STATEMENT DELIVERED BY REPRESENTATIVE OF THE JHARKHANDIS ORGANIZATION FOR HUMAN RIGHTS (JOHAR)

At the seventeenth session of the WGIP, 26th to 30th July, 1999

From decades, right up to the present year, the Jharkhand region has witnessed demonstrations by the indigenous peoples or Adavasis against innumerable projects both small and big. This opposition has been so, because like projects in many parts of the world, the Adavasis face the forced acquisition of their lands under the power of eminent domain and implemented via the notorious Land Acquisition Act, 1894, the Coal Bearing Act and other legislation. Some of the projects that have witnessed opposition and/or still continue to do so are the Koel Karo Project, Tudarma Dam Project, Netarhat Field Firing Range Project, Surangi Jalashay Project and the mining at the Jadugura Uranium mines.

Just like other indigenous peoples, for the Adivasis their lands territories have important material, cultural and spiritual significance, hence they are not willing to part with their lands.

Their opposition to land acquisition or displacement has resulted in interesting slogans like: "Jan Denge, Jamin Nahi Denge" - we will give our lives but not our lands; "Jan Nahi Denge, Jamin Bhi Nahi Denge" - we will not give our lives, neither our lands; "Dam da Kabua, Sirma da Abua" - we do not want water from the dam, but from heaven; "Bijhli Bati Kabua, Dibri Bati Abua" - We do not want electrical light, our lanterns will do. etc... Slogans or protests are acquiring an art form it seems.

Meanwhile, though The Provisions of the Panchayats (Extension to the Schedule Areas) Act 1996 was passed a few years back, and it even has a clause that says "(1) The Gram Sabha or the Panchayats at the appointment level shall be consulted before making the acquisition of land in the schedule areas for development Projects and before resettling or rehabilitating persons affected by such projects in the schedule areas...." no consultation is taking place under this clause currently or even retrospectively. We would say that the peoples however by their written and oral demonstration have amply communicated their intentions.

Another important development is the increasing opposition by Adivasi Women organizations to projects. The Adivasi Mahila Manch (AMM) which has currently about 15 organizations under its umbrella, in response to land issues and laws has asserted the following principles:

"1) Change must never be imposed on the Adivasis,
2) Imposed change, would be an act of violence on the Adivasis and hence must be avoided,
3) Changed must be by consensual or democratic will of the Adivasi peoples concerned themselves....

... More over, indigenous peoples or Adivasi reserve the right to reject any proposed change, policy or law."
It is hoped that the Government of India, both through its central and State offices will heed the loud voices of protests of the Adivasi peoples, and the principles that have been proposed by the Adivasi women of Jharkhand.

JOHAR! JAI JHARKHAND!

R. Bhengra

A perusal of both the proposed Land Acquisition (Amendment) Bill, 1998, hereafter referred to as the Bill and the National Policy, Packages and Guidelines for Resettlement and Rehabilitation hereafter referred to as the Policy demonstrates a marked increase in paternalistic protection and safeguards for the Adivasis or indigenous peoples of India, but not the recognition of their incontrovertible and inalienable rights which they own and possess by the fact of their being distinct and collective self-determining subjects in their own right. The Bill alludes to the question of consultation with reference to the Fifth Schedule Areas, and, the Policy apart from some scattered reference to “tribals” in it, also has a whole section devoted to “tribals” in it. At first glance or by some standards at may appear to be doing or giving a lot or a reasonable increase in the doing or giving, but that is precisely what the is the problem. It is high time that the Government conceded that the Adivasis or indigenous people are primarily seeking the recognition of their rights by which they will do or give to themselves, rather than receive what is considered a largesse out of government funds, when in many instances the government itself receives much more from the lands and territories of the Adivasis, for instance, the Jharkhand. The question of protection arises because the State itself has been a major party to the incapacitation and destruction of their socio-cultural, religious, economic, and political identities. If the Government really wants to “do” justice to the Adivasis, then it must adopt a rights-based approach. It is a sad commentary on the part of Indian N.G.O.s, social movements and progressives that they have also failed to really grasp and really push for the distinct Rights-based approach to the question of the Adivasi peoples in India.

Encouragingly, the Draft National Policy for Rehabilitation of Persons Displaced as a Consequence of Acquisition of land, formulated by the Ministry of Rural Development 1993 contains this paragraph: “the development in the field of Human Rights in international law, particularly the universal declaration of Human Rights, the two Declarations [Covenants] on Political and civil Rights, on social and Economic [and cultural?] Rights and the recent Draft on the Right to Development also cannot be ignored. The International Labour Organisation revised convention No 107 is of equal relevance particularly in the context of tribals. In addition, many conventions, protocols and regional charters provide for specific human rights.”

