



No. 11/2/13-Coord.

GOVERNMENT OF INDIA

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

6<sup>th</sup> Floor, 'B' Wing, Lok Nayak Bhawan,  
Khan Market, New Delhi 110003

Dated: 13/12/2013

To,

1. Dr. Rameshwar Oraon, Chairperson,
2. Shri Ravi Thakur, Vice Chairperson,
3. Smt. K. Kamala Kumari, Member
4. Shri Bheru Lal Meena, Member,

**Sub: - Summary record of the 51<sup>st</sup> Meeting of the Commission held at 11:30 hours on 22/11/2013.**

Sir,

I am directed to refer to the above subject and to say that 51<sup>st</sup> Meeting of the National Commission for Scheduled Tribes was held at **11:30 Hrs. on 22/11/2013** in the Conference Room at Lok Nayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,

*(Signature)*  
(K.D. Bhansor) Mrs.  
Deputy Director

Copy with a copy of the Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit / Office may be furnished to Coordination Unit by 20/12/2013 positively.

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

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

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

*(Signature)*  
(K.D. Bhansor) Mrs.  
Deputy Director



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग  
GOVERNMENT OF INDIA

NATIONAL COMMISSION SCHEDULED TRIBES

संख्या/No.-1/12/13-समन्वय

दिनांक/Date 13/12/2013

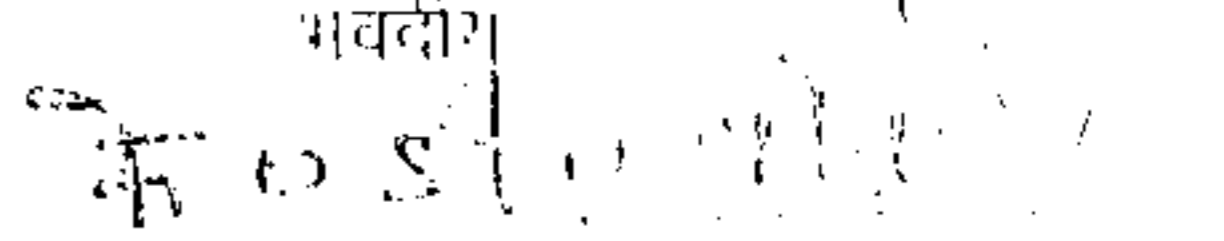
प्रति,

- 1) डा० रामेश्वर उराँव, अध्यक्ष
- 2) श्री रवि ठाकुर, उपाध्यक्ष
- 3) श्रीमती के. कमला कुमार, सदस्य
- 4) श्री भैरू लाल मीणा, सदस्य

विषय: राष्ट्रीय अनुसूचित जनजाति आयोग की दिनांक 22-11-2013 को अपराह्न 11:30 बजे सम्पन्न 51वीं बैठक का संक्षिप्त अभिलेख।

महोदय,

मुझे उपर्युक्त विषय का उल्लेख करते हुए यह कहना है कि आयोग की 51वीं बैठक माननीय अध्यक्ष, राष्ट्रीय अनुसूचित जनजाति आयोग, लोकनायक भवन, नई दिल्ली के कक्ष में दिनांक 22 नवम्बर, 2013 को अपराह्न 11:30 बजे हुई थी। बैठक की अध्यक्षता डा० रामेश्वर उराँव, अध्यक्ष, अनुसूचित जनजाति आयोग द्वारा की गई। बैठक का संक्षिप्त अभिलेख की एक प्रति सूचना एवं अभिलेख हेतु संलग्न है।

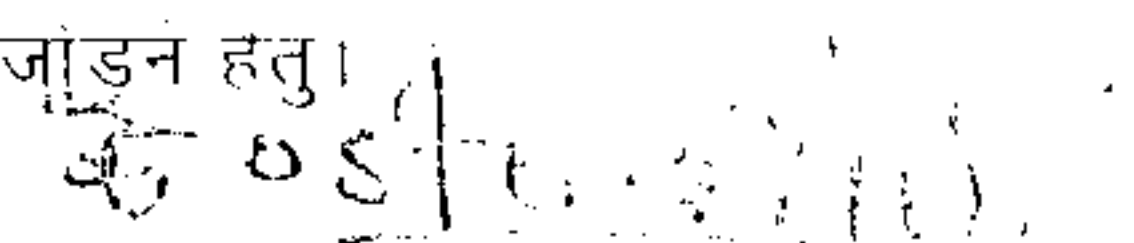
भवदीय  
  
(के.डी. वन्सोर) श्रीमती  
उप निदेशक

प्रतिलिपि : बैठक के संक्षिप्त अभिलेख की एक प्रति सहित, निम्नलिखित अधिकारियों को इस अनुरोध के साथ अर्पित है कि बैठक में लिए गए निर्णयों पर की गई कार्रवाई के संबंध में जानकारी प्रत्येक संबंधित एकक का माध्यम द्वारा 20-12-2013 तक अवश्य ही समन्वय एकक को भेज दी जाए।

- (i) निदेशक (प्रशासन-I एवं आर०यू०-II)
- (ii) उप निदेशक (आर०यू०-III और आर०यू०-IV)
- (iii) अवर सचिव (प्रशासन और आर०यू०-I)
- (iv) सहायक निदेशक/ अनुसंधान अधिकारी प्रभारी-आर०यू०-I/ आर०यू०-II आर०यू०-III आर०यू०-IV/ समन्वय/ सहायक निदेशक (राजभाषा)।

प्रतिलिपि: बैठक के संक्षिप्त अभिलेख की एक प्रति सहित, सूचनार्थ अर्पित:

1. अध्यक्ष के निजी सचिव।
2. सचिव के कार्यालय।
3. संयुक्त सचिव के प्रधान निजी सचिव।
4. निदेशक/सहायक निदेशक/ अनुसंधान अधिकारी, राष्ट्रीय अनुसूचित जनजाति आयोग के मापान भुवनेश्वर, जयपुर, रायपुर रांची शिलांग स्थित क्षेत्रीय कार्यालय।
5. वरिष्ठ सिस्टम विश्लेषक (NIC Cell, NCST) - आयोग की वेबसाइट पर जोड़ने हेतु।

  
(के.डी. वन्सोर) श्रीमती  
उप निदेशक

**51<sup>ST</sup> MEETING**

**OF THE**

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

**RECORD OF DISCUSSIONS**

**Date:** 22<sup>nd</sup> November, 2013

**Time:** 1130 hours

**Venue:** Conference Room, NCST, 6<sup>th</sup> Floor, Lok Nayak Bhavan, New Delhi.

**In the Chair:** Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST

**List of Participants:** Annexed. As Agenda Item 9 related to significant clarifications issued by the Ministry of Tribal Affairs, Secretary, MTA who had been invited, conveyed her excuses and was represented by the Joint Secretary, MTA.

