Draft National Policy on Tribals: Suggestions for Improvement

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[1] The author has been greatly benefited from the views of Madhu Sarin, V.J.George and Harsh Mander. Usual disclaimers apply.

1 Executive Summary

The draft tribal policy (hereinafter referred as draft or DTP) prepared by the Ministry of Tribal affairs appears to be a mere reiteration of the existing policies and programmes. It makes many promises without being specific about how and in what time frame these would be fulfilled. There is no explicit mention of the CMP commitments, many important issues (eviction from forests) are ignored, and the draft provides no links with other government policies. It does not fix measurable targets, does not examine why existing policies have failed to deliver, and does not question the present accountability mechanisms. Finally, the draft does not assign any new role or responsibility to the Ministry, which would unfortunately continue to be one of the weakest Ministries of GOI with no clout or influence over other Ministries. Thus the draft seems to be '*Business as usual'*.

It is surprising that the draft does not discuss some of the pressing problems of adivasis. A few serious omissions are:

- No discussion on eviction of tribal communities from forest
- Does not mention the violations by states of GOI law on tribal panchayats (PESA)
- No mention of De-notified and Nomadic Tribes
- Indebtedness has not been discussed
- No discussion of problems of migrant tribals, or bonded labour
- Does not promise restoration of alienated lands
- Does not refer to unrest in tribal areas caused by neglect of development, and
- Does not refer to various findings on governance in tribal areas

Further, the draft is a stand-alone document, as it does not link with the 5th and 6th Schedules to the Constitution, PESA Act, The Indian Forest Act (IFA), Forest Conservation Act, the Wild Life Protection Act (WLPA), the Land Acquisition Act (LAA), and the new Rehabilitation Policy announced in early 2004. It often suggests measures that are against the existing policy/law without committing government to change that law/policy. For instance, the new Rehabilitation Policy does not promise land for land for the displaced tribals, it makes land allotment conditional to availability of government land. However the draft in question states, 'When displacement becomes inevitable, each scheduled tribe family having land in the earlier settlement shall be given land against land. A minimum of two hectares of cultivable land is considered necessary and viable for a family (comprising man, his wife and unmarried children).' Unfortunately the draft, which was announced after the new R & R Policy, does not go to the extent of committing government to making an amendment in the R&R Policy to bring it in line with the tribal policy. Therefore provision in the draft of two ha of land to the displaced is meaningless unless it is part of the R & R Policy. Similar contradictions and omissions exist in other commitments also.

The draft which was finalized by the present government should have made an explicit mention of CMP commitments, and how these would be achieved. However, here again the draft disappoints, as one does not a clear idea as to how the following CMP announcements are going to be met:

- Confer ownership rights in respect of minor forest produce, including tendu patta.
- Eviction of tribal communities from forest areas will be discontinued.
- The rights of tribal communities over mineral resources, water sources etc will be fully safeguarded.
- Launch a comprehensive national programme for minor irrigation
- The growth of extremist violence is a deeper socio-economic issue which will be addressed more meaningfully

The draft policy is full of bad phraseology. For instance, it 'seeks to bring Scheduled Tribes into the mainstream of society' and seeks their 'assimilation through opportunities for tribals to interact with outside cultures'. It is a well established fact that tribals have been victims of the market forces that coerce them to assimilate at unequal terms. Such an assimilation for adivasis has meant loss of livelihoods, land alienation on a vast scale, and sometimes hereditary bondage. Therefore any talk of assimilation without sufficient protection is against tribal interest.

Another example of bad phraseology is the use of insensitive and derogative terms such as 'Primitive Tribal Groups', which is antithetical to the universally recognised principles on the dignity and equality inherent in all human beings. It would be better if they were referred as 'excluded tribes' or 'pre-agriculture Tribes'.

While discussing shifting cultivation in the north-east the draft alleges that 'Tribals merely believe in harvesting crops without putting in efforts', which again depicts government's bias against them, besides it is factually not correct to say that there is no physical effort from the tribals in raising crops on a rotational basis.

The suggestion in the draft policy to "encourage qualified doctors from tribal communities to serve tribal areas" is an attempt to further ghettoize the indigenous peoples, and let non-tribal doctors escape a hard posting in remote areas. Serving in the rural areas for a period of 10 years with five years exclusively in Tribal Sub-Plan (TSP) areas must be made mandatory for all government doctors.

The draft would have been more meaningful if it had laid down quantifiable targets, such as:

- Reduction of poverty of tribals by two percentage points every year
- Reduction of IMR by three percentage points every year
- All tribal children to be covered by supplementary nutrition, MDM and immunisation
- 90% of vacant posts to be filled up within a year

- Absenteeism to be monitored by independent observers and reduced by 50% in a year
- PDS monthly supplies would improve to 25 kg in a year (a study shows that it is as poor as 2.3 kg per month per family).

The most important policy innovation which will have a far reaching effect on programme delivery in tribal areas is to suggest a radical change the way funds are transferred to the states and districts. With a view to improve governance and delivery in tribal districts, a quantifiable annual index should be constructed for the districts as well as the entire state, on the basis of certain agreed indicators such as land restored to tribals, policy changes by state governments to empower gram sabhas in scheduled areas, restoring control and access of tribals over forests and natural resources, infant mortality rate, extent of immunisation, literacy rate for women, feeding programmes for children, availability of safe drinking water, electrification of rural households, percentage of villages not connected by all weather roads, and so on. Central transfers to the states both under Article 275 (1) of the Constitution and by the Planning Commission should be linked to such an index. Once these figures are publicized the states will get into a competitive mode towards improving their performance, which alone should attract more central funds.

Even when the draft discusses tribal problems, the proposed strategy for amelioration lacks conviction. For instance, the draft wishes to 'tackle tribal land alienation by stipulating that

- Tribals have access to village land records
- Land records be displayed at the panchayat
- Oral evidence be considered in the absence of records in the disposal of tribals' land disputes
- States prohibit transfer of lands from tribals to non-tribals
- Tribals and their representatives be associated with land surveys'.

As is obvious, these suggestions such as States should 'prohibit transfer of lands from tribals to non-tribals' are not going to check further transfer, just as in the past such general policy pronouncements have failed to arrest alienation. In addition, the draft does not even promise restoration of land alienated, at least in the recent past. The Ministry of Tribal Affairs should do a quick study of the loopholes in various state laws, and come up with a model legislation for both, restoration of alienated lands as well as for checking further transfers. The progress of restoration of lands should be carefully monitored by an assessment of total area alienated, fixation of annual targets for the states, and its supervision by a high level empowered committee chaired by the Cabinet Secretary, with at least two members in this committee from the civil society with experience of working in tribal areas. Such a committee should meet at least once a quarter and its minutes should be kept on the Ministry's website.

Similarly on displacement, the draft stipulates that 'displacement is kept to the minimum and the displaced should be provided a better standard of living.' However, several questions remain unanswered. Who will ensure that it is minimum? Better

than what? Who will certify that? Moreover the draft makes no reference to the scheduled area protection provided in law & policy. It appears that the Ministry has not read the R & R policy announced in March 2004, nor has it shown familiarity with previous instructions issued by the Rural Development Ministry for displacement in scheduled areas.

We will suggest that the Ministry incorporates the following suggestions in the policy:

1. Close monitoring to ensure state legislation for genuine compliance with all features of PESA
2. Special EGS for all tribal areas related to forest regeneration, soil and water conservation, and other locally relevant livelihoods
3. Recognise shifting cultivation as a form of agriculture, and not forestry
4. Rejuvenate tribal agriculture through irrigation
5. Stronger legislation on tribal land alienation and usurious money lending
6. Special focus on tanks, ponds, and rainwater harvesting
7. Prepare land records in the north-east
8. Recognise communal tenures
9. Lands wrongly classified as forest to be returned to tribals
10. Convert forest villages into revenue villages
11. Special tribal health plan, and
12. Appropriate silvicultural changes to maximize production of NTFPs

Finally, the role of the Ministry of Tribal Affairs should also be re-examined. Some of the key changes could be:

- The Ministry should be an independent source of assessment of the field situation, so as to put pressure on other Ministries
- Believe in complete transparency and sharing
- Set up high level empowered group under the Cabinet Secretary with members from civil society
- Suggest amendments in the existing anti-tribal policies
- Transfer the task of giving grants to NGOs to some autonomous body so that the Ministry can concentrate on the new tasks proposed in this report
- Re-examine how SCA to TSP is spent
- Energise state-level committees
- Collect and publicise best practices, and
- **Promote rights-based approach to tribal development, involve civil society in this task, strengthen gram sabhas, and link devolution of funds with performance**

2 Overview

Since Independence, for the first time in India's history, Government has come up with a draft national policy on Tribals. This is certainly a welcome step, more so because the draft has been put on the website of the Ministry of Tribal Affairs, and comments have been invited from civil society on the contents of the draft.

The draft recognises that 'a majority of Scheduled Tribes continue to live below the poverty line, have poor literacy rates, suffer from malnutrition and disease and are vulnerable[2] to displacement. The National Policy aims at addressing each of these problems in a concrete way.'

However, the extent to which the lofty objectives set out in the draft policy would be achieved with the proposed strategy is debatable. At present, the draft appears to make many promises, without being specific about how and in what time frame these would be fulfilled. This note suggests the various ways in which the draft policy could be improved and made operational, so that lacunas in the policy and ambiguity in addressing systemic issues concerning Adivasi can be addressed comprehensively.

Generally speaking, the draft is a mere collection of pious sentiments and reiteration of existing policies, most of which have not yielded results because of poor implementation by the states and lack of monitoring by the centre. There is simply no reference in the draft to the findings of the evaluations and studies of the Programme Evaluation Organisation (PEO) of the Planning Commission of India and the Joint Parliamentary Committee on the welfare of the Scheduled Castes and Scheduled Tribes about the existing policies, laws, programmes and delivery.

The draft should have begun by analysing why the tribal situation has not improved and how in future the draft would ensure speedy implementation of the stated intentions. The draft also does not lay down quantifiable targets (such as reduction of poverty of tribals by two percentage points every year, or reduction of IMR by three percentage points every year). Such quantification of goals in the policy alone will put pressure on the concerned Ministries and state governments to improve delivery. In the absence of such measurable indicators and monitoring, it would be impossible to judge whether after a few years of operation the new Policy has caused any difference to the tribal situation, or it is business as usual.

The draft national policy also does not organically link with any other current policy, programme and legal formulation and framework and it largely remains as a stand-alone piece. Many other legal as well as policy frameworks such as the 5th and 6th Schedules to the Constitution, PESA Act (Panchayats Extension to Scheduled Areas Act), Forest Conservation Act of 1980, the Wild Life Protection Act of 1972, the Land Acquisition Act of 1894, and the new Rehabilitation Policy of 2003 are not taken into consideration while framing this policy draft. The draft does not commit itself to suggesting any changes in the existing legal or policy frameworks, which may have a bearing on the tribal situation. For instance, the new Rehabilitation Policy does

[2] The choice of word vulnerable is unfortunate. It gives an impression as if displacement is a disease. The fact of the matter is that most displacement is involuntary, caused by government initiated projects, and is forced upon the tribals.

not promise land for land for the displaced tribals, it makes land allotment conditional to availability of government land. However the draft in question states, 'When displacement becomes inevitable, each scheduled tribe family having land in the earlier settlement shall be given land against land. A minimum of two hectares of cultivable land is considered necessary and viable for a family (comprising man, his wife and unmarried children).' Unfortunately the draft, which was announced after the new R & R Policy, does not go to the extent of committing government to making an amendment in the R&R Policy to bring it in line with the tribal policy. Therefore provision in the draft of two ha of land to the displaced is meaningless unless it is part of the R & R Policy. Similar contradictions and omissions exist in other commitments also.

The draft policy does not take into account the promises made in the National Common Minimum Programme (CMP), and how and by when these would be fulfilled. For instance, the draft is completely silent about the following commitments of the present government:

- **The UPA will urge the States to make legislation for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in the forests.**
- **The rights of tribal communities over mineral resources, water sources etc, as laid down by law, will be fully safeguarded.**

It is hoped that the policy when finally decided will be in line with the CMP pronouncements.

3 Consequences of assimilation

From the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population; often their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation. Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical — as tribal institutions and practices were forced into uneasy existence with or gave way to market or formal state institutions (most significantly, in the legal sphere), tribal people found themselves at a profound disadvantage with respect to the influx of better-equipped outsiders into tribal areas. The repercussions for the already fragile socio-economic livelihood base of the tribals were devastating — ranging from loss of livelihoods, land alienation on a vast scale, to hereditary bondage.

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, the small clutch of bureaucratic programmes have done little to assist the precipitous pauperisation, exploitation and disintegration of tribal communities. Tribal people respond occasionally with anger and assertion, but often also in anomie

and despair. However that too is branded as a typical 'law and order' problem, ignoring its socio-economic dimensions.

