

# INDIGENOUS PEOPLES PLANNING FRAMEWORK

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Project No.: 51228-001  
April 2018

## IND: Railways Track Electrification Project

The indigenous peoples planning framework is a document of the borrower. The views expressed herein do not necessarily represent those of ADB's Board of Directors, Management, or staff, and may be preliminary in nature.

## **ENVIRONMENTAL ASSESSMENT AND REVIEW FRAMEWORK, RESETTLEMENT FRAMEWORK AND INDIGENOUS PEOPLES PLANNING FRAMEWORK**

1. ADB, as part of its sovereign lending operations, approved the IND: MFF – Railway Sector Investment Program in 2011, executed by the Ministry of Railways through its implementing agency, Rail Vikas Nigam Limited. The investment program included doubling of existing railway tracks and electrification of the railway corridors in several states of India. In compliance with ADB Safeguard Policy Statement, 2009, the Ministry of Railways developed the following safeguard frameworks: (a) environmental assessment and review framework, (b) resettlement framework, and (c) indigenous peoples planning framework, to address the potential environment and social impacts associated with the ADB funded investment program.

2. The safeguards due diligence for the proposed loan assessed the adequacy of the safeguard frameworks (environmental assessment and review framework, resettlement framework and indigenous peoples planning framework) to address the environment and social impacts associated with the electrification of tracks by the Indian Railways Finance Corporation (IRFC). The due diligence confirmed that the provisions in the safeguards frameworks are adequate to address the environment and social impacts and no material changes to the framework provisions are required. The following modifications to reflect the specific requirements of the proposed electrification subprojects have been identified in the due diligence findings:

- (i) revise sections in the frameworks related to institutional structure and implementation arrangements;
- (ii) update the national requirements related to land acquisition by including (a) the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and (b) guidelines by the Ministry of Power, Government of India on payment of compensation towards damages in regard to Right of Way for transmission lines, 2015;
- (iii) exclude from ADB funding, any electrification subprojects categorized A for any of the three safeguard categories, through an early screening of all subprojects at an early stage for environment, involuntary resettlement and indigenous peoples impacts; and,
- (iv) develop subproject selection criteria and procedures to exclude from ADB funding, (a) any subproject where construction activities have been commenced by the contractors, and (b) any subproject where incorporation of environment and social safeguard requirements in the procurement documents is not possible.

3. These enhancements have been discussed and agreed upon with IRFC and IRFC commits to update these frameworks prior to ADB's first disbursement, to the satisfaction of ADB.

4. The safeguard frameworks prepared as part of the IND: MFF – Railway Sector Investment Program in 2011 are presented in the following sections.

## **A. Introduction**

1. The Railway Sector Investment Program has been formulated by the Ministry of Railways of the Government of India (Executing Agency [EA]), and will receive financing from the Asian Development Bank (ADB) using the multi-tranche financing facility (MFF) loan modality. It includes a plan for efficiency-improvement measures to railway organization, and work processes and procedures to complement the physical investments to improve the commercial orientation of railway services, as well as a railway sector analysis. Additionally, a number of track doubling, electrification and/or similar subprojects are included in the first tranche and possibly for future tranches.

2. This Indigenous Peoples Planning Framework (IPPF) has been formulated to guide the preparation of subproject Indigenous Peoples Plans (IPPs) for this and subsequent phases during loan implementation, if required. In India, tribal peoples are recognized as the populations to which ADB's Safeguard Policy Statement applies (See **Annex 1**).

3. The Implementing Agency (IA), Rail Vikas Nigam Limited (RVNL), will be responsible for conducting the social assessment and formulating IPPs for subsequent tranches, if any, as per procedure outlined in this IPPF. The draft IPPs will be formulated by the program implementing agency, Rail Vikas Nigam Limited (RVNL) in consultations with affected tribal communities. This framework is to be read together with the approved Resettlement Framework (RF) which outlines the entitlements of all project affected persons. The need for an IPPF arises from the fact that tribal people are generally considered as 'vulnerable' populations requiring special attention and assistance in case of losing property, access to common property and socio-cultural identity. Their entitlements, however, could broadly be built into involuntary resettlement plans.

## **B. IPPF Objectives and Policy Framework**

### **1. Indigenous Peoples Planning Framework Objectives**

4. The Indigenous Peoples Planning Framework seeks to ensure that indigenous people and tribal communities are informed, consulted, and mobilized to participate in the subproject preparation. The Framework is intended to guide selection and preparation of additional subprojects under the Project where impacts on tribal people are identified to ensure better distribution of the Project benefits and promote development of the indigenous peoples in the Project areas. The framework is prepared in accordance with ADB's procedures for sector loans as presented in ADB's *Safeguard Policy Statement*, 2009 (SPS).

### **2. The Indigenous Peoples Planning Framework**

5. The Indigenous Peoples Planning Framework is intended to guide the selection and preparation of additional projects under the project to ensure better distribution of project benefits and promote development of IPs in the project area. In cases where significant impacts on IPs are identified, this framework will be applied if necessary during the preparation of additional subproject, in accordance with the SPS.

6. An indigenous peoples plan (IPP) is required if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of the IPs or affects the territories or natural or cultural resources that IPs own, use, occupy, or claim as their ancestral domain.

7. The IPPF is based on the overall local and national development strategies and ADBs SPS. The principle objectives are to:

- i) ensure IPs affected by any additional project will receive culturally appropriate social and economic benefits from the project.
- ii) ensure IPs participate in the entire process for the preparation, implementation and monitoring of project activities and
- iii) do not suffer adverse impacts as a result of projects.

