

**INDIGENOUS PEOPLES' COLLECTIVE RIGHTS TO LAND, TERRITORIES**  
**AND RESOURCES**                      **Date: 18-04-2018**

**Madam Chair,  
UNPFII**

NICHOLAS BARLA

I am Mr. Amarsingh Chaudhari, age 78 from Gujarat India; belong to Bhil Indigenous Community (Scheduled Tribe). I have represented Parliament of India during 1971-1976 and then onwards engaged in organizing the Indigenous Communities in India. Recently we have able to bring all the Indigenous Communities under “ **Adivasi Ekta Parishad**” and “ **Tribal Coordination Front, India**” in the National level in the Country. We are called Scheduled Tribes (STs)/ Tribals or the Adivasis, who are the Original inhabitants of India. (The Supreme court **Criminal Appeal No. 11 / 2011, Crl No. 10367 of 2011** affirms that the Scheduled Tribes are the original inhabitants of India rest 92% of the populations are broadly Immigrants (20). We have a communal practice of land rights in our territories.

I have experienced that Our Tribal / Adivasi land system was of Communal and Collective since Time immemorial. There was no space for individual land ownership in our communities. Still in the some of the villages and communities they practice the communal practice of land ownership and use of resources in their traditional boundaries/ Territories. We had very good symbiotic relationship with Land, Forest and Nature. The “Mother Earth” in our concept took care of us and we did not destroy our ‘Mother Earth’ in return. According to our needs we used the resources. But today Situation has changed and my Indigenous Communities in India as a whole are facing disastrous situation. The impact is felt in the form of Climate change and other Natural calamities in the Global level.

In India, there is a close coincidence between the tribal habitat and the rich in hydrologic, mineral, oil, gas, forest, and other resources. In other words, generally tribals are living in the rich forests and minerals lands. As a result of this almost all major developmental projects in India are mostly located in the tribal dominated areas (CSE 2008). Generally developmental projects tend to displace a disproportionately large tribal population. Involuntary resettlement experience worldwide suggests that its impact on tribal people has been overwhelmingly disastrous. In most cases, development projects have only led to their further impoverishment (Carnea 2000 and 1996; Mathur 1999; Mathur and Marsden

1998). According to WCD (2000) "overall, 40 to 50 percent of those displaced are estimated to be tribal people, who barely account for 8.6 percent of India's total population which is over 110 millions". The alienation of land was one of the main reasons for the many tribal uprisings all over the country. Land is sacred to the tribals that is the only resource for their sustenance. About 70 percent of India's population primarily depend on land related work and agricultural production. Thus, for them, land is a means of livelihood and the basis of socio-economic and cultural relationship. Alienation from land and displacement has threatened the livelihood of millions. Tribal People are displaced without any consultation or participation in the development process. Furthermore, they are denied their rightful share in the gains of development project that displaces them. Moreover, the government's attitude to displacement has not changed substantially from the time of independence. It still does not accept rehabilitation as an integral part of any displacement plan.

While going by the historical processes which the tribal communities have experienced, it were the wrong state policies of administering us and our resources which have contributed towards our marginal status. Starting with the colonial rule, various repressive legislations such as the land Acquisition Act, 1894 and the Indian Forest Act, 1927 adversely affected the lives and livelihoods of tribal communities, and denied us our economic, social and cultural rights. The twin concepts of "*res nullis*" (that which has not been assigned by the sovereign belongs to the sovereign) and "*eminent domain*" (power to take private property for public use by a state) introduced by the colonial administration in tribal areas in order to extract valuable mineral, forest and other natural resources caused massive displacement of tribal communities from our natural habitats. After independence, the policies adopted by the Indian government was in continuity with the draconian colonial laws such as the Indian forests Act 1980 and the Mines and Minerals (Development and Regulation) Act, 1957 which further marginalized the tribal communities to the extent that some of the groups had to take the extreme step of siding with the left wing extremist groups in radically resisting the state interventions in tribal areas. Due to lack of political will from the Indian state and wrong policies implemented by the government, the tribal communities were further marginalized and pushed to bottom of all socio-economic

and human development indicators. In order to put issues in right perspective, we now briefly discuss the major problems faced by the tribal communities in contemporary period:

