

REPORT

OF

**THE STUDY GROUP ON LAND HOLDING
SYSTEM IN TRIBAL AREAS**

GOVERNMENT OF INDIA

PLANNING COMMISSION

THE CHIN HILLS REGULATION, 1896 ¹

(Regulation V of 1896)

{13 th August 1896}

1. Section 22- Where the Superintendent of the Deputy Commissioner of any area specified in the Schedule is satisfied that the presence of any person not being a native of such area is injurious to the peace or good administration of the area, he may, for reason to be recorded in writing, order such person to leave the area within a given time.

2. Section 23- Whoever, not being a native of any such area, disobeys an order under clause (1) may, on conviction by a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 1,000, or with both.

3. Section 35 - Taxes shall be levied on residents, permanent or temporary, house, clans and villages at such manner and subject to such exemptions as the State Government may prescribe.

Explanation - 'Tax' in this section includes land revenue, as well as any cess, toll, rate, duty or fee.

4. Section 38 (2)- The State Government may revise any order passed under clause (1).

5. Section 40 - No order made under clause (1) shall be called in question in any Civil or Criminal Court.

NOTES

Section 22,23,38 (2) and 40 of the Regulation are set out here in the restricted and modified form being extended to earlier the North Cachar Sub-Division of the Cachar District, Garo Hills, the Khasi and Jaintis Hills (excluding the Municipality and Cantonment, Shillong wher only section 35 has been extended), the Naga Hills, the Mikir Hills Tracts in the Nowgong and Silsagar Dist. and the Lushai Hills District etc.

Section 35 of the Regulation in the modified form set out here was extended to the Lushi Hills District, the Garo hills District, the Naga Hills District, the Khasi and Jaintia Hills District, the Sadiya Frontier Tract, the Balipara Frontier Tract, the Lakhimpur Frontier Tract, the North Cachar Hills in the Cachar District and Mikir Hills Tract in the Nowgong and Sib-sagar Districts etc.

Under section 22, the Superintendent or the Deputy Commissioner of any of the areas as specified in the Schedule is satisfied that the presence

¹ As applied in Meghalaya and Nagaland.

Of any person who is not a native of such area is injurious to the peace or good administration, then he may direct such person to leave the area within a given time and under section 23 when such person disobeys an order passed as such, then he would be liable to be convicted. Under sections 35, powers have been given to levy taxes on the residents of such area. Under section 40 an order passed as above will not be questioned in any Civil or Criminal Court.

Adopted by Nagaland

Chlu Hills Regulation V of 1896-No. 784, dated the 9th October, 1911. _ In exercise of the powers conferred by section 5 of the Scheduled Districts Act, 1874 (XIV of 1874) and with the previous sanction of the Governor-General in Council, the Lieutenant Governor of Eastern Bengal and Assam is pleased to extend section 22,23,28 (2) and 40 of the Chin Hills Regulation, 1896 (Regulation V of 1896), to be areas specified in the Scheduled hereto annexed in the restricted and modified form set out below, namely :

- (1) Where the Superintendent or the Deputy Commissioner of any area specified in the Scheduled is satisfied that the presence of any person not being a native of such area is injurious to the peace or good administration of the area, he may, for reasons to be recorded in writing, order such person to leave the areas within a given time.
- (2) Whoever not... U native of any such area. Disobeys an order under clause (1), may, on conviction by a Magistrate be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000, or with both.
- (3) The Local Government may revise any order passed under clause (1)
- (4) No order made under clause (1) shall be called in question in any Civil or Criminal Court.

Schedule- The North Cuchar Sub-division of the Cachar District, the Garo Hills, the Khasi and Jaintia Hills, the Dibrugarh Frontier Tract, in the Nowgong and Sibsagar Districts and the Lushi Hills District.

[See Easter Bengal and Assam Gazette of the H.d.October 1911, Part II, Page 1882]

NOTES

The Government of Nagaland has adopted section 22, 33,38 (2) and 40 of the Chin Hills Regulations in the restricted and modified from having re-numbered the said sections as 1,2,3 and 4 respectively.

PREFACE

The Planning Commission had set up a study group on land holding system in tribal areas under the chairmanship of Prof. B.K. Roy Burman, in November 1985.

The basic objective was to study the nature and extent of land and land-based resources available in the tribal areas, the nature and extent of dependence of tribal communities on land resources, the extent to which traditional access of the tribal communities to land and land-based resources is recognised under provisions of the various laws, the overt and covert changes following implementation of survey and settlement operations in tribal areas and changes in the matter of control and access to land and land-based resources in the wake of development activities and different administrative and legislative measures.

This report is primarily based on a field study in Orissa. It has also drawn upon secondary resource materials from some other states. Even this limited study has brought out certain issues of a general nature which have relevance to other states as well. In December 1986, the study group submitted its report to the Planning Commission. Subsequently, the Government placed it in the Lok Sabha vide U.S.O No. 675, dated 15th April 1987.

The basic threat to the tribal existence emanates from their land alienation. For the tribals, traditional land holding system was the basis of their polity, economy and culture. This land holding system is different from mere allocation of land pattas to the individual families. As Prof. Roy Burman puts it in his forwarding letter to the then Home Minister:

“Traditionally in most tribal areas individual rights of enjoyment of land and land based resources are embedded in communal systems of access to, and management of resources- during the latter part of the colonial rule attempts were made to convert the political rights of the military overlords into proprietary rights of feudal nature. But due to lack of productive and administrative infrastructure, such attempts towards feudal distortions, these were accepted as the crucial elements of the legal framework for implementation of policies and programmes in the tribal areas. Paper laws of the colonial dispensation were given the place of pride, over the laws on the ground by which the people lived. The significance of tribal upsurges in diverse forms which have taken place from time to time during the last one century, for protection of their resource-based survival systems, in specific historic-ecological niche, has not been adequately appreciated. On the other hand, the paper laws of the past have been used as alibi to deny the customary rights of the people, and in the process accommodative compromises have been made with the feudal pretensions in some areas and factional elites have been promoted in other”.

Apart from non-recognition of the community as a legal entity, the Orissa Government had issued an instruction that during the land survey and settlement operation for the preparation of the records of rights, land use of only upto nine degree slope should be recorded. In fact, the survey technique which was adopted did not allow accurate cadastral survey of land beyond a nine degree slope. The combination of the non-recognition of the ground reality of community rights and the adoption of an incongruous policy decision and survey technique, was disastrous for the tribals. The study Team has

cited a case in Koraput district where out of 936.13 acres were recorded in their favour. In many other villages of the same district, less than one percent of the land was recorded in favour of the tribals. In Keonjhar district through examination of the record of rights and field verification, the study Team found that only 2.48 percent to 23.50 percent of the land under occupation of the tribals belonging to Juang and Bhuiya communities for centuries was recorded in their favour. The rest of the land was entered in the record of rights as 'States land' and the tribals were shown as 'encroachers' on their ancestral lands.

It is to be noted that in his statement submitted to the Lok Sabha, the Planning Minister did not deny the facts documented by the study team but, observed that the state government of Orissa "seems to have avoided" surveys beyond ten degree slope "in order to prevent alienation of fragile hill slopes."

Thus, the plea of environmental protection has been used by the state as a justification to rob the tribals of the resource base of their survival. There are two issues involved in it. Is there ample evidence to show that the tribals, on their own, cause damage to their hilly environment? Are there not many studies which show that reckless extraction forest resources by national and international industrial-commercial concerns, in collusion with the obliging techno-bureaucratic apparatus of the state, are primarily responsible for the degradation of the hilly terrains? The second issue is that, even if the tribals play a secondary role today in causing damage to the hilly slopes which they nurtured for

generations, can the state curb their right in the name of environmental protection, by a simple executive order?

The Study Team has highlighted another interesting fact. It has brought out that the land reform (without first removing the colonial distortions) has promoted neo-feudalisation process where the tribals are less assertive and democratic mobilization where they are conscious of their historical rights.

Keeping all these facts in view, the Study Team has made a number of recommendations. It has suggested that the land laws and the land policies operative in the tribal areas should be carefully examined in their historical, ecological and political-economic contexts. It has also suggested that before the land survey and settlement operations are conducted in the tribal area, the methodology of the operation, the process of identification of the rights and the contents of the rights which are to be actually recorded should receive very close examination, as it has been found that in these matters the practices vary from state to state.

It is surprising that though the report of the Study Team which reveals many disconcerting facts about erosion of the command of the tribal communities over resources, was placed before the Lok Sabha in 1987, none of the political parties have reacted to it. What is more strange is that the Commissioner for the Scheduled Castes and Scheduled Tribes, who in his report for the years 1987-89 has made a strong plea for the protection of the command of the tribals over resources has failed to take note of this

weli-documented report, which shows that the command of the tribals over resources for the tribals is being eroded not because of failure of functionaries at the implementation level put because of the conscious decision of the State at the policy making level.

As the report of the Study Team was presented to the Lok Sabha, it is a public document and deserves wide circulation. We hope that the Planning Commission will make printed Copies of the report available to the general public, particularly the social activists, academicians, the legislators and the policy makers.

Society for Participatory Research in Asia (PRIA)

42, Tughlakabad Institutional Area

New Delhi-110062

Statement attached to the Planning Commission O.M No.PC/BC/16-1(7)/ 87 dated. 1988 in fulfillment of assurance in respect of Lok Sabha U.S.Q No.675 dated 15.04.1987

1. (C) & (d): The Report was examined in consultation with the State Government of Orissa and the Central Ministries/Departments of Welfare, Environment and Forests and Rural Development and the details are given here under.

2. It has been brought out that the record of rights do not take into account the communal holdings of tribals. It has, therefore, been rightly recommended by the Study Group that the Survey and Settlement Acts and Manuals of different States should be studied to ensure that the rights relevant for tribals are recorded. It is recognized that this is particularly important in a traditional tribal society where separation of individual from the community in matters of property relations concerning land do not exist. The Department of Rural Development agrees with the Recommendation about the need for an intensive study of communal land systems, their persistence, change, decay and re-invigoration with a view to identifying measures which may lead to formulation of policy guidelines regarding communal land systems. It is also recognised that where individual rights are embedded in communal rights, removal of community as an intermediary removes the necessary condition for

the concerned individuals to enjoy their rights and, therefore, this aspect will need to be kept in view while framing land reform policies.