### **C. Identification of Affected Indigenous Peoples and Tribal Peoples**

8. As per SPS, the term indigenous peoples (IP) is used in a generic sense to refer to distinct, vulnerable, social and cultural group possessing characteristics in varying degrees: (1) self identification as members of a distinct indigenous cultural group and recognition of its identity by others; (2) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; and (3) customary, cultural, economic, social or political institutions that are separate from those of the dominant society and culture and four distinct languages, often different from the official language of the country or the region. Essentially indigenous people have a social and cultural identity distinct from the mainstream society that makes them vulnerable to being overlooked in development processes.

9. The above characteristics of Indigenous Peoples agree with the definition of 'tribes' found in the Indian Constitution and laws. The Constitution specifically recognizes most vulnerable tribes as 'scheduled tribes'. Constitutional protection and assistance programs for tribal development have brought significant changes since 1950.

10. Recognition as a 'scheduled tribe' (ST) confers entitlements to affirmative action programs including reserved seats in legislatures, various subsidies and separate educational facilities. However, the majority of tribal communities continue to be vulnerable even today in comparison to mainstream society and this is reflected in the socio-economic conditions and problems they often encounter such as land alienation, indebtedness, deprivation of forest rights, all of which are further compounded by low literacy and high drop-out rates and prevalence of poverty.

### **D. Social Impact Assessment**

11. This framework seeks to ensure that IPs are informed, consulted, and mobilized to participate in the additional subprojects. Their participation can either provide them

benefits with more certainty, or protect them from any potential adverse impacts of the additional subproject. The main features of the IPP will be a preliminary screening process, a social impact assessment to determine the degree and nature of impact of each additional project, and an action plan developed if needed. Meaningful consultations with and participation of IP communities, their leaders, and local government representatives will be an integral part of the overall IPP.

## **1. Screening**

12. The EA and DPR Consultants responsible for subproject preparation and implementation will visit all tribal settlements near the subproject areas or in likelihood of being affected and influenced by the subproject components. Public meetings will be arranged in selected communities by the EA and DPR Consultants with the tribal communities and their leaders to provide them information about the subproject and take their views on the subproject.

13. During this visit, the social specialist/s of the EA will undertake a screening of the tribal communities with the help of the community leaders and local authorities. The screening will cover the following aspects:

- (i) Name(s) of tribal community group(s) in the area;
- (ii) Total number of tribal community groups in the area;
- (iii) Percentage of tribal community population to that of total area/locality population;
- (iv) Number and percentage of tribal community households along the zone of influence of the proposed subproject.

14. If the results of the screening bring forth the presence of tribal community households in the zone of influence of the proposed subproject, a social impact assessment will be planned for those areas.

## **2. Social Impact Assessment**

15. The EA Consultant will undertake a social impact assessment (SIA). The SIA will gather relevant information on demographic data; social, cultural and economic situation; and social, cultural and economic impacts—positive and negative—on the tribal communities in the subproject area.

16. Information will be gathered from separate group meetings within the tribal community, including tribal leaders; group of tribal men and women, especially those who live in the zone of influence of the proposed subproject under the Project. Discussions will focus on the positive and negative impacts of the subproject as well as recommendations on the design of the subproject. The EA will be responsible for analyzing the SIA and based on it developing an action plan with the tribal community leaders. If the SIA indicates that the potential impact of the proposed Project will be significantly adverse threatening the cultural practices and their source of livelihood, the

EA will consider other design options to minimize such adverse impacts and will prepare an IPP.

### **3. Indigenous Peoples Plan (IPP)**

17. The IPP will consist of a number of activities and will include mitigation measures of potentially negative impacts by means of modification of subproject design and development assistance. Where there is land acquisition in tribal communities, the Project will ensure that their rights will not be violated and that they will be compensated for the use of any part of their land in a manner that is culturally acceptable to them. The compensation will be in keeping with Entitlement Matrix as provided in the RF of the Project. The IPP will include:

- (i) Baseline data;
- (ii) Land tenure information;
- (iii) Local participation;
- (iv) Technical identification of development or mitigation activities;
- (v) Institutional arrangement;
- (vi) Implementation schedule;
- (vii) Monitoring and evaluation; and
- (viii) Cost estimate and financing plan

**Annex 2** provides the outline for the IPP.

18. The main thrust of an IPP is to address any relevant development issues taking into consideration the marginal and vulnerable status of affected tribal communities. All affected tribal households will be provided with assistance, which would help them to improve their living standards without exposing their communities to disintegration. As vulnerable groups, they are entitled to receive special assistance not only to restore and improve their income and livelihood, but also to maintain their distinct cultural identity. (Please refer to the Entitlement Matrix of the approved Resettlement Framework.)

19. Affected tribal households will be entitled to various compensation packages and these compensation entitlements will be the same that are listed in the approved Resettlement Framework of the Project. In addition, as tribal communities, they will have traditional land rights and these will be honoured and the absence of land titles will not be a bar for receiving compensation and other assistance packages.

20. The IPP will be developed in consultation with the community and the Block/District Tribal Welfare Officer.

21. Special Assistance is an additional allowance to which tribal people are entitled to other than decided compensation package. This may include assistance/ support in preserving their cultural knowledge, identity and income-generating practices such as access to forests and forest produce.

**22.** In cases where the affected tribal peoples live with non-tribal peoples in the same subproject location, a joint community development plan may be prepared.

23. The EA will submit the IPP to ADB for review and approval prior to the selection of specific subprojects. The IP policy and measures must comply with ADB's SPS.

## **E. Consultation and Participation**

24. Consultations will be held with the tribal communities, their local leaders, and PIU will organize them. Consultations and information disclosure will be undertaken to ensure that needs, priorities and preferences of tribal communities are adequately responded to.

25. The IPPF prepared in consultation with affected tribal communities will be translated into local language and made available to them with the assistance of implementing NGOs. The PIU will require that all consultations held with tribal communities be done in a culturally appropriate manner that takes into account customary decision-making and interactional patterns.

