMDR Act has not been finalized, also informing that the latest version of the draft MMDR Act had been uploaded on 3rd June, 2010 on website of the Ministry of Mines.

Secretary, Ministry of Mines again requested (with reference to their letter dated 08/06/2010) to forward the new Draft MMDR Act, as soon as it is finalized for comments/views of the Commission.

Minister of Mines apprised of mandatory consultation with the Commission under Clause 9 of Article 338A of the Constitution and the Commission’s concern in critical areas which require urgent attention.

Minister of Mines requested to forward the final version of the Draft MMDR Act for the views of the Commission as required under Article 338A of the Constitution at an early date.

Minister of Mines apprised of Commission’s concern on certain important issues affecting Scheduled Tribes.

Minister of Mines was informed that no response from the Ministry of Mines had been received in response to D.O. letter dated 11/10/2010 with the request to have views of the Commission considered by the Council of Ministers.

Meeting taken by the Hon’ble Chairperson with the Secretary, Ministry of Mines. From the position submitted by the Ministry of Mines in the meeting, the Commission observed that its recommendations being important, required consideration of the Government; and in case it was not found to be feasible to incorporate Commission’s recommendations for general adoption, these may be incorporated as special provisions, applicable to the Vth Scheduled Areas.

The Commission also observed that since the draft MMDR Bill, as finalized and being processed had not been referred for comments by the Ministry of Mines, the Commission was not in a position to date, to discharge its mandated function. Representative of the Ministry of Mines stated that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to National Commission for Scheduled Tribes.
Secretary, Ministry of Mines requested to forward the Draft MMDR Bill 2010, as finalized by the Group of Ministers for Commission's views/suggestions to enable the Commission discharge its mandate in the spirit of the Constitution.

Secretary Ministry of Mines was informed that the Commission was not agreeable to the contention of the Secretary, Ministry of Mines that legislation was not a policy matter within the ambit of Article 338A (9) of the Constitution, Ministry of Mines was also apprised of the concern of the Commission regarding non-furnishing of the Draft MMDR Bill, 2010 inspite of the letter dated 27.07.2011 for Commission's views/suggestions in the matter. Secretary, Ministry of Mines also requested to produce copy of the draft MMDR Bill, 2010 in the meeting scheduled to be held on 17/8/2011.

Ministry of Mines informed that views of the Deptt. of Legal Affairs, Ministry of Law have been sought inter-alia on the need to consult the Commission on the MMDR Bill, 2010 legislation

Ministry of Mines informed vide letter dated 17/08/2011 that recommendations of the GOM on the draft MMDR Bill 2010 were awaiting Cabinet approval. Since GOM and Cabinet procedures are by their nature secret, it is not possible to share the contents of the discussions of the GOM with the Commission at this stage.

Secretary, Ministry of Mines apprised of the need to forward the draft Bill finalized in the Ministry to the Commission and also expedite views of the Ministry of Law in the matter.

In the meeting taken by the Chairperson, National Commission for Scheduled Tribes representative of Deptt. of Legal Affairs stated that the opinion of the Ministry of Law would be communicated shortly.

Ministry of Law and Justice have opined that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

3. It is evident from the above that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.
4. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Ministry of Mines on 3rd November, 2011 at 12:00 hours at the Conference Room of the Commission to:

(a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.

(b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and

(c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission’s requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

5. Secretary, Ministry of Mines, is requested to attend in person.

Yours faithfully,

[Signature]

(Aditya Mishra)
Joint Secretary
To

The Secretary
National Commission for Scheduled Tribes
6th Floor, B Wing, Lok Nayak Bhawan
Khan Market, New Delhi

(Kind attention: Shri Aditya Mishra, Joint Secretary)


***

I am directed to refer to your letter no. 12/12/2009-Cord dated 14th September, 2011 on the aforesaid subject and to say that opinion of this Department on the issue of making available to the Commission a copy of the draft Bill on the aforesaid subject has been sent to the Ministry of Mines vide FTS no 3120/11/Adv.A, a copy of which is sent herewith for record/necessary action as desired.

Its receipt along with annexures may please be acknowledged.

Yours faithfully

(M.K. Sharma
Joint Secretary & Legal Adviser
Tel. no. 23383069)
The Ministry of Mines has referred the following issues for advice:

(i) Whether the draft Mines and Minerals (Development and Regulation) Bill, 2011, as a legislation based on National Mineral Policy, 2008, qualifies as a policy matter in terms of the provisions of clause (9) of Article 338 A of the Constitution of India; and

(ii) Whether the draft Mines and Minerals (Development and Regulation) Bill, 2011, can be shared at this stage with National Commission for Scheduled Tribes, once the GOM has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process).

2. It has been stated that National Commission for Schedule Tribe (NCST) is seeking a copy of the draft Mines and Minerals (Development and Regulation) Bill, 2011 to give its comments/views on the draft Bill which has been recommended by the GOM to be placed before the Cabinet. The NCST has stated that the Constitution of India confers power upon it to monitor all matters relating to safeguards provided for the Scheduled Tribes and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. NCST has further stated that clause (9) of Article 338A of the Constitution provides that "the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes, and clause 5(d) of the same Article also provides that the Commission shall present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards. The NCST has sought a copy of the draft MMDR Bill, 2011, in terms of these provisions of the Constitution.