Thus it is the forced assimilation caused by government policies and lack of protection to the simple adivasi folks against the tyranny of distorted market forces that has been their main problem. Viewed in this context, it is very unfortunate that the draft policy 'seeks to bring Scheduled Tribes into the mainstream of society' and seeks their 'assimilation through opportunities for tribals to interact with outside cultures'. As already argued, without adequate safeguards, such an interaction is going to be on unfair terms and likely to cause more harm rather than any good to them.

4 Tribal neglect

Briefly speaking, the following persistent problems have by and large remained unattended, and need to be immediately redressed:

- Land alienation and indebtedness
- Loss of access and control over forests
- Involuntary displacement due to development projects and lack of proper rehabilitation
- Ineffective implementation of PESA Act for Schedule V areas
- Shifting cultivation, and
- Weak governance, and poor programme delivery, especially in health and education

We discuss below provisions about the above issues in the draft, and how these can be improved.

5 Land alienation

The most important livelihood option of the tribal today is settled agriculture. However, tribal land alienation is the most important cause of the pauperisation of tribal people, rendering their economic situation, which is extremely vulnerable even at the best of times, even more precarious. In Andhra Pradesh, for instance, non-tribals today own more than half the land in Scheduled Areas of the state. In Madhya Pradesh the percentage of Scheduled Tribe cultivators to total Scheduled Tribe workers fell from 76.45 per cent in 1961 to 68.09 per cent in 1991. Correspondingly the percentage of Scheduled Tribe agricultural labourers to total Scheduled Tribe workers rose from 17.73 per cent to 25.52 per cent. Studies have indicated that in Orissa 54-56% of tribal land has been lost to non-tribals over a period of 25-30 years through indebtedness, mortgage and forcible possessions. What is more significant is the fact that tribals have lost possession over the most productive land, leaving them to cultivate poor quality land that makes their fragile economy more vulnerable to natural calamities.

With the massive encroachment of non-tribals to tribal areas, many of the areas previously occupied by the tribes cannot now be declared as a scheduled area. For example, in Kerala the entire Wayanad district was once the tribal land alone. But now none of the Taluks of Wayanad district can qualify as scheduled area. Hence, the

right of the tribals for administrative autonomy is lost. This is true of many other areas as well. The traditional abode of tribals is now ruled by non-tribals. Therefore, in addition to restroring lost lands to them, the National Policy should seek to redefine the concept of 'scheduled area' so as to ensure maximum extent of administrative autonomy to tribals.

The studies also establish the sad fact that government policy itself has, directly or indirectly, contributed to the phenomenon of tribal land alienation. It has been noted in several states that tribal land is being legally auctioned by co-operative credit societies and banks to recover dues. Auctioned land is purchased by non-tribals as well as rich tribals.

The draft admits that 'although States have protective laws to check the trend, dispossessed tribals are yet to get back their lands'. The draft policy proposes to 'tackle tribal land alienation by stipulating that

- Tribals have access to village land records
- Land records be displayed at the panchayat
- Oral evidence be considered in the absence of records in the disposal of tribals' land disputes
- States prohibit transfer of lands from tribals to non-tribals
- Tribals and their representatives be associated with land surveys'

As is obvious, a mere declaration that States should 'prohibit transfer of lands from tribals to non-tribals' is not going to check further transfer, just as in the past such general policy pronouncements have failed to arrest alienation. In addition, the draft does not even promise restoration of land alienated, at least in the recent past.

It is suggested that the draft policy may incorporate the following:

The Ministry of Tribal Affairs will do a quick study of the loopholes in various state laws, and come up with a model legislation for both, restoration of alienated lands as well as to check further transfer. Amendments in the Madhya Pradesh Land Revenue Code, 1959 through the section 170(B) of the Code may serve as a good model. It instituted suo moto responsibility of the revenue court to enquire into all transactions from tribal to non-tribal, even without an application from the tribal. The burden of proof was shifted to the non-tribal to prove that fraud did not take place, and the presumption of the court supported the legal rights of the original tribal landowner. Appearance of advocates without permission has also been debarred in these proceedings. There is provision for only a single appeal to the Collector. However, non-tribals have been able to delay proceedings by resorting to revisions. One must plug such loopholes too.

Section 211 of the UP ZALR Act, applicable to usurpation of tribal lands by outsiders in the tarai lands (now mostly in Uttaranchal) may also serve as a model. It reads as follows:

"211. (1) Where any land held by a tenure-holder belonging to a Scheduled Tribe is in occupation of any person other than such tenure-holder, the Assistant Collector

may, SUO MOTU or on the application of such tenure-holder put him in possession of such land after evicting the occupant and may, for that purpose use or cause to be used such force as may be considered necessary, anything to the contrary contained in this Act notwithstanding.

(2) Where any person, after being evicted from any land under sub-section (1), re-occupies the land or any part thereof without any lawful authority, he shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than six months and also with a fine which may extend to three thousand rupees but which shall not be less than one thousand rupees.

(3) Any court convicting a person under sub-section (2) may make an order to put the tenure-holder in possession of such land or any part thereof and such person shall be liable to eviction without prejudice to any other action that may be taken against him under any other law for the time being in force.

(4) Every offence punishable under sub-section (2) shall be cognizable and non-bailable."

Passing of such laws by the state governments should be accompanied by simplification of judicial procedures, constitution of special courts, and sensitization of district officials. The progress of restoration of lands should be carefully monitored by an assessment of total area alienated, fixation of annual targets for the states, and its supervision by a high level empowered committee chaired by the Cabinet Secretary, with at least two members in this committee from the civil society with experience of working in tribal areas. Such a committee should meet at least once a quarter and its minutes should be kept on the Ministry's website.

Moreover legal aid should be provided to tribal communities so that all pending land disputes are monitored and settled immediately so that tribals do not face constant harassment from non-tribals, revenue and other departments. Regular updating of land records, proper and regular conduct of Jamabandhi, display of revenue details at the village level should also help to achieve this objective. Sample surveys should be done to assess how many tribals have legal pattas with them, and how this number has changed over the years.

It must be admitted that without improving governance in the tribal districts, neither alienated land will be restored to them nor other policies suggested in this note will get implemented. Therefore we will like to suggest a radical change the way funds are transferred to the states and districts.

With a view to improve governance and delivery in tribal districts, a quantifiable annual index should be constructed for the districts as well as the entire state, on the basis of certain agreed indicators such as land restored to tribals, policy changes by state governments to empower gram sabhas in scheduled areas, restoring control and access of tribals over forests and natural resources, infant mortality rate, extent of immunisation, literacy rate for women, feeding programmes for children, availability of safe drinking water, electrification of rural households, percentage of villages not connected by all weather roads, and so on. Central transfers to the states both under Article 275 (1) of the Constitution and by the Planning Commission should be linked

to such an index. Once these figures are publicized the states will get into a competitive mode towards improving their performance, which alone will attract more central funds.

5.1 Leasing of cashew plantations in Orissa to Private parties

In Orissa, cashew plantation has been raised by Soil Conservation Department on 120,000 hectares of "Government Wastelands" in Schedule V areas. In many cases such lands in the past were under cultivation by tribals but their rights were not recorded. In many regions of Central India land records were generally in a bad shape where land was of poor quality, as such lands did not have the potential of giving revenue income to the state. When settlement took place, tribals because of their ignorance were not in a position to get their possessions recorded, and thus land under their possession got recorded as government land and sometimes transferred to the Forest Department. Thus the poor tribals got described as encroachers even on lands which were cultivated by their ancestors. In such cases, no compensation was given to the poor farmers, because their land rights were not recorded.

These cashew plantations, raised on land that was supporting livelihood needs of tribals, were handed over to the Orissa State Cashew Development Corporation for management. As the Corporation could not run profitably, it started giving annual leases for harvesting of cashew crops to private parties through open auctions. Often such plantations are in a degraded condition because of lack of maintenance.

Two years back Orissa government even contemplated giving long term leases to private parties for managing cashew plantations. One such advertisement appeared in the Economic Times dated 20/4/99. The leases would be given for a period of 35 years for a minimum area of 2000 ha. Thus lands that were once with tribals would now be with private corporations, with the tribals getting no compensation, or rehabilitation. Many of them shifted to the hill slopes, and that resulted in more soil erosion, the prevention of which was the objective of the scheme. It is ironical that these plantations that deprived the tribals of their possession were funded by a scheme called, 'Economic Rehabilitation of the Rural Poor (ERRP).

It is understood that in addition to cashew, there are similar plantations of coffee and other commercial crops, the exact details are not known.

Orissa government may like to reconsider its policy and give these lands back to the tribals, or to palli sabha, rather than to commercial houses. The Palli Sabha should be encouraged to take up the management and upgradation of these plantations. Financial resources for this could be made available under various Government schemes through the DRDA.

5.2 Indebtedness

The fundamental reason for tribal land alienation is the fragile, constantly shrinking economic base of the tribals. As most banks and cooperative institutions are unwilling to provide consumption loans, moneylenders are the only source of consumption credit for them. This leads to an extreme dependence on moneylenders on the part of the tribal, keeping him in perpetual debt and resulting in the mortgage and ultimate loss of his land. Though this phenomenon is common enough, another particularly

tragic outcome of this indebtedness is the phenomenon of bondage, wherein people pledge their person and sometimes even that of their families against a loan. Repayments are computed in such terms that it is not unusual for bondage to persist until death, and to be passed on as a burdensome inheritance to subsequent generations. The persistent problem of indebtedness amongst the tribals is one of the manifestations of their poverty. Despite the existence of legal/protective measures to curb the business of money-lending in tribal areas and provisions for debt-relief, their enforcement has been weak and ineffective. Also, the non-recognition of the tribal needs for their day-to-day consumption purposes by various credit extension programmes makes the otherwise vulnerable tribals fall as easy victims into debt-traps. Although the practice of bonded-labour stands abolished in the country through an Act of Parliament viz., the Bonded Labour System (Abolition) Act 1976, yet a total number of 2.52 lakh bonded labourers (including STs) were identified in March 1993 in 12 States i.e., Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Maharashtra, Uttar Pradesh, Kerala, Haryana and Gujarat.

It is unfortunate that this problem has been totally ignored in the draft policy, and finds no mention. As suggested above, immediate action is needed to review both the laws and their implementation to free tribals for indebtedness and bondage. In addition, positive measures to improve flow of institutional credit for consumption through self-help groups and to start more grain banks need to be taken. Long term solution will obviously lie in strengthening tribal livelihoods through access to water, credit, and other resources for higher productivity.

Here again it is not enough to merely state, as the draft does, that 'public distribution system (PDS) shall be introduced to ensure regular food supply. Grain banks shall be established to ensure food availability during crises.' The policy must fix measurable target and suggest that the flow of PDS grain would improve from a low of 3 kg per family per month (a study showed that it was only 2.3 kg) to at least 25 kg (government entitlement is for 35 kg) per card per month in a year's time. Similarly the total grain handled by SHGs should show a marked improvement in a given period of time.

6 Tribals and forests

There is much evidence to show that tribals' access to forests for meeting their basic subsistence needs has deteriorated in the last thirty years, and that this is fairly widespread. Some of the processes which have caused this are; deforestation, preference for man-made plantations in place of mixed forests, regulatory framework, diversion of NTFPs and forests to industries, nationalization of NTFPs, and exploitation by government agencies and contractors in marketing of NTFPs. Most pressing is the issue of tribal eviction from forest lands. Despite the prescription in the Common Minimum Program that '**eviction of tribal communities and other forest dwelling communities from forest will be discontinued**' tribals continue to be evicted, threatened with eviction or assaulted by armed police brought to evict them.

The draft policy has a section on forest villages (their number is only 5,000, whereas tribal majority villages could be at least ten times that number), but there is no discussion in the draft of problems outside forest villages facing tribals in dealing

with forests. The problem of eviction does not even find mention in the draft! All that the draft has to offer is vague platitudes, such as

- ‘Tribals be given opportunities to partake in joint forest management and encouraged to form cooperatives and corporations for major forest related operations
- Integrated area development programmes be taken up in and around forest areas
- Tribals’ rights in protection, regeneration and collection of minor forest produce (MFP) be recognised and institutional arrangements made for marketing such produce
- Efforts be made to eliminate exploitation by middlemen in cooperatives like Tribal Development Cooperative Corporations (TDCCs), Large Sized Multi Purpose Societies (LAMPS) and Forest Development Cooperatives by introducing minimum support prices for non agricultural produce on the lines of minimum support prices for agricultural produce.’

Clearly, such pious declarations are not going to work, unless specific policy directions are included in the draft policy. In order to ensure that tribals’ livelihoods are supported by NTFPs, one would have to address three inter-related issues; how to increase NTFP production, how to improve access of the poor to NTFPs, and how to maximize their incomes through marketing.

Norms for silvicultural practices were developed in times prior to the current scenario of high human and cattle pressures, and must now be adjusted accordingly. If the national objectives have changed to prioritise people's needs, there must be an accompanying change in silvicultural practices and technology. One requires a complete reversal of the old policies, which favoured commercial plantations on forest lands, and trees for consumption and subsistence on private land. "Scientific" forestry should therefore mean that environmental functions, wild fruits, nuts, NTFPs, grasses, leaves and twigs become the main intended products from forest lands and timber a by-product from large trees like sal. The reverse has been the policy for the last 100 years. Although after the advent of the new forest policy in 1988 there has been great efforts to involve forest communities in management, more thought should be given to make necessary changes in the technology which will be suitable to the changed objectives.