1. The Chairperson welcomed the previous members who had been reappointed and the Vice-Chairperson who had joined recently. Agenda subjects were discussed as below:

<b>Agenda Item I</b>	Draft Cabinet Note for the Framework for Implementation of National Health Mission (NHM)
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2. Ministry of Tribal Affairs in their letter F. No. 20014/7/2013-R&M dated 10/09/2013 have sought the comments of the National Commission for Scheduled Tribes on the Draft Note for the Cabinet on the Framework for Implementation of National Health Mission (NHM) received from the Ministry of Health & Family Welfare in their O.M No. Z-14011/2/2012-NRHM-II dated 30/08/2013.

3. The Commission noted that the Cabinet approved the proposal to launch the National Rural Health Mission (NRHM) in January 2005 to address the healthcare needs of the rural population. The first phase of NRHM ended on 31st March 2012. The Union Cabinet approved continuation of National Rural Health Mission (NRHM) for 5 years from 1st April 2012 to 31st March

*Rameshwar Oraon*  
 Dr. Rameshwar Oraon  
 Chairperson  
 National Commission for Scheduled Tribes  
 Lok Nayak Bhavan, New Delhi

2017 i.e. co-terminus with the 12th Five Year Plan. In the light of experience gained over the years in implementing NRHM, the Framework for Implementation of the NRHM was proposed to be revised building on the Framework developed in 2006 for the first phase of NRHM and incorporating the learning of the past seven years.

4. Meanwhile, the Twelfth Five Year Plan (2012-2017) document was approved by the National Development Council (NDC) which stated that a National Health Mission (NHM) will be set up which would cover all villages, towns and cities in the country. The NHM is categorized as a Flagship scheme. The Government has therefore proposed to lay down the Framework for Implementation of the NHM (rather than of only NRHM), which would spell out the broad principles and strategies of NHM covering both NRHM and NUHM. NHM would have six financing components: (i) NRHM-RCH Flexipool, (ii) NUHM Flexipool, (iii) Flexible pool for Communicable diseases, (iv) Flexible pool for Non communicable diseases including Injury and Trauma, (v) Infrastructure Maintenance and (vi) Family Welfare Central Sector component.

5. The Commission further noted that National Rural Health Mission, which is presently in its second phase, will now be a Sub-mission of NHM. On the other hand, NUHM is entering into its first phase of implementation under NHM. There is already an existing Framework for Implementation for NRHM. The NRHM and NUHM framework have distinct strategic approaches to address the specific needs of rural and urban populations. However, an overarching implementation framework for NHM is required for laying out the broad principles and strategic direction. NHM would be the main vehicle for this at the primary health care level up to the District Hospital. The NRHM Framework of Implementation and the Framework of Implementation of NUHM will continue to guide the NRHM and NUHM in so far as they are not inconsistent with any of the provisions of the NHM framework. In view of the above, the draft Cabinet Note on the subject was approved by the Commission.

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*Ramkrishna Das*



<b>Agenda Item II</b>	Draft Note for the Cabinet- Proposal to amend the Parliament (Prevention of Disqualification) Act, 1959.
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6. Ministry of Tribal Affairs in their letter No.12/13/2013-CP&R dated 26/09/2013, received in the Commission on 01/10/2013, sought comments of the National Commission for Scheduled Tribes on the Draft Note for the Cabinet prepared by the Legislative Department under Ministry of Law & Justice on the proposal to amend the Parliament (Prevention of Disqualification) Act, 1959. Draft Bill to amend the Parliament (Prevention of Disqualification) Act, 1959 so as to exempt Members of Parliament from incurring disqualification on being appointed to statutory bodies etc., under the provisions of any law, for the time being in force, was referred to the Joint Committee on Profit (Fifteenth Lok Sabha). The Committee has agreed with the Draft Bill. The proposed amendment to the Parliament (Prevention of Disqualification) Act, 1959 will exempt the office of the Chairman or Chairperson, Member or Director of a Board, Committee, Commission, Authority, Council or Court of University, Body, Society, Trust (by whatever member of the House of the People or the Council of States on being elected or appointed by the case may be, to such office constituted or established under any law for the time being in force, from incurring disqualification. Accordingly, a draft Note for the Cabinet has been received for comments.

7. While agreeing to the proposal, the Commission noted that the proposal was to include also the Member of a Commission beside its Chairman or Chairperson. The Commission recommended that the above noted proposal should include the Vice- Chairperson and Members of National Commission for Scheduled Tribes without any condition, as NCST is a Constitutional Commission.

<b>Agenda Item III</b>	Draft Memorandum for Expenditure Finance Committee (EFC) for a new scheme titled "Enhancing Institutional Capacity for Training of Trainers".
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8. Ministry of Tribal Affairs in their letter F.No.17014/10/2013-SG-II dated 25/09/2013 has sought the views/ comments of the Commission on the draft

Dr. RAMESHWAR ORAON  
 SR\_NCST 51<sup>st</sup> meeting held on 22/11/2013  
 National Commission for Scheduled Tribes  
 Govt. of India  
 New Delhi

Rameshwar Oraon

EFC Memorandum for a new scheme titled "Enhancing Institutional Capacity for Training of Trainers", proposed by the Ministry of Labour & Employment in their O.M No. DGET-17(4)-ATI & RVTI-NS(TA)/2012 dated 09/09/2013.

9. The main objectives of the scheme are:

- To create a pool of trained instructors as per need across the country and required for improving the delivery of quality vocational training.
- To improve participation of disadvantaged section in the pool of trained instructors.

