

Intervention made on the 17th session of the UN Working Group on Indigenous Peoples on behalf of Chotanagpur Adivasi Sewa Samiti (CASS) on agenda item 5.
On 27 July 1999

--Bineet Mundu

Thank you Respected Madam Chair,

I bring "Johar" from our people to you and all the participants of the WGIP. At the same time I would like to congratulate the new team of Indigenous Fellows and wish them success in contributing to the Indigenous peoples cause in a meaningful way.

We the Adivasis have an ancient and immemorial cultural relationship with our lands and territories. This includes our livelihood, besides our customary practices, festivals, and spirituality having its origin in this relationship.

Through out the history we the Adivasis have revolted against all forms of alien interventions in our territories in the defence of our land and forests. The differences and struggle of ours with other communities, pre-dates the arrival and expansion of the British in India.

The British seeing the cultural differences, i.e. between the Adivasis and the non-Adivasis recognised us as separate and that they would deal with us in separate terms. As a result they evolved the Partly Excluded and Excluded Areas for separate administration for Adivasis. This lead to form the basis for separate territorial administration in the future.

We struggled and resisted exploitation against the British. Tenancy laws were made as a result of our grand parents uprisings and revolts. However, in the course of "industrial and national development" the systematic demolition of our symbiotic relationship with our land and the forests resulted in our alienation from all we had. More over, in the big jargon of "unity in diversity", our unity was made to dilute to the main stream's diversity as a part of assimilation into main stream society. In time we were forced to move towards settled agriculture as for our main source of survival, which excluded us from our forest resources. Thus our communal mode of production we saw was forced on us to give way to private ownership of land, introducing an economy of commodities based on monetary transaction. Land, in the emerging context, became very vital for ~~our~~ survival.

However, depending also on forest produces we did not have property rights in paper and were governed by laws made for forests. The forest laws do not recognise land rights within forests. Outside the forests, invariably, the more fertile lands in the villages are taken by the non-Adivasis. The Report of Adivasi Areas (1981) of the National Commission of Development of Backward Areas stated clearly that land alienation has continued and time bond plans have not yielded results.

All forms of land alienation has been a disaster for the life system of the Adivasis. According to some studies alienation of our land has been going on through:

- a) displacement through developmental and mega projects.
- b) benami transfers
- c) transfer of land form Adivasi to non-Adivasis in the form of lease and mortgage
- d) encroachments taking advantage of lack of land records

- e) concubinage or marital alliances, i.e., land is purchased by non-Adivasis and registered in the name of Adivasi women whom they keep as mistresses
- f) acquisition in the Adivasi servants who are under verbal contract with them
- g) lending names by Adivasis to non-Adivasis in exchange for money
- h) fictitious adoptions of non-Adivasis in Adivasi households
- i) land grabs and change of records with village officers as accomplices
- j) acquisition of land by the state for development purposes
- k) fraudulent transfer of land to non-Adivasis
- l) fake sale of land using ~~fraud and coercion~~

Alienation of Adivasi land has been taking place in various ways. A study conducted by the Department of Rural Development in the early 1980s shows that of the total land alienated, 40 percent was by way of sale, 25 percent by way of land acquisition for public purposes, 25 percent by way of mortgage. Lease and remaining 10 percent by other modes. It has also been found that our people are generally not aware of the protective laws in respect to alienation of lands. The above mentioned study showed that as few as 1 percent of the Adivasis in Madhya Pradesh state, 4 percent in Rajasthan state and 18 percent in Tripura were aware of the protective laws. Even in States where awareness is more the poverty of our people and the cumbersome process of law prevented recourse to the legal process.

Recognising that land alienation has become a major destabilizing factor and that protection given the existing legal provisions to the Adivasi land holders was not adequate, some State have passed Acts to restore alienated land to the Adivasis. Under these Acts, Adivasi lands transferred in favour of non-Adivasis during a stipulated period, by way of sale, gift, exchange, mortgage, or lease or any other disposition, are to be restored to the Adivasis. The Acts also restrict the transfer of Adivasi lands to the non-Adivasis after a stipulated date without the prior permission of the government. These Acts have been included in the Ninth Schedule to the Constitution.