Secondly, a government agency like the Forest or the Tribal Development Department assisted by civil society should be involved in informing tribals and gatherers about the prices prevailing in different markets, improve marketing practices, and act as a watch-dog. It may be worthwhile to examine if promotional Marketing Boards, as distinct from commercial corporations (which are inefficient, and hence demand monopoly), should be set up with responsibility for dissemination of information about markets and prices to the gatherers.

Government should encourage bulk buyers and consumers such as exporters of herbal medicines establish direct links with the villagers. Government should also address issues like creating proper marketing yard, market information system, storage space and minimum processing facilities at the local level. Simple processing activities such

as broom making, leaf plate making, tamarind processing, mat and rope making should be encouraged in the household/ cottage sector.

Clearly *laissez faire* is not going to help the poor in all cases. Where government alone does marketing it is inefficient; and where it is left to private trade, it may still not provide sufficient returns to the gatherer on his labour. Thus de-nationalisation per se may not remove all market constraints which inhibit a gatherer in realising the full value of his labour.

The draft policy has rightly suggested that there should be 'minimum support prices for non agricultural produce on the lines of minimum support prices for agricultural produce.' Aggressive buying of NTFPs by state agencies, as has been done for wheat and rice, alone can break the dominance of the wholesale traders and their linkages with the village level market. The nature of produce and actors involved makes it obvious that without government support there can be no justice to forest gatherers. Therefore such organisations should compete with private trade, and not ask for monopoly.

While assigning a bigger role to government institutions, which were earlier accused of inefficiency, collusion with traders, and callous attitudes towards forest gatherers, care needs to taken that there is all round improvement in governance and efficiency of the States' organisations. Collaboration with socially committed private sector/exporters should also be considered.

To conclude, rather than be a monopoly buyer of NTFPs, government should adopt market friendly policies, facilitate private trade, and act as a watchdog rather than eliminate the trade. It should encourage local bulking, storage and processing, and bring large buyers in touch with the gatherers, so as to reduce the number of layers of intermediaries.

6.1 Specific suggestions for tendu

The CMP states that '**UPA will urge the States to make legislation for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in the forests.'**

The draft tribal policy is totally silent on this issue, despite the fact that tendu (*Diospyros melanoxylon*) leaves play a vital role in the economic life of tribals in central India. Tendu leaf generates 150 million person days of employment during the agricultural lean season in Orissa including labour involved in making *bidis*. Jharkhand, Madhya Pradesh and AP should also be generating similar numbers for employment through tendu. It is also a source of revenue for the states.

Given the enormity of scale of operation, tendu has to continue under State nationalisation. Private trade would not be able to arrange for 1500 to 2000 crore Rs in just 40 to 50 days that is required during the season every year in central India for the entire operation. Further, bringing in private traders would again encourage political patronage and corruption, as was the experience before tendu was nationalised in the seventies.

The present system, however, has a large number of infirmities. The following

suggestions would improve benefits to the tribal pluckers.

- States should pass on the enormous profits made in the tendu leaf trade as bonus to the tendu pluckers. Even if 50% of the royalty (surplus) generated from the tendu leaves as of now is shared with the pluckers, it would, on an average lead to an additional income of Rs 1000 to Rs 1500/- per annum per household (HH)**.**
- The collection prices should be hiked so that returns from plucking are at least equivalent to the minimum wages fixed for unskilled agricultural work by the states. Even in Andhra Pradesh, where wages are higher by about 15% than in Orissa, despite Orissa's leaves being superior in quality, a study by IAMR showed that returns from leaf collection were only 55% of the minimum wages, and 87% of what they would get elsewhere in the market.
- Uniform pricing of tendu leaves, irrespective of their quality, does not inspire the pluckers to procure leaves of better quality. Therefore payment should be related to the quality of leaves.
- The payments to pluckers should be made weekly with no delay. This will require procedural changes in the way funds flow to the *phad.*
- Delayed payments should carry an interest of 15 per cent per annum.
- All records pertaining to names of people employed and their period together with date of payment should be displayed on the district website for anyone to verify.
- The Group Insurance for tendu pluckers as followed in Madhya Pradesh should be adopted in other states too.
- Part of the income from tendu plucking can be saved by the pluckers through forming SHGs - this would help them in avoiding credit from moneylenders at a high interest.

The entire tendu trade is the exclusive responsibility of the Forest Department or its agencies, and there is no internal review of its limitations and failures by other sister departments of government. The Department of Rural Development, which is incharge of poverty alleviation and the Department of Social (or Tribal) Welfare at the state level, which is supposed to look after the interest of tribals and scheduled castes, take no interest in the tendu operation, although millions of the supposedly target group who are the responsibility of these departments are affected by the poor implementation of the tendu procurement. Had these departments been more vigilant, there would have been pressure on the Forest Department to improve its performance.

It is unfortunate that there are no effective administrative mechanisms in the states for inter-departmental coordination for achieving the broader goal of welfare of the poor. The Indian administrative culture does not encourage one department critically appraising and reviewing schemes of the other department.

We suggest that an inter-departmental Study Team/Commission should be set up to look into our suggestions as well as the systems being followed by other States (especially MP). The Commission could also suggest ways to achieve the objective of

welfare maximisation for the tendu pluckers. The Commission/ Committee should include members from tendu Union, representatives of tendu pluckers and from NGOs and academic institutions. This independent Commission should study the purchase operations every year and give its assessment on the extent it has furthered peoples' livelihoods and how the operations have improved as compared to previous years' campaign. It should also suggest practical measures to improve transparency and reduce corruption in the purchase operations. Its suggestions should be considered by the Cabinet.

The states must give primacy to the welfare aspects of tendu production and trade, and relegate revenue objectives to the secondary position. Tendu trade is one opportunity where by making certain easy policy changes, the states can ensure the direct welfare of millions of its poor citizens.

6.2 Tribal eviction from forest lands

It is clearly stated in the Common Minimum Program that '**eviction of tribal communities and other forest dwelling communities from forest will be discontinued**.' However, notwithstanding the assurance given to the adivasis, they continue to be evicted, threatened with eviction or assaulted by armed police brought to evict them. Recent examples of their eviction are given at annexure 1. This subject, again, is totally ignored in the draft tribal policy.

The threat of eviction, which confronts about 1.5 million adivasi families in the country is a result of the failure of the respective Forest Departments to implement the Guidelines issued by the Government of India on 18th September 1990. These guidelines had asked the states to regularize pre–1980 encroachments; review disputed settlements over forest lands; regularize Pattas & Leases; and convert forest villages to revenue villages. One of the reasons for little progress on these issues was the absence of a time-bound procedure and reluctance to undo unjust forest settlement that had wrongly declared tribal lands as government property.

A large area of cultivable lands of indigenous tribal peoples are being categorised as encroachment areas. Many of these cultivable lands are not encroachments but existed prior to both the Indian Forest Act of 1927 and the Forest Conservation Act of 1980. Lands under cultivation by tribals were of low productivity, and were often not surveyed by the British, more so in princely states. As the tribal ownership was not recorded on such lands, they were through a sweeping order declared as forest lands in the first twenty years after Independence, resulting in increase in area under forest department's control from 46 mha in 1951 to 67 mha in 1971. Thus the hard reality is that government is the encroacher on what are now being branded as 'forest lands encroached by tribals'.

The National Commission on Scheduled Castes and Scheduled Tribes noted that as a result of the Forest Conservation Act, 1.48 lakh persons, mainly tribals, occupying 1.81 lakh hectares of lands in forest areas in Madhya Pradesh suddenly became encroachers on October 24, 1980, and thus liable for eviction. Unfortunately no procedure has been adopted by the states for doing justice in such cases, except in Maharashtra.

The Government of Maharashtra laid down a procedure to ensure implementation in a transparent and participatory manner with the concurrence of the Gram Sabha through an Order dated 10th October 2002. This is the only example of a procedure being adopted by any state government. GoI should make certain that a transparent and participatory procedure as laid down by the Government of Maharashtra is uniformly adopted across the country. This should ensure that

a) All concerned are informed,

b) All so-called encroachers have the opportunity to make their claims in their language,

c) The weaker sections of the community are spared the time and expense of travel, and

d) An assembly of the village should be held to ensure participation of the community.

Lastly, Ministry of E & F should approach the Court with a pro-tribal stance. In the past, the Supreme Court has not hesitated to defend the interests of the tribals in a responsive and responsible manner. In the Banwasi Sewa Ashram cases (1985-1994), the Court made available special courts and legal aid to ensure that adivasis were restored the lands to which they were entitled and which were under threat of acquisition for afforestation. This was one of the massive and impressive actions undertaken by the Supreme Court, which reconciled ecological needs with tribal needs. Such an exercise is necessary now.

In Pradip Prabhu's case (1995), the Supreme Court remanded matters back to Maharashtra to determine the rights of landless adivasis who had land entitlements under the Government's own plans. Similar orders were passed for Madhya Pradesh. In the Samata case (1997), a majority decision took a comprehensive view of the entitlement of tribals to the land and its rich resources to direct that benefits from those areas must secure the uplift and socio-economic empowerment of the adivasis. Even after the Balco case (2001), the Samata judgment is unscathed as a fitting testimony to how an equitable justice can reach the most disadvantaged. Now comes the Forest case. I am certain that the Supreme Court did not intend a volte face on previous commitments to social justice for tribals. But much depends on Government of India’s petition before the Court. Rather than take a narrow view, MOEF should consult the Ministry of Tribal Affairs, and other stakeholders and not misuse the Supreme Court's order to terrorise the tribals.

On the other hand, enthused by the huge influx of arbitrary power, the MoEF — in furtherance of the Court's orders — created the Jaykrishnan Committee with no tribal representation and with lay members more concerned with animals than the ecology as a whole. Past policies and commitments appear to have been forgotten and swept under the carpet.

The Ministry of E & F has recently (21st December, 2004) issued a circular, the relevant portion is being quoted below:

'After a critical examination of the issue of settlement of claims over forest lands and eviction of ineligible encroachers of forest lands, what emerges is that the State/UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands since time immemorial. The Central Government is convinced that the difficulty in distinguishing between genuine tribals/ forests dwellers and ineligible encroachers by the State Governments / UT Administrations is the main cause of the problems of tribals. Therefore, some kind of interim measures are necessary to safeguard the interests of the tribals and forest dwellers who have been living in forests since long, and whose disputed claims are yet to be settled.

In view of the above, and without prejudice to Supreme Court's order dated 23-11-2001 and 23-2-2004, it has been found appropriate to request the State/UT Governments, that as an interim measure, they should not resort to eviction of tribal people and forest dwellers other than ineligible encroachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. The State/UT Governments are advised to exclude such tribals/ forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop State/UT Governments from evicting the ineligible encroachers from forest lands. Suitable instructions may be issued to forest functionaries at all levels to keep the aforesaid in view while dealing with eviction of ineligible encroachments from forest lands.'

While this letter may help to restrain the current "eviction drives", it does nothing to protect "ineligible encroachers". Further, the term "ineligible encroachers" remains ambiguous. It would be logical not to consider anyone as "ineligible encroacher" until such time as a credible process of *verification* has taken place. However, far from insisting on due verification, the letter states the "eviction drives" can continue for "ineligible encroachers", without clarifying how ineligible encroachers are to be identified. Seen in this light, the letter is almost a green signal for the *continuation* of eviction drives, instead of an order to *discontinue* them, as it purports to be.

It is also worth noting that the letter does nothing to ensure that the eviction of "ineligible encroachers" (however defined) proceeds in a humane manner with some element of rehabilitation. Recent experience suggests that basic safeguards are urgently required in this respect.

A dialogue should be initiated with concerned parties (including Amicus Curiae Adv. Harish Salve and members of the Central Empowered Committee, the Inter-Sectoral Committee, the Campaign for Survival and Dignity, other citizens' organizations, the National Advisory Council, and the Ministry of Environment and Forests) to explore ways of protecting tribal communities and forest-dwellers from the "collateral damage" caused by recent orders of the Supreme Court in the Godavarman case, e.g.

through joint interventions in the Supreme Court.[3] The following issues need urgent discussion, among others:

(1) The wholesale ban on regularization of encroachments.

(2) The Supreme Court stay on the 5/2/2004 orders of the MoEF.

(3) The wholesale ban on collection of Minor Forest Produce (MFP) and Non-Timber Forest Produce (NTFP) from Protected Areas.

(4) The ban on conversion of forest villages into revenue villages.

(5) The ban on de-reservation of forest land (and the need for an exemption for the purpose of implementing the 1990/2004 Guidelines).

(6) The ban on any change in the status of forest land (and the nature of rights that may be conferred).

(7) Orders relating to "compensatory afforestation" and "net present value".

