

## National Commission for Scheduled Tribes

### Summary Record of the Proceedings of the Sitting taken by Hon'ble Chairperson, NCST on 16<sup>th</sup> February, 2012 to discuss applicability of best practices emerged from ILO C-107 and C-109 for adoption in relation to Scheduled Tribes

List of the officials who were present in the meeting is enclosed at ANNEXURE.

2. The Commission mentioned that the meeting was convened to discuss applicability of best practices emerged from ILO C-107 and C-109 for adoption in relation to Scheduled Tribes. The Commission had sought views of the MEA, MHA and the MTA vide letter dated 31<sup>st</sup> January, 2012 on the approach of the Government with regard to the various provisions in the ILO C-169. In response, MTA has communicated vide D.O. No. 368/JS(UNES)/121 dated 3<sup>rd</sup> February, 2012 that Ministry of Labour and Employment is the nodal Ministry for dealing with issues relating to ILO. On the other hand, Ministry of Labour and Employment vide D.O. No.W-13014/1/2002-ILAS (i) dated 6<sup>th</sup> February, 2012 has furnished comments of the (MEA, MHA and MTA in the context of ratification of ILO Convention 169. The reply of the Ministry of Labour and Employment does not indicate the views of the Govt. of India communicated, if any, to the ILO.
  3. The Commission has noted from the Ministry of Labour and Employment letter dated 6<sup>th</sup> February, 2012 that C-169 has not been ratified by India mainly due to non-applicability of the concept of indigenous people (as defined in C-169) in the Indian context. While we may also heed political overtones (MEA), indigenous citizen concerns (MHA) and the reporting load (MTA) arising out of ratification of C-169, and on such considerations, not subscribing to the Convention does not appear rational or egalitarian to ignore the best practices which emerge from the Convention(s), that are also aimed to uplift the tribal people bringing them to the level of general population especially in the context of increasing resentment/ unrest in tribal areas.
  4. The Commission noted that MEA has mentioned that subjecting to our laws to any scrutiny in accordance with the relevant provisions of the C-169 is bound to provoke a litany of motivated complaints. The Commission desired to know the views of the MEA as to why our laws should not be aligned with best practices emerged from the Convention (s) and whether such adoption will result in any international merit. JS, MEA explained that the best practices arising out of the Convention (s) should be adopted with a view to improving out system. He
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also mentioned that MEA also highlights such matters at various international forums.

5. The representative of MHA expressed that provisions like right to indigenous and tribal people to decide their own priorities for the purpose of development (Article 7 of C-169) would create administrative problems in the formulation of development plans and may distort the planning process in the country. In the context of spreading violence in tribal population/ areas, Commission desired to know the views of MHA on their objection if any, to the inclusion of a re-furbished TSP strategy predicated on increased GoI responsibility in the Vth and VIth Schedule, which also aims at focussed development of respective Scheduled Areas. Director, MHA informed that MHA in principle agrees to the above views. However, these may require review of the existing provisions in Vth and VIth Schedules to the Constitution.

6. The Commission also noted that MHA have mentioned that the existing laws don't confer rights on landholders, whether tribal or non-tribal, over sub-surface resources. It was mentioned that the V<sup>th</sup> and VI<sup>th</sup> Schedule provide for separate regulations in respect of land rights of tribals. These do not mention about excluding sub-surface rights. Thus, the views expressed by the MHA are not in line with the existing provisions of the V<sup>th</sup> and VI<sup>th</sup> Schedules. Representative of MHA, however, mentioned that the Ministry will take up the matter with the Ministry of Law for their opinion and advice on the sub-surface rights of the tribals in the Schedule Areas under Vth and VIth Schedule to the Constitution.

7. The Commission desired to know the views of the MTA on the need to incorporate international best practices into our constitutional safeguards for STs and also spell out these aspirations in the Tribal Policy. The Commission noted that Governors' Conference, the second Administrative Reforms Commission (ARC) and the Standing Committee on Inter-Sectoral Issues have also argued for issue of directions by GoI to implement the spirit of V<sup>th</sup> Schedule/ discretionary powers of Governors. The Commission pointed out that after making monetary compensation to the tribals after acquiring their lands, the tribals become jobless as well as landless and the compensation received is not sufficient to secure peaceful livelihood to the tribals and this was a major cause for uprising and naxalism in various tribal/ scheduled areas in the country. The Commission mentioned that it has already recommended on the MMDR Bill, 2011 that besides compensation for entrustment of land surface rights, future earnings from mining activity should also be shared with land owners in perpetuity. Therefore, while redesigning the quantum and nature of (sweat) equity participation to allay the NCST/Proceedings of Sitting on ILO C-169

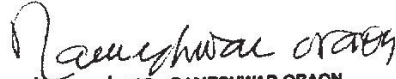


apprehensions of promoters in respect of enterprise management, a sum equal to royalty be paid to the land rights holders for the duration of mineral extraction; and sweat equity holdings may be redeemed by the lessee to purchase lifelong annuity payments after mining operations have ceased in a particular location.

8. Secretary, MTA informed that the best practices could be incorporated in the related issues concerning Scheduled Tribes. The Secretary also informed that the Task Force under the Chairmanship of Dr. Narendra Jadhav, Member, Planning Commission has already examined the working of Tribal Sub-Plan in various States and by the Central Ministries/Departments. The Task Force has given its recommendations for revised guidelines for preparing TSP by the Central Ministries. Recommendations of the Task Force relating to revised guidelines for TSP of States is in the process. He further mentioned regarding sub-surface rights over land that the proposed provisions by the Ministry of Mines in the MMDR Bill, 2011 may also be examined.

9. Secretary, Ministry of Labour and Employment mentioned that a draft Cabinet Note regarding ratification of ILO Convention (C 169) was mooted in 2003 which was not finalized taking into consideration the views expressed by the MEA, MHA and MTA. He further mentioned that, so far, only 22 countries have ratified ILO C 169. He also emphasized the need to adopt best practices out of ILO Conventions to improve our systems.

10. Chairman, NCST observed that while some of the best practices have been embedded through existing safeguards in our Constitution, in respect of remaining, a view should be taken for Constitutional/ legislative changes which may be appropriate for modern times/context. He further mentioned that based on the position emerged from the discussion, Commission will propose to recommend to the Govt. for considering the need for amendments of Schedule V<sup>th</sup> and VI<sup>th</sup> to provide a comprehensive Charter for tribal communities incorporating the best practices enumerated in the ILO Convention (s). It was also decided that the MHA will take up the matter with the Ministry of Law and Ministry of Mines in relation to the Scheduled Areas under VI<sup>th</sup> Schedule. Similarly, MTA, (which is the nodal Ministry for Tribal Affairs) may take up the matter with the Ministry of Mines in the context of sub-surface rights of the tribals in the Country.

  
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