

No.1/9/11-Coord.
Government of India
National Commission for Scheduled Tribes

6th Floor, 'B' Wing,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 110003
Dated: 18-11-2011

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

Sub:- Summary record of the 29th Meeting of the Commission was held at 11:30 hours on 11th November, 2011.

Sir,

I am directed to refer to the above subject and to say that 29th Meeting of the National Commission for Scheduled Tribes was held at 11:30 Hrs. on 11th November, 2011 in the Conference Room of the Commission at Lok Nayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Chairperson of the National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,



(S.P. Meena)

Assistant 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 30th November, 2011 positively.

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

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

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

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: **29th meeting of the Commission held on 11-11-2011 at 11:30 AM in the Conference Room of the Commission.**

The 29th meeting of the Commission was held at 11:30 AM on 11-11-2011 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST. List of participants is enclosed at Annexure. There were two Agenda Items pertaining to draft Food Security Bill, 2011 and Draft Mines and Mineral (Development & Regulation) Bill, 2011 for discussion in the meeting. Both the agenda items were discussed.

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

[1] Food Security Bill, 2011

3. Secretary, NCST mentioned that after learning from the news reports that the Deptt. of Food & Public Distribution, Ministry of Consumer Affairs was processing the Draft National Food Security Bill, Secretary, Deptt of Food and Public Distribution, Ministry of Consumer Affairs, was requested vide letter dated 18th October, 2011 to forward the Bill, as finalized, for seeking the views of the Commission, in accordance with the provisions of the Clause 9 of Article 338A of the Constitution. Secretary, Deptt of F & PD, was also apprised of the opinion of the Ministry of Law, vide letter No. FTS.2878/LS/11 dated 22-09-2011, that the Ministries are obliged by the Constitution to consult the Commission on the provisions of a draft Bill affecting STs. In reply, the Deptt. of F&PD requested the views of the Commission on the Bill as available in the public domain. Consequently, Secretary, F&PD was informed vide letter dated 27th October, 2011 that proffering the views of the Commission, when the Ministry has not finalized its views on the Bill, wouldn't serve the intended purpose and the spirit of the Constitution. Since, It was understood from the news reports that the draft Bill, after incorporating certain changes to the version provided in the public domain, would be

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prepared by the Deptt. of F&PD shortly, Secretary (F&PD) was being called on 11-11-2011(A/N) to sensitise him to ensure mandatory consultation with the Commission on the Bill, as finalized by the Ministry. Nonetheless, the draft Bill as available in the public domain, together with relevant comments has been circulated to the members for deliberation in this meeting.

4. Secretary, NCST mentioned that The National Food Security Bill, 2011 was an important legislation affecting tribals in the context of the need to ensure physical and economic access to the food, because food security is especially fragile in the Scheduled Areas since problems of availability (of required quantities) and affordability were intricately enmeshed in these regions. However, the draft Bill in its present form (as available in the public domain) does not incorporate any special focus in respect of the tribals or Scheduled Areas. Secretary, NCST highlighted that the Scheduled Areas have comparatively primitive agricultural practices/low production, difficult access, poor infrastructure/logistical services and underdeveloped markets, besides endemic poverty and lack of opportunities for livelihood maintenance. In addition, the Scheduled Tribes are vulnerable sections of the society, having poor entrepreneurial capacity and lack of bargaining power. Therefore, there is an imperative need to recognize those special characteristics; and, have a differentiated approach by way of provision of adequate entitlements, requisite food stocks, strengthening of warehousing and logistics, financial resources and responsibilities through a separate chapter for Scheduled Areas in the Bill.

5. Further, as advocated by the Commission in its views regarding good governance in Scheduled Areas, considering the special Constitutional mandate for Scheduled Areas and also the persisting poor health and economic standards of the tribals even after the lapse of more than 60 years after independence, the Union Government should undertake full financial/logistical responsibility in Scheduled Areas as the State Governments have limited capacity to mobilize foodgrains in low production regions, organize bulk movement and subsidise logistical/distribution costs on a large scale. Referring to the Clause 23 and 24 of the draft Bill, Secretary, NCST mentioned that the Central Government in Scheduled Areas should also ensure provision of foodgrains in desired quantity as per nutritional requirements, on demand, for all residents, supplemental logistical arrangements (road/rail transportation,

depots/issue points and increased inventory) as well as priority in foodgrain allocations, since resort to payment of allowance without robust alternative supply arrangements is not a feasible option for these areas as it will seriously compromise food security. Food entitlements should also be specified in the Schedules annexed to the Bill on the basis of recommended nutritional requirements to enable purchase of needed quantity at option (or yearly aggregate entitlement may be specified instead, since the average off-take may fluctuate at different times of the year depending upon prices or alternative availability/sources of supply, and may be more relevant for planning subsidy/logistic requirements). Besides use of information technology for increasing transparency of transactions, the monitoring mechanism in Scheduled Areas should also be strengthened through reliable reporting systems to enable rapid awareness of related transactions – stocks, movement, issues etc.- at all locations upto fair price shop level, and provide timely feedback for prompt remedial action to rectify logistical failures which imperil food security in remote areas.