A comprehensive central legislation should be drafted to give due recognition to the forest rights of tribal communities and forest dwellers. The draft "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act", prepared by the Campaign for Survival and Dignity, could be a guide on this subject.

The Ministry of Tribal Affairs should closely monitor the process of tribal regularisation of their occupation[4] over forest lands, as has been suggested in the circular issued in September 1990, and report to the suggested Empowered Committee chaired by Cabinet Secretary.

6.3 **Wrong classification of tribal lands as 'forests' or govt 'wastelands'**

An amazing aspect of the DTP is that it does not mention the issue of adivasi rights over natural resources at all.

One of the major reasons for tribal pauperisation is the wholesale classification of huge tribal areas as state property, both as forests and wastelands (60 % of 'state' forests are in 187 tribal districts). The problem of evictions and deprivation of access to essential social welfare services is rooted in their lacking tenure and access to the very basis of their livelihoods being snatched away from them. The proposed law on recognition of tribal/forest dwellers rights will deal with the problem to some extent but at the policy and legislative level, what is badly needed is the harmonisation of constitutional provisions safeguarding tribal rights/interests and forestry/wild life/environmental laws. At present, the latter over rule the former - the havoc being created by more and more such areas being declared protected areas in states like Orissa is heart rending - they are not permitted even to collect leaves for leaf plate making or tendu leaves compelling parents to give away their children in bondage - and the state is proposing to increase the state area under PAs from 5 to 10%. It will

[3] This dialogue should be initiated soon, preferably before the next "hearing" of the Godavarman case in the Supreme Court.

[4] The Ministry of Tribal Affairs should also note that the year 1980 has already been changed to 1993 for tribals.

again be predominantly adivasis who will suddenly find themselves deprived of their livelihood resource base with none blinking an eyelid over the consequences.

The sanctity of constitutional provisions needs to be restored and rights granted by existing laws, eg Santhal Parganas and Chhota Nagpur Tenancy Acts, respected instead of being overruled through administrative JFM type orders. Sch V permits withholding of certain laws from scheduled areas - the least the tribal policy should propose is that LAA, IFA, WLPA etc in such areas be adapted to conform to legal and constitutional provisions related to tribals. In many countries now territories of indigenous people are being restored to them and new governance arrangements being worked out whereby it is the communities themselves who take up conservation, combining it with sustainable use. It will be great if the present government could take at least the first steps in that direction through a tribal policy.

Essentially, the policy should not only aim to make amends for the injustices done in the past with respect to resource rights but must ensure that ongoing processes which continue to deprive them of such rights must be stopped. The latest amendment to the WLPA empowers WL authorities to stop all exercise of rights from the date of the preliminary notification but provide them alternatives till the final settlement is done. When rights and usage haven't even been assessed, how can alternatives be provided? The forest staff is effectively empowered to simply enforce a ban on extraction almost overnight and none bothers to even mention alternatives. This clearly must be stopped as no amount of allocations for EGS, health etc will help if basic livelihoods are snatched away.

Similarly, in addition to preventing private tribal land alienation to non-tribals, continuing tribal land alienation by the state either through declarations of the same as state 'reserve' forests (where is the need for fresh reservation of forests today - 55 years after independence - but it is continuing apace, often of lands categorised as forests through dubious processes) or PAs or through the LAA for transfer to private resource exploiters (mining/industrial/power companies) needs to be stopped. It is unfortunate that the state is the biggest alienator of tribal lands today (witness the industrial/mining policies of Jharkhand, Chhattisgarh, Orissa, MP, and even the NE states). The huge hydro-electric projects planned for the NE will not only increase local poverty and alienation but also destroy the region's unique biodiversity. A tribal policy should ideally respect the samatha judgement.

6.4 Convert forest villages into revenue villages

The unique aspect of forest villages is that these are not illegal as they have been set up by the forest departments themselves. Many of them are 80 to 90 years old when the colonial government initiated commercial forest exploitation and needed the availability of labour in uninhabited forest areas for their forestry operations. As long as commercial forest management continued, the residents of forest villages had wage work for several months of the year. In addition, the forest departments allocated some land to them for subsistence cultivation besides permitting them to collect NTFPs and other forest products for meeting their domestic requirements. Their livelihoods have however come under increasing constraints in the last two decades.

Felling bans and reduced commercial forest exploitation has created a crisis of work availability for such villagers, particularly due to their remote locations.

The condition of such villagers has become even worse where the areas where they are located have been declared national parks or wild life sanctuaries under the Wildlife Protection Act. In such areas, particularly after the Supreme Court order of 14.02.2000 banning the removal of dead fallen and decaying trees as well as grasses etc. the livelihood crisis has become truly acute.

One of the common problems faced by all forest villages is that the land on which they are located, irrespective of its being partly under cultivation and partly under habitation for several decades, on paper remains recorded as forest land. Although Govt. Of India decided in the mid-1970s to encourage conversion of all forest villages into revenue villages through granting secure land titles to their inhabitants, enactment of the Forest Conservation Act in 1980 became a serious hurdle for state governments to undertake such conversion. The residents of forest villages today are like forgotten people invisible to society and government at large, left suspended in a legal vacuum that deprives them of basic fundamental rights enshrined in the constitution.

Consequences of lacking land title - Not having title to the land which they cultivate and on which they live deprives them of the following entitlements:

- They cannot get any bank loans.
- The tehsildar, apparently the only official authorised to do so, refuses to give them domicile certificates on the grounds that the land is under the forest department's jurisdiction. The forest department does not seem to have either bothered to obtain the authority for issuing domicile certificates for such people or is not permitted by law to issue them. Whatever the legal technicalities, the villagers are deprived of access to a critical document which is their passport to several other benefits/entitlements.
- Lack of a domicile certificate means that they cannot get a Schedule Caste/Tribe certificate depriving the predominantly tribal residents of all the special benefits meant for SCs/STs. They cannot apply for jobs/educational facilities reserved for such groups.
- Lack of land title also deprives them of housing assistance under the Indira Awas Yojana.
- Till the recent state elections, they did not have access even to BPL cards to enable them to avail of subsidized goods under the PDS. Instead of getting kerosene at Rs.11/- a litre, through the PDS they are compelled to buy it in the black market at Rs.15/- per litre. They similarly have to purchase foodgrains at market prices. Because of the elections, some households in the village now have these BPL cards.
- During a drought, they are not entitled to compensation for crop loss due to not being covered by crop insurance.
- Government functionaries avoid visiting the villages, as the forest department discourages their presence in its 'jurisdiction'.

The Ministry must obtain clearance of the Supreme Court, if necessary, and get all the 5000 forest villages declared as revenue villages.

7 Displacement and Resettlement

The draft policy rightly observes that 'Nearly 85.39 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55.16 percent of the total displaced people in the country. Cash payment does not really compensate the tribals for the difficulties they experience in their living style and ethos.

Displacement of tribals from their land amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life.

The National Policy for Tribals, therefore, stipulates that displacement of tribal people is kept to the minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted. When it becomes absolutely necessary to displace Scheduled Tribe people in the larger interest, the displaced should be provided a better standard of living.'

Although the package of compensation (land for land) provided in the draft policy seems quite satisfactory, it is at variance with the new R&R Policy announced by the Ministry of Rural Development. Therefore our first suggestion is that the draft policy should unequivocally state that it will get the Ministry of Rural Development to change its clauses as far as tribals are concerned, and bring these in harmony with the Ministry of Tribal Affairs' policy. Secondly, the draft policy is vague when it 'stipulates that displacement of tribal people is kept to the minimum'. Who will ensure that it is minimum? Unless a procedure is prescribed involving civil society, it is feared that the district authorities will gladly certify in each case of inhuman acquisition that all 'possibilities of non-displacement and least displacement have been exhausted'.

Acquisition in Scheduled Area - Detailed executive instructions were luckily issued by Government of India signed by Secretary Rural Development sometime in 1998 for acquisition of land in Schedule V areas to describe the modalities of consultation with the Gram Sabhas or with the Panchayats where more than one Gram Sabha is involved. The procedure to be followed for acquisition of land in Schedule V areas was deliberately made difficult so as to discourage projects to displace tribals. For instance, it provided that the company requiring land must produce a letter of consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land (see annexure for the complete order, which fortunately is still operative, though almost forgotten by the state governments). The Ministry of Tribal Affairs should get a suitable sub-section incorporated in the Land Acquisition Act, 1894, which would reflect the spirit of this notification.

It is unfortunate that neither the draft tribal policy nor the new R&R Policy makes any reference to this government notification issued in 1998 to make the spirit of section 4(I) of the PESA Act a reality. It is feared that the states may in due course of time ignore the provisions of the executive instructions issued, as just now neither the

Policy nor the Land Acquisition Act remind the acquiring authorities of their responsibilities about tribals in the V Schedule area.

In addition, the draft policy should mandate that the following guidelines be followed when tribals are displaced:

- Ensure that displaced families have a standard of living superior to the one before their displacement and, have a sustainable income above the poverty line. Gains to the displaced should be of the same scale as to the project beneficiaries.
- Each project should form a high level committee with NGOs, PRIs and representatives of tribals before acquisition, which should finalise proposals for acquisition after full consultation with the affected families in options for acquisition & resettlement site selection so as to minimise displacement.
- No displacement or resettlement of tribal villages for declaring any areas as National Parks or Sanctuaries should be allowed. The laws and policies should be adapted to strengthen this co-existence and in maintaining the ecological balance.
- There should be housing sites for all (at least 50 sq m per adult); whether they owned house or not, and constructed houses for the BPL tribal families.
- Each PAP must be made literate and trained for semiskilled or skilled jobs. All unskilled new jobs and semi-skilled direct employment created in the project would go to the tribal PAPs on a priority basis. Even those private enterprises (such as ancillary industries and contractors) that benefit from the project would be charged in the same manner with responsibility for providing skills and jobs to such people. The displaced people should be resettled as near as possible to the developmental project sites so that they get multiple access and facilities as well as economic benefits generated out of the developmental projects.
- If land acquired for a commercial undertaking, 20% shares to be given to PAFs free and equitably. For Schedule areas this percentage should be 50, to honour the spirit of the Samatha judgment.
- Enable projects to take land on 99 year lease, by paying an annual lease rent of twice the gross annual produce. This will obviate the need for compulsory acquisition.
- Whenever land acquired for a public purpose is transferred to an individual or a company for a consideration, 25 per cent of the difference between such consideration and the compensation will be given to the original land owners.
- All benefits to persons/families, if further displaced within a period of 20 years, shall be doubled.

Lastly, the draft policy is silent about the colonial nature of the Land Acquisition Act, which also needs to be amended in the following manner:

1. No land shall be acquired under the Act unless the process of land acquisition is accompanied with rehabilitation of affected people.
2. 'Rehabilitation' is defined as "having been achieved when the income of the affected people has been brought above the poverty line and above their previous

income".

3. Principle of land for land for tribals in all projects and for all agricultural families in the irrigation projects should be incorporated in the Act itself.
4. Minimum 10% of the project cost should be spent on RR, not including compensation.
5. The Land Acquisition Act should not only compensate for assets acquired, but also compensate for loss of livelihoods. This would mean that the assetless people such as landless labourers, encroachers of Government land, artisans and gatherers should also be compensated by giving them either land or a compensation of at least two years of minimum wage. The definition of 'persons having interest in land' in sec 9 of the Act would be changed to include sharecroppers, tenants and sub-tenants, encroachers, and attached agricultural workers.
6. The principle of market value as laid down in Section 23 (1) should be substituted by replacement value.
7. For determining the market value of land the Collector will take recourse to three different modes of assessment. Firstly, on the basis of existing sale deeds as has been done in most cases so far. Secondly, the Collector may take into account the scheduled rates for that category of land fixed under the Indian Stamps Act for registration of sale deeds. Thirdly, the Collector may calculate the gross annual production from each plot and fix the compensation as 20 times the gross value of annual production. The final market value for assessment will be the highest among the three amounts arrived at by these three methods.
8. Consent award would be the primary mode of settling the amount of compensation, which should not be less than the value calculated on the basis of the principle enunciated in the above para.
9. It should be possible for the Collector to give a monthly or a quarterly stipend in place of lumpsum payment for the amount of compensation that can be put in the bank, in a joint account.

8 Panchayats in Scheduled V areas

For the predominantly tribal Scheduled V area of Central India, Government had passed an Act 'The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996' (popularly known as PESA Act). It came into force on the 24th December 1996 and extends Panchayats to the tribal areas of now nine States; namely, Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan. The Act intends to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. PESA is unprecedented in that it gives radical self-governance powers to the tribal community and recognises its traditional community rights over natural resources.

In reality, however, since its passage it has almost been forgotten and has not become part of mainstream political or policy discourse. Many state governments have passed laws not fully in conformity with the central law. The implementation of the law has

been severely hampered by the reluctance of most state governments to make laws and rules that conform to the spirit of the law. Weak-kneed political will has usually led to bureaucratic creativity in minimalistic interpretations of the law.