What is more encouraging is that this paragraph was inserted word for word in the draft National Policy for Development Induced Displacement and Rehabilitation of Persons Displaced as a consequence of Acquisition of Land, 1995 as prepared by the National Campaign for Peoples Resources. We welcome the citation of the revised convention 107 or I.L.O. Convention 169 in the context of tribals by the Ministry of Rural Development, and also by the very nationwide endorsement of it. We urge all N.G.O.s, social and political movements and other progressive forces to also campaign for the signing and ratification by the Government of India of I.L.O. Convention 169, since the government was party to the signing and ratification of I.L.O. Convention 107.

Both the drafts did not refer to the Draft Declaration on the Rights of Indigenous Peoples (DDRIP). The omission of a positive reference on the part of the peoples draft to the D.D.R.I.P. is significant. It is to be noted that the Draft Declaration on the Rights of Indigenous Peoples, as adopted by working Group on Indigenous Populations, United Nations, 1993 has come to signify the minimum standards in the area of rights as pertaining to Indigenous peoples. This should be the primary basis for discussing Adivasi
issues and problems in India and any person or organisation seeking to further Adivasi rights should draw inspiration from it. As a preliminary step for furthering the cause of Adivasis or the tribals in India, a campaign for the signing and ratification of ILO Convention 169 would be essential.

The National Policy, Packages and Guidelines for Resettlement and Rehabilitation, 1998, in its preamble has a very telling paragraph, telling because it amply demonstrates the top-down approach, most probable pride, prejudices and position, if not willful hidden motivation, or at the least gross and profound unconcern and or ignorance.

Para 1.4 of the policy says: "Today, project affected people are no longer in a mood to suffer passively. Consequently there has been growing protests and militancy leading to tensions, conflicts and violence. Unsatisfactory arrangements for the rehabilitation and resettlement create opposition to acquisition of land, and ultimately the cost involved in delayed acquisition of land is much more than the cost that would be incurred in case of a satisfactory rehabilitation and resettlement."

The above quote or para assumes that people are not willing to be displaced because of "unsatisfactory arrangements for the rehabilitation and resettlement ..." For the Adivasis, this is not so. If one looks at the well known anti displacement movements in Jharkhand, from the decades long Koel-Karo andolan to the recent Netarhat Firing Range, Tucharma and Surangi Dam cases, the opposition to the displacement by land acquisition has been for their collective survival as peoples with distinct cultures. Their identities in all their many manifestations are tied to their ancestral lands and territories and hence they have dissented to the displacement. They have not sought just and fair compensations. The idea itself from their point of view is ridiculous. Can one compensate them for the lose of their culture or for the extinction of their religion. And neither in the framework of the indigenous beliefs and practices can they be resettled or rehabilitated.

In this regard one needs to note the war like situation caused by the proponents of the Ram Mandir. In the case of the Adivasis we do not intend to seek parallels, except for the fact that do not our sentiments also matter, and are we not entitled to 'secular' constitutional protection in the framework and logic of our spiritualities. We also do not intend to seek parallels with the dominant religions of the country or world because our spiritualities need to be understood in their own distinct logic and understanding.

Another important dimension to be constantly kept in mind, when confronted with the question of Adivasi or indigenous lands, is the notion of collectivity. The indigenous or Adivasi peoples have always and from time immemorial had an interesting and healthy collective identity and one that has also imbued their land, social, political, material and spiritual relationships with oneself and the others.

Land was not individual property and it was with the fatal intrusion of British law that individualistic tendencies on land was introduced, striking very much at the notion of indigenous territory and ancestral domains. Nevertheless, collective characteristics or quality was so strong that inspite of such interventions by the British and later on sustained by the Indian government, the collective identity of the Adivasi peoples, and there collective land, social, political, material and spiritual relationship still remains. In the area of culture and spirituality this is particularly strong, vibrant and unique. It would be wrong for instance to say in the context of Jharkhandi Adivasis, that religion is a private matter between one's God and oneself. The Mundas for instance have communal graves in all villages and ancestor worship prevails there. This worship is done both individually and also collectively. By nature, one village can only conduct or do this at their ancestral village. No collective ancestor worship would be possible if such
worship places were acquired. It would also be an intrusion in their religion and spirituality and constitutional disrespect to their worship. Similarly Adivasi villages in Jharkhand are dotted with Sams or sacred groves, which again have ancestral religious significance. The Adivasi religions have to be viewed from their viewpoints and not from the viewpoints of other religions or from materialistic perspectives.