6. After discussion, the Commission approved the draft comments on the Bill and desired that, while communicating the same to the Ministry of Consumer Affairs, it should be specifically pointed out that these should not be perceived as final views of the Commission on the Bill, and the Ministry of Consumer Affairs is obliged to seek mandatory consultation with the Commission on the Bill, as finalized, before submission to the Cabinet for consideration, in accordance with the provisions of the Clause 9 of Article 338A of the Constitution.

[II] Draft Mines and Mineral (Development & Regulation) Bill, 2011

7. Secretary, NCST, mentioned that views of the Commission on the earlier draft Mines and Mineral (D&R) Bill 2010 (as available on public domain at that time) were forwarded to the then Minister of Mines (letter dated 6th August, 2010, 11th October, 2010) and his successor (letter dated 13th July, 2010), as also to the President (letter dated 19th July, 2011), Prime Minister and to the Minister of Tribal Affairs (both letters dated 20th July 2011)]. Subsequently, the Ministry of Mines was requested on several occasion (including Sittings taken by the Chairperson, NCST with the Secretary, Ministry of Mines on 25th July, 2011, 17th August, 2011 and 15th Sept., 2011) to forward a copy of the draft MMDR Bill as finalized, for the views/comments of the

Commission under Article 339A(9) of the Constitution. Ministry of Mines was also apprised of the (supporting) opinion of the Ministry of Law & Justice regarding the constitutional obligation of the Ministry of Mines to consult the Commission on the Bill. Notwithstanding this, the Ministry of Mines proceeded with the processing of the Bill without consulting the Commission, which was approved by the Cabinet on 30th September, 2011 and is now likely to be placed in the Parliament in the Winter Session 2011. The lapses on the part of the Ministry of Mines and its officials have been brought to the information of the Prime Minister vide letter dated 17th October, 2011, with the request to issue appropriate instructions in this regard under the Rules of Business of the Government for future. Ministry of Mines has now forwarded a copy of the Bill, approved by the Cabinet, vide letter dated 24th October, 2011, draft comments on which were proposed for discussion in the meeting of the Commission.

8 Secretary, NCST circulated a copy of the earlier suggestions, concerning the Scheduled Tribes forwarded to the Minister of Mines after the deliberations of the Commission in its 21st meeting held on 21st September, 2011 on the earlier version of the Bill. It would appear that some important issues have still not received due attention in this version of the Bill, as follows:-

- a. 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.

- b. 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.

- c. 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 possible 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 sudden deprivation due to cessation of business. Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. The land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure, as has been analogously provided in the Land Acquisition and R&R Bill, 2011. Further, the land should be returned to the owners after ecological reclamation of mined areas, or future earnings shared if non-agricultural use is continued in another form. If some land rights are being ceded in perpetuity, the Commission suggests that the retained earnings from the project activity should also be shared with the land owners in the form of "sweat-equity" (beside

compensation for denial of use of land surface). Share of earnings from alternative uses of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Schedule V and VI areas.

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

9. After discussion, the Commission approved the draft comments on the Bill and desired that views of the Commission on the Bill should be communicated to the Prime Minister to have these considered by the Government even while the matter is engaging the attention of the Standing Committee of the Parliament.

10. The Commission noted that the Land Acquisition and Rehabilitation and Resettlement Bill 2011, Food Security Bill, 2011 and the Mines and Mineral (Development & Regulation) Bill, 2011 were important legislations covering issues integral to the very existence of tribals in the country. Therefore a Special Report, incorporating views of the Commission in respect of these Bills, should be submitted to the President as provided under Article 338 (5)(d) of the Constitution.

11. The Meeting ended with a vote of thanks to the Chair.

Rameshwar Oraon

डा० रामेश्वर उराँव / Dr. RAMESHWAR ORAON
अध्यक्ष / Chairman
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

National Commission for Scheduled Tribes

Subject: 29th Meeting of the Commission held on 11-11-2011 at 11.30AM in the Conference Room of the Commission.

S. No.	Name and Designation
1.	Dr. Rameshwar Oraon, Chairperson (in Chair)
2.	Smt. K. Kamala Kumari, Member
3.	Shri Bheru Lal Meena, Member
4.	Shri Raghuvendra Singh Sirohi, Secretary
5.	Shri Aditya Mishra, Joint Secretary
6.	Smt. K.D. Bhansor, Dy. Director
7.	Shri S.P. Meena, Assistant Director
8.	Shri R.C. Durga, Director