It is unfortunate that the draft tribal policy does not mention the inadequacies of PESA, and how these need to be set right. This is one of the most glaring omissions of the draft, despite the fact that the state governments' action of not passing laws in conformity with the GOI law amounts to violation of the Constitution. We summarise below some of the lacuna in the state laws, and how they violate the PESA provisions.

Section 4 (m) (ii) of this Act provides that -

> "while endowing panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the ownership of minor forest produce."

Further, PESA required that state government would change its existing laws wherever these were not in consistent with the central legislation. Following the Central PESA Act, the Orissa Act has tried to circumscribe the constitutional provisions of the Central Act by adding a clause[5] `consistent with relevant laws in force' while incorporating the constitutional provision concerning the competence of the Gram Sabha to manage community resources and dispute resolution as per the customs and traditions of the people. Thus, tribals can have ownership rights over Minor Forest Produce, but only if the relevant laws in force allow that. This is clear violation of the Constitutional Provision of the Central Act since in case of any inconsistency the relevant state laws have to be changed instead of negating the rights granted to Gram Sabha as per the Central Act in this regard.

In Andhra Pradesh too, there is a clear contradiction between PESA and GOM 173 dt. 7/12/96 of the Environment, Forest, Science and Technology Department. The Usufructory Rights of Vana Samrakshana Samitis prescribed therein include, '(a) All Non-Timber Forest Produce except those for which GCC holds monopoly rights. However the right to collection shall remain with the VSS members, if they so desire. The members shall be paid the collection charges upon delivery of the produce as per the rates fixed by the Government'. It can also be seen that there is a contradiction between the `ownership' vesting in Gram Panchayats/Sabhas clause and the monopoly rights vested in GCC. Whether bamboo constitutes major or minor forest produce is also an unsettled question.

Secondly, MFP has been defined to exclude cane and bamboo. This is contrary to the commonsense definition of MFP which is 'that part of a tree that can be sustainably harvested without damage to the survival of the tree'. MFP is a product of the living tree, as opposed to timber which is product of the dead tree. More significantly, the state governments deny access to poor tribal artisans to two types of MFP, bamboo

[5] Many other states have also diluted the GoI Act. Both the Gujarat and Maharashtra Acts make ownership subject to the relevant state acts on NTFPs. The Maharashtra state Act leaves bamboo and cane out of the list of NTFPs over which ownership is granted to the panchayats.

and cane, on which their livelihoods are most critically dependent. On the other hand, many state policies have subsidised bamboo for private industry.

Lastly, Government should not lease out forest lands to industries even through local institutions like Vana Samrakshana Samithis, particularly in the Scheduled Areas (as attempted by the Government of A.P. under G.O.112).

According to PESA, prior consultation with Gram Sabha or Panchayats at the appropriate level shall be made mandatory before acquisition of land for development projects. Here again the states have diluted PESA provisions. In Andhra Pradesh, Gram Sabhas have no role. Gujarat assigned this power to Taluka Panchayat. Orissa assigned the power to Zilla Panchayat with no role for the Gram Sabha/Gram Panchayat.

Similarly PESA lays down that recommendations of Gram Sabha or the Panchayats at the appropriate level shall be made mandatory before grant of prospecting licence or mining lease for minor minerals. Here again Andhra Pradesh gives no role to Gram Sabha. Gujarat does not make any mention of it. Himachal Pradesh retained primacy of Gram Sabha but the term 'shall be made mandatory' has been replaced by `shall be taken into consideration'. Maharashtra assigns powers to Gram Panchayat, and Gram Sabha has no role in the matter. Orissa gives powers to Zilla Parishad, with no role for the Gram Sabha or the village panchayat.

Another PESA clause lays down that Panchayats at appropriate level and the Gram Sabha to be endowed with power to prevent & restore tribal alienated land. Gujarat, Himachal Pradesh, Madhya Pradesh Panchayati Raj Amendment Act do not make provisions for this. Only in Madhya Pradesh, the Land Revenue Code, 1959 has been amended to give power to Gram Sabha. However, the Code should have also laid down that no new entry in the ownership register will be permitted through sale or gift in favour of a non-tribal, unless it is approved by a resolution of the Gram Sabha.

These interpretations have almost killed the concept of ownership and control of local resources by Gram Sabha. The irony is that while PESA remains unimplemented, Ministry of Mines in GoI has proposed amending Schedule V of the Constitution itself to open up tribal areas for commercial exploitation by national and multi-national corporate interests. The secret document of the Ministry of Mines, Government of India, No.16/48/97-M.VI, dated 10th July, 2000 which contained the legal advice of the Attorney General suggesting amendment of the Fifth Schedule to overcome the Samatha Judgment, is shocking evidence of the shift in the mindset of the political powers and the bureaucracy with regard to Scheduled Tribes and tribal areas. Such moves only reflect that the state is looking for justification for opening up these areas to global market forces and not to fulfil its constitutional/social responsibility. At no cost should the Fifth and Sixth Schedule laws of the constitution be amended to open up the areas for control or ownership by private non-tribal individuals, industries or institutions.

In order to make the Central Act effective, it is necessary for the State Governments to make appropriate amendments in their State Laws / Acts which impinge on specific provisions contained in the Central Act namely (i) Land Acquisition Act; (ii) Excise Act; (iii) State Irrigation Act; (iv) Minor Forest Produce Act; (v) Mines and Minerals

Acts; (vi) Land Revenue Code / Act; (vii) SC/ST Land Alienation Act; (viii) Money Lenders Act; and (ix) Regulated Market Act. No doubt, some State Governments (MP) have already amended some of the relevant Acts, others are yet to follow suit.

It is therefore suggested that the Ministry of Tribal Affairs should get the state laws changed in conformity with the central law in a give time frame, and link central devolution to the states with such amendments.

9 Shifting Cultivation

On the issue of shifting cultivation, the draft policy states, 'Though the practice is hazardous to environment, it forms basis of life for tribals. The tribals involved in shifting cultivation do not seem to have any emotional attachment to the land as an asset or property needing care and attention as in non-tribal areas. Tribals merely believe in harvesting crops without putting in efforts'.

For the tribal peoples, their land means livelihood; their culture and identity is built upon it. So, to assert that tribals have no emotional attachment to land is to say the least is a bit puzzling. Moreover, to hold this practice hazardous to environment is unfair. In interior areas where communications are not developed and where sufficient land suitable for terracing is not available, shifting cultivation is the only system of cultivation which can be operated at the present stage of development, where tribals have no access to credit or extension. It is a practical way out from the inherent difficulties confronted in preparing a proper seedbed in steep slopes. Shortening of cycle has taken place for a variety of reasons, such as tribal land being taken over by dominant peasantry as a result of which tribal are pushed or they themselves withdraw to more interior/higher (altitudes) areas which are generally more inhospitable.

The problem is that shifting cultivation is more frequently compared with forestry activities or even natural forests rather than with other farming systems. It is unrealistic to expect shifting cultivation to be as benign as natural forest - it is a farming system, which makes use of forests and should be considered as such.

What's most important about *jhum* cultivation is that it protects and supports collective ownership of natural resources, so also preventing land from being privatised. Encouraging 'settled agriculture' in its place — the endeavour of current government policies — would only hasten the end of community ownership. The current policy fails to recognise that the land left fallow is actually part of the whole *jhum* cycle and needs to be protected as *jhum* land: government classifies *jhum* fallow lands as 'wastelands' or degraded forest.

The recommendation in the draft policy that 'Land tenure system will be rationalised giving tribals right to land ownership' is welcome, but a significant part of such lands have been declared as forests, and therefore settling them in favour of tribals will attract the restrictions imposed by the Forest Conservation Act. Without specifying the area of land that would be settled with tribals and the time frame in which it will be done, the statement made in the draft is likely to remain only on paper.

The draft favours cash crops over food crops in shifting cultivation areas, but the basis of such a preference has not been stated. Shifting cultivators often have poor access to agro-chemicals because of poverty, inadequate extension systems and a general

disregard of their farming practices by authorities. Moreover, such areas are remote from markets, and forcing cash crops on the tribals may lead to their greater dependence and exploitation by traders and middlemen. At present, yields of staple crops such as rice, maize, or cassava, are often quite low, but many other plants are intercropped in the swidden fields and collected from the secondary forest, making overall productivity much higher. Therefore tribal perspective on their farming system must be kept in view before making sweeping recommendations against traditional practices.

9.1 Implication of absence of land records in the north-east

The north eastern states of Nagaland, Arunachal Pradesh, Mizoram, Meghalaya, hill areas of Manipur and some tribal tracts of Assam have no land records system. The survey and settlement could not take place here because of the resistance of the local people. We describe below the status of land records in Meghalaya, a tribal and comparatively peaceful state.

A peculiar feature of Meghalaya's rural economy is its agrarian structure, characterized by insecurity of tenure, rising tenancy and landlessness, increasing concentration of land ownership in the hands of a few, and declining output from shifting cultivation. This structural condition under which land is cultivated combined with the fact that the elite are able to corner most government funds has intensified poverty in Meghalaya. Cohesive social relations therefore co-exist with increasing economic disparities.

Unlike other parts of India, government in Meghalaya did not claim ownership rights over the uncultivated forestlands of the indigenous people. Moreover there is no system of payment of land revenue, nor any record of land rights. Although theoretically land belonged to community, there were several ways that it could be privatised. Performing labour or, rather organizing labour, to cut a terrace or plant trees in an orchard, was recognized as conferring exclusive and permanent rights, although not recorded. The lack of a legal base means that tenancy works to the disadvantage of the weaker partners in the relationship, the tenants. The absence of any legal regulation works to the advantage of those with economic and political power. Measures like a cadastral survey to record actual land holding positions, tenancy, etc. have been consistently opposed even by the non-rich, as there is deep suspicion of the state, and the likelihood of imposing land revenue payments or other regulations.

There has been phenomenal growth in the number of agricultural labour due to increasing concentration of land in the hands of a few. The proportion of cultivators to total workers has fallen from 73.3 in 1961 to 55.3 in 1991, whereas the proportion of agricultural labourers has increased from 4.3 to 12.5% during the same period.

There are also instances where in the entire village the actual tillers do not own any land at all. They are merely tenants of landlords, who mainly reside in Shillong, the State capital. The tenants have rights only over the crops, but do not have any rights to forests.

The privatization of land that is going on throughout Meghalaya through enclosure of

commons can hardly be viewed as a positive step because its impact on agrarian relations is retrograde. Individuals are acquiring permanent interest in the occupancy of a plot of land, which in turn is imputing monetary value to land. This may be resulting in the dispossessing of the actual tiller of the soil and owner farming is getting converted into tenant farming.

Thus Meghalaya has continued to be a non-cadastral State, with no land records at all. Efforts made in the early 1980s to prepare land records met with stiff resistance from the people, even the poor. The elite are able to whip up tribal sentiments against government, and although government clarified that it had no intentions of imposing land tax on the surveyed land, people were reluctant to allow government enter and disrupt their community cohesiveness. The poor are not organized, they are tied up in social relations to the elite of their clan, and to them large landowners are greater benefactors than a remote, heartless and corrupt government. Even when survey would have benefited the poor, they chose to support the clan leaders in opposing preparation of land records.

9.2 Securing communal tenures in the North East

There is no mention in the DTP of the unique situations in the NE - although technically communities own large chunks of land, there have been no surveys of the lands or codification of customary rights and practices or enabling people to interface with modern systems with such tenurial arrangements. For example, people owning land communally are unable to use it as collateral for getting bank loans. Most of the same land is also classified as 'unclassed state forest' with the FDs attempting to gobble that up (what they couldn't do via the IFA in the NE). There is serious conflict in Arunachal Pradesh due to such efforts. In the absence of a communal land recording system, revenue departments are using mainland procedures for happily allotting such lands to private parties. Due to the classification of jhum lands as 'forests' (the FAO calls them forest fallows), it is MOEF which gives clearance for their diversion to other uses instead of the land owning communities. Recent Supreme Court orders have now empowered MOEF to collect a net present value of between Rs 6 to 9 laks per ha for such land diversion instead of the money going to the legal landowning communities!

There are still excellent functioning systems of jhum cultivation. Massive damage has been done to such sustainable systems by promoting all kinds of unsustainable practices on them such as pineapple cultivation and rubber plantations. Jhuming is an integral part of social organisation and has sophisticated notions of equity built into it (there is no landlessness in funcioning jhum systems as every year land is allotted on the basis of mouths to be fed rather than wealth or status).

10 Primitive Tribal Groups (PTGs)

The use of “insensitive” and “derogative” terms such as “Primitive Tribal Groups” in the Draft National Policy on Tribals is antithetical to the universally recognised principles on the dignity and equality inherent in all human beings. The use of the term “primitive” fails to secure understanding of and respect for the dignity of the human person. Certain derogative terminologies are no longer acceptable in the lexicon of civilised societies. Although at another place the draft envisages to halt

"stigmatisation" of the so called Primitive Tribes, one wonders as to how such stigmatisation can be halted when the draft policy itself uses such pejorative terms. It would be better if they were referred as 'excluded tribes' or 'pre-agricultural communities'. For others too, it would been ideal if for tribals one used the word 'adivasi', however since this demand has been rejected many times by GoI (on the basis that even non-STs are indigenous peoples), it is not being pressed here.