3. The study Group has observed that the Orissa Village Forest Rules, 1985 assign the rule of preparing and approving the working plan of village forests to the Forest Department officials and doubts have been expressed as to what extent the need of the village communities would be satisfied through such arrangements. It has been clarified by the Government of Orissa that the said Rules specify that the opinion of the concerned villages be obtained while preparing such management plans. In the Social Forestry Project the joint management plans for the village wood lots are required to be drawn-up in consultation with the Village Committee which is the body consisting of the representatives of all sections of the village. Thus, this arrangement does take into account the choice of the villagers with regard to the plantation sites, species, harvesting programme and distribution of usufructs.
4. The tribal communities enjoy proprietary rights over bulk of the forest areas in North-East through the institutions of District Councils. In other parts of the country also considerable areas under tree cover was set apart for meeting the needs of the communities living in and around forest areas, at the time forests were declared as Reserved or Protected Forests under the Indian Forest Act, 1927.

5. The Ministry of Environment and Forests have stated that with the Promulgation of Forest (Conservation) Act, 1980 there has been a very considerable reduction in diversion of forest land for other purposes and consequently the threat of displacement of the tribals from their house and lands, which are mostly within forested areas has also been brought down. Wherever a major diversion of forest land is approved, one of the main stipulations made is that proper rehabilitation programme for oustees should be prepared keeping in view their social, cultural, economic and also psychological aspects.
6. The Ministry of Environment and Forests reiterates that the Forest (Conservation) Act, therefore, ensures steps to maintain the life style and culture of the tribals.
7. As regards cadastral survey and settlement operations above 10 degree slopes which have been declared forest, there may be some difficulty in carrying out these operations because this may come in conflict with the provisions of the Forest (Conservation) Act, 1980. Even in cases where the provisions of the Forest Act are not attracted the State Government of Orissa seems to have avoided such a survey in order to prevent alienation of fragile hill slopes.
8. It might be noted that the existing policy measures under the Tribal-Sub-Plan provide a framework for implementation of broad aspects of the important

recommendations contained in the Report. By their very nature, the recommendations call for continuing review and implementation. The policy approach is revised/perfected with the experience gathered in implementation of various development measures. The Rural Development Department has conducted recently a survey through the Tribal Research institutes to ascertain the extent of alienation of tribal land, adequacy of legislative provisions and shortcomings in the administrative machinery in the implementation of concerned protective laws in 13 States. A Standing Committee has also been constituted by the Ministry of Welfare to review rehabilitation of project displaced tribals in a continuing manner.

9. As to constitution of Watch-dog committee at the district level to maintain vigilance over land transfers, the Orissa Land Reforms Act, 1960 already provides for such District Level committee. The State Harijan and Tribal Welfare Department have Extension Officers in each Block. Their duty chart prescribes that in course of their tours they should be on the look-out for illegal transfer of tribal land and if any such instance comes to their notice, it should be promptly brought to the notice of competent authority for appropriate action under Regulation 2 of 1956. Further the Regulation 2 of 1956 on control of transfer of tribal land is being amended as per the recommendations of the Tribal Advisory Council to make it more stringent with all built-in safeguards, both legal and administrative.

10. As regards displacement and rehabilitation of displaced tribals, a comprehensive national policy on rehabilitation of displaced persons is being formulated.

VIII SESSION 1987 OF EIGHTH LOK SABHA

	MINISTRY OF PLANNING	DEPARTMENT OF		DATE OF FULFILLMENT
QUESTION NO. AND DATE	SUBJECT	PROMISE MADE	WHEN & HOW FULFILLED	REMARKS (REASONS FOR DELAY)
Starred Question No. 675 dated 15.04.1987 by Prof. Narian Chand Parashar:	Recommendation of Study Group of <u>Land Holding Systems</u>			The required information could not furnished by the State Government and Central Ministries
	Referring to the reply given to USQ No.4018 on 13.8.86 regarding Land problems of tribal and asking:			
	(a) whether the Study Group on Land Holding System in Tribal Areas, set up		As per Statement attached.	

	by the Planning Commission has since submitted its report;			
	(b) if so, when;			
	(c) the main recommendations made and the decision/action taken by Government thereon, and	(c) & (d):- The main recommendations made by the Study Group include examination of the question of communal ownership and, management of land and land-based resources including forest resources in tribal areas, taking steps to prevent dispossession of tribal land alienation laws and rehabilitation of project displaced tribals. The report is under examination.		

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Dr. Prof. B.K. Roy Burman
Chairman
Study Group on Land Holding
System in Tribal Areas

Planning Commission
Yojana Bhawan
New Delhi-110001

December 1, 1986

It is with a mixed feeling that I am submitting herewith the report of the Study Group on Land Holding Systems in Tribal Areas. I am happy that though there was some problem about requisite organizational and infra-structural support, it has been possible for the Group to complete the exploratory study mainly based on case study in Orissa. The understanding cooperation extended by you has certainly helped the Study Group to achieve whatever it has been able to achieve. Some of the members of the Study Group including myself had earlier conducted studies on the central tribal belt of India in our other capacities. Thus a fair amount of substantive material was available to the Study Group and it was possible to formulate the issues and carry out the field observations even in the absence of a requisite infra-structure. Inwardly I however feel sad that the Study, exploratory though it is, has provided enough material, which tend to confirm the correctness of a disturbing Tribes during the Seventh Five Year Plan to the effect that alienation of tribal land system through state action is becoming a very important fact of life and is the cause of much resentment in tribal areas. I would have been happy if it was otherwise.

Here I would like to make it clear that mere change in land sue pattern, whatever may be the scale of such change is not alienation. Even transfer of rights by itself is not alienation. Anthro-p-sociologically alienation is a systemic concept. It is related to role dissonance in economic, socio-political and cultural milieu looked at in this way, it is an imperative

need for a state committed through the history of its formation to the ethos of socialist humanism, to make a holistic approach to the question of alienation of land-based resource system.

Broadly there are three processes through which alienation of tribal land holding system takes place, out of which one is related to the colonial past of the country and the other two to the dominant social philosophy about the role of welfare state and of the generative source of science and technology. I am leaving out here transfer of lands from tribal individuals to non-tribal individuals, as in recent years there has been a sharp decline in its magnitude in many states and also it is to be perceived as the outcome of several processes, which deserve closer look.

As a legacy of the colonial past, there is considerable ambivalence and ambiguity in the matter of recognition of customary rights of tribal communities in respect of land and land based resources. Traditionally in most tribal areas individual rights of enjoyment of land and land-based resources are embedded in communal system of access to and management of resources. While in the middle ages in some of the tribal areas feudal control was imposed on communal system, during the latter part of the colonial rule attempts were made to convert the political rights of military overlords into proprietary right of feudal nature. But due to the lack of administrative and productive infrastructure, such attempts mostly remained on paper. In the post-independence period rather than correcting these attempts towards feudal distortion, these were accepted as the crucial elements of the legal framework for implementation of policies and programmes

in the tribal areas. Paper laws of the colonial dispensation were given the place of pride over the laws on the ground, by which the people lived and by and large still live their life. The significance of the tribal upsurges in diverse forms which have taken place from time to time during last one century, for protection of their resource based survival system, not only as biological entities, but also as social entities in specific historic-ecological niche, has not been adequately appreciated. On the other hand, the paper laws of the past have been used as alibi to deny the customary rights of the people and in the process accommodative compromises have been made with the feudal pretension in some areas and fictional elites have been promoted in other areas. It is anybody's guess to what extent both have contributed to the stagnation of growth and corruption of the over-all administrative political system.

The report has given several qualitative and quantitative indicators of the dispossession of the tribals that have taken place as a result of state policy regarding recognition of their customary rights has been found that only a fraction of the land under possession of the tribals for generations have been recorded in their favour. It has also been found that they have been treated as encroachers not also in respect of lands on which trees have grown in nature but also in respect of lands on which trees worth several million rupees were planted by themselves and their forefathers. What makes the matter highly questionable is the use of the scientific method of land survey and concern for the protection of environment as the justification for this anomaly. This leads to the second process, through which the tribal land-holding system is being adversely affected. There are arguments advanced by well-meaning persons that one should not be too much bogged

down with historico-normative issues; what is more important is the welfare of the people. From this point of view the tribal people are considered as backward and can be manipulated by internal and external vested interests against the mainstream strategy and programme of national development and hence direct take over of the resources under the aegis of the technical and administrative bureaucracy is in the long interest of the tribals themselves. This argument is faulty on three grounds. First, it ignores the creative strivings of the tribal and other sections of the population at the grass-root level to harness the forces of nature, create their own environment and adapt themselves to the same. Second it ignores the fact that bulk of the natural resources like minerals, timber, hydel-power sources are located in tribal areas and that tribal expectations and aspirations are as much important as those of any other section of population in determining the experience all over the world shows that there is a limit to the positive role of welfare state in human welfare. In fact the welfare states has entered a gray area of uncertainties and crisis everywhere and there is a growing quest for finding solutions to the environmental issues through people's creative partnership. But any land management system which ignores the historical-ethical basis of people's rights and the process of democratic mobilization taking place among them will accentuate the environmental hazards. The third factor affecting the tribal land holding system is the prevailing notion about the generative source of science and technology. For more than a century an artificial separation has been created between life and laboratory as the generative source of science and technology. While technology has its own realm of autonomy, an integration of science and technology can take place only in real life situations. As tribal life situation today mainly centres round the productive functions and relations of

production concerning land, the science and technological development in the tribal areas has to proceed along two axis. One axis is the skill, Knowledge and resource base of the tribal communities; the other axis is the common pool of technology and knowledge about the application of such technology available to mankind at the global plane for augmenting the quality of life and strengthening the forces of peace and human unity. It has often been found that in the matter of technological development of tribal areas, the tribal people as such have been generally looked upon as marginal concerns,. As a result, technologies are transplanted which make their skill, knowledge and adaptive mechanisms irrelevant. Lands which have been considered by them for generations as of vital importance for survival are marked in terms of exogenous technology as wastelands. Some of the recent legislations and administrative measures in respect of waste-lands have tended to adversely affect tribal interest, it is not a reflection against the subjective attitude of the policy makers, but it speaks about the failure of the social analysts to critically bring out the issues.

In this forwarding letter I have felt it necessary to refer to several issues which are crucial for an integrated understanding of the land holding system operating on the ground but which were not specifically included in the terms of reference of the Study Group. The issues concerning technology and land use belong to this category. The views expressed in the letter in respect of the should be considered to be of my own.

In the light of the knowledge derived from the intensive study that has been carried out in Orissa, there was a general feeling among the members of the Study Group that land

reform policy in the tribal areas is yet to be realistically formulated. The cornerstone of land reforms in India has appropriately been the abolition of exploitative intermediaries between the state and the land users. But where individual rights are embedded in communal rights, removal of the community as intermediary removes the necessary condition for the concerned individuals to enjoy their rights. There are, however, several complex issues involved in this generalized statement; in depth examination of the issues in the light of the actual processes taking place on the ground will be necessary.

