



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.)

File No. NCST/2008/REHAB/01-Coord.

Dated 20/12/2012

To

Ms. Nivedita
Deputy Secretary,
Ministry of Tribal Affairs,
Room No. 279, August Kranti Bhawan,
Bhikaji Cama Place,
New Delhi- 110066

Sub: Comments on the Cabinet Note for the official amendments to the Land Acquisition, Rehabilitation & Resettlement Bill, 2011

Sir,

I am directed to refer to your letter No. 4/21/2011-CP&R dated 06/12/2012 forwarding a copy of the Draft Cabinet Note on the above subject for seeking comments of NCST on the Draft Cabinet Note and to say that the subject matter was discussed as Agenda Item No-XI in the 40th Meeting of the Commission held on 17/12/2012.

2. Relevant Extracts from the Summary Record of the meeting of the Commission are enclosed for information and further necessary action. It is requested that information about action taken on the views and observations of National Commission for Scheduled Tribes on the subject matter, and the nature and the manner in which those views have been incorporated, may be forwarded to this Commission urgently for including the same in the Annual Report of the Commission.

Yours faithfully,


(K. D. Bhansor) Mrs.
Deputy Director

Copy with enclosure forwarded for information to:-

1. The Secretary Ministry of Rural Development, Department of Land Resources, NBO Building, Nirman Bhawan, New Delhi-11000, with their letter No.13011/01/2012-LRD dated Nil addressed to the Ministry of Tribal Affairs.
2. SSA (NIC) for uploading on the Website of NCST
3. Assistant Director (Coordination)


(K. D. Bhansor) Mrs.
Deputy Director

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 40th meeting of the Commission held at 11:30 AM on 17-12-2012

The 40th meeting of the Commission was held at 11:30 AM on 17-12-2012 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 fourteen Agenda Items for discussion in the meeting. In addition, as desired by the Chairperson, NCST important administrative issues of immediate concern relating to functioning of the Commission were also taken up for discussion as additional Agenda item No. XV.

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

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Agenda Item XI	Comments on the Cabinet Note for the official amendments to the Land Acquisition, Rehabilitation & Resettlement Bill, 2011
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32. The Ministry of Tribal Affairs vide letter No.4/21/2011-CP&R dated 6/12/2012 has sought the comments of the Commission on the Cabinet Note.

33. The Commission noted that as reported in the media, the Govt. has already approved the Cabinet Note on 13/12/2012. The Commission further recalled that the Minister, MoRD vide letter dated 23/07/2012 had forwarded responses of the MoRD to the earlier recommendations of the Commission on the Draft Bill. Subsequently, the views/ comments of the Commission on the Draft Cabinet Note were discussed in the meeting of the Union Minister of Rural Development, Drinking Water and Sanitation on 24/07/2012 and based thereon, revised comments on the Bill were forwarded vide NCST letter No.2008/REHAB/01-Coord dated 25/07/2012.

34. The Commission observed with appreciation that its major recommendations regarding inclusion of a special chapter in respect of Scheduled Areas to have a

clearly defined perspective of tribal rights has been accepted through inclusion of Clause 38A and 38B in the Bill. The Commission, however, noted:

- i) There is still a need for another R&R legislation as, the LARR Bill does not include cases of involuntary displacement of permanent nature due to disasters/natural calamity, external/internal, conflicts and diversion of forest land, etc.
- ii) Other legislations providing for acquisition of land/or occupation of the land under emergency in times of conflict, calamity, etc. without prior payment of compensation and SIA should also be reviewed/amended to provide appropriate rehabilitation and resettlement timely and also to align them with the Land Acquisition, Rehabilitation & Resettlement Bill, 2011.

35. The Commission further observed that there was need to formulate rules/guidelines for effective implementation of the proposed legislation which should, inter-alia, take into consideration the following observations of the Commission which were also communicated to the MoRD earlier.

- i) The Bill seeks to provide R&R benefits to affected families on sale/ purchase of land on a mutually agreed basis where the sale/purchase of the land is equal to or more than 100 acre in rural areas and 50 acres or more in urban areas. MoRD has accepted the suggestions of the Standing Committee for the extension of the threshold limit to be decided by the concerned States for incorporating the same appropriately in the Bill. However, in the Scheduled Areas, R&R benefits should be inseparable part of land acquisition and no threshold limit should be imposed for this purposes. The proposed flexibility to the State Govt. for the extension of the threshold limit beyond 100 acres in rural areas and 50 acres in urban areas should not be applicable in respect of Scheduled Areas.
- ii) Special Impact Assessment (SIA) should also include emotional and psychological impacts and should also identify affected areas (including contiguous forest lands wherein Scheduled Tribes individual as well as community have rights) and enumerate all affected (interested) persons to facilitate enquiry into objections and subsequent determination of 'public purpose'.

- iii) 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 the sale prices (comparable with his award) before private transfers are permitted/registered.
- iv) In the event of the acquired land remaining unutilized, it should be returned back to the original tribal owners 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.
- v) MoRD has proposed return of the un-utilized land to the State Land Bank. In such a case, the Land Bank should offer the land which was acquired from the tribals, first to the original tribal land holders and thereafter, to other tribals from the same area. In case no tribal offers to take the land, the same may be retained with the Bank for future development activities only.

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