Since independence, starting from the Bhilai and Rourkela Steel Plant, the Hirakud dam, The Narmada Dam, the CIL coal mines, and the National Thermo Plant (NTPC), super thermal power projects, to name a few, all large scale projects are established by displacing the tribal population. India today is witnessing economic growth at a fast rate, with private sector becoming an increasingly important player in the development process. Large investments in development, especially in energy sector and infrastructure development projects are flowing in. This would entail acquisition of large tracts of land, particularly in tribal areas thereby influencing on social, cultural and economic base and livelihood of local communities. But such investments along with economic growth also carry huge social and human costs. Millions of tribal people have been displaced from their lands, their homes, their livelihoods, and their communities to make way for projects, but the precise number of tribal people who have been displaced for the sake of development projects is not known. According to a recent estimate at least 55 percent of those displaced are tribal people (government of India 2004). It is largely this group that is paying for the development of India with economic insecurity, poor wages, social disorganization and cultural shock. The number of displaced tribal people is increasing rapidly and this number will further go up before long if the economic development plan continues without respecting the local laws, Tribals and environment. The following Data show a glimpse of displacement.

## Magnitude of Displacement among Scheduled Tribes in India:

**Number of Displaced Persons (DPs)/Project Affected Peoples (PAPs) of Some States Where Studies Have Been Done\***

State/Year	1951-1995				1947-2000		1947-04	65-95	Total
Type	Andhra	Jharkhand	Kerala	Orissa	Assam	Bengal	Gujarat	Goa	
Water	1865471	232968	133846	800000	448812	1723990	2378553	18680	7602320
Industry	539877	87896	222814	158069	57732	403980	140924	3110	1614402
Mines	100541	402882	78	300000	41200	418061	4128	4740	1271630
Power	87387	NA	2556	NA	7400	146300	11344	0	254987
Defence	33512	264353	1800	NA	50420	119009	2471	1255	472820
Environmt	135754	509918	14888	107840	265409	784952	26201	300	1845262
Transport	46671	0	151623	NA	168805	1164200	1356076	20190	2907565
Refugees	NA	NA	0	NA	283500	500000	646	Nil	784146
Farms	NA	NA	6161	NA	113889	110000	7142	1745	238937
Hum Res.	NA	NA	14649	NA	90970	220000	16343	8500	350462
Health	NA	NA	NA	NA	23292	84000	NA	1850	109142
Admin	NA	NA	NA	NA	322906	150000	7441	3220	483567
Welfare	37560	0	2472	NA	25253	720000	20470	NA	805755
Tourism	0	0	343	0	0	0	26464	640	27447
Urban	103310	0	1003	NA	1241	400000	85213	1750	592517
Others	265537	50000	0	100000	18045	0	15453	840	449875
<b>Total</b>	<b>3215620</b>	<b>1548017</b>	<b>552233</b>	<b>1465909</b>	<b>1918874</b>	<b>6944492</b>	<b>4098869</b>	<b>66820</b>	<b>1981083</b>

\*Since the understanding of displacement has grown during the 15 years of the studies, Orissa has very few categories. They are more in later years. Sources: AP, Fernandes et al.

2001: 89; Assam, Fernandes & Bharali 2006: 107; Goa, Fernandes & Naik 2001: 55; Gujarat, Lobo & Kumar 2007: 99; Jharkhand, Ekka & Asif 2000: 97; Kerala, Muricken et al. 2003: 189; Orissa, Fernandes & Asif 1997: 130; Bengal, Fernandes et al. 2006: 123

### Caste-Tribe of DPs/PAPs from Some States

State	Tribals	%	Dalits	%	Others	%	NA	%	Total
Andhra	970654	30.19	628824	19.56	1467286	45.63	148856	04.63	3215620
Assam	416321	21.80	NA	NA	609015	31.90	893538	46.30	1918874
Goa	NA	NA	NA	NA	NA	NA	66820	100	66820
Gujarat	1821283	44.43	462626	11.29	1791142	43.70	23818	0.58	4098869
Jharkhand	620372	40.08	212892	13.75	676575	43.71	38178	02.47	1548017
Kerala	NA	NA	NA	NA	NA	NA	552233	100	552233
Orissa	616116	40.38	178442	11.64	671351	48.01	0	0	1465909
W. Bengal	1330663	19.16	1689607	24.33	2566223	36.95	1357999	19.55	6944492
<b>Total</b>	<b>5775409</b>	<b>29.15</b>	<b>3172391</b>	<b>16.01</b>	<b>7781592</b>	<b>39.28</b>	<b>3081442</b>	<b>15.55</b>	<b>19810834</b>

Source: Ekka & Asif 2000: 99; Fernandes et al. 2001: 89; Fernandes & Bharali 2006: 108; Fernandes & Naik 2001; Lobo & Kumar 2007: 99; Muricken et al. 2003: 189; Fernandes & Asif 1997: 87; Fernandes et al. 2006: 91.