10. The EFC Memo states that the proposal is to roll out the scheme in the XII<sup>th</sup> Plan. The actual operation of the Institutes may start in FY 2016-17 onwards. Land has been identified for setting up some of these institutions in anticipation of the approval & efforts are being made to ensure that land for remaining proposed institutes also gets identified within next six months, so that this does not become a constraint in quick roll out of the scheme. The Commission while agreeing to the proposal contained in the EFC Memo observed as follows:

- (i) The scheme should have a separate chapter highlighting the applicability of the scheme to the Scheduled Areas, Tribal Sub-Plan Areas and the Scheduled Tribes and the benefits likely to flow to them.
- (ii) Well represented number of the Institutes to be set up under the scheme should be located in the areas mentioned in (i) above.
- (iii) Reservation for Scheduled Tribes may be maintained while making appointments to various posts in the above Institutes.
- (iv) Reservation for Scheduled Tribes may also be followed while selecting the trainers. In particular, the trainers identified and trained for placement in tribal areas must be specially sensitized to the skill needs and opportunities available for tribals and to sympathetically interact with them.
- (v) The course content of the training programme should be designed to be relevant to the needs of Scheduled Areas/Tribal Areas and the local / regional Tribal Population and their feasible opportunity structure rather than focus on subjects like DTP which may not find any market. The training should aim at enhancing the skills of the tribals linked to

the potential for preparing tribal youth for gainful employment or promote feasible avenues of entrepreneurship.

<b>Agenda Item IV</b>	Proposal for Inclusion of 'Binjhiya' community in the list of Scheduled Tribes of Chhattisgarh State.
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11. The Commission recalled that the Ministry of Tribal Affairs in their letter No 12026/10/2005-C&LM-I dated 21/03/2013 had sought the views/comments of the Commission on the proposal for inclusion of 'BINJHIYA' community in the list of Scheduled Tribes of Chhattisgarh State. The proposal was then discussed in the 46th meeting of the Commission held on 26/04/2013. It was noted that the recommendation of the State Government was not been received along with the proposal. The Commission also noted that the recommendation of the Registrar General of India was based on the study report of the Chhattisgarh State Tribal Research Institute published in the year 2010, but the Report of the TRI could not be considered as recommendation. Accordingly, Ministry of Tribal Affairs was requested to forward detailed proposals and recommendations of the State Government of Chhattisgarh on the subject. The Commission was of the view that, if necessary, a team from the Commission may also visit the areas inhabited by the Binjhiya community in the State of Chhattisgarh before formulating its opinion.

12. The Ministry of Tribal Affairs forwarded the proposal of the State Government of Chhattisgarh along with ethnographic details on 'Binjhiya' community, for views of NCST. On examination of the enclosures, it was noted that the same report/documents sent earlier to the Commission had now been sent in a report of "बिड़िया जाति का नृजातीय अध्ययन 2010-आदिमजाति अनुसंधान एवं प्रशिक्षण संस्थान, रायपुर (छत्तीसगढ़)"।

13. The Commission noted that no additional information beside the recommendation of the State Tribal Research Institute has been received. The Commission therefore decided that a team from the Commission may visit the areas inhabited by the Binjhiya community in the State of Chhattisgarh before formulating its opinion.



<b>Agenda Item V</b>	Draft Note for the Cabinet on the Rights of Persons with Disabilities Bill, 2013 to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
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14. The Ministry of Tribal Affairs in letter F.No. 20025/01/2013-C&LM-I dated 03/09/2013 w.r.t. Ministry of Social Justice and Empowerment, Department of Disability Affairs letter F.No. 16-09/2011-DD-III dated 07/2013 have sought comments of the Commission on a Draft Cabinet Note on the Rights of Persons with Disabilities Bill, 2013 to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

15. The Commission noted that the proposal is to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PwD Act, 1995). by a new legislation to be moved in Parliament namely, the Rights of Persons with Disabilities Bill, 2013. The PwD Act, 1995 defines 'disability' as blindness, low vision, hearing impairment, loco motor disability, mental retardation, mental illness and leprosy-cured. It defines persons with disabilities as those with minimum disability of at least 40%, as certified by a medical authority. The PwD Act, 1995 provides for education, rehabilitation, employment, non-discrimination and social security for persons with disabilities.

16. The Commission observed that the PwD Act, 1995 has now been in force for the last 17 years. A number of measures have been taken by the Government towards rehabilitation and development of persons with disabilities. However, much remains to be done towards their full participation, empowerment and inclusion in the society. Over a period of time, the conceptual and legal understanding of the Rights of persons with disabilities has become clearer. At the international level, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) came into effect on 03/05/2008 and India has ratified this Convention. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the Convention. The PwD Act, 1995 is not fully UNCRPD compliant.



Therefore, this Act needs to be replaced and institutional mechanism strengthened thereby.

17. The Commission further noted that the RPwD Bill, 2013 focuses on the following issues which are generally agreed to be part of a progressive and right based approach for the persons with disabilities:

- i. Definition of person with Disabilities
- ii. Rights of persons with Disabilities
- iii. Problem of accessibility
- iv. Human Resources Development
- v. Legal capacity, support and guardianship
- vi. Reservation in educational institutions
- vii. Reservation in employment
- viii. Strengthening of the Monitoring and Grievance Redressal Mechanism
- ix. Financial Support
- x. Stakeholder participation
- xi. Offences and penalties

18. The Commission observed that the Planning Commission has allocated an amount of Rs. 32,684 crores to the Ministry of Social Justice and Empowerment as a whole, for various schemes to be undertaken during the 12th Plan. 10% of the allocation which is Rs. 3,284 crores has been earmarked to the Department of Disability Affairs.

19. After detailed discussion, keeping in view the proposed increase in reservation from 3% to 5% for students with benchmark disability in higher educational institutions and employment in government as well as private sector, the existing reservation rules and reservation rosters may be amended accordingly. The Commission also recommended that for adequate representation of ST persons with disabilities, grouping of vacancies for admission in higher educational institutions and posts in government, semi-government as well private sector, grouping of vacancies/posts may be made by the concerned educational institution and employer.

Agenda Item VI	The proposal for relaxation to provide funds for replacement/reconstruction of Rural roads affected by Natural Disaster as one time dispensation in the State of Utrakhand under PMGSY.
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20. The Ministry of Tribal Affairs in letter No. 17014/09/2013-SG-II dated 26/09/2013 w.r.t. Ministry of Rural Development letter No. P-17026/4/2013-RC dated 09/09/2013 have sought comments of the Commission on the proposal for relaxation to provide funds for replacement/reconstruction of rural roads affected by natural disaster as one time dispensation in the State of Uttarakhand under PMGSY.