26. The PIU will ensure that adequate funds will be made available for consultation and facilitation.

## **F. Disclosure**

27. Project information will be disseminated through public consultation and made available as brochures, leaflets, or booklets, using local languages. For non-literate people, other communication methods should be used. (Resettlement information booklets, leaflets, etc. could be used for this purpose). Copies of IPDPs will also be made available at the local level public offices, such as District Collector's Offices and Block Development Officer's Office, as soon as the plans are available and certainly before civil works have begun. The IPDPs will be disclosed on ADB's and EA's websites.

## **G. Mitigation Measures**

28. The mitigation measures will be described in the IPP. The main objective will be to ensure all affected indigenous households are provided with assistance, which would help them to improve their living standards without exposing their communities to disintegration. As vulnerable groups, they are entitled to receive special assistance not only to restore and improve their income and livelihood, but also to maintain their distinct cultural identity.

## **H. Grievance Redress System**

29. Complaints and grievance procedures regarding implementation of the IPP will be handled by the Grievance Redress Committee established at each district level as described in the Resettlement Framework.

## **I. Institutional and Implementation Arrangements**

30. The PIU is responsible for the formulation of an IPP in consultation with the District level Tribal Officer. This is to ensure dovetailing with existing tribal programs.

The implementation of the IPP under each subproject component will be the responsibility of the PIU.

31. For a subproject IPP, PIUs will have overall coordination, planning, implementation and financial responsibilities. The PIU has to ensure that the IPDP has been implemented before moving any of the groups from the subproject areas. Implementation of IPP will involve ensuring culturally appropriate benefits to minimize and mitigate impacts through continuous consultations with the affected tribal communities.

32. The PIU for each subproject will be assisted by experienced NGOs for implementation of the IPP. The NGO/s will have clearly defined tasks. The NGO would play the role of a 'facilitator' and will work as a link between the PIU and the affected tribal community. The NGO will assist affected tribal households in participating in the formulation of the IPP.

## **J. Monitoring and Evaluation**

33. A set of monitoring indicators will be included in the IPP, and they will be reviewed during project implementation. Chief among the indicators are:

- (i) Reactions from the community;
- (ii) Information from the community on plan preparation, implementation, time taken at each stage, etc.;
- (iii) Socioeconomic status of the community;
- (iv) Degree of community participation;
- (v) Usefulness and utilization of training imparted, if any
- (vi) Interaction between Implementing NGO and the community

34. The PIU with the help of the implementing NGO will monitor the above. The NGO will be thoroughly briefed about the ADB's Policy on Indigenous Peoples and laws and policies pertaining to tribal populations in India.

35. Reporting and monitoring formats will be prepared for an effective internal and external monitoring. These reports will be submitted to ADB for review and comments as a dedicated section of the Involuntary Resettlement monitoring reports.

36. Monitoring and evaluation reports documenting progress on IPP implementation and IPP completion reports will be provided by the PIU to HQ for review and approval from ADB.

37. The external monitor (appointed by HQ/PIU) for the subproject Resettlement Plans will be engaged to also monitor and proactively evaluate the IPP implementation. The external monitor will have previous experience in tribal development and familiarity with Government and ADB IP/tribal policies, and will be engaged with ADB concurrence within three months of the loan effectiveness. The consultant will monitor and evaluate IPP implementation to determine whether IPP goals have been achieved, whether livelihood and living standards have been restored, and to provide recommendations for improvement. Monitoring will also ensure recording of APs' views on tribal development



issues related to the IPP and project. The external monitor will also evaluate the performance of the PIU and NGOs in managing IPP activities

38. The EA will submit semi-annual progress reports on implementation of Indigenous Peoples Plans as a dedicated section of the Involuntary Resettlement Plans.

39. The EA will set up an internal monitoring system comprising Social Development and Resettlement Specialist, NGO/agency, tribal people/IP and their institutions to monitor the plan implementation. Monitoring indicators will be established. In addition, an experienced and qualified external monitoring and evaluation agency/expert will be engaged by the EA with ADB concurrence to undertake independent external evaluation of the Plan. The evaluation will be carried out every year during project implementation. Reporting / monitoring formats will be prepared for both internal and external monitoring.

#### **K. Budget and Financing Plan**

40. The IA will provide the PIUs with sufficient resources to formulate IPP if the subproject will have impacts on tribal communities. The IPP will be implemented with the assistance of the NGOs. A detailed budget will be prepared by each of the PIUs taking into account all activities associated with the formulation and implementation of IPP. Each IPP will have its own budget. Such budgets will be an integral part of the project cost, and will be made available during project implementation.

## ANNEX 1: LEGAL FRAMEWORK

### A. National Legal and Policy Framework

1. The first legal notification specifically for the protection of Scheduled Tribes was issued in 1950. The Constitution, through several Articles, has provided for the socio-economic development and empowerment of Scheduled Tribes.

2. Recognizing the special needs of the STs, the Constitution of India made certain special safeguards to protect these communities from all possible exploitation. While Article 14 confers equal rights and opportunities to all, Article 15 prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc; Article 15 (4) enjoins upon the State to make special provisions for the advancement of any socially and educationally backward classes; Article 16(4) empowers the State to make provisions for reservation in appointments or posts in favor of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State; Article 46 enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular, the STs and promises to protect them from social injustice and all forms of exploitation. Further, while Article 275(1) promises grant-in-aid for promoting the welfare of STs and for raising the level of administration of the Scheduled Areas, Articles 330, 332 and 335 stipulate reservation of seats for STs in the *Lok Sabha* and in the State Legislative Assemblies and in services. Finally, the Constitution also empowers the State to appoint a Commission to investigate the conditions of the socially and educationally backward classes (Article 340) and to specify those Tribes or Tribal Communities deemed to be as STs (Article 342). The constitutional commitment prompted the policy-makers and the planners to accord high priority to the welfare and development of STs from the beginning of country's developmental planning. The Tenth Five Year Plan (2002-2007) of India further lays stress on empowering tribals through continuing the on-going 3-pronged strategy of i) Social Empowerment; ii) Economic Empowerment; and iii) Social Justice.