In this regard, it is encouraging that the policy states in section 3 or in para 3.1.1:—

"This policy prescribes not the maximum, but instead the statutory minimum that must be assured by the requiring authorities. It is made clear that the policy represents the floor, over which the PAPS are free to negotiate. The project authorities shall be encouraged to provide such additional packages or benefits as may be required to satisfy the displaced persons in the interests of quick completion of the development project." According to this para, improvements or some variations are possible.

Further in section 3 of the policy or the Directive Principles to Govern the Rehabilitation and Resettlement Policy Framework, Packages, Planning and Delivery Mechanism, in para 3.1.3, it says:—"Each large development project must be first subjected to a holistic appraisal as to the desirability and justifiability of the project." If such a holistic appraisal is made mandatory for seeking desirability and justifiability, then amongst other factors, at least the social, spiritual, cultural and environmental impact on Adivasi communities should be first assessed. This would leave possible the avenue for improvements or variations in the case of Adivasis. This assessment in the case of Adivasis or their areas must also be done in the section 3-A or the Preliminary Survey stage of the current Land Acquisition Act. This "holistic appraisal" must not be restricted to Scheduled Areas, but wherever Adivasis or their villages are found.

At first instance, a desire for "holistic appraisal" and the cultural and religious constraints that may arise might seem vague or stepping on uncertain territory, however, the Assam Land (Requisition and Acquisition) Act, 1964 in section 3, Power to acquisition, has a proviso that states "Provided that no land used for purpose of religious worship shall be requisitioned under this section ....".

The Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, in section 3, Power to requisition immovable property, in its proviso states "Provided that no property or part thereof—

(a) which is bona fide used by the owner thereof as residence of himself or his family, or (b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage, shall be requisitioned .......

"and also the Nagaland Land (Requisition and Acquisition) Act, 1965, in section 3, Power to requisition, in its proviso states, "Provided that no land used for the purpose of religious worship shall be requisitioned under this section..."

Even in the Chotanagpur Tenancy Act, 1908, in its section 50 (7), provides that no religious place can be authorised for acquisition by the Deputy Commissioner amongst which sacred grove and burial ground are specifically mentioned. We need not mention that such a provision was a result of the many and long and sustained struggles of the Jharkhandi Adivasis in defence of their lands and territories. The British had to recognize this. Unfortunately, it needs to be pointed out that independent India had not thought it fit to honour the memory of the numerous Adivasi Martyrs who laid down their lives in defence of their lands and territories.
Perhaps the legislations of Punjab, Assam, and Nagaland are different because they demonstrate concerns of relatively non-dominant religions or the concerns of states that are familiar with non-dominant and differing beliefs and precepts.

Court or judicial statements to the contrary notwithstanding, given the religio-cultural sensitivity as indicated in the legislations of Punjab, Nagaland, and Assam, the Constitutional and Fundamental Rights Safeguards for Adivasis or Indigenous peoples, the Supreme Court judgement in Samata v. Andhra Pradesh, the increasing recognition of the collective distinctiveness of the tribal or indigenous peoples in international law and the protection thereof and the uniqueness also of the special spiritual relationship of the Adivasis to their lands and territories, the Land acquisition Act and the Rehabilitation and Resettlement Policy must advocate the avoidance of requisitioning Adivasi lands or territories or any parts thereof.

Another argument is the one regarding the consent of the peoples. This is an argument of the will of the people over the will of the government. Do people have local sovereignty over local resources. Is the government sovereign or are the people sovereign. Since the government represents the people, naturally and of course the people are sovereign. The question becomes problematic when in a state, differing voices or interests, claim to seek what they perceive is to be their due or due rights.

In a culturally diverse country like India, the way to a just society can only be furthered if the attitude of cultural pluralism is more and more advocated and advanced. For too long has the Indian State tried to be a homogenising agent, and in the process it has caused great harm to peoples whose cultures and way of life and self-government it has trodden upon. This suppression and oppression has been particularly brutal in the case of the Adivasi Peoples. For the sake of the gains of the dominant Nationalities / interests in the Indian state the cultures, wealth, resources, lands and way of life of the Adivasi peoples were sought to be obliterated or drowned. Their voices did not matter. The economic and political choices of the indigenous peoples have not mattered, only the economic and political viability of the dominant groups mattered, and never mind if in the process the rich cultures or identities of the Adivasi Peoples were marginalised or obliterated. They had no say, and that is why now if the state is to really genuinely compensate the Adivasis, it can begin by recognising that they have a recognised legal right to dissent to projects or intentions of the state or government, which they may consider detrimental to their identities and well being.