21. The Commission observed that the proposal under consideration is to allow the sanction of an amount of 61.61 crore under PMGSY to the State of Utrakhand as a onetime dispensation for repair or replacement or reconstruction of 310 number of rural roads earlier constructed or ongoing under PMGSY and damaged/washed away as a result of natural disasters as special case. The existing program guidelines of PMGSY do not have such provisions and do not provide for repairs or replacement or reconstruction of rural roads earlier constructed under PMGSY.

22. After discussion, the Commission decided to recommend the proposal for further processing by the Ministry of Tribal Affairs and Ministry of Rural Development, Department of Rural Development.

Agenda Item VII	Proposal for Inclusion of 'Darlong' Community in the list of Scheduled Tribes in the State of Tripura.
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23. The Ministry of Tribal Affairs in letter No. 1206/15/2001-C&LM-I dated 21/10/2013 has forwarded a proposal for inclusion of 'Darlong' community in the list of Scheduled Tribes of Tripura State. The Commission noted that the proposal for inclusion of 'Darlong' as a sub-tribe of Kuki has been supported by the RGI for inclusion in the ST list of Tripura. The RGI in its report has mentioned that Darlong is one of the main sub groups of the Kuki tribe. Some 41 exogamous clans are reported among this group. Many of these clan names are common across the Kuki tribe. Even though they are stated to be a

predominant major sub- tribe of Kuki, 'Darlong' has not yet been notified as a sub entry under the Scheduled Tribe 'Kuki'.

24. The Commission also observed that the Secretary, TW Department, Government of Tripura in letter No. F.4-(70)/TW/R-Cell/98/5024 dated 17/06/2013 addressed to Ministry of Tribal Affairs has intimated that the Council of Ministers, State Government of Tripura in its Meeting held on 16/11/2002 has approved the proposal for recognizing of 'Darlong' community as a separate tribe under Kuki. However, the following deficiencies have been observed by the Commission in the proposal:

- (a) Only a report of the Committee to examine the representation for inclusion of Darlong tribe separately in the list of STs of Tripura has been forwarded by the State Government along with the proposal and no ethnographic study report has been forwarded.
- (b) The views of the Tribal Council (TTAADC) and of the Governor have also not been forwarded.
- (c) Size of population of Darlong community has not been mentioned in the proposal and no area/location of Darlong community has been specified.
- (d) The report does not include any data relating to backwardness of the community compared to the society at large and those living in Tripura and also relating to economic, educational and social development that would distinguish this group and support their inclusion as a Scheduled Tribe of the State.

25. After discussion, the Commission recommended that MTA should be requested to obtain requisite clarification/ details from the State Government of Tripura. The Commission does not support the proposal in the absence of requisite clarification/ details.

<b>Agenda Item VIII</b>	<b>Draft Scheduled Castes Sub Plan Bill, 2013.</b>
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26. The Ministry of Tribal Affairs in letter No. JS(A)/MTA/2013/5682 dated 05/11/2013 has forwarded a copy of the draft Scheduled Castes Sub Plan Bill, 2013 and sought for the comments of the Commission on the draft Bill.

*Rameshwar 08/11/13*



27. After discussion the Commission recommended the proposal for further processing by Ministry of Tribal Affairs/Ministry of Social Justice & Empowerment. The Commission also recommended that similar draft Bill should also be prepared for Tribal Sub Plan (TSP) by the nodal Ministry and forwarded to NCST for comments.

<p><b>Agenda Item IX</b></p>	<p>Clarification issued by MTA in letter No.12026/4/200 dated 27/01/2009 with regard to Hindi version of the Scheduled Tribes through the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 notified on 1.10.79- on Scheduled Tribe's Status to the "Nayak", "Koli" etc. Communities of Rajasthan. Another clarification issues in MTA letter No. 12026/04/2009 dated 13/07/2010 on the Synonymous/Phonetic similarity in name of "Dhanak Dhanuk", Dhankia, (S.No.21) as Scheduled Castes: and "Dhanka, Tadvi, Tetaria, Valvi" (entry S.No.4) as Scheduled Tribes in the State of Rajasthan. To further clarification on the similar communities to be discussed.</p>
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28. Some of the issues tabled for this meeting had already been considered in the 25<sup>th</sup> meeting of the NCST on 31/3/2011 on complaints that the Director, Regional Office in Jaipur had directly addressed the Ministry of Tribal Affairs in his letter No. 5/1/Raj./2/2005-RU dated 20/07/2009 in violation of the Rules of Procedure of the Commission. The complainants had then alleged mala fides without any documentary evidence and hence, the Secretary had suitably advised the Director of the Regional Office at Jaipur. Following repeated complaints and also a research article in the Economic & Political Weekly on 26/11/2013 (pp.71-75), it was learnt that this Regional office had been directly addressing Government, purporting to be acting on behalf of the Commission, from as early as the year 2005. The initial correspondence was in relation to Nayak, Koli, Dhanka and other communities and later correspondence in 2009 was specifically with reference to Dhanka etc. communities.

29. In this context and the need to review the situation in the light of new evidence and the Commission's concerns expressed at various points of time on the issue of bogus and false ST certificates, the Commission decided to have a closer examination of the situation of orders, Court decisions and facts

RAMSHEERAM CHAUDHARI  
Chairperson  
National Commission for Scheduled Tribes  
Govt. of India  
New Delhi

that lie with the clarifications issued in MTA letters No. 12026/4/200 dated 27/01/2009 and No. 12026/4/2009-C&LM-I dated 13/07/2010.

30. In this regard, the Commission also took note of the concerns expressed by the Commissioner of SC and ST in his 28<sup>th</sup> Annual Report of 1986-87 where it was noted that members of certain Hindu castes tried to identify themselves as ST persons and thereby, fraudulently availed of benefits including by use of phonetic similarities between the names of their communities and those of the STs. The Report detailed instances from across the country. The Report at p.554, para 11 also noted the context in which area restrictions had been removed in the 1976 Act and the anomalies that had resulted.