#### 1. The Fifth Schedule

3. The Fifth Schedule is the constitutional provision with reference to the administration and development of the Scheduled Areas and Scheduled Tribes in India. The Schedule has been framed to protect of the rights of the Adivasis on their land, forest and water as their natural rights.

4. The Fifth Schedule is incorporated in the Constitution of India to allow the character and life of tribal peoples to exist side by side with the general population. Article 244(1) of the Constitution mentions that the distinct identity and rights of the tribal people of the Scheduled Areas needed to be protected. Special provisions were therefore laid down in the Fifth Schedule to the Constitution. The said Article of the Constitution includes the rights of the tribal people, with special mention of the land of the tribal peoples and related regulation.

## 2. Provisions of the Panchayat Extension to the Scheduled Areas Act (PESA), 1996

5. The Parliament of India passed the Provisions of the Panchayats Extension to the Scheduled Areas Act (PESA), 1996, to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. This Act accords statutory status to the Gram Sabhas in Schedule V areas with wide-ranging powers and authority. This aspect was missing from the provisions of the 73rd Constitutional Amendment. The Act has recognized the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources—land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas through self governance.

6. Important Provisions of the PESA 1996:

- (i) Definition of a village— According to the Act, a village in a Scheduled Area shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. This definition of a “village” is quite clear and overcomes the deficiency in the 73rd Constitutional Amendment wherein village has not been defined.
- (ii) Constitution of Gram Sabha— A Gram Sabha (GS) will be constituted for each village. According to the Act (PESA), it will consist of persons whose names are included in the electoral rolls for the panchayats at the village level. The Gram Sabha is competent to safeguard and preserve the traditions and customs of the tribal people, their cultural identity, community resources and customary mode of conflict resolution. It is important to note that PESA has vested the Gram Sabha as a powerful institution having full powers to manage the affairs of local communities.
- (iii) Constitution of Panchayats— A panchayat will be constituted for each village in the Scheduled Areas in the following manner:
  - (a) The reservation of seats at every panchayat will be in proportion to the population of communities in that panchayat for whom the reservation is sought to be given under Part IX of the Constitution provided that reservation for scheduled tribes will not be less than one-half of the total number of seats.
  - (b) All the seats of chairpersons of panchayats at all levels will be reserved for the scheduled tribes; and
  - (c) The State government will nominate persons belonging to such scheduled tribes that have no representation in the panchayats at the intermediate level or district level, but such nomination will not exceed one-tenth of total members to be elected in that panchayat.
- (iv) The powers of Gram Sabha as specified in the Act can be divided into the following four categories: (i) Mandatory powers; (ii) Powers to be consulted; (iii) Recommendatory powers and (iv) power to be devolved by the State Government According to Section 4(i) of 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 projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.

### **3. The Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006**

7. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, recognises and vests the forest rights and occupation in forest land to Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights are not recorded.

8. This Act is for members or community of the Scheduled Tribes who primarily reside in forests or forest lands for their livelihood, including Scheduled Tribe pastoralist communities or the members or community of the Scheduled Tribes who have been residing in the forest for 75 years.

9. The Government of India (GoI) recognizes and vests forest rights with forest dwelling STs,, where they are declared as STs, and other traditional forest dwellers. The Act provides a detailed list of rights to ST and forest dwellers. These rights can be broadly divided into the following:

- (i). Title rights (i.e. ownership)- Refers to land that is being farmed by Tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted;
  - (ii) User rights- Refers to minor forest produce (also including ownership), to grazing areas, ponds for fishing, to pastoralist routes, etc.
  - (iii) Relief and development rights- Refers to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection;
  - (iv) Forest management rights- Refers to protect forests and wildlife.
  - (v) Rights to indigenous knowledge- Refers to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
  - (vi) Traditional rights- Refers to any other traditional rights enjoyed by forest dwellers except (a) right of hunting or trapping or extracting any part of any wild animal.
10. Recognition, Restoration and Vesting of Forest Rights include: (i) In critical wildlife habitats, forest rights may be modified or people resettled provided they meet the provisions as detailed in the Act; (ii) The recognition and vesting of forest rights under this Act applies to forest ST/forest dwellers occupying land before 13th December 2005;

(iii) The right under this Act is heritable, but also alienable or transferable, and shall be registered jointly in the name of both the spouses or single head as the case may be; (iv) Other than provided, no forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete; (v) The forest rights recognized under the occupation of an individual or family or community on the date of commencement of this Act shall be restricted to the area under actual occupation and shall not exceed 4 hectares; (vi) Forest right will be conferred free of all encumbrances, including procedural clearance under the Forest (Conservation ) Act, except for those specified under this Act; and (vii) Under this Act the forest dweller has the right to land provided he can establish that that he was displaced from his dwelling and cultivation without land compensation due to State development interventions and where land has not been used for the said purpose within five years of acquisition.

11. Authority and Procedure for Vesting of Forest Rights: The Gram Sabhas (GS) will be the authority for determining the nature and extent of individual or community forest rights. The GS will receive claims, verify and consolidate them, and prepare a map delineating the area. The resolution will be forwarded then to the sub-divisional-level committee.

12. Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub Divisional Level Committee constituted under this Act. The State Government will constitute a Sub-Divisional Level Committee (SDLC) to examine the resolution passed by the GSs and forward it to the District Level Committee.

13. The State Government will also constitute a District Level Committee (DLC) to consider and approve the record of forest rights prepared by the Sub divisional level committees. The decision of the DLC will be final.