(I have included a "STATEMENT SHOWING CASES OF LAND ALIENATION, DISPOSAL AND RESTORATION IN TRIBAL SUB-PLAN STATES" and "LAND ALIENATION LAWS IN T.S.P. STATES in the end of my statement.)

In conclusion, however, the Report of the Working Group on Development and Welfare of Scheduled Tribes During the VIIIth Five Year Plan 1990-95 mentions that the laws contain certain inherent deficiencies. They are, in the absence of a machinery to initiate suo-moto action, the general period of limitation of 12 years for adverse possession, lack of provision against relinquishment, lack of provision against transfers. The legal process suffers from delays, several stages of appeals and revisions and administrative delays in disposal of cases. Absence of free legal aid to the contesting to our people is often a constraint. Much of the Adivasi areas continue to be un-surveyed or partly surveyed and lack of up to date land records prevents quick actions. In certain states, even after orders are passed in the favour of Adivasis, the law requires us to approach the competent authority again with an Execution Petition, setting in motion another round of litigation of the land to the Adivasis from the issue of orders.

There are a few more important points I have raised in my intervention, but due to the time allocated to me I am not read it out, however I would like them to be included as a part of my intervention for record.

Thank you Madam Chair.

Adivasis, Scheduled Tribes and Indigenous People

It was the racist ideology of the British colonialism and its expansion into the whole of the Indian sub-continent that crystallised a social category of the "tribe". The first official designation was "forest tribe" followed by "primitive tribe" (1931) and "backward tribe" (1935). Prior to this, terms that were used by the British to refer to these communities were "aboriginal tribes", "backward tribes" etc. However, Indians by and large, address most of the "Scheduled Tribes" as Adivasis. The word is rooted in Sanskrit. *adi* means "original" and *vasi* means "inhabitants". Thus *adivasi* /s means the "indigenous people/s". Recognising that certain sections or peoples of the world are subject to discrimination historically and that they have certain specific historic characteristics, their tragic situation came to be voiced at various international fora too.

In accordance with Article 342 of the Indian Constitution, 6.77 Crores or 8.08 percent of India's population have been designated as "Scheduled Tribes" by the Government of India (Census Commissioner of India 1991). Such of those communities who have been notified by the President of India as the "Scheduled Tribes" are said to be the scheduled tribes, for the purpose of special considerations and treatment by the Central and State governments for their welfare and development. The term "Scheduled Tribes" indicates those communities which satisfy the criteria of "geographical isolation, distinctive culture, primitive traits, shyness of contact with community at large and economic backwardness" (SARINI 1997: 3).

The International Labour Organisation (ILO) of the United Nations (UN), by its Convention 107, adopted in 1957, laid down that member states should enable indigenous and other tribal and semi-tribal populations to pursue their material well being and spiritual development in conditions of freedom and dignity, of economic security and cultural specificities some of which may hinder them from benefiting fully from the rights and advantages enjoyed by other elements of the population and also help the process of integration of such population into the national mainstream.

The indigenous and tribal peoples in different parts of the world strongly protested against the ILO's integrationist approach. In response to this, Convention 107 was revised and Convention 169 was adopted by the ILO in 1989, whose main thrust was the emphasis on the right of self-management of the concerned peoples. The Convention stipulates that self-identification as indigenous or tribal shall be regarded as the fundamental criterion for determining the groups to which the provisions of this Convention apply. It should be noted that, though India was a signatory of the Convention 107, till date it has not ratified Convention 169. In fact, the Permanent Mission of India to the UN has maintained till date in the UN debates that there are no "indigenous peoples" in India, and that the Scheduled tribes in India are NOT indigenous people as understood by the United Nations (SARINI 1997: 8).