3. According to the administrative Ministry it had undertaken an exercise to prepare a draft Bill to replace the existing Mines and Minerals (Development and Regulation) Act, 1957 in terms of the Report of the High Level Committee in Planning Commission and the new National Mineral Policy, 2008. In preparation of the draft Bill the Administrative Ministry has undertaken extensive consultations with all stakeholders including State Governments, Concerned Ministries/Departments of Central Government Industry Associations and Representatives of Civil Society concerned with environmental/societal impact. Successive versions of draft was circulated/uploaded on the web site for comments of the stakeholders. Subsequently the Government set up a GOM to consider the draft Bill which has recommend the Bill to be presented to the Cabinet.

4. It has been stated that the NCST addressed the Hon'ble Minister of Mines vide its letter dated 06.08.2010 (p.22-23/C) regarding concern on issues pertaining to Scheduled Tribes arising out of mining operations and recommended that in a development project specially when land is required from tribal land owners, the land should be returned to the owners after reclamation of mined areas or future earning secured if non-Agricultural use is continued and a sum equal to royalty due should be paid to tribal for duration of mineral extraction to compensate them for deprivation of livelihood. Since, the draft Bill was referred to GOM which had already held two meetings by then, the NCST vide the letter dated 27.09.2010 (p.27/C) of the Hon'ble Minister of Mines was informed inter alia that the draft Bill has been prepared after consultations with the stakeholders in terms of National Mineral Policy, 2008 which enunciates that appropriate compensation will form an important aspect of sustainable mining and adequately provide for stakeholders' interest for indigenous population in mining operations. It was further informed that the Government has constituted a GOM
to consider various view points on the draft Bill to give its recommendations to the Government. Since the Bill is under consideration, specific measures and details are not yet finalized. Subsequent to this, the NCST issued another letter dated 11.10.2010 (p.95-97/C) making additional recommendations on the draft Bill. It has been stated that the administrative Ministry had incorporated these recommendations on the draft Bill but the NCST was not informed for the reason that the matter was with the GOM and the provisions of the Bill were not finalized. As the NCST was not informed, the NCST convened a meeting for discussion and requested the Secretary, Ministry of Mines to attend the same on 25.07.2011 (p.114-115/C). In the said meeting the Ministry of Mines is stated to have clarified that all concerns raised by NCST have been suitably addressed in the draft Bill and that once the draft Bill was approved by the Cabinet, a copy of the same would be sent to NCST before introducing the same in the Parliament.

5. From the above, it may be seen that the draft Mines and Minerals (Development and Regulation) Bill, 2011 is yet to be submitted to the Cabinet as recommended by the GOM. The administrative Ministry has neither disclosed nor placed on file any instructions/guidelines prohibiting to share the draft Bill with the NCST which is under the constitutional obligation to participate and advise on the planning process of Socio-economic development of the Scheduled Tribes and to evaluate the progress of their development in terms of Article 338 A(5) (c). The Commission also possess powers of Civil Court under Article 338A (8). Further, in terms of Clause (9) of Article 338A, the Union and every State Government are under an obligation to consult the Commission on all major policy matters affecting Scheduled Tribes.

6. In view of above, we are of the opinion that the concerns expressed by the National Commission for Scheduled Tribes in their letters dated 06.08.2010 (p-23/C) and 11.10.2010 (p.96-97/C) relate to the safeguards of the Scheduled Tribes and the provisions of the draft Bill may likely to affect the Scheduled Tribes and as such, may be a major policy matter affecting Scheduled Tribes. Hence in our opinion, the Ministry of Mines is under constitutional obligation to consult the commission. Thus, there may be no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

May kindly see.

(R.S. Shukla)
Addl. Legal Adviser
14.09.2011

May also kindly see.

J.R.A.(S/MKS)

M.L.S

Secretary

J.S.D.
D.O. No. 11051/07/Advice-A

My Dear Colleague,

The National Commission for Scheduled Castes called me on 7th August 2007 to discuss the issue relating to non-consultation of the Commission while making various substantive legislations and rules affecting the interests of the Scheduled Castes in the country.

2. During the discussion Dr. Buta Singh, the Chairman of the Commission, expressed his serious concern by observing in no uncertain terms that the Commission is not being consulted by the Government while taking various decisions/measures affecting the rights of the Scheduled Castes in the country and that such non-consultation violates the provisions of article 338(9) of the Constitution of India. The said article provides that the Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes. The role of our Department and the Legislative Department in such matters was explained to the Commission. After the discussion, the Hon’ble Chairman directed me to take appropriate steps in the matter and inform the Commission.

3. I shall be grateful if you could kindly advise all Ministries/Departments to strictly follow the provisions contained in the said article as per observations by the Commission.

Yours sincerely,

(T.K. Viswanathan)

Shri K.M. Chandrasekhar,
Cabinet Secretary,
Cabinet Secretariat,
New Delhi.
Annexure-IV

Comments/views of National Commission for Scheduled Tribes on the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011

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 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.

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. 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.

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).

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 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.
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/privately 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.

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/dereliction of responsibility, through properly qualified multi-disciplinary teams and should also incorporate views of the affected persons and 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.

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.

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.

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 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.

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.

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 unto 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.

Governance

(i) It is desirable that all Acts and laws should be reviewed for their adaption to the Scheduled Areas, but this is not practically feasible by the concerned departments. The Law Commission (under the Ministry of Law) should be entrusted this responsibility of review of existing Laws and Acts for adaption to Scheduled Areas in consultation with Ministry of Tribal affairs, State Govts., NCST, etc. Any weak areas in schemes / policies for Tribal areas should be got remedied either directly or indirectly by MTA.