14. The State government will also constitute a State Level Monitoring Committee (SLMC) to monitor the process of recognition and vesting of rights to the nodal agency.

15. The SDLC, DLC and the SLMC will consist of officers from Revenue, Tribal and Forest departments; 3 members of whom from Panchayati Raj institutions, two of whom shall be ST members and one shall be a woman member.

#### **4. Draft National Tribal Policy, 2006**

16. Ministry of Tribal Affairs has prepared a draft of the National Tribal Policy (yet to go to the Cabinet for approval). This is the first time the Government has come out with a policy to guide the development of STs in an integrated and holistic manner. The proposed policy will address the issues such as enhancement of human development index of STs, improvement of infrastructure in STs dominated areas, ensuring their control over the natural resources base, displacement from their habitat and resettlement, distribution of wealth and opportunities among Tribals and empowerment.

17. The objective of the policy is to bring STs up to par with rest of the population in terms of their HDI, socio-economic conditions and basic infrastructure facilities in tribal areas. The policy provides for regulatory protection, socio-economic and political empowerment, development of infrastructure, increased livelihood opportunities, improved governance and administration, preservation of cultural and traditional rights

and traditional knowledge, protection of traditional knowledge in the intellectual property rights regime and access to privileges.

18. The strategy for implementing the policy includes addressing of tenurial insecurity among Tribals by amending State anti-alienation land laws, amending the Indian Registration Act and establishing fast track courts to deal with tribal alienation reorienting institutional arrangements in the Scheduled/ Tribal areas, strengthening and revamping of the administrative machinery; developing a quantifiable Tribal Development Index (TDI); linking devolution of funds to improvements in TDI so as to bring STs and tribal areas up to par with national level standards of living by 2020; preparation of a separate tribal-centric strategy for each sector; strengthening Integrated Tribal Development Plans/ITDAs, Modified Area Development Approaches and Clusters in tribal areas; introducing a single line administration in the Scheduled/ Tribal areas; adopting an area planning approach in the Scheduled/ Tribal Areas; adopting a Tribal Sub-Plan Strategy in letter and spirit; converging efforts and resources; devising an appropriate personnel policy to ensure the presence of Government functionaries in far-flung tribal areas; supporting voluntary action in the service deficient far-flung areas; developing an appropriate communication strategy to effectively reach the STs; encouraging academic, anthropological and policy research; putting in place an institutionalised system of monitoring and evaluation mechanism for concurrent feedback and linked to outcomes; and, empowerment of the community in terms of the provisions of the PESA Act to transfer resources and benefits directly to the Gram Sabhas.

19. The National Tribal Policy 2006 outlines several new and continuing initiatives for accelerating the pace of welfare and development of STs tribal areas in the country. To make the policy a living document, the Cabinet Committee on Tribal Affairs (CCTA) will be requested to review of the Policy every three years to redefine the objectives and the guiding principles of the policy if necessary and to accordingly recast the strategy to address new challenges that may emerge.

#### **5. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

20. The Act deals with atrocities against members of Scheduled Castes and Scheduled Tribes.

21. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—the main Act dealing with atrocities against members of Scheduled Castes and Scheduled Tribes—largely remains unimplemented. Then Minister of State for Home Affairs, Mr. I.D. Swami informed the parliament on 23 April 2002 that over 28,000 incidents of crimes, including murder and rape, were committed against Scheduled Castes and Scheduled Tribes across India during 2001. Mr. Swami further informed that while 24,792 cases were reported against Scheduled Castes, as many as 3,691 crimes were committed against Scheduled Tribes. The statistics pertaining to the calendar year 2001 show that the States of Uttar Pradesh (7356 cases), Madhya Pradesh (4336 cases), Rajasthan (1996 cases), Gujarat (1760 cases), Andhra Pradesh (1288 cases) and Orissa (1125 cases), collectively accounted for 82.39% of total number of 21,678 cases charge sheeted in the courts under the Act.

## **B. State Legal and Policy Framework**

22. Some of the States have framed specific policies to protect the interests of the ST. However, all the States are under the purview of the National policies. The states listed below are those scheduled to participate in the first tranche of this Program.

### **1. Andhra Pradesh**

23. In Andhra Pradesh to protect the STs the following Policy safeguards exist:

#### **a. The A.P. (Scheduled Areas) Land Transfer Regulation, 1959 (Regulation 1 of 1959)**

24. This Regulation repealed the Agency Tracts Interest and Land Transfer Act, 1917, and provided protection to tribal land. This Regulation was originally made applicable to the Scheduled Areas of Srikakulam, Vizianagaram, Visakhapatnam, and the East and West Godavari Districts. Subsequently, it was extended to the Scheduled Areas of Adilabad, Khammam, Warangal and Mahabubnagar districts by Regulation II of 1963 to bring uniformity of the law throughout the State.

25. Salient Features of this Regulation:

26. This was amended by Regulation 1 of 1970 which substituted Sub Sec(I) of Sec.3 of Regulation 1 of 1959 by placing an absolute prohibition on transfer of immovable property in the Scheduled Areas by a person, irrespective of tribal or non tribal, to any person other than Scheduled Tribe. Statutory presumption has been drawn that, until the contrary is proven, any immovable property situated in the Scheduled Areas and in possession of a non tribal shall be presumed to have been acquired by him or his predecessor in possession through a transfer made to him by a member of Scheduled Tribe. It also provides that where a tribal is unable to sell any land at a fair price to another tribal, he may offer it to the government who will take over the same on payment of compensation. The Regulation of 1 of 1959 was amended again in 1971 to enable mortgage without possession of any immovable property situated in the Scheduled Areas to any Cooperative Bank or other Financial Institution approved by the State Government with the express condition that in the event of default, the property should be sold only to the Tribals or Cooperative Societies composed solely of members of Scheduled Tribes.