I avail of this opportunity to put on record my deep appreciation of the informed cooperation rendered by all the members of the study group.

Though Dr. Bhupender Singh ceased to be Member-Secretary on his transfer to Orissa, he continued to take active interest in the work of the Group till the finalization of the report. I am thankful to him for the same.

On behalf of the Group I would like to put on record our thanks to the Government of Orissa for the unstinted cooperation extended by them during our visit to the State.

I would also like to put on record on behalf of the Study Group our appreciation of the assistance rendered by Shri P.K. Mohanty, Senior Research officer, Planning Commission, Shri Sarat Chandran, P.S. to the Deputy Chairman and Shri K.C. Arya, Who was attached to me as private secretary at the state of finalization of the Report.

The understanding cooperation extended by Shri A.S. Bajjal, Secretary, Planning Commission has helped the Group to finalise the report. I thank him for the same.

The Study Group is also thankful to the Planning Commission for sponsoring the Study and to you personally for the active interest that you have shown at every stage of the study.

Yours Sincerely

B.K. Roy Burman

Dr. Manmohan Singh
Deputy Chairman
Planning Commission
New Delhi.

REPORT OF THE STUDY GROUP ON LAND HOLDING SYSTEMS IN TRIBAL

AREAS

1.0 Formation of the Study Group

A Study group was set up by Planning Commission (Backward Classes Division) on land Holding Systems in Tribal Areas on November 6, 1985 vide their Memorandum No.PC/BC/17-1(21)/85. The Group consisted of the following members:

Prof. B.K. Roy Burman
Visiting Senior Fellow
Centre of the Study of Developing Societies, Chairman

Prof. G. Parthasarathy
Professor of Economics
Antra Pradesh University,
Visakhapatnam, A.P

Prof. Gangmumei Kabui
Professor of History
Manipur University
Imphal

Prof. Jaganath Pathy
Deptt. Of Sociology
South Gujarat University
Surat

Justice D.M. Sen (Retd.)
Gauhati High Court

Shri Murkoth Ramunni
(Retd.) Adviser to the Governor of Nagaland

Smt. R.O. Dhan
Ex-Member, Union Public Service Commission

Shri A.R. Bandopadhyaya
Commissioner
Agriculture and Irrigation
Government of Bihar, Patna

Dr. Bhupender Singh
Adviser
Planning Commission

.....Member Secretary

In May, 1986, Dr. Bhupender Singh was transferred to Orissa as Commissioner, Agriculture and Rural Development, Government of Orissa. After that there have been several changes in the composition and functional arrangement of the Study Group.

2.0 Terms of Reference

The terms of reference were as follows;

- (i) the nature and extent of land and land-based resources available in the tribal areas;
- (ii) the extant land holding-holding patterns obtaining among different Scheduled Tribe communities and the types of institutions as well as forms of institutional arrangements prevalent among them for regulation of the use of the land resource by individuals, LAMPS, village communities on the land resources;
- (iii) the nature and extent of dependence of tribal communities on the land resources;
- (iv) the extent and form of awareness of the individual tribal communities relative to the economic value of the land resources;
- (v) the extent to which traditional access of the tribal communities to land and land-based resources is recognized under provisions of the various laws;
- (vi) the overt and covert changes following implementation of survey and settlement operations in tribal areas; and
- (vii) the changes in the matter of control and access to land and land-based resources in the wake of development activities and different administrative and legislative measures.

3.0 **Time frame**

In the Memorandum issued by the Planning Commission on 6th November, 1986, the Study Group was required to submit its Report within six months. Subsequently, in two installments, the time-frame was extended upto 30th November, 1986.

4.0 **Organisational Infra-structure**

Because of the ban on recruitment of staff, the Planning Commission found it difficult to provide the requisite organizational infra-structure. A Private Secretary has been functioning exclusively for the Study Group Since 28th October, 1986 only. Though no other person has at any time been placed exclusively at the disposal of the Study Group, the Planning Commission made several efforts from time to time to provide at least some part time assistance.

5.0 **Brief outline of the Activities of the Study Group**

As the Member-Secretary was out of the Country at the time when the Memorandum constituting the study group was issued, the first meeting of the Group was held on 13th January, 1986. In view of the limited time-frame, it was decided to examine the secondary Source materials as much as possible. A set of mailed Questionnaire (Annexure II) was also adopted for collection of information from the State Governments, Tribal Research Institutes, Voluntary organizations and other knowledgeable sources. Further, in the absence of technical personnel to prepare the background material, it was decided that while it would be necessary to make on-the spot studies in the states having sizable tribal population, the states in respect of which

analytical studies have already been made by some members would be visited first. Orissa was selected for the first visit, keeping this as well as the fact that all the major tribes of the central tribal belt of the country and some of the tribes having largest concentration in the adjoining state in the South found here.

The present report is primarily based on the study in Orissa. But even this limited study has brought out certain issues of general nature which may have relevance to other states. However, at the present stage, the report should be treated as an indicative one. Besides, in the absence of any technical personnel at the disposal of the Study Group, it has not been possible to compile all the relevant information for fully covering the terms of reference.

6.0 **Context of the Study of the Land Holding System of the Tribals**

6.1 The Working Group on Tribal Development during the Sixth plan had observed as follows: ‘Regulations promulgated by the State Governments under the Fifth Schedule regarding land so far have covered largely alienation part and ignored other aspects. Rs. 3 crores were set apart in the Fifth Plan for, inter alia, updating of land records. The progress in this regard is not known. Preparation of land records where they are not existent and updating them where they exist, preserving in both cases community ownership, recognizing local practices of land management etc. need to be attended to on a priority basis’. The Working Group on Development of Scheduled Tribes during seventh Five Year Plan has noted that ignorance of tribal customs and traditions about land holding in certain

areas has resulted in wrong recording by survey and settlement authorities and ultimately in their transfer away.

6.2 The Committee on Forests and Tribals (Ministry of Home Affairs, Govt. of India) in their report submitted in 1982 brought out the fact that while dependence of the tribals on land-based natural resources was as high as 40 per cent in some of the central tribal belts, their rights of access to and control and management of these resources remained to be recognized. There are other studies which show that in some areas the dependence of tribals on forest resources is as high as 70 per cent.

6.3 At a meeting of the Regional Committee (North Eastern Regional of the Industrial Bank of India held in February, 1984, it was stated that while lending institutions insisted on creating a charge in their favour on the land on which industrial units were proposed to be set up, the loans in the hill areas (where the individuals did not hold title and transferable alienable right on the land) could not create such a charge. The plan documents of some of the states had also clearly stated that ambiguity about the rights of individuals had impeded the flow of development input. This problem is, however, to be seen in a wider canvass. Gunnar Myrdal has pointed out that many Third World Countries are facing dilemma about 'Tribal system of collective ownership'. In a world Bank Publication it has been observed "one often comes across the conflict between statutory title to the land and traditional land use pattern. The State lays claim to areas of land which are 'unused' or 'vacant', but in fact the right to use these lands under traditional

systems may be well defined and accepted. In numerous instances this failure to distinguish between statutory and traditional title has resulted in a shortfall of lands said to be available for a project.”

6.4 The hiatus in the perceptions of the tribal population and the government about the rights of ownership and use of land-based resources in Chhota Nagpur was brought out in a Seminar organized by the Tribal Research Institute, Govt. of Bihar in 1978. Since 1980, revisional survey and settlement operation has remained suspended in parts of Ranchi district because of this hiatus in perception.

6.5 The root of the hiatus has been traced by Justice Hidayatullah to the locus of history as a hang over of the colonial rule to which the country was subjected. He argues “The British, for the first time, tried to separate the individual from the community against old traditions. It was Roman Law which distinguished between ‘a natural mode of acquisition’ from ‘legal mode’”. In dealing with property in land, it is well to remember that property in land always linked political functions of a group with its social economy. When the importance of land increased, political activity increased manifold. Thus property in land of members of a clan or tribe had a dual meaning. While devolution of property was from the community to the individual, the devolution was subject to the control of the community. It could then be said, it belonged simultaneously to the community and the individual either alone or in a family group.”

- 6.6 It is obvious that the observation of justice Hidayutullah has far reaching implications. Two of them would be particularly mentioned here. First, in the long run, what would be the reaction of the concerned population if a land-based development programme is carried out without correcting the colonial distortions? Second, on a rational appraisal what is the expected impact of such a development programme on the economy of the weaker section of the population? These questions assume particular importance in the context of the signs of unabated restlessness of the tribal communities in different parts of the country.
- 6.7 In the discussions and debates that preceded the preparations of the Seventh Five Year Plan, the fact that property relations based on land would be central to the future strategy of tribal development and to the integration of the tribal communities in the national polity was highlighted by the analysts of the tribal scene in various forums. It was argued that through the implementation of the six five year plans, the tribals by and large, had reached the take-off point from relief and welfare dimension to development dimension and that at this point consolidation of their traditional rights in respect of the resources was a matter of crucial importance for ensuring their enthusiastic participation in the development process.
- 6.8 In preparing the design of inquiry of the land holding system of the tribals, the emerging trend as reflected in the views and perceptions of the diverse authoritative sources were kept in view and attempts were made to collect

materials covering the totality of de-jure and de-facto access of the concerned communities to land and land-based resources.

7.0 **Tribal Situation in Orissa- a Rapid Overview**

7.1 The total geographical area of Orissa is 155707 sq. km., out of which 68896.3 sq.km. are covered by 21 integrated Tribal Development projects. Altogether 118 blocks have been covered in the 21 ITDPs. The forest area in the state in 1981 was 9963.30 sq. constituting 38.48 per cent of the total area of the state. About 40 per cent of the land was under cultivation and the rest was cultivable waste land, grazing land and others.

7.2 Leaving out the coastal tract, a large part of Orissa is rich in mineral resources. In Northern Orissa iron ore became technologically and socially meaningful to the primitive smelters quite early, but exploitation of the other mineral resources and forest products on any significant scale started only during the colonial period. It may be noted in a general way that while the nature of the terrain made it possible for the people to live in comparative isolation, the diversity of the resources provided opportunities for specialization of functions and consequent social differentiation.

7.3 In 1981, altogether 26272654 persons were enumerated in Orissa, of whom 5915067 belonged to 62 communities categorized as scheduled tribes under the

provision of the Constitution. They constituted 22.43 per cent of the total population of the state. Among the better known tribes of Orissa, particular mention is to be made of the Khond, the Saora, the Bhuiya and the Juang Tribes like Oraon, Munda, Ho, Santhal and Gond are also numerically and politically important. Among these tribes, the Juang, the Bhuiya and some sections of the Khond and the Saora have been included in the list of the Primitive tribes. Preliminary notes on the last four tribes highlighting their social structures and the historical ecology of their access to land and land-based resources will be provided/here, so that the existing legal framework and the practices actually prevailing on the ground can be seen in perspective.