31. In the subsequent report of the National Commission for Scheduled Castes and Scheduled Tribes of 1993-94, the Commission observed that the removal of area restrictions in 1976 (effective from 27/07/1977) made with the intention to alleviate hardships to members of those communities in the area where they were ordinarily resident had created other problems of misuse of benefits by certain castes incorrectly posing themselves as a scheduled caste/tribe. The Commission noted "in fact, as is clear from the SCs and STs Orders (Amendment) Bill, 1976, the basic purpose of the Bill was to re-adjust community representation in the newly formed Parliamentary and Assembly constituencies". The Commission also noted several such cases of misuse of benefits in different States. In particular, it noted that Dhankia was an SC under the 1956 Order throughout Rajasthan except Ajmer District, Abu Road Taluka of Sirohi District and Sunel Tappa of Jhalawar Distt. where Dhanka, slightly different from Dhankia in pronunciation was declared as an ST. Dhanak in Ajmer Distt. and Dhanuk of Sunel Tappa of Jhalawar Distt were recognized as SC in pursuance of Section 41 of the States Reorganisation Act, 1956 (Act 37 of 1956). The Commission noted that removal of area restrictions by the 1976 Amendment had resulted in issue of false certificates in this case also. It was incidentally observed that some members of Dhanak communities had migrated to Delhi by obtaining certificates as Dhanak, an SC in Delhi, but at the time of promotion, they began to claim ST status as Dhanka from Rajasthan following which the Commission recommended that

Govt. of India should review the whole question based on historical and social factors in order to re-impose area restrictions.

32. It is, in this context, that a decision was taken in the Madhuri Patil case (CA No.5854 of 1994) by the Supreme Court to affirm the principle of affinity as a central criterion for deciding if a person belonged to the ST or not. Even prior to this judgment, the form for issue of ST certificate has been prescribed by the Ministry of Home Affairs in O.M. No. BC-16014/1/82SC&BCD-I dated 06/08/1984 and the certificate required not only identification of name and full address of the applicant but also that of the father or mother of the applicant including their caste or tribe and their place of ordinary residence. This format of the caste certificate continues today.

33. Prior to this letter, Ministry of Home Affairs had in its Letter No. BC/12025/2/76-SCI-I dated 22/03/1977 pointed out that the correct interpretation of the term 'residence' was the permanent residence of a person on the date of the Presidential notification for that community and the relevant Revenue official (the Competent Authority to issue the certificate) would be the one concerned with the locality relevant to the permanent abode of that applicant's community. Therefore, the Revenue Official of one district would not be competent to issue a certificate for persons belonging to another district. The Commission, therefore, noted that the facilitation extended by the 1976 Act was only to help certain persons of these notified tribes who had been living outside the notified area at the time of notification and not to include/exclude other communities, allow for phonetic similarities, and expressly to ensure that the affinity principle applies to these left out persons who were part of the larger tribal community who satisfied the earlier area restrictions.

34. The National Commission for Scheduled Tribes had also occasion to observe adversely including in its Annual Report (to be tabled before Parliament) on the need to restrict the issue of false/bogus certificates and the expeditious introduction and review by the Caste Scrutiny Committees that were put in place by several States consequent upon the judgment of the Supreme Court in the Madhuri Patil case. The Commission has also noted



that despite its urgings, the problem has expanded considerably. In this context, attention of the Commission has been drawn to the decision of the Supreme Court in Directorate of Tribal Welfare, Govt. of AP in 1995 AIR 1506, 1995 SCC (4) 32 decided on 18/04/1995 which placed the burden of proof for tribal status on the applicant for certificate (para 6) and further, specified that only the 'Native' revenue officer could issue such a certificate (para 6) by which it intended that the officer of that locality/district relevant to the applicant and the tribe could issue such a certificate. Attention was also drawn to a case decided by the Full Bench of the Bombay High Court in its Civil Appellate Jurisdiction (WP No. 5028 of 2006) decided on 7<sup>th</sup> May, 2009, which re-affirmed the need to prove affinity as set out by the Supreme Court in the Madhuri Patil case but also delineated the procedures required to be followed by the Caste Scrutiny Committee and importantly, affirmed that the onus of proof for demonstrating affinity lay upon the applicant for ST certificate. Considering these matters, the Commission has now decided to examine the issue of the application of the SCs & STs Orders (Amendment) Act, 1976 and its implementation.

35. The Commission noted that the SC & ST Order (Amendment) Act, 1976 which became effective from 20/07/1977 enunciated in its Statement of Objects and Reasons tabled in Parliament on 12/05/1976, that restrictions to certain areas for some communities had been causing difficulties to genuine members of these SC/ST communities in the areas where they had not been so specified and the Bill, therefore, sought to generally remove these area restrictions to facilitate members of these communities. The objects were the tribal communities so notified in previous Presidential Notifications. While the Bill makes no mention of any inclusion or exclusion and, even the recommendations of the Joint Committee on the SC & ST order (Amendment) Bill, 1976 for exclusion of certain communities were not taken up in that Bill. The Govt. also stated that with the removal of the area restrictions for these castes and tribes, and to safeguard their reservations in terms of Legislative/Parliament seats, the Census authority was required to re-estimate the population for the purpose of re-allocating the reserved constituencies. It was for this purpose that financial provisions had been made to support the

Census authority's task of re-estimation. These clearly reveal an intention to make marginal adjustments for previous errors and not for wholesale increase in population sizes. The Act itself reflected these objects in aiming to re-adjust the representation of Parliamentary and Assembly constituencies as necessitated by such inclusion or exclusion. In Section 5 (2) (a), the Act prescribes that where in "any locality in a State specified in relation to any caste or tribe in any of the parts of the Schedules to the Orders referred to in the said section is varied so as to specify a larger area in relation to such caste or tribe, the Census Authority shall take into account the population figures of the caste or tribe as ascertained in the last Census and in any previous Census wherein the population figures of the caste or tribe in respect of the increased area had been ascertained and determine the population of that caste or tribe as on the 1<sup>st</sup> day of April, 1971 by increasing or decreasing such figures by the proportion in which the general population of the State or, as the case may be, the division, district, taluk, tehsil, police station, development block or other territorial division in relation to which such caste or tribe has been specified by the said amendments has increased or decreased between the previous census aforesaid and the last census."