27. The Regulation 1 of 1959 was further amended by Regulation 1 of 1978, prohibiting registration of documents relating to sale transactions in favour of non-Tribals, and all offences under the Regulation are made cognizable. Non-Tribals in occupation of land even after decree of ejection are punishable with rigorous imprisonment for a period up to one year or with fine extending up to Rs.2000, or with both.

#### **b. The A.P. (Scheduled Areas) Money Lenders Regulation, 1960**

28. The main provisions of this Regulation are:

- (i) Money lending in Scheduled areas without license is prohibited and;
- (ii) The money lender has to renew his license once in a year.

29. This Regulation stipulates that the interest shall be simple and shall not exceed 12%. If money is advanced against a pledge and if the loan is Rs 25/- or less the rate of interest chargeable is 9.38% per annum, and if the amount is more than Rs.25/- the rate of interest will be 6.25 % per annum. Every money lender should maintain account books for loans advanced.

#### **c. The A.P. (Scheduled Tribes) Debt Relief Regulation 1960**

30. This Regulation provides for scaling down of debts incurred by members of Scheduled Tribes. The Salient Features of the Regulation are:

- (i) All interest outstanding on 1-1-57 on debts incurred before 1-1-57 shall be deemed to be discharged and only the principal or such portion thereof as may be outstanding may be payable.
- (ii) Where any member of Scheduled Tribe has paid to any Creditor twice the amount of the principal, such debt shall be deemed to be wholly discharged.
- (iii) Where the sum repaid falls short of twice the principal, such amount only as would make up shortage shall be repayable.
- (iv) On debt incurred on or after 1-1-57, interest shall be calculated up to commencement of the Regulation at 5% per annum simple.
- (v) On debts incurred after commencement of this Regulation, Interest rate shall not exceed 9% per annum simple, if it is a secured debt. In case of unsecured debt, there shall be 12% per annum simple interest.

#### **d. A.P. Scheduled Tribes Debt Relief Regulation, 1970**

31. This Regulation provides further relief from indebtedness and renders all loans advanced by unlicensed money lenders null and void and unenforceable in any court.

32. The Regulation also provides for scaling down of debts as follows:

- (i) Amount of debt shall be limited to the amount of principal only; principal or outstanding portion thereof is payable.
- (ii) No interest shall be payable; most of the land in Scheduled areas in Andhra Pradesh was covered under the Feudatory systems of land tenure, like the Zamindari, Jagirdari, Muttadari and Mahaldari systems. Under these Feudatory systems, the land holders have the right to evict a tenant if someone offered higher rent. The tribal tenant did not have security of tenancy over the lands cultivated by him. With a view to confer patta rights to tribal ryots (farmers) over the land cultivated by them the, following regulations were made:



**e. The A.P. Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969**

33. The Regulation I of 1969 provides for abolition of Mahals in the Scheduled Areas of Nugur, Alabaka and Cherla in the Khammam district and for the conversion thereof into the ryotwari system. This regulation was passed to abolish the feudatory system of tenure called Mahaldhari and to extinguish the relationship between the proprietor and tenant so as to confirm patta rights to tribal tenants over the lands held by them. The Regulation provides for :

- (i) appointment of settlement of Officers to conduct settlement operations in the erstwhile Mahals.
- (ii) Every tribal ryot in lawful possession of land continuously for a period of not less than one year immediately before the notified date shall be entitled for to ryotwari patta for such land. If the tenant is a non-tribal, he is entitled for ryotwari patta only if he is in occupation of land for a continuous period of not less than eight years immediately before the notified date and such occupation is not violative of provisions of the Land Transfer Regulation of 1959.

**f. The A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 (Regulation II of 1969)**

34. Regulation II of 1969 provides for abolition of Muttas in certain Scheduled areas of the State and conversion thereof into Ryotwari system. The said regulation came into force in 1969. The Regulation vests in the Government all the rights of Muttadars free from encumbrances. The Revenue Recovery Act, 1864, the Irrigation Cess Act, 1865 and all other enactments relating to rights over the land and land revenue applicable to ryotwari area are made applicable to the Muttas. The Settlement Officer appointed under this Regulation has to carry out survey and settlement operations to facilitate introduction of ryotwari settlement.

35. Under this Regulation the tribal ryots in occupation of lands for a continuous period of not less than one year before the notified date shall be entitled to ryotwari patta. No non-tribal ryot is entitled to ryotwari patta in respect of agricultural land unless he is in lawful possession of the said land for a continuous period of 8 years before the notified date and such possession was not hit by the provisions of A.P. Scheduled Areas. Land Transfer Regulation, 1959.

**g. The A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970 (Regulation II of 1970)**

36. This Regulation provides for ryotwari Settlement of certain lands in the scheduled areas in Andhra Area in respect of which no settlement has been effected i.e. part of Khammam, Srikakulam, Vizianagaram, Visakhapatnam, East Godavari and West Godavari districts. The Regulation applies to lands other than those comprised within the Muttas and Mahals governed by the Regulations providing for the abolition thereof. After the survey every ryot is entitled to ryotwari patta in respect of all cultivable lands that were properly included in his holding. If the land is situated in an estate taken over by the Government under Estates Abolition Act , the occupant of that land shall be granted

a patta if he is in continuous occupation of that land from the notified date. For the lands not falling under the said Category, a non-tribal ryot is not entitled to a ryotwari patta unless he is in occupation of the said land for a continuous period of 8 years from the commencement of the said Regulation, and the same is not void or illegal under Land Transfer Regulation, 1959.

**h. The A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950.**

37. The notified tribal areas in the Telangana region were covered by Jagirdari System of land tenure. The Jagirs were abolished and the ryotwari system was introduced. The notified tribal areas were surveyed and settled and the tenants were conferred patta rights under the Act.