(ii) In the context of continuing demand for inclusion of new areas / communities, there is a need to review the list of Scheduled Areas/ Tribes objectively in a time-bound manner. Appropriately, therefore, the Scheduled Area & Scheduled Tribes Commission should be constituted every 10 years to look into such demands. SA & ST Commission should be entrusted the review of Scheduled Areas, Scheduled Tribes list and Laws/rules relating to administrative and financial structure. The Terms of reference of SA & ST Commission should be amended accordingly.

(iii) The National Tribes Advisory Council should be established with clear definition of scope and terms & condition. It should also co-ordinate the governance of Scheduled Areas.

(iv) The role of Committee on Administration of Scheduled Areas in the National Development Council may be clearly spelt out. The Finance Commission should assess the costs of governance of Scheduled Areas and provide requisite funds under 275(1).

(v) The elections to the lowest body of the administration i.e. Gram Panchayat are fought on party lines or influenced by the political parties. Therefore, these institutions are incapable of functioning on the basis of bipartisan interest, as was the case with the traditional system. Therefore, the elections to the lower bodies should be conducted keeping in view only the interest of inhabitants without any overt political involvement. Modern society faces many economic/social issues which confound decision makers who struggle with capacity constraints. Oversight
mechanisms are also necessary along with devolution of powers to local bodies.

(vi) A single-line administration, in which head of the district is head of all the departments / local bodies in the district, (which was followed in earlier days), is an effective form of administration for robust decision-making in times when the administrators enjoy high personal credibility. Nowadays, due to high degree of politicization, intensive oversight mechanisms and heightened expectations, administrators also lack self-confidence. The current environment is not conducive for single line administration, as specialized and more refined administrative practices are being followed, which may not be easily reversible. For single-line administration to be effective, besides PESA, operating / legal frame work is required to be simplified, in addition to availability of administrators committed to rule of law and public interest.

(vii) The Ministry of Tribal Affairs should prescribe a uniform format for preparation and submission of the reports by the Governors in respect of 5th Schedule States with particular reference to its contents. The Ministry of Tribal Affairs should also issue the following instructions to the State Governments to the effect that:

(a) The reports should reach the Govt. of India (Ministry of Tribal Affairs) within a period of six months of closing of the financial year end.

(b) The reports should contain a detailed note on the implementation of the constitutional safeguards for promotion of educational and socio-economic development of the Scheduled Tribes. These reports should also contain a brief on problems relating to law and order, naxal movements and tribal unrest. The reports should also make a mention about Central and State laws enacted in the State during the report period and extension/applicability of those laws to Scheduled Areas in the light of the powers of the Governor under Fifth Schedule. Working of PESA Act in the State should also be integral part of the Governor’s report.

Considering the comprehensive nature of the task, it is not pragmatic to expect the desired report to be compiled by the Governor. Every
of the State, which in turn should compile these reports to identify the schemes/policies being run by them to the Tribal Welfare Department in the State. Should submit a report about the
strong areas and weak points for presentation to the Governor.

In case the reports do not contain the observations of TAC, they may be sent back to the State Governments advising them to apprise the Central Government of the observations of the TACs and action taken on the observations of TAC.

The reports should be thoroughly examined in the Ministry of Tribal Affairs on the basis of the material contained in them and the State Governments should be apprised of the assessment to enable them to take necessary follow-up action.

A copy of the Governor's Report should be made available to the National Commission for Scheduled Tribes immediately after receipt of the Report in the Ministry to enable the Commission to examine the same and offer its comments thereon. The States, which have TACs, should ensure that TACs are constituted/reconstituted timely and that their meetings are held regularly as per Constitutional provisions.

(viii) PESA envisaged democratic institutions of administration. ITDAs are generally headed by the District Collectors. To provide sustained co-ordinated emphasis to the problems of Scheduled Tribes/Areas, multiplicity of agencies should be avoided. ITDAs should be merged with ZPs.

All the areas covered under Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach (MADA) Pockets and Clusters included in Tribal-Sub-Plan of the States should be made co-terminus with the Scheduled Areas of the respective State.

All such revenue villages having 50% or more tribal population as per 2001 Census but presently not included in Scheduled Areas of the State concerned, may be included in Scheduled Areas or MADA or Clusters, as the case may be, of the respective State.

(ix) The State Govts. may be advised to take necessary action in terms of Section 4(n) of the PESA Act, 1996 to equip Panchayats with requisite powers and authority to enable them to function as institution of self-government.

(x) There is a need to devise a mechanism, which would enable the field formations to receive funds directly from other agencies instead of
being routed through State Hqrs. by enforcing on them a system of accountability for proper utilization of those funds.

(xi) There is a need to advise the State Govts. to ensure that the State legislations on Panchayats should conform with the customary law, social and religious practices and traditional management practices of community resources; and where the State Govts. have enacted legislations which are not in conformity, they should initiate corrective action to make suitable amendments in the State legislations.

(xii) In the context of continuing demand for inclusion of new areas / communities, there was a need to review the list of Scheduled Areas/ Tribes objectively in a time-bound manner. Appropriately, therefore, the Scheduled Area & Scheduled Tribes Commission should be constituted every 10 years to look into such demands.