- 7.4 The Khonds are one of the major tribes of India. In 1971, 911835 persons were enumerated as belonging to the Khond group of tribes throughout India. Their overwhelming concentration was, however, in Orissa (869965 persons), followed by Andhra Pradesh (34375), Madhya Pradesh (6899) and Bihar (596). Broadly the Khonds are divided into three groups, depending upon their habitat. These are (i) the Kutia (Hill Kondh); they are the weakest section (ii) the Dongar (Hill Kondh); they are less primitive and adept in horticulture and (iii) the Desia (Low country) Kondh-the Khonds of this section have left their hill fastnesses and settled down in the plains to pursue cultivation. The social and political history of the Khonds differ considerably from area to area. Kandhamals which adjoin the Agency Tracts of Ganjam district and which is predominantly inhabited by the Khonds was a part of the princely state of Boudh at the time of the British conquest in

1803. The latter put it under the control of the Superintendent of Tributary Mahals.

For the correct appraisal of the current land problem of Khonds, a brief appraisal of the system of Tributary Mahals is necessary. The Tributary Mahals or Tributary states or Garjats of Orissa had played a significant role in the social and economic life of the people. There were tribute paying chiefs during the indigenous Hindu, Mughal and Maratha periods. The political relations of the various categories of tributary chiefs depended on the general political conditions of the region. Though the British Government was not interested in the matter of tributary mahals, the post of a Superintendent for the Tributary Mahals of Orissa was created to keep the tributary chiefs under supervision and control.

In 1885, the Khonds agreed to pay a plough tax (calculated on the number of ploughs). This was regarded as a voluntary contribution and it was collected voluntarily by the village headman who was not entitled to get any remuneration for his service in collecting this.

- 7.5 Dr. Patnaik, Director, Tribal and Harijan Research-cum-Trining Institute, Govt. of Orissa and his colleagues have summarized the land tenure system in different areas of Orissa inhabited by the Khonds. In Koraput District, the system of rent collection was known as mustajari. Groups of villages called mutha were leased out by the zamindar to individuals called mustajars, who collected rent from the

tenants either in cash as in Rayagada division, or in both cash and kind, as in koraput and nowrangpur divisions. In Kalahandi district, the khonds used to claim to be the real owners of the soil. The wider section of the Khonds did not even pay any regular land revenue. But they paid and still pay a nominal fee for the area under shifting cultivation. Coming over to the current practices, Dr. Patnaik and his colleagues in their publications have observed that joint community system prevails among the hill khonds. The people of each village on a large scale and those of a mutha own them jointly. Individual possession is not recognized and in exceptional cases, it is permitted by the community for the sake of convenience. Outsiders cannot acquire land in a mutha, let alone in a village within a mutha, to the exclusion of the members of the sect. Each mutha is generally composed of a single sect. An outsider who is not related by blood to the people of the mutha is looked upon as an interloper, and in on case, he is allowed to acquire any permanent right of occupancy in their holdings. Whenever anyone has leased out a portion of his land to an outsider or to a poorer relative on the basis of share-cropping, he can eject the latter, whenever he likes. In such cases, the lease-holder or the under-tenant is not permitted to perform the rite of sacrifice to the earth-goddess residing in the holdings and participate in the annual worship of the earth-goddess (Dharani Puja) in the village. Subsumed within community ownership, however, individual right exists. Dr. Patnaik has found that as long as a person is in possession of a swidden he continues to cultivate it and after his death his son uses the same swidden. If any family has no heir, the swidden passes on the person who needs it.

7.6 With variations in spelling, the Saoras have been included in the list of the Scheduled Tribes. In Orissa (342757), Andhra Pradesh (81227), Madhya Pradesh (59535), Bihar (3547) and West Bengal (4986). Their aggregate population in 1971 was 492064. The concentration of the Saoras are found in Ganjam, district of Orissa and Srikakulam and Vizagapatnam districts of Andhra Pradesh. Besides a good number of persons belonging to Saora ethnic cluster are found in Koraput, various plain districts of Orissa like Sambalpur, Puri, Cuttack and so on. Based on occupational and cultural differentials, the Saoras are grouped into several sub-differentials; the Saoras are grouped into several sub-divisions. Among them the Lambu Lanjia Saoras are primarily cultivators. They also carry on terrace cultivation (Bagerda) to some extent. From swidden they harvest sixteen or more types of crops. In a seminar jointly organised by the Orissa Government and Utkal University in 1980, it was brought out that there are patterned voluntary organizations of labour-exchange in their society to meet the exigencies of diversified cropping pattern and the social attitudes that go with such labour exchange find expression in the fact that when other members of one's lineage are starving, storing of food is socially ostracized. The group solidarity and social cohesion of the Lanja Saora society is further expressed in the holding of property under village ownership system (locally called Garajang Andruku). The members of different lineages and religious groups living in the village have claim over the joint ownership and inheritance of Garajang Andruku.

Previously the Saora villages were unilineal in composition. (They have no exogams Totemic clans, no phratries, no moieties). Each village reclaimed some land in the nearby hill slope. The distribution of land was done by the lineage head in the presence of the head of the families in a village meeting.

In a Saora village, the secular headman i.e. Gomango is synonymous with the lineage-head. Equally important is the village religious head, the buyya. The offices of gomango and buyya are normally hereditary, but there are exceptions. The gomango and buyya are not very different from the common people of the village except for their headship in secular and religious matters.

- 7.7 The Bhuyias are notified as a Scheduled Tribe in Orissa though they are reported to be found in Bihar and Western fringe of West Bengal. In 1971, 188212 persons were enumerated as Bhuiya out of whom 5882 were in Sundargarh and 55995 were in Keonjhar district, adjoining southern Chhota Nagpur. Half a century ago S.C. Ray had observed that the Pauri Bhuyias or Hill Bhuyias who mainly practiced shifting cultivation, shifted their village site also, along with the place of cultivation. Such shifting used to take place one in ten year. Currently shifting of village site is not so frequent.

After taking note of the fact that the area inhabited by the Bhuyias is mostly unsurveyed Patnaik and his colleagues of the Research Organisation of the Govt. of Orissa have observed that the tribals are free to cut and clear the patches of forests to practice kamani cultivation. Except for a few selected areas in Bonai,

the restrictions enforced by the Forest Department in respect of kamani do not apply to the pauri area. Village being the land owning unit, each Pauri Village has a definite area demarcated by boundary lines from the time of the feudatory chiefs and the villagers are free to cut forest and hunt within their territory. Trespassing in the land of another village leads to quarrels and conflicts which may either be decided mutually by both the villages or may be brought to the court of law for trial. Such cases, however, occur very rarely.

Patnaik and his colleagues have further reported that some kinds of land are owned permanently by individuals, some permanently by the village. While the ownership of some other types of land rests with the village, the individual families occupy the same during the period of cultivation.

Patches of forest land for shifting cultivation are distributed among the individual family heads every year, after a ritual called magha purnei. In addition to such cultivation by individual households, there is also cultivation on community basis for increasing the common stock of grains to be used for common purpose. There is again joint cultivation by the village youth to meet their own special needs. Sometimes the unmarried boys and girls cultivate patches of kamani on cooperative basis. The boys take bullocks from their respective families and plough the field, while the girls do such works as hoeing, cutting and clearing bushes, setting fire to dried trees and bushes, weeding and harvesting. The yield is

stored in the common fund of the boys and girls to meet the expenses concerning their youth organization.

There is also a system of inter-village lending of land. If suitable patches of forest land are not available in a village the village may borrow some land from the neighboring village for temporary cultivation. In such cases, some of the elders of the village pay visit to the other villages with a few bottles of liquor and beg their permission to allow them to cultivate the land. If they agree, the villagers may cultivate the land for three years and in return make some token payments in kind as a measure of their gratitude.

Dr. L.K. Mahapatra, the then Vice-Chancellor of Utkal University has also published significant information about the Bhuyias. He mentions that at present there are three main types of land use – (a) swidden land free to all villagers and held by the tenure of ‘corporate village ownership’ as village common land and forests (b) private ownership in terrace plots and (c) podu and gura cultivation. In the latter the period of keeping the land fallow is shorter than the period of cultivation. Besides in guru cultivation only the bushes are burnt. In this cultivation in the first year only Kulthi (leguminous pulse) is grown; in the second year paddy is grown, followed by sesamum oil seeds in the third year. In the context of these practices Dr. Mahapatra is of the view that during the preparation of record of rights, even if as a matter of policy corporate rights are over looked

(which should not be) the rights on gura lands cannot be forfeited on the ground of their location on upland.

- 7.8 The Juange are a Scheduled Tribe in Orissa with a numerical strength of 21890 according to 1971 Census. Their traditional habitats are in Keonjhar and Dhenkanal districts.

The Juangs are primarily an agricultural people. Once they were considered to be one of the most primitive tribes. Currently they practice shifting cultivation as well as wet cultivation. Each Juang village has a panchayat headed by an elected functionary, Bada Behera; he is assisted by another functionary, Pai Behera.