As in other paras, the draft policy makes all kinds of vague promises, which have no connection with the policies of other Ministries, the progress of which is not being monitored by the Ministry of Tribal Affairs. For instance, the draft makes the following commitments for them:

1. To boost PTGs' social image, their being stigmatized as 'primitive' shall be halted.
2. Efforts shall be made to bring them on par with other Scheduled Tribes in a definite time frame. Developmental efforts should be tribe-specific and suit the local environment.
3. Effective preventive and curative health systems shall be introduced.
4. PTGs' traditional methods of prevention and cure shall be examined and validated.
5. To combat the low level of literacy among PTGs, area and need specific education coupled with skill upgradation shall be given priority.
6. Formal schooling shall be strengthened by taking advantage of 'Sarva Shiksha Abhiyan'. Trained tribal youth shall be inducted as teachers.
7. Teaching shall be in tribals' mother tongue/dialect
8. Considering PTGs' poverty, school-going children shall be provided incentives.
9. Emphasis shall be on laid on vocational education and training.
10. PTGs shall enjoy the 'right to land'. Any form of land alienation shall be prevented and landless PTGs given priority in land assignment.
11. Public distribution system (PDS) shall be introduced to ensure regular food supply. Grain banks shall be established to ensure food availability during crises.
12. PTGs' participation in managing forests shall be ensured to meet their economic needs and nourish their emotional attachment to forests.'

The 10th Plan of the Government of India lucidly describes the problems of these vulnerable communities: 'A decline in their sustenance base and the resultant food insecurity, malnutrition and ill-health force them to live in the most fragile living conditions and some of them are even under the threat of getting extinct.' Rather than make vague statements, such as the policy will 'nourish their emotional attachment to forests', it is better if the Ministry comes up with specific plans which are monitored by independent agencies on a quarterly basis.

10.1 **Creating a framework for securing communal tenures**

Most attention related to tribal land has been focused on preventing alienation of private land to non-tribals. But most adivasi livelihood systems (as in the hills also) depend on access to common lands and some systems are rooted in communal property rights/use. Shifting cultivators and pre-agricultural communities (officially labelled PTGs) have effectively been left floating in the air as even during forest settlements in the mainland, either shifting cultivation was declared a concession which was later withdrawn leaving the people with nothing, or an attempt was made to simply wish the practice away without working out what happens to the people involved. In Orissa, there must be lakhs of shifting cultivators on whose limited rotational cultivation lands left, the forest dept keeps trying to plant teak or other trees without assuming any responsibility for assuring them alternative livelihoods. The result is that the people keep uprooting or burning the plantations on their lands and the FD staff keeps extracting fines and bribes from them. Many are forced to migrate in search of new options. The rights of pre-agricultural communities like the Chenchus, pahari korwas, bhuinas, etc have similarly been extinguished leaving many such communities on the verge of extinction after declaring their lands as PAs. There is little scientific evidence to support the premise that their resource use patterns are inimical to biodiversity conservation. In 1942, the present Srisailam Tiger reserve in AP was declared a 'Chenchu reserve' to protect the Chenchus and their lifestyle. Later it was declared a 'tiger reserve' with efforts to move the Chenchus out. This didn't succeed but now the presence of Chenchus in their ancestral land is 'illegal' and both the Chenchus and the tigers are more vulnerable than ever before!

11 De-notified and Nomadic Tribes (DNTs)

There is no mention of their problems in the draft. This serious omission needs to be corrected.

The terms ‘de-notified’ and ‘nomadic’ do not belong to the same typology as the former term is legal and the latter ecological. The communities which were notified as criminal during the British rule and which were de-notified after independence are called de-notified tribes. However, as some of the de-notified communities were nomadic and vice versa, they are usually considered together.

As they are constantly on the move, they do not have any domicile. Though many of them have now begun to settle down, traditionally they did not possess land rights or house titles. As a result, they are deprived not only of welfare programmes, but also of citizenry rights, such as a ration card. They were not considered untouchables but occupied lowermost positions in social hierarchy.

The first and foremost problem of the DNTs is that of classification and enumeration. The DNTs are not categorised as a class under the constitutional schedules like the scheduled castes (SCs) and scheduled tribes (STs). Some of them have been included in the respective state lists of SCs and STs but there is no uniformity across the country. As in the case of the STs, the problem of pseudo-identities also affects the DNTs. The concessions of the DNTs are usurped by other communities having a similar nomenclature. The DNTs are also not covered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), under which the SCs and STs

are protected. As a result, the violation of human rights cannot be addressed effectively.

Although a plethora of programmes could be suggested, the basic steps warranted are as follows:

(1) Provision of constitutional safeguards to some of the most vulnerable communities like the Pardhis, and covering them under the Prevention of Atrocities Act (1989).

(2) Strict scrutiny of the caste certificates of DNTs and penalisation of bogus DNTs.

(3) Sensitisation of the police force by information dissemination and in-service training, and setting up of special cells (in collaboration with NGOs) for legal aid and counselling, especially for women.

(4) Free and compulsory education to genuine DNT children till at least matriculation.

12 Governance

Apart from policy failures listed above, tribals have also suffered because of the poor quality of governance. Programme delivery has deteriorated everywhere in India, but more so in tribal areas, where government servants are reluctant to work, and are mostly absent from their official duties. Government seems to have surrendered to political pressures from the staff, as many of their posts have now been officially transferred from tribal regions to non-tribal regions, where they can draw their salaries without doing any work! It is a pity that massive vacancies exist in tribal regions in the face of acute educated unemployment in the country. The Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes of the 13th Lok Sabha in its 23rd Report of February 2003 stated that hundreds of posts of medical staff in Tribal Sub-Plan areas in Rajasthan have been lying vacant. The State government of Rajasthan could not give any answer as to the reasons for not filling up the vacancies.

Poor implementation of existing schemes in the tribal regions has meant that not only poverty continues at an exceptionally high levels in these regions, but the decline in poverty has been much slower here than in the entire country, as shown below.

Table 1: Population Living Below Poverty Line (1993-94 and 1999-2000) (in per cent)

					Percentage Change	
Category	1993-94		1999-2000		(Col 2-4).	(Col 3-5)
	Rural	Urban	Rural	Urban	Rural	Urban
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	37.27	32.38	27.09	23.62	(-)10.18	(-)10.04
STs	51.94	41.14	45.86	34.75	(-)6.08	(-)6.39
GAP	**14.67**	**7.48**	**18.77**	**11.13**	**(+)4.10**	**(+)3.65**

During this period the share of the tribals amongst the poor in the country increased from 14.8 to 17.5 per cent, with abnormal increase in the following states:

	Share of tribals in		
	population	Poor in 1993-94	Poor in 1999-00
Gujarat	14.9	30.8	43.1
Maharashtra	9.3	18.1	31.7
Orissa	22.2	36.0	41.1
Rajasthan	12.4	28.8	36.5

Similar gaps continue between literacy levels and health indicators of STs and the general population and have widened over the years.

12.1 Education

The draft policy advocates teaching in mother tongue of the child. Yet, it suggests very few concrete measures how to implement it. The drop out rate among indigenous and tribal peoples is alarming. Various steps taken by the State governments to check drop out including free distribution of books and stationery, scholarship, reimbursement of examination fee, free bus travel etc have failed. The Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes of the 13th Lok Sabha in its 23rd Report of February 2003 on the Working of Integrated Tribal Development Projects in Rajasthan reported that the delay in disbursement of scholarships is one of the reasons for increasing drop out of indigenous and tribal students. No evaluation of the programmes on education including the Ashram schools under the Tribal Sub-Plan (TSP) has been conducted by the Ministry so as to understand the shortcomings and suggest corrective measures.

The draft policy advocates education to be 'linked with provision of supplementary nutrition', but the Ministry does not seem to be aware that in Jharkhand, very few tribal children have access to mid-day meals, despite orders to this effect both from the Ministry of Human Resource Development and the Supreme Court. In fact the Commissioner of the Supreme court to monitor food based schemes has observed the following in his tour note dated March, 2004:

'**Mid-day meals -** There are two problems here. One, the scheme has been sanctioned only in seven districts and that too for 200 schools per district. Two, supply of foodgrain is highly erratic and administration has not been able to ensure continuity of supply. At the Nini centre in district Lohardaga, I was told that cooked meals could be served only for seven days, as there was no stock after that. Moreover, the Bank did not permit them to withdraw funds and insisted on a seal of the Mothers' Purchase Committee. The Committee had to borrow 300 Rs from shopkeepers to run the show for the week foodgrains were available. On the whole the scheme is running very poorly in Jharkhand'.

Similar is the situation in the tribal blocks of district Nandurbar, Maharashtra. The relevant point here is that the Ministry must spell out in in the policy in some detail

how it will ensure that the entitlements of tribal children are observed in actual practice. Bogus reorting is another serious problem in tribal districts. According to the official figures, in Maharashtra only 0.74% of children in the tribal areas suffered from grade III and IV malnutrition. This is gross under-reporting as the NFHS data for 1998-99 showed that this for tribal children was 35.4%. The draft unfortunately is silent on this kind of reporting, which defeats the very purpose of data collection.

The draft also proposes opening of 'schools and hostels in areas where no such facilities exist, so that at least one model residential school is located in each tribal concentration area.' This has been the policy for the last two decades, and yet the progress has not been satisfactory. A recent evaluation carried out by the Ministry on the scheme reveals that the performance of certain States in providing matching grant, and maintenance of services and management of hostels is not encouraging. The pace of construction of hostels has been very slow and the basic amenities provided therein are of substandard. A review of the scheme of Ashram Schools revealed that some of the schools are very badly maintained and deprived of even basic facilities. Also, no separate sections exist in the hostels for primary school children, which is a pre-requisite. The draft policy should have discussed these constraints, especially the states' reluctance to provide matching contribution in centrally sponsored schemes meant for the ST population.

The continuing gap between literacy levels of STs and the general population is shown below.

Table 2:Literacy Rates of STs and Total Population (in per cent)

Category	1971	1981	1991	2001
(1)	(2)	(3)	(4)	(5)
Total Population	29.45	36.23	52.21	65.38
Scheduled Tribes	11.30	16.35	29.60	Not yet
Gap	**18.15**	**19.88**	**22.61**	available

Table 3: Female Literacy Rates of STs and Total Population (in per cent)

Category	1971	1981	1991	2001
(1)	(2)	(3)	(4)	(5)
Total Population	18.69	29.85	39.29	54.16
Scheduled Tribes	4.85	8.04	18.19	Not yet
Gap	**13.84**	**21.81**	**21.10**	available

Thus the gap in literacy levels, both for tribal men and women, is increasing despite the fact that the largest proportion of centrally sponsored programmes for tribal development are related to the single sector of education. The gap would be wider if

the north-eastern states are excluded from the above table, as education and health standards of tribals in that region are much above the national average.

Most teachers teaching in adivasi schools are non-adivasis who tend to view adivasi language, culture and social practices as being inferior to theirs. Psychologically, this has a strong negative impact on children, which again contributes to their dropping out of school. One way of tackling this problem would be to change the way adivasi communities are being educated. For instance, if textbooks were to be prepared in the language of the adivasis to express their culture, worldview and concepts, it would make it easier for adivasi children to begin learning since they would be already familiar with the language and content of the textbooks. It would also mean that they would have to learn only two skills, viz., reading and writing. In time, they could gradually begin to learn the language of the state, which would put them on par with non-adivasi students. At this point it might be pertinent to ask whether it would be at all possible to revive the various adivasi languages. While recognising the difficulties of such an endeavour, we nevertheless feel that a concerted effort needs to be made in this direction.

12.2 Nutrition and Health

The health indices of various social groups are given below:

Table 4: Health indicators

	IMR	U5MR	% Under nutrition
SC	83.0	119.3	53.5
ST	84.2	126.6	55.9
India	70	94.9	47

Source: X Plan

This clearly establishes the sad state of health and nutrition in the tribal blocks. The draft policy admits the problem. It says, 'Although tribal people live usually close to nature, a majority of them need health care on account of malnutrition, lack of safe drinking water, poor hygiene and environmental sanitation and above all poverty. Malnutrition and undernutrition are common among Primitive Tribal Groups who largely depend upon food they either gather or raise by using simple methods. The poor nutritional status of tribal women directly influences their reproductive performance and their infants' survival, growth and development.'

A diet and nutrition survey of the tribal populations living in the Integrated Tribal Development project (ITDP) areas, in the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Gujarat, Orissa and West Bengal was done during 1985-87. A repeat survey was carried out during 1998-99 among tribal population living in the same ITDP areas to assess time trends in food and nutrient intake, nutritional status as assessed by anthropometric indices of nutritional status and prevalence of nutritional deficiency signs.

Comparison of data between the two surveys in tribal population showed that over time there has not been any improvement in the food and nutrient intake. The tribal population is more under nourished than their rural counterparts.