II. Focus on National Missions on Tribal Areas

The strategy for all programmes, particularly the major missions/schemes of the Ministries/Deptt.s, should comprise sub-Chapters for accelerated development of the Scheduled Area. In particular, it is necessary to have specific Tribal Sub Plan (TSP) component in all the major missions/ schemes/ programmes of all Ministries/Deptts to have a clear focus on formulation of schemes/programmes concerning the STs and their effective implementation and monitoring. The TSP component should not be per population share but according to "problem-share"; and "need-based" taking into account the extent of deprivation, or even more than that to make up the backwardness/ negligence experienced over the years. Unless the earmarking of TSP outlays exceeds the relative share of incidence of residual problems eg. drinking water, primary health care and education, nutritional support, unemployment etc., the relative gap in physical quality of life is likely to persist.

III. Infrastructure Development in tribal areas

The Constitution provides a special role for the Central Government in the administration of Scheduled Areas. Token Special Central Assistance (SCA) for the Tribal Sub Plan has made limited impact to bridge the developmental gap in Scheduled Areas. The Government of India should bear the responsibility for infrastructure development/ upgradation of Administration in Scheduled Areas under Art. 275 of
the Constitution, rather than confining itself to the issue of directions for its development. The costs of governance in tribal areas should also be funded under Article 275(i) grants. Besides, allocation for Tribal Sub-Plan should not be per population share but according to "problem-share" and "need-based". (As regards utilisation of non-lapsable pool funds, the Commission recommends that the unutilized TSP funds should be placed in a non-lapsable development fund administered by the Ministry of Tribal Affairs and the fund should be used for infrastructure development in the TSP areas. It is also necessary to prepare detailed guidelines for expenditure out of this fund, to make optimum use of those funds and to ensure that the desired benefits reach the Scheduled Tribes and the tribal areas).

IV.

Tribal Sub-Plan

(i) The funds allocated under Tribal Sub-Plan of the States should be non-divertible and non-lapsable with the objective of bridging the gap in socio-economic development of the Scheduled Tribes and the Scheduled Areas (and other tribal areas) under Tribal Sub-Plan in a time bound manner. The Ministry of Finance, Ministry of Tribal Affairs and the Planning Commission may take necessary steps for creation of a non-lapsable (Tribal Sub-Plan) fund under each State/UT having Tribal Sub-Plan and formulate guidelines for utilisation of such funds. Infrastructure development aimed at accelerated development of the Tribal Sub-Plan areas should be a priority area for expenditure from the non-lapsable fund. It is suggested that unutilized TSP funds at the Centre should be placed in a non-lapsable infrastructure development fund administered by the MTA. For this purpose, appropriate guidelines should be formulated, on the lines of the guidelines issued by the Ministry of Development of North Eastern Region for administration of non-lapsable central pool of resources, to ensure utilization consistent with objectives.

(ii) The State Govts. should be advised to ensure that the funds available under the grants given under SCA to TSP and First Proviso to Article 275(1) are not diverted under any circumstance to any other area not connected with tribal development. The State Govts. should also be advised to submit to the Ministry of Tribal Affairs a statement of details of actual expenditure of these grants on various tribal development programmes within three months of the close of the concerned financial year with a view to exercise check both on timely utilization of the money on tribal welfare schemes as well as on non-diversion of these grants to other areas.
(iii) In the recent past various Ministries concerned with development and services have formulated National Missions on crucial services like National Rural Health Mission, National Drinking Water Mission, Mahatma Gandhi NREGA. These missions have direct impact on the life of Scheduled Tribes but do not make specific provisions for Scheduled Tribe beneficiaries. It may be recalled that 50% of the targets fixed under IRDP were reserved for Scheduled Caste and Scheduled Tribe beneficiaries. The Commission has noted that formulation of various National Missions are policy matters affecting the life of Scheduled Tribes and therefore, the Government is expected to consult the National Commission for Scheduled Tribes as per provisions of Article 338A(9) of the Constitution. However, no consultation with the Commission was made by the Government while formulating the National Missions. The Commission recommends that the Ministries/ Departments administering the National Missions must ensure that adequate investments/ benefits are earmarked for Scheduled Tribes under Tribal Sub-Plan of the Ministry/ Department during each plan period so as to provide for their accelerated development and in general each Ministry/ Department should consult the National Commission for Scheduled Tribes in all policy matters affecting Scheduled Tribes, as provided under Article 338A(9) of the Constitution.

(iv) The Planning Commission, in its communication to the State Governments, regarding preparation of Annual Plan and Five Year Plan should invariably emphasize that the Plan proposals of the State Government for Annual Plan as well as Five Year Plan will not be considered unless Tribal Sub-Plan document is also received. The communication should also clearly specify that the State Governments will simultaneously sent the copies of State Plan documents and Tribal Sub-Plan documents to the National Commission for Scheduled Tribes.

(v) In order to ensure non-diversion of Tribal Sub-Plan funds, the Planning Commission and the Ministry of Tribal Affairs should ensure that each State Government budgets the earmarked TSP funds under a single budget demand head under the control of the State Tribal Welfare/ Development Department of the State, as envisaged in the Maharashtra Model and advocated by Planning Commission as well as Ministry of Tribal Affairs from time to time.
(vi) Allocation from state plan funds in proportion to the ST population of the state may be linked to some incentive in SCA to TSP.