36. The Commission noted that the Act itself provided a specified and detailed direction to the Census authority on the mode of collection of data and specified that they should determine the population of that caste or tribe as on 01/04/1971 and in that context referred to the caste or tribe in the previous order of 1950 as amended in 1956. Therefore, the families omitted by the area restriction of the previous orders but who had been enumerated as 'these' tribes in previous censuses, would be now estimated by inflating their previous population by the relevant population growth and figure of that locality. Unfortunately, as it turned out, although proportionately was to be maintained with the general population, the influx of bogus claimants inflated these reserved categories. The Commission observed that there can be no misunderstanding of the purposes and contents of the Act and reference to the Objects and Reasons only clarifies its intentions more accurately.

NAMESHWAR ORAO  
Chairperson  
Commission for Scheduled Tribes  
Ministry of India

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37. The Commission also noted the contents of the circular issued by the Ministry of Home Affairs in 1977. This circular was also adopted while issuing clarifications by the Ministry of Tribal Affairs in their letter No.12026/4/2009-C&LM-I dated 13/07/2010. This communication required proof of residence not only in terms of the ordinary place of residence but also by way of a relationship to the place of residence from which migration had allegedly occurred and which would entitle the individual to obtain an ST certificate under the 1950 order as amended in 1956. The Commission observed that the Supreme Court judgment in the Madhuri Patil judgment on need to prove affinity was consistent with and flowed directly from this nuanced interpretation of the term 'place of residence' and the MHA circular was consistent with this position. As the Supreme Court noted in the Madhuri Patil case (para 9), "the Scheduled Tribes are inhabitants of intractable terrain regions ... away from the mainstream ... traditional moorings and customary belongs and practices, ... governed by their own customary code of conduct ... rich cultural heritage, mode of worship and cultural ethos." Therefore, the place of residence or permanent residence areas of the tribe in question has great sociological significance for the tribe and their identity is closely intertwined with the place of residence. Any other interpretation would, therefore, not be consistent with the nature of the tribe in question. By way of a partial comparison, claims to declaration as a person belonging to a particular Scheduled Caste must necessarily deliberate on the history of untouchability and oppression while in the case of tribes, the sociological point of relevance is different as set out above. As mentioned previously, the Full Bench of the Bombay High Court headed by Chief Justice Swatanter Kumar, Justice V.C.Daga and Justice Dr. D.Y. Chandrachud (WP No. 5028 of 2006) not only set out procedures for the Caste Scrutiny Committee but also placed the burden of proof upon the applicant for ST certificate.

38. Therefore, the Commission is of the view that there seems to be nothing inherently wrong in the conclusions communicated in the circulars issued by the MTA in their letters No.12026/4/200 dated 27/01/2009 and No.12026/04/2009-C&LM-I dated 13/07/2010 in respect of specified communities from the State of Rajasthan. In point of fact, the Commission



observed that the clarifications would have wider implications for other communities in that State and across the country which have made unwarranted claims for ST status as had been pointed out by the Commission for SC & ST in 1986-87, by the National Commission for Scheduled Castes and Scheduled Tribes in its Annual Report 1993-94, and by the National Commission for Scheduled Tribes during its tours and meetings.

39. The Commission took note of the fact that certain members of the Nayak, Koli etc. communities have filed a case before the Jodhpur High Court in W.P.No. 12891/2013 in which the MTA and NCST were cited as respondents. The Commission continues to emphasise that as an advisory body, NCST should not be cited as respondent in such cases. Further, some members of the Dhanak etc. community who had claimed ST status had also filed a WP before the Jaipur High Court (WP 8623 of 2010). Therefore, it would appear that the matter was sub-judice. The Commission agreed with the view that the matter was under examination by the Court but it was the duty of the Government Counsel concerned in the case to place the Government's concerns and interpretations before the Hon'ble Courts to enable them to take a comprehensive view on the matter by reference to decisions of the Supreme Court and exemplary judgments from High Courts across the country. Therefore, the Commission decided to advise the MTA on its views so that the cases can be appropriately and effectively defended and benefits that should flow to genuine STs are not taken away by bogus certificate holders who are naturally more capable of taking advantage of environmental and economic opportunities than the extremely backward sections of society who comprise the STs including the primitive tribal groups.

40. With regard to the letters issued by Shri Somawat, former Director, Regional Office, Jaipur, the Commission noted that this officer had sent a letter to the Chief Secretary, Rajasthan in his reference No. 5/1/Raj./2/2005-RU dated 14/11/2005 in the garb of a routine correspondence relating to various issues of certificates and reservation. He had subsequently taken up and given population statistics for the cases of Dhanak, Tadvi, Valvi, Tetaria and also for Nayaka, Nayakda to support his arguments to deny them ST status. This correspondence had issued without the knowledge of this

Commission. He had followed up this correspondence in his letter No. 5/1/Raj./2/2005-RU dated 20/07/2009 arguing against claims by Dhanak, Dhanuk, and Dhankias and pressed the State Govt. to act against issue of certificates to such claimants who he considered were not eligible. He sent reminders to pursue the issue on 22/02/2006, 22/03/2007 and 17/09/2009. He also addressed the Secretary, MTA in his letter No. 5/1/Raj./2/2005-RU dated 22/03/2007 on the case of Nayaks and again in his letter No. 5/1/Raj./2/2005-RU dated 20/07/2009 on the issue of Dhankas. None of this correspondence was brought to the attention of the Commission by the officer. The MTA in its clarifications addressed to the Govt. of Rajasthan on the issue of Nayak, Koli etc. had referred to a letter received from the State Govt. and marked a copy to the Regional Office of NCST with reference to its letter. In the subsequent clarification from MTA on 20/07/2009, the clarification is stated to be based on a letter received from the Director, NCST from its Regional Office, Jaipur. Considering that this issue including that of Dhankas had been a matter for consideration in the Commission in its various avatars from 1986 onwards following the problems raised by the Act of 1976, the Commission observed that the Director had no business to intervene in the manner he did without routing the correspondence along with his view for the prior consideration of the Commission. However, since any further action would require an examination of the circumstances and the fact that the officer has already superannuated from service, the Commission left it to the Secretary to decide on the need and scope of further disciplinary action against the former Director including for consideration of the issue of mala fides, if actually involved in the matter, or of any attempt made to misuse his official position with ulterior motives.