Adivasis in India: Problems and Prospects

One of the professed aims of the state in the socio-economic development of us has been our integration, both social and cultural, into the mainstream of national life. Most scholars are critical of this approach. They see in it an attempt to integrate us into the mainstream society as a low status group, even though traditionally we have lived in an egalitarian and unified society in which women have a fairly high status. The policy of integration tacitly legitimises vested interests to force the Adivasis into a relationship of the worst forms of exploitative dependence on the mainstream society.

The problems encountered by us today are primarily because of the fact that even after fifty years of democratic governance we still lack a comprehensive National Policy for us. Protagonists of the National Tribal (Adivasis) Policy claim that, its absence has resulted in the piecemeal nature of many of these development efforts. Most policies and laws focus on

particular issues and were formulated according to needs that arose at different points of time. Many of them are incongruent and contradict each other on principles and content. Rather than addressing and aiding the process of amelioration of the Adivasis problems, they have created new problems for them.

The Indian Constitution and the Adivasis

The irony of Adivasi development has been that we remain marginalised in spite of the Constitution providing for a comprehensive framework for our socio-economic development. Eight States have Adivasi areas which have been declared "Scheduled Areas" under the Fifth Schedule to the Constitution, which imposes a special responsibility for "peace and good government" of these areas. For this purpose, it empowers the Governor of the State to formulate necessary laws and to the Union Government to direct the States for proper administration of these areas (Min. of Welfare 1989: 9).

Accordingly, laws have been framed to prohibit or restrict transfer of land by or among members of Adivasi groups scheduled in the Constitution, regulate allotment of land to members of such Adivasis and to prohibit the business of money lending in these Adivasi areas. The Governor also has powers to exclude the Scheduled Areas from the application of any State or Central legislation or to direct application of such legislation with exception or modification. Similarly, the Sixth Schedule to the Constitution envisages participation of the Adivasis in the management of their affairs, through autonomous District and Regional Councils.

Looking beyond the problem of exploitation, Article 46 of the Constitution of India directs the state to promote with special care the educational and economic interests of the Scheduled Adivasi groups and to protect them from social injustice and all forms of exploitation. Articles 15 (4), 16 (4) and 17 (5) provide for imposing reasonable restrictions on fundamental rights in the interest of protecting so called Scheduled Tribes (and Scheduled Castes). Articles 330, 332 and 334 provides for representation of these groups in the legislative bodies, while Article 335, calls for reservation of seats for Adivasis in matters of recruitment. Thus, both retributive and restitutive arrangements are made available to the Adivasis by the Constitution.

One may ask, Why have the intended benefits of these constitutional measures not reached the Adivasis? What could be the reasons for this hiatus between policy/programme and praxis? The search for answers prompts us to critically appraise the components of the existing policies and laws related to the Scheduled Tribes.

To go a little further I would like to present a case of Kerala. For the past century and more, the non-Adivasis at throwaway price have bought Adivasi lands. There has been legislation to check this trend and also to restore alienated lands to Adivasis. But the will to implement these laws on the part of the government has been missing. Kerala has recently passed a bill, purportedly to protect the interests of the Adivasis, which makes restoration of land to Adivasis almost impossible.

The Impact of 'Development' on Adivasis

Development has clearly become the major cause of deprivation of the sources of livelihood as far as we are concerned. The very fact that the primary sources of modern development are the resource rich Adivasi homelands is the cause of massive displacement that has gone on and which is rapidly increasing (Min. of Home Affairs 1985: 1). This has not only been devastating the vital eco-system but also threatens our survival of the Adivasi communities depending on them. Not surprisingly the state has become the Adivasis' greatest enemy.