Table 5: Average intake of Foodstuffs (g/day) among the tribal population

Age-group	Cereals & Millets		Pulses		Foodgrains		Decline in consumption during 1985-99 in
	1985-87	1998-99	1985-87	1998-99	1985-87	1998 99	
1-3 years	187	155	13	14	200	169	15.5
4-6 years	276	224	18	18	294	242	17.7
7-9	334	282	21	18	355	300	15.5
10-12 years	408	335	23	19	431	354	17.9
10-12 years	373	333	22	20	395	353	10.6
13-15 years	465	405	24	21	489	426	12.9
13-15 years	463	392	24	21	487	413	15.2
>16 years	521	518	29	23	550	541	1.6
>16 years	454	404	29	21	483	425	12.0

However, the solutions proposed in the draft policy lack credibility. It says, 'Expand the number of hospitals in tune with tribal population'. The fact of the matter is that the utilisation of bed capacity in the already constructed hospitals in tribal areas is extremely low, because neither doctors attend to such clinics (no doctor is ever found there in the night, so tribals with serious illness cannot take the risk of being left there totally unattended), nor are medicines or other facilities present in such so-called community hospitals.

12.3 Administration

The draft policy admits that the existing administrative machinery has 'not been up in terms of the quality of performance and development indicators', but the solutions proposed are weak and toothless. The draft 'seeks to revitalise the administration by proposing the following:

- Skill upgradation-cum-orientation programmes shall be conducted for tribal administration officials.

- Infrastructure development shall be given priority so that officials will function from their places of posting.
- Only officials who have adequate knowledge, experience and a sense of appreciation for tribal problems shall be posted for tribal administration.
- As the schemes meant for improving tribals' condition take time, a tenure that is commensurate with their implementation shall be fixed for officials.'

While it is easy to talk of long tenures and posting officers with commitment in the tribal regions, the reality is that postings are done by the state governments who generally succumb to pressures from the officials who wish to move out of tribal blocks on one pretext or the other. The only way to combat political compulsions and opportunism, and promote good governance is by prescribing hard punishment in terms of loss of central funds for those states who do not follow prescribed norms. In addition we suggest that the Ministry of Tribal Affairs must obtain approval of the Cabinet after consulting Planning Commission and the Finance Ministry on linking devolution with performance. However, as repeatedly stressed in this paper, the pre-requisite for achieving this would be a good system of monitoring which will capture the performance of the states on key indicators. In addition, one would have to think of innovative solutions, such as empowering tribal panchayats to hire staff on contract, Mobile Health Services, and compulsory tenure in tribal regions before confirmation of government staff, to improve programme delivery.

In this connection, the suggestion in the draft policy to 'encourage qualified doctors from tribal communities to serve tribal areas' is an attempt to further ghettoize the indigenous peoples, and let non-tribal doctors escape a hard posting in remote areas. Serving in the rural areas for a period of 10 years with five years exclusively in Tribal Sub-Plan (TSP) areas must be made mandatory for all government doctors. All the vacancies of medical staff in the TSP areas need to be filled up within a specified time frame. The government may consider additional benefits to medical staff working in TSP area and concomitant budgetary allocations need to be made under the TSP.

Effective mechanisms need to be devised to ensure that all allocations for tribal areas actually reach the people. Increasing allocations will have little impact unless the present systems of looting are smashed. Direct transfer of funds and PDS supplies to gram sabhas is required but that runs into resistance from state govts. Similarly, either local people should be recruited as teachers and health workers or incentives provided to staff from outside to actually stay in the areas and do their work. For that, the availability of basic facilities like electricity, health centres and schools simply has to be improved. In the Satkosia wild life sanctuary (district Angul, Orissa) visited by Ms Sarin in this January, none of the 92 villages with a population of over 30,000 living inside had any electricity, few schools had teachers or the PHCs any health staff. The worst was that the PA staff harassed traders and others delivering construction and other essential material to the villagers while entering the area. Which outsider with a family and kids would be willing to work in such an area no matter how effective the monitoring is?

Migration - Migration is common to almost all tribes, but it is the highest in Maharashtra, Gujarat and Jharkahnd. In Nandurbar and Dhule districts of

Maharashtra, for example, due to high indebtedness over 30 per cent of the tribal population migrate between the months of August and March to work on sugarcane fields in neighbouring Gujarat, despite owning, on an average, three to five acres of land. The landholding pattern in Jharkhand, however, differs from that in Maharashtra. Landlessness is high and land is distributed unevenly. But unlike Maharashtra, it has had a history of tribal struggles and has therefore a strong civil movement. Clearly, then, the particularities of each region will have to be taken into account if we are to develop a working plan for these areas.

It is unfortunate that the draft policy does not discuss the evil consequences of migration. Often such families have no ration card in the cities, where they work for several months. The labour laws governing migrant labour are poorly implemented, as there is little knowledge about such laws, and no legal aid to help the tribals. A recent research study On 'Migrant Tribal Women Girls in Ten Cities' for the Planning Commission found that the employers paid very low wages below the level of minimum wages, made illegal deductions, forced them to work for very long hours beyond the hours fixed by law. The principal causes of financial and sexual exploitation of the migrant tribal women and girls in cities were poverty, lack of employment opportunities, unorganised nature of labour force, misunderstanding of the local people about free sex in tribals, and lack of community support to victims of sexual exploitation.

It is hoped that the Ministry will in consultation with the Ministry of Labour incorporate sufficient safeguards in the final version of the policy so that migrant tribal labour is not exploited.

12.4 Role of the Governor

Clause 3 of the Fifth Schedule and Article 244 of the Constitution of India make it mandatory for the Governor of each State having Scheduled Areas to submit a report regarding the administration of such areas to the President of India annually or whenever so required by the President. The eighth report of the Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2000-2001) on the working of Integrated Tribal Development Projects in Madhya Pradesh informed that the report for the year 1992-93 was despatched by the Secretariat of the Governor of Madhya Pradesh on 9 July 1996 but it was still under examination in the Ministry of Tribal Affairs by 2000! The Joint Parliamentary Committee further stated that:

'it is more painful to note that this report highlights only the achievements of the State Government in tribal development. The in-depth analysis of the solution to the problems of Scheduled Areas are not included in the reports. The Committee desire that the Union Government who has the power to give directions to the states in regard to the administration of Scheduled Areas, should ensure that the Governors Reports by the States are submitted to the President of India within the stipulated time. They also desire that analytical solutions to the problems of the Scheduled Areas should also form a part of the Report so as to make Governors Report a useful document.'

How does the draft policy propose to strengthen the quality and timeliness of such reports? The draft envisages the following steps:

'The regulation making powers of State Governors to maintain good governance, peace and harmony in tribal areas will be further strengthened (*in what manner, and how effective it would be, is not known*). It will be ensured that Tribal Advisory Councils meet regularly and focus on speedy developmental works and prohibition of land transfers. Money lending menace shall be curbed through implementation of money lending laws.

Tribal Advisory Councils will be established in States which have Scheduled Areas and even in States where a substantial number of tribal people live although Scheduled Areas have not been declared.'

Again well meaning pious statements, and collection of already existing ineffective policies, with no implementable thrust.

The track record of the Tribal Advisory Councils (TACs) across India has been dismal. The TACs are seldom constituted by the State governments. When they are constituted, they seldom meet, as their meeting depends on the wishes of the concerned bureaucrats in the Departments.

The Tribal Advisory Council of Rajasthan met only once in a year during 1996, 1997, 1998 and 2000. According to the Rajasthan government "more meetings of TAC could not be organised due to preoccupation of the Chairman and Members". The Madhya Pradesh government gave the ridiculous reasoning to the Joint Parliamentary Committee that the TAC meetings could not be held on regular intervals as "issues for Tribal Advisory Council were limited".

On 4 June 1998, the then Dravida Munnetra Kazhagam (DMK) government announced the revival of the Tribal Advisory Council after a gap of 18 years! It also met three times in three years but no information is available about the outcome of these meetings. After the term of the Tamil Nadu Tribal Advisory Council expired in 2001, the present AIADMK government made no appointment.

The failure of the Governors to submit reports about the actual situation of indigenous and tribal peoples and non-functioning of the TAC meant that the Fifth Schedule commitments remained in paper only.

12.5 Grants-in-Aid

The grants-in-aid under Article 275(1) of the constitution of India and specific schemes such as Tribal Sub-Plan launched in 1974 have been the key instruments of the government of India to translate the constitutional guarantees into a reality. In 1997, the Programme Evaluation Organisation of the Planning Commission of India undertook a study on grants-in-aid under Article 275(1) from 1992-93 to 1995-96 and found that the flow of funds from the State to the project authorities were not as per guidelines. Most of the States had used the funds for infrastructure facilities like irrigation, roads, bridges, school buildings and the like while the funds were to be utilised in resettlement of tribals practising shifting cultivation, development of forest villages and medical assistance to the tribals suffering from specific diseases etc.

The Planning Commission in its Report No. 3 of 1999, among others, stated that (1) the 20 State Governments and Union Territories Administrations reported utilisation

of only Rs. 1546 crore out of Rs. 1809 crore released by the Ministry during 1992-1998 under the tribal sub plan and a large part was either retained in various deposit accounts or was spent for purposes other than the intended purpose of providing additive to States Tribal Sub-Plan; (2) the physical performances reported by State Governments were inconsistent with the expenditure; (3) Many State Governments did not contribute their share of funds under the Tribal Sub-Plan and instead used the funds received from the Union Government towards SCA isolation; (4) the Tribal Affairs Ministry and the State Governments did not carry out evaluation to ascertain the extent to which the objectives of economic upliftment of the Scheduled Tribes for crossing the poverty line and protection against their exploitation were achieved; and (5) the funds were misused for assistance to ineligible persons, purchase of vehicles and consumable durables, discretionary medical assistance, purchasing teaching aids for school, meeting administrative expenditure, helicopter hire charges, construction of building and houses, reimbursement of loss.

There is nothing in the draft that would give confidence that the grant-in-aid funds would be better utilised in future.

We should ensure that the Maharasthra plan is implemented by all the State Governments and make it a necessary condition for release of funds under 10th Five Year Plan. The Maharashtra Plan is well known where the TSP fund is placed at the disposal of the Tribal Welfare Department and this Department in turn decides the quantum of funds that should flow to the various sectors and allocate funds accordingly to various line Departments. This is then monitored by the Department of Tribal Welfare of the State Government. This enables the State Government to have complete idea about the various infrastructure and other development schemes that are necessary for the development of STs in scheduled areas and also help in convergence of programmes.

The present approach of SCA to TSP where 70% of the funds are to be spent on individual family oriented income generating schemes is overlapping with IRDP programmes, now renamed as SGSY programmes. In the absence of any mechanism to prevent overlapping, we should implement family oriented income generating schemes only through IRDP schemes. One should use the SCA to TSP for infrastructure development, strengthening administration and monitoring, and matters incidental thereto. If necessary, an amount of about 20% of the funds could be kept for Family Oriented Schemes to meet certain exigencies where it is considered essential.

12.6 NGO funding by the Ministry

It is pertinent to mention that a large number of schemes of the Ministry are being implemented by NGOs pertaining to education, health, income generating programmes, and vocational training. Hence it is important to ensure that only organisations with credibility and commitment are selected. There has been a mushroom growth of fake NGOs, who are able to corner funds from the Ministry and state governments through the back door. This must be checked through transparency, better monitoring, and grading of NGOs. Since this is an important subject, we discuss it in some detail. The best option of course is to transfer this responsibility

outside the Ministry so that the Ministry officials can concentrate on more pressing issues. If it cannot be done at one go, let a separate autonomous body be set up, and gradually the task be transferred to that body.

Government's efforts to nurture and bring into its fold good NGOs have been constrained partly due to the ineffectiveness of the eligibility criteria to debar a number of so called NGOs, whose activities are more akin to fly-by-night operators, from getting assistance from Government. For getting grants from government the proposal must look good on paper, and anyone who can produce such papers cannot be denied grants, as government cannot work on subjective satisfaction of the Joint Secretary! Government procedures are such that it is generally the corrupt and mediocre NGO who can wade his way through the maze of procedures and grab government largesse. Government's intention of weeding out fake organisations and thus setting up a stricter procedure for screening acts like a self-fulfilling prophecy, as procedures deter self-respecting NGOs and reward manipulative ones. Weak monitoring mechanisms in government has prompted social climbers and manipulators (that includes defeated politicians and civil servants' wives) who use their extra-professional 'resources' to obtain grants from several Ministries/Departments of Government and spend it fast, with no commitment to sustainable development or poverty alleviation. Often the Ministry officials are pressurised by the politicians to give grants to fake and manipulative NGOs. The Ministry officials thus end up spending most of their time either resisting vested interests, or succumbing to such pressures, or sometimes even sharing the loot! A very large number of organizations funded by the Ministry of Tribal Affairs are such who are basically promoting themselves rather than helping the adivasis.