Here too it is not a matter of individual consent or dissent. The popular notion that religion is a matter between him/her and a God, does not apply to Adivasis. The sacred ancestral sites cannot be signed away by a single person because it belongs to all. Similarly, the sacred Sarnas cannot be signed away because it belongs to all. Hence the consent of all must be required, and the consent must be free and informed consent. Laying too much stress on consent may appear too far-fetched to some, but given the fact that Adivasis were not even counted by the law makers, rulers and administrators, recognising their right to and of consent as peoples is of crucial importance for their survival as peoples with distinct identities. Recognising this right will be the only way of compensating the Adivasi peoples in principle of the more than fifty years when their cultures and identities have been marginalised, suppressed and destroyed.

The Chotanagpur Adivasi Seva Samiti (C A S S) in a response to the Coal Indian Rehabilitation Policy states “The C. I. R. P. is unrealistic in its hopes of rehabilitating tribals to maintain their unique, cultural heritage. Those who are familiar with tribal life, be they tribal themselves, academics who know them well, others, who
work closely with them, all are unanimous that mining involves the removal of cultural/religious sites, the scattering of kinship groups, the disruption of informal social and economic networks, the destruction of cultural identity. The larger part of C I L mining is in tribal areas, therefore, the terms of Rehabilitation presented by the C I R P statement are basically an admission that in the name of coal mining, this tribal culture and society can not but be destroyed. “If such is the scenario, the right of consent or dissent of the Adivasi Peoples must be conceded, and moreover the onus is on the government or state to see how best, ways to save, protect and maintain Adivasi cultures and institutions can be established.

We, however, with some concerns welcome that in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996, it is directed that “......a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management systems of community resources,” and that “every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolutions.” Though this 1996 Act itself is for the Scheduled Areas, where the subject matter is meant to be the “welfare and advancement of the Scheduled Tribes” as per the constitution, the language of the Act is far too general and not Adivasi or Scheduled Tribes specific.

This Act also has a provision which says “(1) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the scheduled areas for development project and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas,...” Then in the proposed amendment to the Land Acquisition Act there is a proposal to the effect that “No Collector shall, acquire any land under L.A. Act. 1894 or any other Act for the time being in force, in the Scheduled Area specified by the Fifth Schedule of the Constitution without prior consultation with the Gram Sabha or the Panchayats at the appropriate level.”

Such provisions or proposed amendments would to some extent, only benefit people in the Scheduled Areas. If one has to address the issue of tribals or adivasi then one has to also adopt the community approach. Are the Scheduled tribes in the Scheduled Areas to be accorded higher safeguards and protections. Are not scheduled tribes in non-scheduled Areas under more domination and duress and hence in need of equal if not greater safeguards than those accorded in the Scheduled Areas. Are there to be no consultations with Scheduled Tribes from non-Scheduled Areas. The area and scope of consultations must be increased to include Scheduled Tribes or Adivasis even in non-Scheduled Areas.

Preferably, the Adivasis would like that their free and informed consent as peoples be required. The Adivasi Mahila Manch (A M M) of Jharkhand have enunciated certain principles that should be considered, in recognition of indigenous rights. As stated by them they are as follows:

(i) change must never be imposed on the Adivasis.
(ii) Imposed change would be an act of violence on the Adivasis and hence must be avoided.
(iii) Change must be by the consensual or democratic will of the Adivasi people concerned themselves.

And finally, any change or development must take into account the minimum standards as evolved and adopted by the United Nations Working Group on Indigenous Populations (UNWGIP).

More-over, Indigenous Peoples or Adivasis reserve the right to reject any proposed change, policy, law or imposition.
Another argument that needs to be raised is one of company versus culture. A glance at the L.A. Act shows that a reasonable emphasis has been placed on companies. At this stage we would only like to state that more importance has been given to the role of companies than to cultures. Well, at least compared to some cultures in practice. It is tragic that cultures which take many decades, if not hundreds and thousands of years to develop can be assaulted so callously and a higher importance is placed on companies and other development work as if cultures were not a product of human endeavour and for enrichment and sustenance. Companies are born every now and then, in their hundreds and thousands, cultures not so, they do not spring up over-night, the indigenous cultures which are the first cultures of the land like others if not all ancient cultures develop over a very long period of time and it is criminal that such scarce regard or respect is had for them. It would not be out of order to say that the treatment that has been given to indigenous cultures just not in India, but in fact all over the world has been racist. At this stage we have merely raised the issue of cultures versus company or cultures versus 'development' but it is felt by us and many indigenous persons and organisations that this issue needs to be addressed and that rights that accrue to indigenous / Adivasi cultures be recognised. And the L.A. Act or the proposed amendments / the proposed Resettlement and Rehabilitation Policy also also need to reflect on this.