It is estimated that over 20 percent or 135 hundred thousand Adivasis have become victims of the development. About 9 percent or 10 hundred thousand Adivasis have been displaced at least

once. According to one survey, out of the 117 hundred thousand persons displaced by just 119 Central and State government projects, a staggering 8 hundred thousand were Adivasis. Nearly, 90 percent of the coal mines are located in Adivasi regions. It is estimated that, mines alone have displaced over 21 hundred thousand persons in the last 40 years, out of which not less than 14 hundred thousand persons are Adivasis (SARINI 1997: 16).

A 1987 Government of India report estimates that 85 hundred thousand Adivasis have been displaced at least once. Another estimate mentions that a total of 213 hundred thousand persons that is nearly 2 percent of the total population of India as on 1991, have been displaced by development projects between 1951-90, of which at least 40 percent that is 85.39 hundred thousand are Adivasis (Fernandes & Asif 1997: 24). Thus we see that all estimations on displacement point to one aspect, nearly 50 percent of those displaced are Adivasis even though they constitute 8.08 percent of the total population.

Table 1: Displacement by Development Projects. By mines 14,00,000 Adivasis have been displaced, by dams 53,00,000 have been displaced, by industries 2,60,000 Adivasis have been displaced, by Sanctuaries and National Parks 5,00,000, and by other big and small projects. Total 76,00,000 Adivasis have been displaced since the last five decades.

With the loss of forests and lands, our people are pushed to the brink of survival and are easily subjugated to inhuman existence. The traditional communitarian life style has cracked under repeated labours. Malnutrition, diseases, hunger and death have become a common phenomenon. Their problems are further accentuated by the Adivasis processes a health care tradition which has helped them survive the vagaries of nature for centuries. Today, these mainstream cultures are forcing them to abandon their health care traditions for modern medicine. The irony is that modern medicine the world over has usurped many of the Adivasis medicinal knowledge for their research.

Administration of development is an important consideration especially if one is talking of development in the Adivasi areas. Not much attention has been paid to this by successive governments since the 1950s. The present administrative structure involving the different Departments of State governments performing their specialised area of activities, is not intelligible to our people who, therefore, find it difficult to associate themselves or participate in the implementation of development schemes and programmes. Many observers feel that the simple Adivasi situation requires a simple administrative structure.

**STATEMENT SHOWING CASES OF LAND ALIENATION, DISPOSAL AND RESTORATION IN TRIBAL
SUB-PLAN STATES.**

S. No.	State	Cases filed in the Courts	Area in Acres	Cases decided in favour of STs.	Area in Acres	Cases rejected	Areas in Acres	Cases pending	Areas in Acres	Land actually restored in Acres	As on
1.	Andhra Pradesh	45865	193667	39339	172538	4051	18770	2475	2345	81845	March, 1988
2.	Assam	3867	20149 (Bighas)	—	—	—	—	—	15489 (Bighas)	—	March, 1988
3.	Bihar	88680	107967	43347	47137	32026	51211	13307	9518	34142	June, 1988
4.	Gujarat	22376	65544	19180	55653	785	2332	2411	7558	54452	April, 1988
5.	Karnataka	469	1141	367	982	251	505	38	105	721	March, 1988
6.	Madhya Pradesh	99864	—	68801	—	10270	—	28793	—	20061	March, 1988
7.	Maharashtra	50850	—	20401	105877	30122	—	327	—	93967	Dec., 1988
8.	Orissa	76527	—	36715	40926	35925	—	3886	—	39595	March, 1988
9.	Rajasthan	3154	15107	268	941	608	3689	2278	10475	—	March, 1988
10.	Tripura	19820	19430	4889	4389	13644	14850	1287	991	3384	March, 1988
11.	West Bengal	336	594	137	273	—	—	—	—	—	Dec., 1988
12.	Uttar Pradesh	8541	17973	40	49	—	—	—	—	—	July, 1988
13.	Kerala	3080	10130	9	20	36	77	2834	6732	—	Aug., 1988

State Government of Himachal Pradesh has stated that the problem does not exist. In Sikkim and Manipur, the problem is of a very small magnitude. No problem of land alienation has been reported from Daman & Diu and A & N Islands. Tamil Nadu has drafted a Bill for providing protection of tribal land and the same is under process.