(vii) The Planning Commission has set up a Task Force in 2010 under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission to re-examine and review Guidelines on Scheduled Caste Sub-Plan & Tribal Sub-Plan. The National Commission for Scheduled Tribes, while agreeing with the recommendations of the Standing Committee and the Task Force, strongly recommends that the Planning Commission as well as concerned Ministries strictly follow them so that smooth operation of the Tribal Sub-Plan of the Central Ministries/ Departments takes place w.e.f. 12th Five Year Plan. The Commission has noted that some of the Ministries/ Departments which have been listed by the task force in 'No Obligation' category for the Tribal Sub-Plan are responsible for infrastructure development and public services in critical areas. The Commission, therefore, recommend that appropriate outlays for TSP should also be earmarked in respect of all these Ministries/ Departments, to ensure that TSP areas/ Scheduled Areas don't continue to be hamstrung by poor infrastructure/services.

(viii) The Planning Commission should not consider the Five Year Plan/ Annual Plan proposal of any Ministry/ Department which is not accompanied by the Tribal Sub-Plan, which should be finalized after discussion with the representatives of the Ministry of Tribal Affairs.

(ix) Each Ministry should set up TSP Cell as in the past. The TSP Cell should be functional throughout the year like the Official Language Section in each Ministry/ Department. The TSP Cell will monitor implementation of TSP schemes of the Ministry and, by using the inputs received through monitoring, prepare the TSP component, of Annual Plan and Five Year Plan of the Ministry/ Department in terms of financial and physical aspects.

(x) The Planning Commission may conduct an exercise with all the Ministries/ Departments and finalise the Ministries/ Departments which must prepare TSP as part of the General Plan exercise and emphasize all those Ministries/ Departments that their Plan proposals will not be discussed if the TSP document is not submitted simultaneously.

(xi) The administrative mechanism in Central Ministries / Departments will need to be adequately strengthened so that they properly
implement SCSP/ TSP as per the recommendations outlined in the Report. The Planning Commission should also take immediate steps for implementation of the recommendations made in the report, from the year 2011-12.

V. **Land Alienation**

**Views/comments on Draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011**

(i) 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 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:

(ii) 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.

(iii) 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.

(ii) 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.

(iii) 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.

(iv) 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).

(v) 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 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.

(vi) 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/privately 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.

(vii) 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/dereliction of responsibility, through properly qualified multi-disciplinary teams and should also incorporate views of the affected persons and 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.

(viii) 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.

(ix) 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.

(x) 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 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.

(xi) 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 re-payment 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.
(xii) 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.

VI

Resettlement & Rehabilitation

(i) The various Acts of the State Govts. should be suitably amended/ revised in line with the spirit of the PESA Act for ensuring an effective as well as efficient management of local natural resources.

(ii) Keeping in view frequent diversion of forest land for any development and infrastructural projects involving displacement of tribals:

(a) the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for re-settlement of rights of the tribals in cases of involuntary displacement in and around forests.

(b) rights of the affected 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 development / infrastructural project.

© the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act should have comprehensive provision for resettlement and rehabilitation of tribals consistent with the spirit/provision of the RR Bill, 2007, as provided in respect of Critical Wildlife Habitat.

(iii) Participation of the local people should be encouraged in development projects to mitigate the adverse effects.

(iv) Traditional and customary beliefs of the tribals should be given due importance, the issues related to traditional and customary beliefs should be settled by involving as many local tribal people as possible in public hearings, workshops etc. besides involving people's representative of the area in the decision making body.

(v) Beside displacement due to public sector projects, large scale displacement is being witnessed on account of private mega-
industrial projects also. The Commission has noted that Rehabilitation legislation is pending enactment for more than two years after notification of the NRRP, 2007. The abnormal delay in this regard is adversely affecting normative definition/ implementation of resettlement and rehabilitation and compensation packages for the benefit of displaced persons.

(vi) Considering the future land needs of SEZ’s, etc, imposition of rehabilitation resettlement obligations on large scale contractual purchases of land 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, 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 mandated. Legislation 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 would 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. In default, the appropriate Govt. may undertake rehabilitation / resettlement (as for Govt. investments) at their cost which may form part of the award under the LA Act.

(vii) Both SIA and rehabilitation schemes should be validated with reference to the potential risks and related risk-reversal programmes to ensure that tribals don’t suffer from impoverishment as a result of their displacement, in any manner and the problems relating to marginalization are mitigated to the maximum possible extent.

(viii) SIA should:

(a) 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 at least where the number of displaced tribal families exceeds 25), or the voluntary / involuntary nature of the displacement.

(b) 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.

(c) 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.

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

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

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

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

(ix) The RR legislation should have substantive provisions for development of CPRs, including development of sufficient alternate fuel, fodder and NTFP resources on non-forest lands in the rehabilitation schemes to support household income, livestock, sustenance to meet the needs of the relocated community and to support ecology; and also appropriate institutional mechanisms for administration of CPRs on long-term basis, or alternatively, displaced tribals should be resettled in proximity to forest areas with corresponding rights in the new habitat.

(x) R&R legislation should create a meaningful CSR model incorporating a significant part of retained profits, comparable with the returns provided to shareholders and set up a mechanism to monitor its implementation.

(xi) 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 / legislation should be made applicable for tribals displaced due to diversion of forest land for non-forest purpose in the event involving 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; and 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 holdings 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 equivalent land must be provided in the forest with similar rights. In such cases, technical and financial help should be given to make the land productive. Subsistence allowance should
also be provided to the tribals till such time the land becomes productive without restricting it to a period of one year

**Mining**
**Views on MMDR Bill, 2010**

The following important issues have not received due attention in the Bill, as follows:-

(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. The judgment also directed that Minerals in Scheduled Areas have to be exploited by the tribals or State instrumentalities alone. Thus, the Samatha judgement requires exclusivity in grant of mineral concessions for Scheduled Tribes or State instrumentalities, not merely according preference to them.