8.0 Land Holding and Land Control System in Orissa as Provided in Statutes and as Indicated in Various Secondary Sources

- 8.1 As part of 1961 Census a survey of land tenures was undertaken all over India by Questionnaire method (Census of India, 1961 Part Xi A (1)). On the basis of this survey the following data were published in respect of the tribal areas of Orissa:

Table 1: Owned or Held from the Government

1.	Grand Total	6508
2.	Ryotwari holders with right of permanent, heri-tahle and transferable possession including right to lease	Nil
3.	Royotwari holders with right of permanent and heritable possession but without or limited right of transfer	5274
a)	Local name	b) Legal terminology
i)	Raiyati or Raeti or Rayati satwa or rayati taila or raita jami	Occupancy raiyat
ii)	Hasilat or Hasilat dakhil Satwa or Dakhil Satwa bisista hasilat	1170
iii)	Jirayati or zirayati or zirayati jami or jikati patta	- 768
iv)	Dakhil Satwa or Dakhali	- 608
v)	Rayati Sattwadhikari or Satwadhikari or Satwa- dhikari jami	- 136
vi)	Tikat bhukta	Occupancy right of tenant living in same village 115

vii)	Nayubadi	Occupancy raiyat	90
viii)	Hatu chasa or Hatu chas jami	Private land settled with occupancy right	63
ix)	Nija Satwadhikar	-	63
x)	Sthiban or rayati sthiban	Occupancy raiyat	49
xi)	Patta Jami	-	46
xii)	Patta bhukta	-	43

4. Holders of special alienated or other non-ryotwari tenures 119

a)	Local Names	b) Legal terminology	
i)	Inam or Inam bhumi	Inam tenure	92
ii)	Lakharaj	Revenue free grant	2
iii)	Jagir or Jagiri	Revenue free grant for rendering personal service	6
iv)	Dehuri Jagir	-	1
v)	Cchatia jagir	-	1
vi)	Bhogra	Revenue free land held by a service tenure holder	5
vii)	Bhugura	-	3
viii)	Chowkidar jagir	Service land attached to the office of the village headman (collection agent)	4

ix)	Nariha jami	Service tenure of waterman	1
x)	Behera Jami	Service Tenure	1
xi)	Raita dehuri	-	1
xii)	Debottar	Revenue free grant	1
xiii)	Kalo jagiri	Service land held by kalo or village priest	1
xiv)	Sistu jami	Occupancy raiyat	40
xv)	Praja Satwadhikari or praja jami	-	37
xvi)	Pahi	Non-residential raiyat of a village	3
xvii)	Rayati Satwa permit	Occupancy raiyat	2
xviii)	Subaka	-	2
xix)	Thani	Resident tenant of a village	1

5. conditional or temporary leases or assignees of Government land:

a)	Local Names	b) Legal terminology	
i)	Sarkanka tharu	Temporary Govt. Lease	33

ii)	Anabudi	Wasteland	29
iii)	Reclamation	Wasteland taken on lease	10
iv)	Artha Satra	Temporary Govt. lease	9
v)	Dakhhal Satwa bihina	-	
vi)	Thika Chasa	-	

6. Encroachers and trespassers

801

i)	Akramana jamin	Encroached land	496
ii)	Jungle jami	Forest land encroached upon	104
iii)	Jabardasti	Encroached land	73
iv)	Banjara or banjara bhumi	Cultivable dry land	44
v)	Akramana Chasa	Encroached land	29
vi)	Anyaya Kasta	Govt. land held under encroachment	21
vii)	Patita	Govt. wasteland and jungle land encroached upon	20
viii)	Dangar or dangara	Dry land encroached upon	12
ix)	Sarkari Jangle	Govt. waste and jungle land encroached upon	2

7. Jhum Cultivators **210**

a) Local Name	b) Legal terminology	
i) Podha Chasa or poda chasa or podu chasa or podu chas	Shifting cultivation	194
ii) Podu Satwa	-	13
iii) Podu chas Satwa	-	2
iv) Dangar podu chas	-	1

8. Unclassified

Jami	-	6
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TABLE II- LAND HELD FROM PRIVATE PERSONS

1. Grant Total		632
2. With right of permanent, heritable and transferable possession		Nil
3. With right of permanent and heritable possession but without right of transfer		149
a) Local Name	b) Legal terminology	
i) Hasilat	Occupancy raiyat	57

ii)	Raiyat or Rayati jami	-	
iii)	Jirayati	-	
iv)	Nayabadi	Newly reclaimed land given	14
v)	Dakhal Satwa	on occupancy basis	11
vi)	Anabadi Dakhal	Uncultivated land acquire by occupancy raiyat	2
vii)	Dakhal satwa bhina	Occupancy raiyat (rent free lands taken on bhag)	2
viii)	Kraya	Occupancy raiyat	1
ix)	Kinua Sutra	-	1

4. Mortgagees in possession 26

i)	Bandhak or Bandhak jami	Mortgagees in possession	21
ii)	Astha dakhal Satwa (Bandhak)	-	4
iii)	Bandhak Sutra	-	1

5. Holding free of rent or on nominal rent in lieu of 62 or not in lieu of service or not in lieu of service

i)	Inam Jami	Inam tenure	18
ii)	Lakharaj	Rent free grant	4
iii)	Niskara	-	3
iv)	Bhogara or Bhogara Satwa	Rent free land held by	7
v)	Jagiri or Jagir	Rent free grant for rendering personal service to zamindari	4

vi)	Dehuri Jagir	-	
vii)	Chaokidari or Chowkidari mafi	Service land attached to the office of the village headman (collection agent)	3
viii)	Naria	Service tenure of waterman	2
ix)	Jhankar jami	Service tenure of waterman	1
x)	Brahmottar	Rent free grant of land to trahmin	6
xi)	Debattor	Rent free grants to deities or temple	4
xii)	Bhukan dano or dana or dana sutra	Rent free gift	8

8.2 A careful examination of the entries in the tables as at para 8.1 shows that many of the land right categories are variant spellings or descriptions of the rights of the same type. In several cases it is doubtful whether the legal terminologies as used here correctly represent the indigenous concepts. For instance chowkidari mafi is unlikely to be “service land attached to the village headman”. Again it is difficult to say that indigenous perceptions have been consistently used here. It seems that the entries represent a mix of indigenous perception as well as official perception. For instance land under occupation without authorization by the State may not always be considered without authorization by the State may not always be considered by the concerned population as ‘Anyay Kasta’ or encroachment. The historical context of occupation is the crucial factor in this matter.

Notwithstanding these limitations, the entries in the table provide valuable clues to the pattern of access of the tribal communities to the land resources and to the rationale of such access. Due to the constraint of time it has been possible to follow up clues only to a very limited extent for the purpose of the present study. But even the limited probes show that implementation of various measures of land administration and land reforms that have been carried out in the tribal areas of Orissa without adequate understanding of the indigenous categories have tended to create several complications. These will be discussed in due course.

- 8.3 Another set of data published by Labour Bureau, Ministry of Labour in 1978 based on Rural Labour inquiries in 1964-65 and 1974-75 deserve mention. In 1964-64 out of total rural labour households in Orissa, 87.1 per cent were agricultural labour households including 47.7 percent with land and 39.4 per cent without land. In 1974-75 the corresponding figures were 82.3 per cent, 51.5 percent and 30.8 percent respectively. The percentage of agricultural labour households out of total rural labour households among the scheduled Tribes. Was in 1964-65. 29.9 (including 17.2 with land and 12.7 percent without land). The corresponding figures in 1974-75 were 26.2 per cent, 18.1 per cent and 8.1 percent respectively. These data reveal three important facts. First the percentage of agricultural labour households out of total labour households was much less among the scheduled tribes than among the total population both in the mid-sixties and mid-seventies. Second among all categories of population there is a declining trend in the incidence of agricultural labour households out of the total rural labour households. Third there is an upward trend in the incidence of

agricultural labour households with land, among both the categories of population. These data are capable of diverse interpretations. One of the interpretations can be that these indicate diversification of rural employment opportunities and that even the agricultural labourers are in a better position in acquiring land both among the Scheduled Tribes and the population as a whole. But on the basis of the same data it is also possible to think that large percentage of land-holding households both among the Scheduled Tribes and the total population were taking to agricultural labour in 74-75 compared to 64-65. Intensive field investigations will be needed for adequately interpreting the data.

- 8.4 Before going further into the issues relating to land holding pattern of tribal households, it is necessary to keep in view one contextual fact. A recent study shows that in the tribal areas of Orissa 20.0 to 59.2 per cent of the population are engaged in the collection of minor forests produce as one of the important sources of livelihood. Hence information on individual land holding pattern of the tribal households is not an adequate indicator of the extent of their access to land-based resources. Any land administration or land reform policy which overlooks this fact, would be construed as a policy of curtailment of the traditional right of the tribals. In this matter it is worthwhile to take note of any observation made by the Commission for Scheduled Castes and Scheduled Tribes in his annual report for the year 1960-61. "It is reported that cashew-nut plantation has been undertaken by the Soil Conservation organisation of the Orissa State Government on hillocks, some of which were used by the tribals for graxing their cattle or collecting dry

shrubs for use as fuel. Some of the tribals even used to cultivate some of these high lands and have title deeds and paid rent for the land utilized by them. It is reported that these tribals have to pay rent to the Government for the areas of land for which they have got title deeds but the Soil Conservation Department did not give them any share in the amount realized by the sale of cashewnut plants on 8 hillocks.” “If schemes of such nature are to be made success, it is always necessary and advisable to consult the tribals and to take them into confidence”. The Commissioner further observed” by over-emphasising the cashew-nut plantation the felt need of the people concerned for fuel and timber had been ignored. “the commissioner however, not only referred to hiatus in the recognition of rights but also to a conscious move on the part of the Orissa Government to dispossess the tribals of their rights in respect of land. He stated that during the Second plan period an amount of Rs. 6.93 lakhs was provided for implementation of the Jhumk control scheme on Assam pattern and an amount of Rs. 30.00 lakhs was provided for implementation of rehabilitation and soil conservation schemes. The soil Conservation Department of the State has mainly concentrated on two types of activities, viz. (1) contour binding below 10 per cent slope and (2) plantation above 10 per cent slope. Figures published by the soil Conservation Organisation show that 65074 acres were bounded and 28103 acres of land were terraced. Three new water-shed management units were also started during the year under report bringing the total number of units to eleven. These units covered a total area of 6.8 lakhs acres. As regards the effect of these measures and attitude of the tribals the commissioner reported as below:

(a) No attachment has been made to obtain the consent of the population concerned for undertaking the scheme and for ensuring their active participation. There has not also been any follow up programme and the maintenance of the contour bunds has posed a difficult problem.

(b) At Present an attempt is being made to obtain the consent from the families concerned to the effect that these will be maintained and repaired by the Government and the cost will be realized from the families concerned. There are several other clauses in the bond. Some of the more important ones are **(i)** the assessment on land where contour bunding work has been executed shall not be reduced merely on the ground that the unprofitable area has been increased as a result of any work, **(ii)** the beneficiary shall give up cultivation above 10 per cent slope **(iii)** the beneficiary agrees that in view of the benefit accrued and accruing to him because of contour bunding he shall transfer a portion of his land (as may be decided by the District Collector) to the government free of consideration for giving the same to other persons who may be losing cultivation above 10 per cent slope.” “In Koraput and Sundargarh districts it was noticed that the people concerned did not agree to sign the bonds and the revenue personnel have now been entrusted with the task of getting the bonds signed by the tribals concerned.”

“The clauses of the bond mentioned above will naturally be to the disadvantage of the tribals, although after contour bunding, the lands

cultivated by them will improve and they may get better crops in future, the clause that the family concerned will have to part with a portion of their land free of consideration at the discretion of the collector is especially bound to be resented by the tribals. Whole approach to this, problem requires to be changed.”