**i. The A.P. Panchayat Raj (Amendment) Act, 1998**

38. According to the provisions under part VI-A of this Act, the tribal panchayats and Grama Sabhas are vested with the powers of safeguarding and preserving not only the traditions and customs of the people, but also their cultural identity and community resources. The Grama Sabha is empowered to approve plans, programs and projects for Social and economic development and also can select beneficiaries under poverty alleviation programs and other schemes. The Grama Panchayats exercise powers in respect to enforcement of prohibition or regulation or restriction of sale and consumption of any intoxicant, ownership of MFP, prevention of alienation of land in Scheduled Areas and its restoration, management of village markets, exercising control over money lending, etc.

**j. The A.P. Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979**

39. Through this Regulation, the trade of Minor Forest Produce was regulated by the creation of a State monopoly. Under the said regulation, the government has appointed Girijan Cooperative Corporation Ltd. as their Agent for the purpose of procurement/trade of minor forest produce and vested monopoly rights with it. The Scheduled Tribes in the State thereby enjoy rights over the collection of minor forest produce from those units of the Corporation.

40. The officers of the corporation are empowered to stop, detain, and examine at any place and to seize stocks that are not covered by a valid transport forest permit, as well as to make further legal proceedings against the offenders. The Branch Managers of the Corporation are empowered to file a charge sheet against the offenders before the magistrate having jurisdiction.

**2. Chhattisgarh**

41. In addition to national laws and policies formulated to safeguard the interests of tribal peoples and their communities, Chhattisgarh is implementing a Tribal Development Program.

42. The objective of the Programme is to develop and implement a replicable model that ensures household food security and improves livelihood opportunities and overall

quality of life for tribal populations based on the sustainable and equitable use of natural resources. To achieve this, the Program: i) empowers tribal grassroots associations and users' groups, including women and other marginal groups; ii) promotes activities which generate sustainable increases in production and productivity of land and water resources; and iii) generates sources of income outside of agriculture, particularly for the landless.

43. The basic approach is to promote processes of awareness generation, legal literacy, social analysis and mobilisation for self-selecting group formation among disadvantaged women and marginalised groups. The Program supports initiatives identified, planned and implemented by beneficiaries and provides the required resources and support. The resources are managed directly by the beneficiaries after appropriate training and capacity building. These are supplied through non-governmental organizations NGOs with a proven experience in applying such approaches.

44. The Program has three main components. Under the beneficiary empowerment and capacity building component, the Program finances broad-based awareness raising of tribal rights and of gender and equity issues, legal and managerial strengthening, and technical training. Similarly, under livelihood systems enhancement, the Program finances all production-related activities as well as enabling measures, namely land and water management/ watershed development—including community-based small infrastructures, production systems improvement, rural micro-finance, and health and nutrition. Under the Program management and implementation component, the Program finances salary and allowances for Program Implementation Unit (PIU) staff at the District level, the relevant running costs for the Tribal Development Society and a skeleton Programme Management Unit (PMU), a legal defence fund, specialised and baseline studies, training for the staff and the development of training material, exposure visits, study tours, technical assistance, and the costs of capacity building of facilitating NGOs and their contractual support services.

### **3. Karnataka**

45. Schedule Tribes in the State are covered by the Karnataka Land Reforms Act, 1964, Prohibition of Transfer of Certain Lands (PTCL) Act, 1978, and Prevention of Atrocities Act, 1989.

#### **a. Karnataka Land Reforms Act, 1964**

46. Under the Karnataka Land Reforms Act, 1964, Scheduled Caste (SC) and Scheduled Tribe (ST) families are eligible for part of lands identified as surplus land in the State.

#### **b. The PTCL Act, 1978**

47. The PTCL Act, 1978, was intended for restricting the transfer of land by members of Scheduled Tribes in the State, and for the restoration of lands alienated by such members. No Schedule Tribe can transfer allotted or granted lands without the permission of Government, if done, the new registration will be invalid. Further, nothing in this Act shall apply to the transfer of allotted/granted lands in favour of the GoI, a local authority or a bank—either before or after the commencement of this Act.

### **c. Land Purchase Scheme**

48. No Schedule Caste or Schedule Tribe is allowed to transfer the land before the loan repayment period of 10 years, given under Land Purchase Scheme of Karnataka Schedule Caste and Schedule Tribe Development Corporation Limited.

#### **4. Maharashtra**

49. The Scheduled Tribes in the State come under the purview of the National level policies. There are no states specific policies.

#### **5. Orissa**

50. The State of Orissa has a tribal population of 22.13% relative to the total State Population. There are 62 different tribal communities in Orissa mostly concentrated in seven districts South-West Orissa, namely Gajapati, Kalahandi, Kandhamal, Koraput, Malkangiri, Nawarangpur and Rayagada.

51. In exercise of powers conferred by sub-paragraph 6 of the Fifth Schedule to the Constitution of India, the revised Presidential Order titled "The Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh & Orissa) Order 1977" has declared the full districts viz. Mayurbhanj, Sundargarh, Koraput (which now includes as Scheduled Areas of the State the districts of Koraput, Malkangiri, Nabarangapur and Rayagada), Kuchinda tahasil of Sambalpur district, Keonjhar, Telkoi, Champua, Barbil tahasils of Keonjhar district, Khondamal, Balliguda and G.Udayagiri tahasil of Khondamal district, R.Udaygiri tahasil, Gumma and Rayagada block of Parlekhemundi tahasil in Parlakhemundi Sub-division and Suruda tahasil (excluding Gazalbadi and Gochha Gram Panchayats), of Ghumsur sub-division in Ganjam district, Thuamul Rampur and Lanjigarh blocks of Kalahandi district and Nilagiri block of Balasore district. After reorganization of districts in the State, 7 districts fully and 6 districts partly are covered under the Scheduled Areas of the State.