It is therefore, desirable that, if mineral extraction is authorized by private entities in case of the Scheduled areas, the Govt. should be willing to shoulder vicarious responsibility for providing habitat and livelihood security in such areas. The State is one of the principal beneficiaries of the mineral extraction projects, as the royalty levied by the State on minerals extracted far exceeds the rents paid by the lessee to the tribal owners. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived of their holdings, as well as give them a due share of the profits to be derived from mining.

(ii) The Bill doesn’t incorporate an essential, specifically delineated provision for rehabilitation & resettlement for the project affected/displaced ‘persons under the obligations set out in the mining lease. It maybe mentioned that the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which is awaiting approval of the Parliament, has integrated the provisions of rehabilitation and resettlement with the land acquisition process, but doesn’t cover R& R in respect of the project- affected/displaced persons as a result of diversion of forest land/private lands leased for mining . The R& R obligations also need to be ensured in respect of incremental leasing of adjacent areas and extension of current leases in
perpetuity also, which have not been provided in the Bill. The subject is vital to the interests of Scheduled Tribes and merits a separate chapter in the Bill.

The proposed National Sustainable Development Framework Bill should have equitable R&R as an objective, with an express provision for issue of R&R guidelines laying down a standard procedure for the same. Rehabilitation and Resettlement (R&R) plans should be linked to the Mining Plan, so that R&R activities are satisfactorily completed before the lessee ceases operations in a specified area. The standard rehabilitation procedure should also be made applicable to diversion of forest land also. All forest rights must be settled as per the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 before grant of lease; and, these must not be resumed/diverted except in the case of emergencies or strategic necessity, in which case equivalent forest land should be allotted with similar rights besides other compensation admissible.

Similar to the corporate social responsibility document (Cl.26(3)), there should also be a R&R document which should document the obligation/efforts and outcomes achieved. Before granting approval for extension of a mining lease, special report regarding implementation of R&R obligation should also be sought (Cl.28(3)proviso). Besides failure or delay in commencement of mining operations (Cl.29(1)) leases should also lapse in case R&R obligations have not been discharged. Further, R & R norms specified by the R & R law/National Sustainable Development Framework should comprise the benchmark to be followed in all cases.

(iii) The Bill assiduously protects the financial interests of Government by mandating lease only through competitive bidding inclusive of profit-sharing [Cl. 13(3)(g)] and also those of lessees, who are permitted to transfer the concession with attendant potential for unearned profits, but does not provide any mechanism for profit-sharing with land owners. It is impossible to link profit-sharing with land holders also with the profits distributed to the Govt. Since mining is a long-term activity, necessary provision according share to land owners in the amount of appreciation of value of lease should also be included.

Contribution to the District Mineral Fund only as a proportion of royalty excludes share from windfall profits or protection against
Benefits/privilages available to mineral right holders may also be provided. If future land use is of a commercial nature, the project activity should also be shared with the land owners in the form of "sweet-equity" (beside compensation). The Commission suggests that the retained earnings from perpetuity, the Commission suggests that the retained earnings from continued in another form. If some land rights are being ceded in mining areas, or future earnings shared if non-agricultural use is provided in the land acquisition and R&R Bill, 2011. Further, the land should be returned to the owners after ecological reclamation of land provided in the land acquisition and R&R Bill, 2011. Furthermore, the compensation (earnings from mining activity) should also be shared with mining (windfall) earnings from surface rights, future and sometimes compensation in lieu of land surface rights, future and sometimes profits distributed/received by the mining enterprise. Besides annual profit distribution, retained by the mining enterprise, besides creating alternative vocations (adjusted for interest inflation), besides creating alternative vocations (adjusted for interest inflation), besides creating alternative vocations (adjusted for interest inflation), besides creating alternative vocations (adjusted for interest inflation), besides creating alternative vocations

since mineral depletion due to cessation of business, since mineral
establishment to which the Act applies shall employ Inter-State and Conditions of Service Act, 1974, no principal employer of an

As per The Inter-State Migrant Workers (Regulation of Employment

Migrations

VIII

purposes.

Committee of the Foundation for reduction of funds to ineligible provision for punishment of the members of the Governing regarding use of MNREGA funds, etc; there should also be a functionaries/public representatives brought out in the CAG reports. The conduct of through other sources. As evident from the conduct of infrastructure development in Scheduled areas should be met specified minor fraction. The legitimate expenditure toward affected persons, unless this proportion is limited by law to a may progressively reduce the rights/benefits directly available to use DMF for creation of local infrastructure, as provided in the Bill, eschew the temptation to dabble in other activities. The sanction to like a Trust looking after the interests of affected persons and should only work

The proposed District Mineral Foundation (DMF) should only work
migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force. Further, a contractor has to obtain a license to employ inter-State workmen. A contractor is required to issue a pass-book to every inter-State migrant workman with a passport size photograph, name and place of establishment, period of employment, the proposed rates and modes of payment of wages, displacement allowance payable, return fare payable on expiry of period of employment, deductions made and other such particulars. As per provisions, inter-State migrant workman shall in no case be paid less than wages fixed under the Minimum Wages Act, 1948. However, this Act is applicable only to inter-State migrant workman employed in an establishment. The Commission, therefore, recommended that provision of the Act should also be made applicable to the placement agencies in respect of Migrant Domestic Workers.