Quarter of a century has elapsed since the Commissioner for Scheduled castes and Scheduled Tribes made his disturbing observations in 1960-61. It has been one of the major concerns of the present inquiry to find out what changes have taken place since then.

8.5 One dimension of persistence and change in the management and utilization of land-based resources is formalized through the legislations enacted by the State in those fields. Another dimension is expressed in the regulatory processes by which the people live with or without the intervention of the state. Analytically appraisal of the first draws upon the insights of anthropology of legal positivism along with those of other disciplines. Inquiry into the second requires an empathetic appreciation of the universality of legal pluralism. Attempt to reach both will be made here as indicative of the line of approach.

8.6 **Legal frame and administrative action pertaining to land control and management:** There is no legislation specifically related to the land rights of the tribals though there are legislations restricting the alienation of tribal lands and

several legislations of general nature which have bearing on the access of tribal communities in particular to land and land-based resources and on the management of the same. In this section, therefore, a rapid review of the legal framework about land administration in general will be provided.

On the eve of independence there were three principal land tenure systems in Orissa. These were zamindari, ryotwari and khasmahal. In different parts of orissa, different statues operated. Orissa Tenancy Act, 1914 operated in coastal region, Madras Estate land Act, 1908 operated in South Orissa and C.P. and Berar Land Revenue and Land Tenure Acts of 1820 and 1880 operated in Sambalpur. Besides, there were separate land management and control systems of different princely states.

Under the Orissa Land Tenancy Act, rents were to be paid by the tenants in two half-yearly instalments. Under the Khalsa system, estates were held by the malguzars as revenue free, as rewards for services rendered to the native princes and British rulers. In Madras system cash rent was not fixed. The zamindars could realize through leaseholders known as mustadars half the produce of the land as rent.

When the country achieved independence, the zamindars found it difficult to extract from a tenant more than what was legally permissible. They had one and only one source, sill left at their disposal which they could exploit. It was the waste land (including the communal lands), forests and other lands not yet tenanted or otherwise alienated.

In order to save the private forests from wanton destruction the Orissa Preservation of Private Forests Ordinance 1946 was passed. This was subsequently replaced by the Orissa Preservation of Private Forest Act VIII of 1947. It defined 'forest' as including communal land containing trees and shrubs and any class of land declared to be a forest by notification of the provincial government but did not include a reserve forest or a protected forest. It prohibited the sale, mortgage, lease or alienation in any other form the whole or any portion of a forest by an owner without the previous sanction of the provincial government.

The Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act I of 1948 was passed when it came to the notice of the Government that land lords were resorting to large-scale alienation and assignment of communal forest and private lands on receipt of high premium. The act was made effective retrospectively from 1st April, 1946. It prohibited the alienation of communal forest and private lands by any landlord without the previous sanction of the collector.

After the merger of the Princely states by an order issued in June, 1948, a paragraph was introduced clarifying the tenancy laws of the states. This inter-alia stated that an occupancy tenant shall be entitled (i) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with previous permission of the Sub Divisional Magistrate concerned (ii) to have full right over all kinds of trees standing on his holding and (iii) to use the land comprised in the holding in

any manner which does not materially impair the value of the land or render it unfit for the purpose of tenancy. This order was subsequently repeated in Orissa Merged States (Laws) Act, 1950.

Orissa Tenants' Protection Act (Orissa Act 3) was passed in 1948 to protect the interest of the temporary tenants paying produce rent and of the raiyats of Ganjam and Koraput who had right of occupancy, but who also were subject to produce rent.

In order to prevent the lands of the tribals from passing into the hands of money-lenders and speculators, the Agency Tracts Interest and Land Transfer Act of 1917 was passed by the Madras Legislature. While the Act Prohibited transfer of immovable property situated within the Agency Tracts by a member of the Hill tribe, it allowed relinquishment of a holding in favour of the land-holder. This enabled indirect transfer of land by hillmen to non-hillmen through the landholder. This loophole was plugged through an amendment passed by the legislature in 1948.

An important change was brought about in the administration of the Khasmahals in 1948. The collection of rent in all the important Khasmahals used to be the responsibility of the Sarbarkars. They were not only responsible for collection of revenue in time but also for all administrative work in the village. This post was more or less hereditary. With the development of political institutions, this was felt to be meaningless and the post was abolished with effect from 1st April 1948.

The lambardar and co-sharer gauntias in Khalsa gaunti villages of Sambalpur had the right to lease out waste lands. With the changes in agrarian economy during and after the World war, land was appreciated in value and the Central Provinces Land Revenue Act, 1881 was amended by Orissa Act XIX of 1950. Section 12B Provided that notwithstanding anything in wazib-ul-urz, custom, decree or order no gauntia should henceforth have the right to lease out waste lands and the rights of lambardars and co-sharers to reclaim waste lands should stand extinguished. Along with issued withdrawing the power of gauntias and other village headmen to lease out waste lands in the ex-states.

The Orissa Estates Abolition Act was passed on 28th September, 1951 providing for abolition of all intermediary interestes in the state. One particular feature of the Act deserves special mention. The original Act provided that vested estates would be managed by Anchal Sasans consisting of the Anchal Sabha and Anchal Adhikari. In 1955, the Orissa Anchal Sasan Act had been passed into law and this Act also the local development administration should be given over to the Anchal Sasan. But it seems that after passing the Act. Purported to democratize revenue administration, move towards formation of statutorily recognized intermediate community, the government had a second thought in this matter. It was felt in official quarters that before the revenue administration of these areas was stabilised, based on a strong tradition, it would be undersirable to hand it over to the Anchal Sasan. “The Government therefore decided not to enforce the provisions of the Anchal Sasan Act and further decided to organize the administration of these vested estates on the line of Khasmahals and stabilize the same.

While democratization of revenue administration was deferred, the government made a move for vesting some of the sub-proprietary interests which were not vested in the state earlier. On 1st June, 1959, the thekadari interests of Nawapara Sub-Division in the district of Kalahandi were be vested in the State. On 1st April 1960, the interests of gauntias, malguzars and muafidars in khalsa villages and those of thikadars and muafidars in ex-zamindari villages of Sadar and Baragarh Sub Division of Sambalpur District were similarly notified as vested in the states. Order for abolition of gaunti system covered other parts of the state in subsequent years.

When the pattern of revenue administration was based on the idea of zamindari system, it was but natural that even in khasmahal and raiyatwari tracts the responsibility of collection of rent was given to part-time collecting agents. Such collecting agents existed in almost all the ex-states. As the abolition of zamindari system progressed and consequently the pattern and emphasis in revenue administration changed, the Government, after a short-lived move towards democratic system, decided to do away with part time collecting agents and replace them by Naib Tahsildari system. In 1953, the Government decided to terminate services of muthadars in the Agency tracts, who appear to be more of service-holders having no property rights in the muthas in their possession. They and their subordinates like mutha heads were making many kinds of levies on the tribal population inhabiting the areas, in addition to the mamuls they were entitled to. Notices terminating their services and directing them to give back their respective muthas were issued in March, 1954. Except for three muthadars, others took the stand that Government had no right to take away their muthas by an executive order and that this

could be done only by the operation of an Act of the legislature and on payment of compensation. They filed writ petitions in the High Court and obtained a stay order at the first instance. The High Court finally allowed their petitions and restrained the Government from taking possession of the muthas. Against this order, Government proffered an appeal in the Supreme Court. In 1961, a compromise was arrived with all muthas. Against this order, Government proffered an appeal in the Supreme Court. In 1961, a compromise was arrived with all muthadars excepting two (Badaguda and Badakhmali) as a result of which Government made certain ex-gratia payments to them and they withdrew all their claims and handed over the muthas to the government.

The post-independence moves and counter-moves at the legal and administrative levels for bringing in changes in land control system have been discussed in some details, as they provide an idea of the limitations of such actions as mere official programmes without strong political mobilization of the concerned population. The Compromises that the bureaucracy and feudal or feudalistic interests make mutually, push the people's disappointment underground, only to come out in explosive form. Some of the political upheavals that have taken place in the tribal areas from time to time during the late sixties and seventies are perhaps to be seen in this context.

Along with crystallization of bureaucratic management system, tenancy reforms in post-independence period in Orissa have moved towards making land a marketable commodity. As noted by the Board of Revenue "the occupancy right in Sambalpur Sadar, Bargarh and Nawapara sub-divisions was not marketable property and this had serious

repercussions on the agrarian economy and social life in these areas.” Orissa Acts 13 and 15 of 1953 amended the Central Provinces Tenancy Act, 1898 and Central Provinces Tenancy Act 1920. It was provided in these amending Acts that an occupancy tenant would be free to sublet his holding or any portion thereof for one agricultural year and shall also have the right to transfer his holding or any portion thereof, by sale, mortgage, gift, bequest or otherwise to a bonafide agriculturist provided that an occupancy tenant belonging to a Scheduled Tribe cannot transfer his right to any person who is not a member of a Scheduled Tribe except with the previous permission in writing of the Deputy Commissioner. These two Acts were again amended by the Acts 14 and 17 of 1956 for giving unrestricted right of transfer to occupancy tenants in respect of transfers in favour of Gram Panchayats and subject to the previous permission of the Deputy Commissioner in writing, in favour of a public institution, Further amendments to these Acts were made by Orissa Acts 14 and 15 of 1958, which provide that an occupancy tenant shall have right, notwithstanding anything to the contrary contained in any entry in the village administration paper or custom or decree or order of a civil court to (a) plant (b) fell (c) propagate lac and enjoy the flowers, fruits and other products of and (d) utilize or dispose of timber or trees, on his land. But he shall not have the right to fell any tree reserved as a survey mark.

In 1957, the orissa land reform Committee was set up and on its recommendation the Orissa Land Reforms Act was passed in 1960. Under the Act ‘Land’ means land of different classes used or capable of being used for agricultural purposes and included homestead. Section 37A provides that the ceiling area in respect of a person shall be ten

standard acres, provided that where the person is a family consisting of more than five members, the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, So however, that the ceiling area shall not exceed eighteen acres. Exemptions to section 37 (a) have been made in favour of (a) lands held by a privileged raiyat (b) land held by industrial or commercial undertakings and (c) plantations. Under this Act privileged raiyat means cooperative society, Lord Jagannath of Puri and his temple, and trust or other institution recognized under provisions of this Act. 'Plantation' means any land used principally for cultivation of coffee, cocoa, or tea and includes lands used for any purpose ancillary to the cultivation of plantation crops or for the preservation of the same for their marketing. Plantation also includes lands held by any agricultural university, agricultural school or college or any institution conducting research in agriculture.