#### **Additional Agenda Item**

41. The following additional agenda items were taken up for discussion in the meeting with the permission of the Chair.

<b>Agenda Item X</b>	<b>Fulfilment of mandatory consultation by State &amp; Government Department of the Government of India with National</b>
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SR\_NCST 51<sup>st</sup> meeting held on 22/11/2013

*Rameshwar Orav*

	<b>Commission for Scheduled Tribes</b>	
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42. The National Commission for Scheduled Tribes has been often urging the Government of India to ensure that all Ministries in the Government of India fulfill their Constitutional mandate to consult the National Commission

for Scheduled Tribes before seeking the orders of the Cabinet on Policy issue. The Commission has been insisting that these consultations should be meaningful and the views of the Commission should be reflected entirely while placing the issue before the Cabinet without any editing or any other means of reduction.

43. Following discussions, the Cabinet Secretary had issued orders in Lr No.1/3/2/2012-Cab dated 16.02.2013 directing all Secretaries to Government of India to refer their Policy notes, prior to submission to the Cabinet, to the National Commission for Scheduled Tribes through the Ministry of Tribal Affairs.

44. The Commission observed that some Ministries failed to send their Policy Notes or Legislation Proposals despite these specific instructions from the Cabinet Secretary and various pleas of non-application were offered and had been peremptorily rejected as incorrect by the Law Ministry when consulted. In many of the cases, the proposals have been forwarded by the Ministry of Tribal Affairs after months of delay and even years. In such cases, therefore, when the Cabinet note was seen by the Cabinet two weeks after issue of this reference through the Ministry of Tribal Affairs, the Commission had barely any knowledge of the existence of such a note. Therefore, notwithstanding the reference having been made to the Ministry of Tribal Affairs, it may be legally construed that the concerned Administrative Ministry that had prepared the Cabinet note had not fulfilled its constitutional mandate and the delay in intermediation by the Ministry of Tribal Affairs was of no avail



in excusing the constitutional lapse which continued to lie with the Administrative Ministry concerned.

45. Further, in some cases, it was noted by the Commission, that the Ministry of Tribal Affairs sometimes sent only its own comments without attributing any views to the Commission or else incorporated the Commission's views within its comments, neither consequence of which will fulfill the constitutional mandate set for the concerned Administrative Ministry.

46. Earlier this year, the Commission modified that system of reporting to send comments directly to the administrative Ministries concerned so as to avoid editing and delay by the Ministry of Tribal Affairs. However, the initial delay and the need for placing views of the Commission before the Cabinet was often not fulfilled for the reasons mentioned earlier.

47. Further, in some cases, the Administrative Ministries formulated policies/proposals which were subsequently referred by the Cabinet to a Group of Ministers constituted under the Terms of Business of the Cabinet Secretariat. This Group of Ministers, as opposed to an Empowered Group of Ministers, was authorized to investigate and consider the issue before reporting to the Cabinet again through the medium of the Administrative Ministry which would provide the secretariat for the purpose. In some of such cases, the original proposals came to be completely altered after the review by the Group of Ministers. In such cases, the constitutional mandate would clearly again intervene and mandate consultation with the National Commission of Scheduled Tribes so that the revised proposals could be considered by the Cabinet along with the views of the Commission since the earlier views may have become quite irrelevant. The Commission has noted that such reformulated proposals following approval by the Group of Ministers are never sent to the Commission and it is considered that this procedure clearly goes against the Constitutional mandate which requires this Commission to provide views with a view to safeguard the interests of the Scheduled Tribes and to reflect their concerns.

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48. The Commission for Scheduled Tribes has also noticed that it is very rarely that State Governments consult the Commission before introducing policies that have a bearing on the needs and concerns of the Scheduled Tribes, even in States with large numbers of Scheduled Tribes.

49. Under the circumstances, the Commission is of the view that the matter should be taken up with the Cabinet Secretary to ensure that the Administrative Ministries and similarly, the States, fulfill their constitutional mandate by directly sending their proposals giving at least ten days' time for the Commission to formulate its views. The Administrative Ministry should also be directed, on similar lines, to refer proposals that have been finalized in consultation with the Group of Ministers, if appointed in any case by the Cabinet. The Cabinet Secretary may also be requested to advise the State Chief Secretaries appropriately under intimation to this Commission.

50. The Commission also considered the recent developments on the formation of the State of Telengana and the examination underway by a Group of Ministers. Considering the previous experience of Scheduled Tribes in the bifurcated states of Bihar/Jharkhand, Madhya Pradesh/Chhattisgarh, and Uttar Pradesh/Uttarakhand, and the previously recorded views of the Commission on this matter, the Commission authorized the Chairman to convey its views to the Cabinet Secretariat so that the concerns of the Scheduled Tribes may be advised to the Cabinet when the matter is discussed.

<p><b>Agenda Item XI</b></p>	<p><b>Memorandum for Expenditure Finance Committee – Improving the planning and implementation of all anti- poverty programs in Jammu &amp; Kashmir through Halqa (village) Panchayats as part of National Rural Livelihoods Mission (NRLM).</b></p>
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51. The Ministry of Tribal Affairs in letter No. 17014/08/2013-SG-II dated 09/09/2013 w.r.t. Ministry of Rural Development, Department of Rural Development letter No. J.11011/04/2013-RL dated 26/08/2013 have sought comments of the Commission on memorandum for Expenditure Finance Committee – Improving the planning and implementation of all anti-poverty

programs in Jammu & Kashmir through Halqa (Village) Panchayats as part of National Rural Livelihoods Mission (NRLM).

52. The Commission noted that the present proposal is for improving the planning and implementation of all anti-poverty programs in Jammu & Kashmir through Halqa (village) Panchayat as part of NRLM scheme. National Rural Livelihoods Mission (NRLM) is a continuing scheme. The proposal provides for an untied grant of Rs. 10 lakh per Panchayat every year covering all the 4098 Halqa Panchayats which have an average population of 2700 with about 500-550 families. The estimated cost for a five year period is Rs.2049 crores out of which Rs. 1639.20 crores would be incurred during 12th Five year Plan and Rs. 409.80 crores during the 1st year of the 13th Five Year Plan.