(ii) After the commencement of 'The Bonded labour System (Abolition) Act, 1976, the bonded labour system shall stand abolished and every bonded labour shall stand freed and discharged from any obligation to render any bonded labour. Any custom or tradition or any contract, agreement or other instrument leading to bonded labour shall be void and inoperative. Every obligation of a bonded labourer to repay any bonded debt shall be deemed to have been extinguished. All the property of vested in a bonded labourer mortgaged in connection with any bonded debt shall stand freed and discharged. No creditor shall accept any payment against any bonded debt, which has been fully satisfied by virtue of the provisions of this Act. These provisions need to be adapted for overseeing contract labour to ensure humane treatment of Migrant workers.

IX

Implementation/amendment of SCs & STs (POA), Act, 1989

(i) The Commission has observed that delay in disposal may be a possible reason for large scale acquittal of persons charged with commission of offences under the Act. The Commission, therefore, recommended fixation of a time-frame of 6 months for disposal of the cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the lines of the stipulation under section 13(3A) of the Consumer Protection Act, 1986, which provide a period of 2 to 5 months for disposal by a District forum. To meet this objective, the Act could also be amended to provide for setting up exclusive Special Courts instead of designating a Sessions Court as a Special Court for trial of cases
under this Act.

(ii) The Commission noted that at present it is not mandatory under the Criminal Procedure Code to register an FIR immediately when a complaint is made. For monitoring purposes, the Commission feels that there should be prompt reporting of all such complaints made to the police to higher authorities without awaiting the registration of an FIR.

X

**Issue of ST Certificates**

(i) The DoPT should issue instructions to all concerned that the children of the migrant SC/ ST parents do not find difficulty in obtaining the caste certificates in the revised format prescribed vide letter dated 6th August, 1984. To facilitate this process copies of all the original Constitution Orders and the Amendment Acts should be available in the office of each authority competent to issue the certificates and also placed prominently on the Websites of Ministry of Tribal Affairs, Ministry of Social Justice and Empowerment and Department of Personnel and Training as also on the Websites of the concerned Departments of the State Governments/ UT Administrations as well as each district administration respectively.

(ii) De-scheduling of certain ST communities as a whole would not be in the interests of still poor and backward families among those Scheduled Tribe communities. The Government may, however, devise measures to ensure that share of the weakest amongst the Scheduled Tribes in the development schemes and economic upliftment programmes are not cornered by those members of Scheduled Tribes who have already availed the benefits and have risen to the average of the society. Moreover, the criteria for identifying a community as Scheduled Tribes as adopted so far needs to be followed strictly so that only deserving communities and economically weaker among those deserving communities are able to reap the benefits.

(iii) There is need to advise the State Governments that

(a) they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents due to the resettlement in another State following displacement from his State of origin will continue to enjoy the same status in the State where they are resettled after
displacement in case the community/communities to which they belong have already been notified as Scheduled Tribe/Scheduled Tribes in that State and avail the benefits admissible to the Scheduled Tribes in that State.

(b) In case the community/communities to which the resettled tribals belong have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/those community/communities notified as Scheduled Tribe/Scheduled Tribes effective from the date of resettlement and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.

(iv) There is also need to advise the State Govts. that they should issue instructions to provide that in the context of creation of new States or transfer of territories from one State to another State following re-organisation of States, the Scheduled Tribes notified for the undivided States will continue to enjoy the same status in the successor States depending upon the place of their residence in the new State on the date of the notification of the State Reorganisation Act.

(v) All States/UTs, in relation to which ST communities have been specified, should set up the Scrutiny Committee for verification/validation of ST caste certificates as per the directives of Hon'ble Supreme Court of India. The Ministry of Tribal Affairs should also take up the matter with all the States/UTs to impress upon them the need for putting in place an effective mechanism for the purpose of validation of the caste certificates and verification of the community status of such persons claiming to belong to Scheduled Tribes or scrutiny of complaints relating to availing benefits on the basis of ST certificates obtained fraudulently by non-Scheduled Tribes and the matters connected therewith.

(vi) The Ministry of Tribal Affairs may advise all the State Govts./UT administrations to ensure utmost care while issuing temporary caste/tribe certificates; and that they should issue the community certificates on the basis of some preliminary enquiry or evidence in favour of the claim submitted by the applicant to discourage the persons who may try to obtain the caste certificate fraudulently.
(vii) The Ministry of Tribal Affairs may undertake a project to compile a data base of ST community certificates linked with UIDs immediately.

Development of PTGs

(i) The most vulnerable PTGs, the policy should aim at the development of while protecting them from cross infection and exploitation by the outside world. They should be regularly provided with food items and health services beside special schools for education of their children. The following measures may also be suitably incorporated in the policy:

(a) The number of regulated contact points may be increased suitably.

(b) Instead of keeping PTGs entirely dependent on forest for livelihood, they may also be introduced to settled agriculture (by supplying them improved seeds, agricultural kits, plough bullocks, bullock carts etc.), horticulture and animal husbandry (by supplying them crossbreed cows, she buffaloes, sheep/piggery units etc.) and providing suitable training therefor.