It is noteworthy that traditional institutions of the tribal communities having interest in land do not appear to have been included in any of the land holding categories, viz. tenant, ryot or privileged ryots. For instance, according to the Report of Ramdhyani who was once Secretary to the Government of India, in Dhenkanal in some villages, land called 'deshkot' was held in common and paid for in common by all the raiyats in a village. A statute on land reforms is expected to give the same respect to the social and cultural moorings of the tribals as those of the non-tribals. Keeping this in view, one wonders why 'deskot' lands or lands of similar nature could not be included in the category of 'land owned by privileged raiyats'.

It is, however, to be recognized that if there were acts of omission in the recognition of the customary system of access to land resources, serious attempts have been made by the government to prevent the alienation of such lands of the tribals, which are de-jure recognised by the state to belong to them. The provisions in this regards as in the statutes would be briefly indicated here.

8.7 Statutory Provisions on Prevention of Alienation of Lands from Tribals to non-tribals

The Orissa Land Reforms Act, 1960 itself contains important provisions for prevention of alienation of tribal land. Section 22 (1) of the Act provides that “Any transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe shall be void except where it is in favour of (i) a person belonging to a Scheduled Tribe (ii) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue officer.” However, according to sub section (b) of section 22 of the Act, ‘Nothing in this section shall apply (a) to any sale in execution of money decree passed, or to any transfer by way of mortgage executed in favour of any scheduled bank or in favour of any bank to which the Orissa Cooperative Societies Act, 1962 applies and (b) to any transfer by a member of a Scheduled Tribe within a Scheduled Area.’ During the field visit to orissa, it, however, came to the notice of the study Group that the exemption in favour of banks and cooperative societies has caused misgivings even in some official quarters at a very high level.

There is a separate statute to ensure effective protection to the Scheduled Tribes of the Scheduled Areas in the enjoyment of their land and immovable property. The Orissa Scheduled Areas Transfer of Immovable property (by Scheduled Tribes) Regulation 2 of 1956 was passed for this purpose and it came into effect on 11th October 1956. This Regulation has repealed the provisions of the Agency Tracts interest and Land Transfer Act, 1917, about which mention has been made earlier. Also, the Regulation applies to other Scheduled Areas, namely, Sundargarh, Mayurbhanj and Khondmal districts. The Regulation provides that transfer of immovable property by a member of the Scheduled Tribe shall be absolutely null and void unless made in favour of another member of Scheduled Tribes or with the previous consent in writing of the collector or any other competent authority. All sub divisional officers have also been appointed as 'competent authority' under the act. No surrender or relinquishment of any holding or part thereof by any tenant belonging to a Scheduled Tribe in favour of his landlord is valid unless after surrender or relinquishment of any holding or part thereof by any tenant belonging to a Scheduled Tribe in Favour of his landlord is valied unless after surrender or relinquishment of any holding or part thereof, the landlord settle the surrendered land with another member of a Scheduled Tribe or retains its possession or settles it with any other person with the approval of a competent authority when it is not possible to settle with a member of a Scheduled Tribe.

Till the end of February, 1986, 28219 persons were benefited by the provisions of the Act, altogether 38914.97 acres of land were ordered to be restored and 34212.98 acres were actually restored under the Orissa Scheduled Areas Transfer of immovable property

Act, 1956. Similarly 6708.540 acres were restored to 4440 Scheduled Tribe persons under Section 23 and 23A of Orissa land Reforms Act of 1960.

The number of beneficiaries itself is an indication of the large scale transfer of immovable property that is going on. On the recommendations of the Social and Protective legislation committee' the Revenue Department has moved for the following amendments of the Orissa Scheduled Areas Transfer of Immovable Property by Scheduled Tribes Regulation 1956 (1) Under Section 7(1) of the Regulation the penalty per acre for unauthorized possession of immovable property of a Scheduled Person is to be enhanced to Rs. 2000 per acre per year from the existing rate of Rs. 200 per acre per year (ii) penalty of Rs. 200 per year per acre for unauthorized occupation of land of Scheduled Tribes, by way of trespass or otherwise, as provided under section 3A of the Regulation be enhance of Rs. 2000/- per year acre (iii) 'Standing tree' shall be included within the definition of immovable property under Section 2 (c) (iv). In case of unauthorised occupation where restoration of property is not feasible or will not be in the interest of the Scheduled Tribe transferor, provision is to be made for assessment of the capital value of the immovable property other than land, through sale in the open market and for levying the same as penalty for being paid to the transferor (v) collector will be made a party on behalf of the Government to defend the title suits against scheduled tribe by a person not belonging to that community at government cost, (vi) so motto revisional powers be provided on the analogy of

Section 5.a (2) of O.L.R. Act 1960 set right the irregular orders passed by the lower courts (vii) offense made under section 7A be made cognizable.

The proposed amendments were approved by the Orissa Tribes Advisory Council, in its meeting held on 10th October, 1985. At the time of the visit of the Study Group in Orissa, it was understood that action was being taken for the amendment of the rEgulation on the lines indicated.

Problems relating to alienation of tribal lands have also come up on the surface from time to time in the wake of judicial decisions. In O.C. No. 1101 of 1970 (Tarah Endu Vs. Bidika Dutia and others) the Hon. High Court of Orissa held tht forcible dispossession of a tribal from his land does not amount to transfer of immovable properties within the meaning of Section 2(f) of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956. After the announcement of the above judgment steps were taken to amend the Regulation so as to make 'forcible dispossession' of a tribal from his land tantamount to 'transfer of immovable property'. In the case Pitambar Piyari vs. Baikhari Behera and others (XII 1975 CLT 894) the Hon. High Court held that Section 22 of the OLR Act 'does not totally prohibit court sale of landed properties of tribals in favour of persons not belonging to a Scheduled Tribe. They opined that sub-section (3) thereof merely "says that in case of such a sale, the court has to give a special direction to that effect." In another case 'Khangeswar Raut vs state of Orissa (1973 A.R. 242), the Hon'ble High Court of Orissa had

that the only transactions which is covered by section 22 is 'transfer of land' as distinguished from 'exchange of land' 'lease of land' mortgage of land' or 111 'agreement on settlement of land' and as such the provisions of this section will not apply to a transaction relating to exchange of land for a correct appreciations of the import of those judicial decisions and of the follow-up action needed, it will be necessary to make a comparative study of similar legislations in other states.

8.7 Regularisation of Encroachment

In Circular No. G.E. (GL) 253/86-28343/F dated 4/5th June 1968, it was appointed out that according to decision taken by the Govt. on 13.08.61, all encroachments on Government lands made prior to 13th September, 1961, if considered unobjectionable should be settled with the encroachers on payment of szalami at the following rates: (a) Rs. 150 per acre for cash crop of rowing lands, (b) Rs. 100 per acre for wet lands, (c) Rs. 80 per acre for rain-feb paddy lands, (d) Rs. 50 per acre for dry lands. But in view of the historical background of encroachments in ex-state areas on the representation of people against charging of salami for settlement of encroachment, the government had later decided as follows (a) no premium should be charged on encroachments in ex-state areas provided it is established that the encroachments are related to a period prior to 26th January, 1950 and are unobjectionable and settleable according to instructions contained in paragraph 3 of Revenue Department No. 30919/R Dated 25th May, 1966 and approved lease principles, (b) Annual rents on such encroachments settled shall be charged at the rates prevailing for similar lands in the vicinity with effect from

26th January, 1950 and not from the date of encroachment (c) encroachments found to have been made after 26th January, 1950 will be settled in accordance with the terms and conditions contained in the approved lease principles on payment of salami.

On the face of it, these provisions appear to be satisfactory but it has been brought to the notice of the Study Group by knowledgeable persons that much of 'encroachment' actually means change in the legal status of land or hiatus in the perceptions of the concerned population and the state about the ownership status. Due to constraint of infrastructure for follow-up investigation, it was not possible to make further probe in this matter.

8.8 Other Legislations and Social Actions having Bearing on Access of Tribals on Land and land-based Resources

8.8.1 In a seminar on Developmental issues in Tribal Areas it was pointed out that the Bhoodan Movement led by Acharya Vinoba Bhave had made a significant impact on the Scheduled Areas having tribal concentration. Large number of donations could be obtained in the areas and after confirmation of the donation, the same have been distributed among other tribals and landless persons. When the new Bhoodan and Gramdan Act, 1970 came into force, such distribution was made after taking into consideration the wishes of the donors. Besides, which according to the old law, the extent of donated Bhoodan land to be settled with a landless person was limited to 5 acres, it was reduced by the new Act to two acres including the land already held by the grantee. The right over the land given to a grantee, however, vested with the Bhoodan Samiti as the Bhoodan philosophy

recognized only community owned land as against individual rights. It was alleged in the seminar that restrictive provisions of various laws against alienation of tribal lands were not applicable to Bhoodan donations. It has, however, not been possible to check whether actual; alienation of land has taken place because of the alleged relaxation implied in Bhoodan Act. It is significant that while there is considerable ambiguity in the matter of recognition of traditional communal land management system under the Bhoodan act externally initiate communal land system has been accorded the prime place.

8.8.2 The Orissa Forest Act, 1972

There were two Forests Act in application in the State of Orissa, viz. the Indian Forest Act, 1927, and the Madras Forest Act, 1882. Except for the districts of Koraput, Ganjam and part of Phulbani district (Baliguda and G. Udayyagiri Taluks) Where the Madras Forest Act, 1992 was in force, the rest of the area was covered by the Indian Forest Act, 1972 was enacted to consolidate and amend the laws relating to the protection and management of forests in the state. Broadly it conforms to the provision of the Indian Forest Act. Some of the salient difference are indicated:

- (i) whereas under Indian Forest Act, a forest lessee is not an owner, under Orissa Forest Act even a forest lessee is an owner. Thus the latter Act tilts in favour of the entrepreneur.
- (ii) While village forest under Indian Forest Act is state property which is placed at the disposal of the village community by the state in the interest

of the village, village forest under Orissa Forest Act is primarily communal property, which is deemed to be under the disposal of the state, for the benefit of the community.

Field investigation at Keonjhar shows that wastelands have been treated as village forests in the meaning of the term defined in the Orissa Forest Act but have been entered in the Record of Rights as 'state owned' according to the meaning of the term defined in the Indian Forest Act. While legal validity of this apparent miscegenation of the two Acts requires to be examined, it is also to be noted that provisions of both these Acts are anti-developmental. Under the Indian Forest Act though the village community can manage the forest on being assigned by the state, it cannot attract institutional finance and make investment on its own as the proprietary right vests with the state. Under the Orissa Forest Act, though the communal ownership is recognized, as the right of management is taken over by the state, the village community cannot initiate development. This the scope for effective participation in planning and development is extremely limited.