53. The Commission observed that its visits to the State had revealed considerable deficit in the support extended to the scheduled tribes of the State, more so of the nomadic kind. The inequity in their participation may then lead to lesser allocation to their needs and priorities which may not be resolved by delegating the responsibility for planning to the Panchayats without a mechanism to monitor the design of programmes and the flow of funds to these deprived groups of tribals. Keeping these aspects in view, and after discussions, the Commission decided to recommend the proposal for further processing by the Ministry of Tribal Affairs and Ministry of Rural Development to ensure that the plans reflected and took account of ground level realities that converge programme design, aims and field implementation.

<b>Agenda Item XII</b>	<b>Registration of Society name and use of "Bharat Entrepreneurs in Scheduled Tribes Chamber of Commerce"</b>
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54. Ministry of Food & Public Distribution in O.M. No. 23/7/2013-IT dated 04.05.2013 have sought the comments of the Ministry of Tribal Affairs on the above subject. The draft OM has been referred by the MTA to this Commission for its views/ comments in their letter No. 15/7/2013-CP&R dated 23.09.2013.

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55. The Commission noted that one Shri D. Shankar Rao, President of a Society has submitted an application to register an Association in the name of "Bharat Entrepreneurs in Scheduled Tribes Chamber of Commerce to Government of Andhra Pradesh. The copies of Memorandum of Association, Rules and Regulations have also been furnished along with the application. The Principal Secretary, Govt. of Andhra Pradesh, Revenue Department, in their letter No. 15827/Regn.II (2)/2013-1 dated 23.05.2013 addressed to the Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, New Delhi has sought views of the Government on the application seeking registration of Society name and use of "Bharat Entrepreneurs in Scheduled Tribes Chamber of Commerce". The application has been referred to the Government as the Society proposes to use the word "Bharat" in its name. The Commission was of the view that there were perhaps already directions within Government barring private entities from assuming titles or names that suggested Government ownership or control. The Commission accordingly advised caution since robust systems were needed to guard tribals from being deceived by private entities.

<b>Agenda Item XIII</b>	<b>Administrative and budgetary matters affecting the functioning of the National Commission for Scheduled Tribes</b>
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56. The Chairperson inquired of the status of budget allocation. The Secretary advised the Commission of his attendance at the meeting of the Dept of Expenditure and the funding promised. On enquiry, the Joint Secretary, MTA said that the finalized figures were still to be received. On the need for cars for the Members, the Secretary reiterated the budget constraint faced. Chairperson emphasized the importance of providing a vehicle for the Vice Chairperson and Members to travel to and from office in keeping with the status and dignity of the Commission. Since MTA had still not finalized the taxi tender proposals of the Commission for nearly six months, the Commission itself may consider taking up and finalizing a reliable supplier and meanwhile, arrange taxis adopting Ministry of Tribal Affairs's existing supplier/ rates to meet needs of the member. He said various concerns of Members would be

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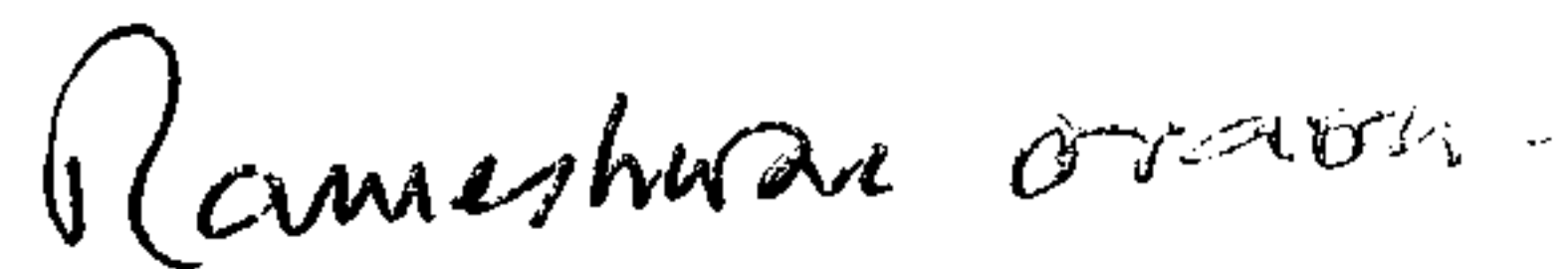
*Rameshwar Oraon*

discussed by him in a separate meeting so that suitable solutions could be evolved.

57. With regard to the petitions received on grievances of Scheduled Tribes, the Chairperson referred to feedback received by him that the complaints were being forwarded to unrelated authorities which, therefore, proved unhelpful and did not permit effective follow-up. He advised senior officers to specify the authorities in the representation or at the initial stage so that results would emerge quickly. An important aspect was to ensure a copy to the petitioner mentioning authorities addressed so that in case of error, the petitioner would respond immediately and effectiveness of intervention would get enhanced.

58. The Chairperson observed that prompt action on representations in accordance with guidelines and office procedure was critical to the effectiveness of the Commission. To this effect, he desired regular review and action to reduce file pendency; He desired that minutes of meetings, hearings, sittings and Tour reports should be submitted within a day for short meetings and within a week for longer meetings and tours. It was also decided that permission of the concerned Member or Chairperson should be obtained for seeking further time for submission of minutes/ reports.

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



Chairperson

National Commission for Scheduled Tribes

New Delhi.

Dr. RAMESHWAR PRASAD  
Chairperson  
National Commission for Scheduled Tribes  
Govt. of India  
New Delhi

**ANNEXURE**

**51<sup>st</sup> meeting of NCST, New Delhi**

**LIST OF PARTICIPANTS**

1. Dr. Rameshwar Oraon, Chairperson (In Chair)
2. Shri Ravi Thakur, Vice-Chairperson
3. Smt. K. Kamala Kumari, Member
4. Shri Bheru Lal Meena, Member
5. Sh. R. Vijaykumar, PhD, Secretary
6. Shri M. S. Chopra, Director
7. Smt. Saroj Jaisia, Deputy Secretary For Adm/Budget issues
8. Smt. K. D. Bhansor, Deputy Director
9. Shri T.D. Kukreja (PS to Chairperson)
10. Shri R.C.Durga, Consultant
11. Shri Ashok, Joint Secretary, Min. of Tribal Affairs
12. Shri Rajeev Prakash, Director
13. Smt. Purnima Tudu, Under Secretary

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