LAND ALIENATION LAWS IN T.S.P. STATES

S. No.	State	Legislation in force	Main features
1.	Andhra Pradesh	The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959 as amended.	The Act applies to Scheduled Tribes in Scheduled Areas only. Protection to be extended to Scheduled Tribes living outside Scheduled Areas.
2.	Bihar	(a) Chota Nagpur Tenancy Act, 1908. (b) Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. (c) Bihar Scheduled Areas Regulation, 1969.	These Acts apply to Scheduled Tribes in the State. Chota Nagpur Tenancy Act applies to North & South Chotanagpur Divisions. The Second Act applies to districts of Santhal Pargana Division. The Third Act applies to all Scheduled areas in the State.
3.	Assam	Assam Land Revenue Regulations 1886 amended in 1981.	The Chapter X of the Regulation create Tribal Belts & Blocks. Transfer exchange and lease of land in these blocks & belts is restricted in the interest of tribals.
4.	Gujarat	The Bombay Land Revenue (Gujarat Second Amendment Act, 1980).	Prohibits transfer of tribal land and provides for restoration.
5.	Himachal Pradesh	The Himachal Pradesh Transfer of Land (Regulation) Act, 1969.	The Act prohibits transfer of land from tribals to non-tribals.
6.	Karnataka	The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978.	The Act covers only land assigned by the Govt. should extend to cover all lands held by the STs.
7.	Kerala	The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated Lands) Act, 1975.	The Act has been made applicable from 1st June, 1982 only by a notification brought in January, 1986.
8.	Madhya Pradesh	1. The Madhya Pradesh Land Revenue Code 1959. 2. Madhya Pradesh Land Distribution Regulation Act, 1964.	The Section 153 of the code protects Scheduled Tribes against alienation of land. In the Scheduled Areas of Madhya Bharat region, the 1964 Act is in force.
9.	Manipur	The Manipur Land Revenue and Land Reforms Act, 1960.	Under Section 158 of the Act, no land belonging to STs can be transferred to non-STs without permission of Dy. Commissioner. The Act, however, does not apply to hill areas and as such hill area tribals are not covered.
10.	Maharashtra	1. The Maharashtra Land Revenue Code 1966 as amended in 1974. 2. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.	The period of application by tribals for restoration of illegally alienated land under these laws is only 3 years. This period expired in 1977. Though suo-moto provisions for filing cases by revenue officers exists under the laws, the State Govt has been requested to permit STs themselves to apply even beyond the limited period of 3 years.

State	Legislation in force	Main features
Orissa	(a) The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956. (b) The Orissa Land Reforms Act, 1960 as amended.	Prohibits transfer of S.T. land in Scheduled Area. Prohibits transfer of land of Scheduled Tribes living outside Scheduled Areas.
Rajasthan	(a) The Rajasthan Tenancy Act, 1955. (b) The Rajasthan Land Revenue Act, 1956.	The Act of 1955 prohibits transfer of land of STs. by way of sale, gift, mortgage, subletting, exchange etc. State Govt. is proposing to amend Section 91 of this Act to authorise Tehsilder to suo-moto proceed against trespassers into ST land.
Sikkim	Revenue Order No. 1 of 1977.	The Revenue Order of 1977 is in force. The Sikkim Agricultural land ceiling and Reforms Act, 1977 in Chapter 7 provides for restriction on alienation of lands by Scheduled Tribes. This Chapter has not yet been brought into force.
Tamil Nadu	Standing Orders of the Revenue Board-BSO, 15-40.	The BSO 15-40 apply only to Malayali and Sholage tribes of Tamil Nadu. They prohibit transfer of land assigned to these tribes without approval of Divisional Commissioner. The State has no legislation prohibiting transfer of ST land as yet. The draft bill has been prepared and is under process.
Tripura	Tripura Land Revenue and Land Reforms Act 1960 as amended.	Section 187 of the Act prohibits transfer of ST land to others without permission of the Collector. Transfer after 1.1.1969 only, however, are covered under restoration provisions by an amendment.
Uttar Pradesh	U.P. Land laws (Amendment) Act, 1982 amending Uttar Pradesh Jamindari Abolition and Land Reforms Act, 1950.	The amending Act has never been applied being locked up in a writ case in Allahabad High Court (Swarn Singh Vs. State Govt.) since 23.9.1981. State Govt. has been requested to move the court for vacation of stay order.
West Bengal	West Bengal Land Reforms Act, 1955 as amended.	Chapter 11-A of the Act prohibits alienation of tribal land and provides for the restoration.