52. The Scheduled Tribe and Scheduled Caste Development Department of Government of Orissa provides concerted efforts to the problem of Scheduled Tribe in Orissa. The Constitution has imposed responsibilities on the Governments for the all-around Development of the Scheduled Tribes and Scheduled Castes. The policies, programs and schemes of the Department have been designed in consonance with the overall goals and objectives as enshrined in Articles 46 (Part IV), 16, 17, 19, 164, 244, 275, 330, 332, 335, 338, 339, 341, 342 and 366 of the Constitution of India, and aim at improving the quality of life of ST and SC communities.

53. Orissa Tribal Empowerment & Livelihoods Program is designed to achieve the following goal and objectives:

- (i) build the capacity of marginal groups as individual and grass-roots institutions.
- (ii) enhance the access of poor tribal people to land, water and forest resources and increase the productivity of these resources in environmentally sustainable and socially equitable ways;

- (iii) encourage and facilitate off-farm enterprise development focused on the needs of poor tribal households;
  - (iv) monitor the basic food entitlements of tribal households and ensure their access to public food supplies;
  - (v) strengthen the institutional capacity of government agencies, Panchayati Raj Institutions, NGOs and civil society to work effectively on a participatory mode for poverty reduction with tribal communities;
  - (vi) encourage the development of a pro-tribal enabling environment by ensuring that legislation governing control of, and access to, development resources by poor tribal households is implemented effectively and recommending other policy improvements; and
  - (vii) build on the indigenous knowledge and values of tribal and blend these with technological innovations to ensure a speedier pace of development.
54. The Program comprises of the following components:
- (i) **Capacity Building for Empowerment:** support NGOs to mobilize communities and to empower them through awareness creation of tribal rights, gender and equity issues, natural resource management and program planning; assist them, through micro-planning exercises, in the prioritization of their development needs and in the formulation and implementation of development proposals and build/strengthen appropriate community institutions. It would also strengthen the capacity of the support agencies that will assist them as facilitators.
  - (ii) **Livelihood Enhancement:** support (i) Land and water management; (ii) Participatory forest management to regenerate degraded forest land and to develop NTFP (non-timber forest products) processing and marketing enterprises; (iii) Improvements in agricultural productivity; (iv) Improvements in animal husbandry; (v) Improved access to rural financial services through the promotion of self-help savings and credit groups and linking them with formal financing institutions to augment their capital base; and (vi) Development of community infrastructure to fill critical gaps in the provision of key rural infrastructure (e.g. drinking water, village link road upgrading) and to provide for necessary economic (e.g. work sheds, stores, mills, expellers) and social infrastructure (e.g. community halls)
  - (iii) **Support for Policy Initiatives:** support the operationalisation of the Government's existing policy initiatives in relation to tribal's access to land and forest products through: (i) Providing a legal defence fund to assist tribal in pursuit of land alienation/restoration cases; (ii) Supporting operational costs for improved detection and disposal of land alienation cases and monitoring enforcement of land restoration orders; and (iii) Funding the survey and settlement process for the hill slopes between 10° and 30°. The Program would also fund studies to deepen understanding on other key policy issues and engage the government in dialogue on unresolved policy areas through a structured framework involving the establishment of milestones and a timetable for action.
  - (iv) **Development Initiatives Fund:** provides flexibility to dispense additional funding for well-performing activities in demand from the communities and for new activities that become feasible and attractive in the course of Program implementation

- (v) **Program Management:** provide for the costs of Program management at the State and ITDA level.
- (vi) **Food Handling:** cover the cost of transport, storage and distribution of WFP food assistance.

## ANNEX 2: OUTLINE OF INDIGENOUS PEOPLES PLAN

<b>Executive Summary</b>	
<b>I. Background and context</b>	<ul style="list-style-type: none"> <li>a. The project and project components</li> <li>b. Relevant state legal and policy framework</li> <li>c. Baseline data of tribal peoples in the project area               <ul style="list-style-type: none"> <li>i. maps of the area of project influence and the areas inhabited by tribal peoples</li> <li>ii. brief analysis of the social structure and income sources of project affected tribal peoples</li> <li>iii. information on relevant cultural practices and patterns</li> <li>iv. relationship of tribal peoples to other local/national groups</li> </ul> </li> <li>d. Key positive project effects on tribal peoples</li> <li>e. Key negative project effects on tribal peoples</li> </ul>
<b>II. Development and/or mitigation activities</b>	<ul style="list-style-type: none"> <li>a. Describe details of development (e.g. benefits-sharing) activities</li> <li>b. Describe details of mitigation activities</li> </ul>
<b>III. Strategy for tribal peoples participation</b>	<ul style="list-style-type: none"> <li>a. Describe mechanism for participation by tribal peoples in planning, implementation, monitoring, and evaluation</li> <li>b. Describe procedures for a project-related grievance procedure</li> </ul>
<b>IV, Institutional arrangements - implementing agency (IA)</b>	<ul style="list-style-type: none"> <li>a. Identify main tasks and responsibilities in planning, managing, and monitoring development and/or mitigation activities</li> <li>b. Identify role of NGOs or tribal peoples organizations in implementing the development and/or mitigation activities</li> </ul>
<b>V. Budget and financing</b>	<ul style="list-style-type: none"> <li>a. Identify development and/or mitigation activity costs (including contingency funds) and funding resources</li> <li>b. Provide detailed cost estimates for planned activities and investments, such estimates should be broken down into unit costs by project year and linked to a financing plan</li> </ul>
<b>VI. Supervision/Implementation</b>	<ul style="list-style-type: none"> <li>a. Specify arrangements for supervision of IPDP, e.g. annual reports, inspections</li> </ul>
<b>VII. Monitoring</b>	<ul style="list-style-type: none"> <li>a. Prepare a plan for internal and independent monitoring and evaluation of the targets of the major development and/or mitigation activities related to tribal peoples</li> </ul>