Every year under different projects e.g Dams, highways, ports, urban improvements, mines, power plants, pipelines, River Connection, Railways , and petrochemical plants and other such industrial development projects globally displace about 10 million people. In India alone involuntary resettlement is estimated to have affected about 50 million people in the last five decades. Three-fourths of those displaced still face an uncertain future. The resettlement process has frequently been taken to be complete once compensation was paid to the affected people and they were relocated to a new resettlement site. While

development projects are intended to reduce poverty, in practice involuntary resettlement has often created new pockets of poverty and misery. Developmental projects leads to change in the land use patterns. The agricultural, forest and other common land acquired for these projects will be put into industrial and commercial use. The common property resources, such as the trees, grazing land, small streams, ponds and other water bodies will get submerged or filled up for the construction purposes. In the process, the people, particularly the tribal and other marginalised section, who were dependent on these land and resources, would get deprived of their livelihood opportunities.

Displacement is more than mere physical dislocation. It is the uprooting and dismemberment of the social, cultural, moral and economic webs of life built over generations. Impoverishment refers to our status as individuals and communities after loss of livelihood, not only to economic poverty that may be the state priority. It is traumatic and results in a spiral of impoverishment: economically, socially, culturally and politically. Tribals displaced from development projects confront a variety of impoverishment risks that include landlessness, joblessness, homelessness, marginalisation, increased morbidity, food insecurity, loss of access to common property, and social disarticulation, a dehumanization process and affecting the environment.

### **Indigenous Health in India:**

The poor health is interlinked with above mentioned reasons poverty and hunger. Due to change in environment, lack of proper government healthcare system, and propert nutritional the Indigenous peoples health is affected with many diseases. Our peoples are suffering from Nutritional anemia, contagious diseases, tuberculosis, waterborne disease, Maternal mortality, infant mortality, sickle cell anemia ....etc. are very high.

Indicator wise India child mortality is 35.8%, Infant mortality 62.1% (National Health Family Health Survey). 46.6% women have BMI (Body Mass Index) indicating high percentage of maternal anemia, 76.8% of Tribal children are anemic.

## **Education among Tribals:**

The education among Tribals is another a great concern. The quality education, lack of Hostels, Ashram schools, Stipend to the poor students..etc. are below standard . In TISS the students are on strike (one of the reputable Institution of the country ) for government's withdrawal of Tribal Students support system, wrong and step mother attitude. There are few teachers appointed in Tribal areas. High drop outs in schools and hardly they are supported for higher and professionals. We need our children to study with our socio- cultural values .

The reason why the tribal people suffer more is largely due to legal codes and governmental practices that often do not recognize our ownership of resources, especially community and individual rights to lands. The resettlement literature, however is replete with cases where ignoring the customary rights of the tribal people and treating us as illegal occupants of government land has only led to impoverishment of once settled communities, just the opposite of what development stands for. In the absence of legal title there is no basis on which to prepare a compensation package in lieu of their lands that projects take over (Morse and Berger 1992). Compensation packages have been utterly inadequate to compensate for the loss of land, livelihoods, and what is more important, the break-up of the communities and culture. The tribal people are further impoverished due to diminished access to natural resources in the areas to which they are moved, as these are not compensated.

## **Mines and Minerals (Development and Regulation) / MMDR Amendment undoes past efforts**

There are clear evidences that mining has an adverse impact on Adivasi communities. We have to suffer massive displacement, land alienation, and destruction of our natural habitat. During NDA-II passed the **Mines and Minerals (Development and Regulation) Amendment Act** without sincerely engaging with the stakeholders.

The amendment Act is crucial because it has undone the efforts of civil society engagement in formulating the original Act which in principal had made way for benefit-sharing and participation of communities in the mining process. As per the 2011 Bill, notification of public land for all types of mining concessions had to be done in consultation with the Gram Sabha or district council in the fifth and sixth schedule areas. In non-schedule areas, district panchayats were required to be consulted. This clause has been removed in the 2015 amendments. This apart, the MMDR 2015 Act has removed from the 2011 Bill the provision of compensation, rehabilitation and resettlement of persons having usufruct and

traditional rights over land and resources. Now, all compensation, rehabilitation and resettlement is limited to occupational rights. MMDR 2015 Act does not safeguard the rights of communities, discourages consultation, and excludes the affected people from decision-making. It is totally Anti Tribal and Anti human.