APPENDIX: 1**ACTS & REGULATIONS PASSED BY STATE GOVERNMENTS & UNION TERRITORIES FOR PREVENTION OF ALIENATION OF TRIBAL LANDS.**

State	Act Regulation	Main Provision
1	2	3
1. Andhra Pradesh	The Andhra Pradesh (Scheduled Areas) Land Transfer (Amendment Regulation, 1970).	Prohibits transfer of land to non-tribals whether the owner is tribal or non-tribal authorises Govt. to acquire land in case a tribal purchaser is not available.
2. Assam	The Assam Land and Revenue Regulations, 1886.	Prohibits alienation of land in tribal blocks.
3. Bihar Outside Chottanagapur & Santhal Parganas.	Chhottanagpur Tenancy Act, 1908 Santhal Pargana Tenancy (Supplementary Provisions) Act, Scheduled Area Regulations, 1969. Bihar Tenancy Act, 1885.	Prohibits alienation of land of tribals and provides for restoration of alienated land.
4. Gujarat	Bombay Land Revenue Code, 1879	-- do --
5. Himachal Pradesh	The Himachal Pradesh Transfer of Land (Regulation) Act, 1968.	-- do --
6. Karnataka	The Karnataka Scheduled Castes, and Scheduled Tribes (Prohibition of Transfer of certain lands) Act, 1978.	Prohibits transfer of certain lands granted to persons belonging to Scheduled Tribes.

7. Kerala (not yet enforced).	The Kerala Scheduled Tribes (Restriction of Transfer of Land and Restoration of Alienated Lands) Act, 1975.	-- do --
8. Madhya Pradesh	Madhya Pradesh Land Revenue Code, 1959.	Prohibits alienation of land.
9. Manipur	Manipur land revenue and Land Reforms Act, 1960.	No transfer of land by a member of Scheduled Tribes to a non-member is valid without the permission of the Deputy Commissioner and District Council.
10. Maharashtra	Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, The Maharashtra (Restoration of lands to Scheduled Tribes Act, 1974).	Prohibits alienation of land and provides for restoration of alienated land.
11. Orissa (within Scheduled Area).	The Orissa Scheduled Area Transfer of Immoveable Property (Scheduled Tribes Regulation, 1956).	-- do --
(Outside Scheduled Area).	The Orissa Land Reforms Act, 1960.	
12. Rajasthan	The Rajasthan Tenancy Act, 1955. The Registration (Rajasthan Amendment Act, 1976).	Prohibits alienation of land and provides for restoration of alienated land.

13. Tamil Nadu	The Board's Standing Orders.	Land assigned to specified Hill Tribals shall not be transferred to persons not belonging to the same class without permission of Divisional Officer.
14. Tripura	The Tripura Land Revenue and Land Reforms Act, 1974.	Prohibits alienation of land and provides for restoration of alienated land.
15. Uttar Pradesh	Uttar Pradesh Zamindars' Alienation of land.	Imposed restriction on transfer of land by Scheduled Tribes to non-Scheduled Tribes without permission of the Collector.
16. West Bengal	The West Bengal Land Reforms Act.	Prohibits alienation of land.

Source: Report on Development of Tribal areas, Planning Commission, New Delhi, 1981.