Another reason for proliferation of bogus organisations[6] is the government's emphasis on fulfilment of targets and fund utilisation, which shifts the focus from the important task of supporting exclusively good and grassroots NGOs to funding as many projects and NGOs as possible. Some Ministries do have a system of sending NGO applications for pre-funding appraisal to monitors, but they are low paid consultants (often appointed on patronage considerations) whose intentions are not always honourable. Even non-existent NGOs could thus get funding from Government, if it could manipulate a favourable report from the monitor. When Ministers find NGOs pocketing government funds they do not plug the loopholes but encourage their own supporters to join the loot[7]. Bureaucratic reaction is to prescribe more formats and tighter procedure which deters good NGOs but crooks can always find their way through by bribing at all levels, and thus a vicious cycle is established.

Moreover, even where the NGOs were genuine, Government is not able to effectively monitor the large number of sanctioned projects, draw appropriate lessons regarding technology, reasons for success or otherwise and thus be able to guide the other

[6] It is interesting that there are a large number of studies on good NGOs, but not a single one on fake NGOs.

[7] A few years back CAPART had leaders with good reputation from the voluntary sector as chairpersons of the grant sanctioning committees. Today they are all political appointees who owe their position to proximity to the ruling political parties rather than to any credible reputation within the voluntary sector.

NGOs wanting to intervene in that sector. The blind emphasis on fund utilisation played havoc with the quality of projects.

A third factor for the reluctance of good NGOs in applying for Government's support is the availability of Government's assistance to strait jacketed Government schemes only and keeping innovative proposals (i.e. those which do not fall within the framework of strait jacketed Government's schemes) outside consideration. Fourthly, Government has not played a pro-active role in establishing partnership with committed NGOs and has generally confined its attention to only those who apply for funds to its office. It has on its own not requested good NGOs to come to its fold and begin a relationship. Finally Government subjects all proposals including those from good NGOs to a uniform appraisal procedure inhibiting sensitive or well-established NGOs or those engaged in social activism from approaching Government.

Unlike Government which seeks satisfaction on paper before sanctioning grants, the donor agencies (such as Ford or Norad) follow an entirely different approach. There are a series of meetings held with the prospective recipients. The Program Officers or well paid consultants (whose integrity cannot be questioned) visit the NGO and see for themselves the past work done by the voluntary organisation. This procedure of aiming at subjective satisfaction of the Program Officer may increase overheads but it screens out the bogus societies, and reduces the scope of fraudulent practices. Since the number of grants that the donors make is limited (Ford makes less than 100 grants a year as against some 500 by CAPART with one-third of the total budget of Ford), it is possible to ensure quality and reduce the risk of grant going to a bogus organisation.

It must be recognized that improvement in governance would take place only when countervailing forces in society develop confidence and autonomy to oppose inefficiency and corruption in government. Therefore in addition to promoting genuine organizations, the Home Ministry should relax FCRA provisions so that NGOs have access to independent funding.

According to a large number of NGOs the FCRA is a major impediment for the voluntary sector. Getting registration is difficult and as a result a lot of very deserving and small NGOs are not able to access foreign funds. The premium on getting FCRAs is such that it has led to corrupt practices. It has also resulted in NGOs obliging NGOs who do not have FCRA number, although it is not permitted under law. This would not be a problem if quality funding from Indian sources were available to the sector for long term institution building work and strengthening of civil society at the grass root level. For the private commercial sector there is a friendly and liberalised regime while for the important issues of development connected with the poor and deprived sections of society there are restrictions that are inconsistent with the spirit of democracy and pluralism.

Given the relatively low levels of human capital in certain states in India, NGO’s and other groups will also have to play a leading role in mobilizing pressure to empower citizens in a fashion similar to the work of MKSS in Rajasthan or Parivarthan in Delhi (on the subject of public distribution of foodgrains) to improve access to information and combat corruption at the local level. Without citizen participation and

involvement, there is always the risk that even the most carefully crafted reforms might eventually run out of steam and stall altogether. However, the experience of CAPART and the Ministries of Social Justice & Empowerment and Tribal Affairs shows that government looks upon giving of grants to NGOs as a source of patronage at its best, and a source of commissions at its worst. Government has thus corrupted the NGO sector or encouraged crooks to float NGOs, and thus given the entire sector a bad name.

Since it is not possible to change the work culture of the Ministries and Departments dealing with the NGOs, I suggest that GoI through the Planning Commission (which is the nodal agency for dealing with NGOs) make a direct contribution of, say, 100 crores to the recognised trusts, such as NFI, Ratan Tata Trust, Development Alternatives, Oxfam, Actionaid, who should be dealing with grassroots NGOs, without the direct intervention of government officials in sanction of grants. The Trust could have government officials on its Board to safeguard the interest of the public money.

13 Summing up

Finally, the draft policy should have given a new direction to the functioning of the Ministry of Tribal Affairs. It is unfortunate that the Ministry (or even the Ministry of SJAE before 1999) does not give sufficient attention to the important problems of the tribals on the plea that many of these subjects, such as land and forests, have not been allotted to it. Even then the Ministry should play a more activist role in addressing these issues by pursuing with the concerned Ministries, where these subjects get a low importance, as the Ministries' excuse is that they are concerned with 'bigger' and more 'general' issues. At least, the new Ministry can set up a monitoring mechanism to bring out the dismal picture of tribal areas that would put pressure on the sectoral Ministries to improve their policies and implementation. Government could also set up a Group of Ministers to review the implementation of suggestions given in this note.

When a new Ministry is set up to help the marginalized people, it is expected that it would take a holistic view of their problems, and coordinate the activities of all other Ministries that deal with the subjects impinging on the work of the newly created Ministry. It would develop systems that inform GoI how and why tribals are denied justice. On the other hand, it has been observed that the new Ministry takes a minimalist view of its responsibility, and reduces itself to dealing with only such schemes (such as distribution of scholarships and grants to NGOs) that are totally outside the purview of the existing Ministries. Such ostrich like attitude defeats the purpose for which the Ministry is created.

It is rather sad that the Ministry of Tribal Affairs is more concerned with spending its budget (and with controlling institutions such as Trifed that create opportunities for distribution of patronage), and less with the impact of overall policies on tribals. It is surrounded by manipulative NGOs who hog the entire attention and time of the senior officers, leaving little time with them for the real pressing problems of the adivasis. This attitude results in continuing neglect of tribal issues. It also under-plays the role of non-monetary policies (such as displacement) and the impact they have on the lives

of the people. As has been shown in many sections of this paper, certain government policies harm the tribals much more than any benefit that accrues to them through money-oriented schemes of the Ministry of Tribal Affairs.

Even the Planning Commission does not monitor regularly the impact of existing policies on the tribal population and pull up the concerned sectoral Ministries. There seems to be an obsession in Government of India with financial budget and not with the impact that policies (or the lack of it) have on the marginalised peoples. Policies and budgetary provisions, despite the rhetoric, have not been integrated so far. Changes in policy or laws, are not seen as an integral part of the development process because these have no direct financial implications. One lesser known reason for this isolation is that development and planning in India are associated with spending of money. That Planning *means* Expenditure, *and that will lead to* Development is the mindset behind such beliefs. The Indian planner unfortunately has still to understand the difference between planning and budgeting.

The formulation of a national policy is justified in the draft to help 'translate the constitutional provisions into a reality'. However this lofty objective can be achieved only when certain hard measures are adopted coupled with intensive monitoring. It is hoped that the Ministry would consider our suggestions that are aimed at strengthening the rights-based approach to tribal development.

Annexure 1:

Recent Cases of Brutal Tribal Evictions from Forest Land

- The homes of 15 adivasis families of Kundal village in Bali Tehsil of Pali District in Rajasthan were razed to the ground on 16/08/2004 by the Forest Department with the protection of 100 policemen and 7 Mahila Police led by the ACF and SDO. The land with standing crop of maize was destroyed with tractor and local cattle herders were asked to put their crops into the land to remove even the stubs. This action by the Forest Department was undertaken inspite of an appeal concerning the same lands in the Revenue Appelate Authority under 34A of Wild Life Protection Act. The adivasis were cultivating the land prior to 1980 and were entitled for regularization but no Verification process had been carried out.
- 10 tribal children, aged 2 to 5, have died of `malnutrition' Dongiriguda, a forest village of Nawrangpur district, in Orissa in June and July 2004. The village is required by the 1990 guidelines to be converted into a Revenue village. But the forest department, having failed in their legal duty, is unwilling to permit even the district collector to install a tube well for drinking water on the grounds that the FCA doest not permit it. 19 children died after being afflicted by a mysterious disease in Baramba block of Cuttack district between April and June
- In Sonebhadra District of UP, tribal families are resisting eviction from 1,213 acres of land, which has been in their possession for over 7 decades. The problem dates back to the pre-independence era when Sonebhadra was an area which was unsurveyed. Hence though the legal status of the land was shown as revenue land and the tribals' are recorded as owners, but the orders in the Godavarma Case have resulted in the forest department claiming the land as forest land.
- The standing crops on forest land of 6 adivasis of Babkhal and 1 from Motidabhas village of Dang Dist. Of Gujarat were totally destroyed by the forest department at 10 p.m. on 23rd and 25th of September 2004. Standing crop of paddy, Nagli, Tuvar dal and chillies worth Rs 2,20,000/- was fully destroyed.
- The homes of 73 tribal families of Bhandarpaani in Betul District (Madhya Pradesh) were set on fire by the Forest Department on the night of 4 July 2004. People have been kept in different places and families separated – relatives and even members of the same families are unaware of each other's whereabouts. Their only fault was that their village has been situated on forest land for generations. Eight children are suffering from severe pneumonia and malnutrition; one of them Kishan), aged 18 months, died on 22 July. Thirty-five persons of the tribe were illegally confined in Ranipur Forest Range Office; 15 were produced in the High Court at Jabalpur on 26 July in a Habeas Corpus petition. Bakhat Singh, after being released in the Court, was taken away by the Forest Department and has been missing since then.
- In the districts of Burhanpur, Damoh and especially in Betul the forest, police and revenue officials enter in one or other tribal villages every other day in the dark cover of night. They beat tribal women, misbehave with them and often put them in overnight illegal confinement without the knowledge of their husbands. 2 tribal women of Danwakheda village are languishing in jail in an offence related to forestland that is bailable from the forest range office. The tribals of Ghorpadmal

were attacked by a team of 50 police, forest & revenue personnel team at night and the women assaulted on their private parts with rifle butts. When they resisted, they were booked under charges of dacoity.

- On 29th June 2004, three Adivasi youths, of Mendhakhapuri village of Khakanar Tahsil of Burahanpur in MP, were severely injured in a forest department firing during an eviction drive. Tribals of more than 35 villages have their houses burnt, livestocks, crops destroyed and they are not allowed to cultivate their land. Local police stations have not registered any complaints. Most of the casualties have been in the villages of Chimnapur, Davali, Jhanjar, Bomiliaput, Jamunala and Hasan pura in Nepanagar Tahsil where Adivasi houses were burnt as part of the eviction drive. The monsoon rains worsened conditions of the Adivasis who along with their children have been rendered shelterless.
- On 1st July 2004, in Bomiliaput village of Nepanagar Tehsil in MP , 50 houses were burnt, utensils, beds, and household items taken away. Crops like soyabean, paddy, maize, jowari, wheat and cotton seeds were burnt. 50 houses were burnt in Hasanpura. In February 2004, 117 houses were burnt in Jhanjar. On 8th July 2004, in Jhanjar, 5 houses were burnt. On the same day, in yet another hamlet of Jhanjar, 22 houses were burnt. In June 2004, in Davali village, 50 houses were burnt. Mr. Ter Singh Patel, the village headman, aged 65, was severely beaten. His wife too was injured. Police refused to accept the FIR. In June 2000, in Haldiakheda village, all 50 houses and animals were burnt. The incident was repeated again in February 2004 wherein all house were burnt In Nov 2003, in Chidiapani village, 40 houses were burnt.
- While incidents of burning have not occurred in Khakanar Tehsil of MP, threats and manhandling are common. On 29th June 2004, in Amgaon village, Sukma Bai, aged 25, was beaten by forest officials while she was collecting firewood. Her mother in law, Gendi Bai, aged 55, was also severely beaten up.
- In Hingua village of Sendhwa Tehsil in MP 5 children have died of starvation. There are 40 more children in this village who are severely malnourished and in grave danger. 184 other children are in the IIIrd stage of malnutrition here. 24 surrounding villages are also facing similar grave and critical conditions of malnutrition. In Chatterpur Dist. Of MP 8 children died due to malnourishment in August and September. In Bhainsatola village of Damoh district, 7 tribal children died due to malnutrition, within a span of two months. 3 children of Saidabad village of Khalwa block of Khandwa district died due to malnutrition in March 2004. Five months later, on 11th of September 5 more children lost their lives in village Mohalkheri village of the same block. In Shivpuri district, the Saharia tribals are severely malnourished, 50 children have died from malnutrition in March-May 2004. In the tribal dominated areas of Pahardgarh block of Morena Dt. 5 children lost their lives due to malnutrition in June-August in the villages of Maanpur, Mara, Jaderu, Dhaundha,Khora and Kusmani. The loss of food sources from the forest is the main cause for the growing malnutrition and deaths of tribal children in MP.