(c) Efforts may also be made to provide education and play way/sports activities to children of PTG community in special residential schools for which the staff and officers may have to make special efforts to make sporting contacts with them and persuade them to send their children to the special schools where every need of the children should be fulfilled free of cost. This may also help in checking the trend of diminishing population. This would certainly need careful selection of the staff and giving them suitable training for enabling them to have peaceful and fruitful relations with the PTGs. As and when possible, local eligible and suitably trained youth/women should be appointed as Teacher in the special schools.

(d) The Primary Health Centres (PHCs) are generally located far away from the habitations of sparse PTG population and, therefore, they are not in a position to avail of medical facilities in the time of emergency. In order to provide emergency and regular treatment facilities, one Medical Mobile Van equipped with primary treatment facilities and medicines along with minor surgical equipments should be arranged at each contact
point for the PTGs.

(e) The local administration may be advised to arrange free distribution of food and consumer items available under PDS to needy persons.

ii) The Primary schools are located in areas distant or far distant from the PTG hamlets/villages and, therefore, the PTG children face difficulties in attending schools regularly especially in rainy season. The Commission recommends that:-

(a) In order to increase the attendance and also to decrease the drop-out rates of PTGs students in the schools, one Primary school for each village may be opened in each PTG village/hamlet.

(b) As far as possible local eligible youth/women should be appointed as Teacher in such schools to ensure proper functioning of the schools.

(c) Incentives in the form of school dress, kid bags etc. and monetary assistance @ of Rs.100/- to Rs. 300/- per year to the students depending upon the classes in which they are studying as also to parents @ Rs.200/- to 400/- per year may be provided for encouraging them to come to schools/ to send their children to schools.

XII

**Strengthening of the National Commission for Scheduled Tribes**

i) It would be appropriate to mention that the Commission is not having requisite manpower to deal with the duties assigned to it. Besides, there is no budgetary head/ funds available in the National Commission for Scheduled Tribes under any Plan scheme. Consequently, this Commission has not been able to take up the matters/ issues mentioned in the Expanded Terms of Reference notified by the Govt. on 23/08/2005. In order to strengthen functioning of the Commission and enable it to perform as per mandate, there is a justified need to empower the Commission through the following measures:

(i) Grant of all the powers the Department of the Central Government.

(ii) Amendment to Clause 5 (b) of Article 338A provide that where the enquiry discloses clear violation in complying with the safeguards provided to the Scheduled Tribes in the Constitution or under any other order or law by a public
servant, the Commission may advise/recommend to the concerned organization for taking corrective remedial measures and that it should be mandatory for the concerned organization of the Central Govt. or the State Govt. to accept such advice/recommendations.

(iii) Grant of powers to impose fine on a public servant for wilful delay or negligence in the discharge of his duties in implementing the instructions of the Government relating to safeguards available to the members of Scheduled Tribes. This is on the lines of the powers given to the Central Information Commission in the context of the implementation of the various provisions of the Right to Information Act, 2005.

(iv) Clause 9 of Article 338A of the Constitution provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. Notwithstanding this provision, the Commission has repeatedly observed that it has not been consulted while enacting important legislations of vital significance to the well being and existence of tribal people, viz; Reservation Bill, the Bill relating to Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Land Acquisition (Amendment) Bill, 2007, the Rehabilitation and Resettlement Bill, 2007 and Wild Life Protection (Amendment) Act, 2006. Since legislation is the most pristine articulation of the policy measures undertaken by the State, it is rather distressing to note that most Ministries of the Government are generally oblivious of the need and obligation to consult the Commission in respect of those legislative proposals which may affect Scheduled Tribes. The Commission, therefore, recommends that the Cabinet Secretariat / Ministry of law should be tasked with the responsibility of ensuring such consultations with the National Commission for Scheduled Tribes before such proposals are placed for consideration before the Council of Ministers.

The matters for advice under the provision of Article 338A(9) may be referred to the Commission after completion of internal process of drafting and before submission to the Apex Body/ Committee/ Cabinet Committee.
Whenever matters are referred to this Commission for advice or comments, the views expressed by this Commission should invariably be placed, without any oversight or modification, before the concerned authorities for their consideration, as the final decision on the issue rests with the concerned authority.

Timely laying of the Annual Reports of the Commission in Parliament

As per the Clause (6) and (7) of the Article 338A of the Constitution, the President or the Governor shall cause all the Reports of the Commission to be laid before each House of Parliament or the State legislation as the case may be along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union or the State/UT and the reasons for non-acceptance, if any, of any of such recommendations. Though, the Commission has submitted four Reports, not even the 1st Report has been laid in the Parliament so far. This delay substantially detracts value from the Commission’s recommendations as the Hon’ble Members of Parliament come to know of them many years after submission of the Report to the President. Besides, it also prevents the Commission from timely dissemination of its reports to various Organisations/ agencies including NGOs working for Scheduled Tribes / the senior officers of the Central Government and State Governments concerned with formulation of programmes and schemes for tribal development, thereby depriving them of the inputs provided by the Commission on various tribal issues.

The Commission is, therefore, of the view that it is very important that Reports of the Commission are laid in Parliament and the State Legislatures, as the case may be, within a reasonable period of time i.e. not exceeding three months, and memorandum of action taken/ proposed to be taken on its recommendations by the Ministry of Tribal Affairs/ the respective State Government are separately laid in the Parliament/ State Legislature within six months of such submission of the report. and initiate expeditious action to amend the above-mentioned Clause of Article 338A of the Constitution on the above lines.