Now there are proposal for New Industrial Corridors, Bullet Rail Projects, Dams, River linkages, Mining, Industries, Tiger Reserves, Elephant Corridors, National Parks...etc. in Gujarat, Mahharastra, Rajasthan, Andrapradesh, Telengana, Chhatishgarh, Odisha, Jharkhand and in North- East States of India that are predominantly Tribal / Indigenous peoples. If the projects are realized we have a feeling that our Indigenous Communities of India will be extinct soon. There are well calculated moves to bring amendments in the existing Acts and laws (CNT, SPT...etc. laws in Jharkhand) by different ministries. We Say **“NO to Displacement, NO land encroachment in Scheduled and Tribal Areas either by the Governments or any business Farms”**. And seeing all these as Indigenous Leaders at this age of 78, I and the Indian delegates recommend the following :-

### **Recommendations:**

Me and Indian delegates, urge UN for a direction to the Government of India to respect and implement the existing protective laws in the Scheduled and Tribal Areas, Modified Areas Development Approach (MADA) and Clustered villages for protection of Scheduled Tribes/ Indigenous Communities.

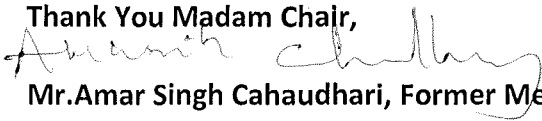
1. Ensure of the implementation of The Fifth Schedule and Sixth Schedule of the Constitution. Direction be given the Government of India, for new Administrative Structure in all protected and Scheduled Areas, where President, Governor, Tribes Advisory Council, Autonomous District Council, Regional Council , Gram Sabha for their mandatory Constitutional roles to be executed. Not to impose the general administrations structure in said areas, as it is going on now. Tribal Youths be empowered and be given the due opportunities for administrative posts in all the Scheduled and Tribal areas.
2. Ensure Free, Prior and Inform Consent (FPIC) from the Indigenous Communities before any projects or Displacement plans, projects and implement the United Nations Declaration of the Rights of the Indigenous peoples (UNDRIP).
3. Ensure the effective implementation of i. **“ The Provisions of the Panchayats (Extension to the Scheduled Areas Act 1996) or PESA Act 1996”** ii. **“The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right ) Act 2006 or FRA Act 2006** iii. **The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act**

### 2013 or LARR Act 2013.

4. We appeal the UN for direction to Government of India and the States for Repealing Anti Tribal Acts /Laws e.g Land Bank Act in Jharkhand and Odisha, Odisha Land Grabbing Ordinance 2015, Compensatory Afforestation Fund Management and Planning Authority Bill 2016 (CAMPA) Bill, the National Forest Policy 2018.....etc. for the protection of the Scheduled Tribes/ Indigenous peoples.
5. Tribals who have been displaced by conflict should be rehabilitated in their villages and provided facilities of housing, safe drinking water, health and education, skill development, electricity supply, irrigation facilities and agricultural inputs.
6. In order to minimize the negative effects of MMDR Act, there is a need to bring amendments for safeguarding the basic rights of Adivasis/Tribals and ensuring that they directly benefit from the mining activities carried out in fifth schedule areas, follow the Supreme Court in Samatha Vs. State of A.P and ors (AIR 1997 SC1297, Para 12 to 15.).
7. In the Tribal, Scheduled, MADA and Clustered Villages the development need to be on socio- cultural values together with Human Rights Approaches.
8. No laws be imposed on Scheduled and Tribal areas without Free, Prior and Informed Consent process and the Governor in consultation to the TACs as per Fifth Schedule and Tribal Council in Sixth Schedule of the Constitution.

We warmly invite you Madam Chair to India in the month of September 2018 .

Thank You Madam Chair,



Mr. Amar Singh Cahaudhari, Former Member of Parliament, India

President

Adibasi Ekta Parishad, India.

At/Post- Vedchhi, Tehsil- Valod, Dist – Tapi, Gujarat, India.

Indian delegates:

Shantikar Vasava 