8.8.3 The Orissa Protection of Scheduled Castes and Scheduled Tribes (Interest on Trees) Act, 1981

Under Section 3 (1) of the Act no contract entered into after the commencement of this Act by owner of any specified tree for the sale of timber thereof, shall be valied if such owner is a member of the Scheduled Castes or Scheduled Tribes and if the contract has

been entered into without the previous permission in writing granted by the Range officer on an application made on that behalf giving adequate description of the timber proposed to be sold.

8.8.4 Orissa Gram Panchayat Act

The following provisions in the Orissa Gram Panchayat Act are of relevance in the matter of access of the tribals to land based resources.

A- Obligatory Functions

Section 44 (i-e) establishment and maintenance of common grazing ground and lands for common benefit of the people of the gram.

Section 44 (i-s) Supervision and control of soil conservation work.

Section 44 (i-u) preparation and execution of plans to advance agricultural conditions including improved methods of agriculture and control of eradication of pests.

B. Discretinoary Functions

Section 45 (a) planting and care of trees on the sided of public streets or in other public vested in it.

Section (b) maintenance of village forest declared as such by notification by the State Government for the purpose of this Act.

Section 45 (c) assisting and advising agriculturists in recaming waster lands and cultivating waster lands.

Section 45 (d) development of cooperation, promotion of cooperative stores for improved seeds and implements, arranging of cooperative management of land and other resources of the village and establishment of goshalas and dairy farms on cooperative lines.

Section 47 (2) Subject to rules made in that behalf and the prior approval of the collector, a gram panchayat may receive from any person and take over any property vested in him or the management of any institution or the execution or maintenance of any work or the performance of any duty within the grama on such terms as may be determined by the Collector.

Section 71 (4) without the prejudice to the generality of sub section (3) but subject to the provisions thereof, properties of the nature herein specified shall vest in him or the management of any institution or the execution of maintenance of any work or the performance of any duty within the grama on such terms as may be determined by the collector.

Section 71 (4) without prejudice to the generality of sub Section (3) but subject to the provision thereof, properties of the nature herein specified shall vest in the Garma Sasan and be under the management, direction and control, that is to say (a) village roads, (b) irrigation sources (c) ferries (d) waste land communal lands (e) protected forests within the meaning of the Madras Forest Act, 1884 in respect of the management and protection and maintenance thereof for timber, fuel, fodder and other purposes (f) markets and fairs or such portions thereof as are held upon public land or upon land belonging to the control of government together with such lands (g) all income arising or accruing from any of the items of properties covered by the forgoing clauses.

Section 95 the Grama Sasan may with the previous sanction of the State Government and subject to the provisions of this Act and rules made thereunder borrow money from the State Government, any local authority or any individual or body of individuals, corporate or not to carry out its purposes.

Rule 104 (2f) of the Orissa Grama Panchayat Rules, 1964 provides that in case of loans applied for raising orchards or for digging or renovation of tanks for pisciculture purpose, the land on which the orchard or tank is proposed to be raised or dug or tank is proposed to be renovated, vests in or belongs to the Gram Sasan.

Rule 104 (2) requires that in case of a non-governmental loan applied for, the amount of such loan including the amount of such loans outstanding at the time does not exceed three times the income of the Grama Sasan of the the preceding year in which the application is made and the total loan (both government and non-government loans) outstanding at the time including the one applied for, does not exceed 10 times the average of the income of the three preceding years of the gram Sasan.

Several issues arise out the provisions of the Gram Panchayat Act, some of the more important ones, for the purpose the present study are as follows: (i) though it makes a mention of communal lands, it has not defined the same, (ii) the growing body of the researches in ethnobotany of tribal communities show that mush of lands which is considered waste land in terms of conventional practices of agriculture is valuable source of vegetational specifiers out of which the poorer sections of the concerned population derive substantial income (iii) the exact nature of vesting of communal land with the Gram Sasan is not clear. Does it means that ownership right also will accrue to the Gram panchayat or only management right will accure to the Gram panchayat. This is a matter of vital importance as it is understood that in some states, the Gram Panchayats auction

out the communal lands to outside contractors thus depriving the poorer sections of the community of the resources essential for their subsistence (iv) it is not clear whether for the development of the land at its disposal, the Gram Sasan can obtain loan from cooperatives and commercial banks.

While it was not possible for the Study Group to examine all these issues, it appears from a perusal of the Act that with suitable modifications it can serve as the institutional care for the management of communal land holding and regulation of the customary rights of many tribal communities.

9.0 With the rapid review of the legal frame and some of the administrative measures and social actions as the backdrop, the land survey and settlement operations in Orissa will be examined in some detail.

The rationale for land survey and settlement operation has been described by the Orissa Board of Revenue as follows "Whether land revenue is regarded as a tax upon agricultural income or as a rate for the privilege of cultivation under the protection facilities providing by the state, it has throughout India, except where shifting cultivation is practiced, come to mean an acreage rate and according to most modern methods of settlement is supposed to bear relation to the productive capacity or income from the land. Being an acreage rate, its proper assessment is bound up with accurate measurement or survey of the surface of individual person or persons holding land jointly. Survey is

also necessary for the determination of which lands may not be cultivated and are required for other purposes such as communal use or residential use and for the assessment of revenue of such lands as well."

In the districts of Cuttack, Puri and Balasore that came under the British administration in 1803, the first survey was the revenue survey. It was taken up between the years 1838 and 1850. This was the so-called than-bast survey and the maps were rough sketches drawn by eye estimation.

Sambalpur, which was a district of the Central Provinces upto 1905 was cadastrally subject to periodical survey, preparation of record of rights and settlement operations. The Khondmals Sub division which was a part of Angul district till 1956 was not however, fully surveyed and settled and only lands belonging to non-Khonds were surveyed and settled between 1920 and 1930.

In the district of Sambalpur and in Nawapara sub division of Kalhandi where Central Provinces Land Revenue Acts were in force, the responsibility for maintaining the land records was always of the Government and a regular establishment existed for this work.

The raiyatwari tracts in the district of Ganjam were completed surveyed and a record-of-right for them was first prepared in the last quarter of the 19 th century.

The respect of the ex-zaminari tracts of Ganjam and Koraput districts, apparently, government had never considered that it was their responsibility for conducting a basic survey and a record of rights operation in these areas. At the initiative of the zamindars and raiyats, survey and record-of-rights operations had, however, been undertaken from time to time. Being isolated attempts made at different times they were not governed by any general policy or uniformity in procedure. After the creation of Orissa, the Government ordered a survey and record of rights operation in 1938. The operation was suspended during the war emergency and was revived thereafter.

It was included in Ganjam by 1950 and in Koraput district by 1964. Currently revisional survey and settlement operation is going on in Koraput district. In the 'Agency' areas of Ganjam district no survey had been done till the 1960's.

Though the ex-states survey and record of rights operation were taken up for the first time towards the close of the 19th century, yet it is generally accepted that the work was far below the standard. Usually junior officers having some training in the neighboring provinces were employed as Settlement Officers. Therefore, though the survey and record-of-rights operation undertaken in these states from time to time might have been sufficient for the purpose of fixing or raising the land revenue demand, yet even according to official sources, it did not have much value as having produced an accurate survey of a proper record-of-rights.

Currently survey and settlement operations are conducted in Orissa under the provisions of Orissa Survey and Settlement Act, 1958. Earlier, the portion excluding the ex-princes' States was covered by the Bihar and Orissa Survey and Settlement Manual of 1927. The technical aspect of the survey was guided by the Technical Rules of the survey Department. The legal framework in Orissa was guided ----- The Orissa Tenancy Act (Bihar and Orissa Act II of ----- in Orissa Division excluding Sambalpur District, (ii) The central Provinces Tenancy Act (Act xii of 1898) and the statutory Rules framed under the Act, (iii) the Bengal Survey Act (Bengal Act v of 1875) which was in force in Bihar and Orissa excluding Sambalpur.

Other Acts Regulations under which settlement and survey was conducted included Settlement Regulation vii of 1822, ix of 1825 and ix of 1933, Act ix of 1847, Bihar and Orissa Act I of 1920.

The Orissa Survey and Settlement Act 1958 (Act 3 of 1959) has been enacted to consolidate and amend the laws relating to survey, record of rights and settlement operations in the State of Orissa.

Under section 4 of the Act, 'Village' means any tract of land which has been recognized as a Village in the revenue records or which the Board of Revenue may from time to time declare to be a village.

Section 21 of the Orissa Survey and Settlement Rules, 1962 stipulates that "where an order is made under section II, the particulars to be recorded shall be specified in the order and may include either without or in addition to other particulars, all or any of the following, namely, (i) name of each tenant or occupant (ii) the class to which each tenant belongs, (iii) the situation or extent of the land held by each tenant or occupant (iv) the name of the land lord of each tenant, (v) the name of each proprietor and landlord, (vi) the rent and charges for irrigation payable by each proprietor, landlord, tenant or occupant, (vii) if the rent is a gradually increasing rent, the time at which and the steps by which it increases, (viii) the use of water for agricultural purpose where obtained from a river tank or well or any other source of supply and repair and maintenance of works for securing supply of water for the cultivation of land held by each proprietor, land lord, tenant or occupant, whether or not such works be situated within the boundaries of such lands, (ix) the special conditions or incidents of any of the tenancy (x) any right of way or other easement attached to the land and (xi) if the land is claimed to be held rent free, whether or not rent is actually paid, and if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority."

When the provisions in respect of the entries in the record of rights under the Orissa Survey and Settlement Rules of 1962 are compared with those under the Chhota Nagpur Tenancy Act, 1908, significant differences come to notice. The latter requires the record of rights to make entry about (i) the existence, nature and extent of right of any person whether a landlord or tenant or not, to take forest produce from Jungle-land or waste

land, or to graze cattle on any land or to take fish from any water, or of similar right, in any village in the area to which the record of rights applies, and (ii) the right of any resident of the village to reclaim jungle land or waste land or to convert land in korkar. But the former does not contain any such provision. There is also scope for variant interpretation of the word 'proprietor' in the Orissa Act, where it has remained undefined. Chhota Nagpur Tenancy Act, on the other hand has defined proprietor under Section 3(xxi) as a person, owning, whether in trust or for his own benefit, as estate or a part of an estate and under section 3(x) 'estate' means land included under one entry in any of the general registers of revenue paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Deputy Commissioner and included government Khasmahals and revenue-free lands not entered in any register. It appears that when proprietor is defined in this manner, it contains scope for the traditional tribal institutions to be treated as proprietor, but in the absence of clear cut definition in each case the question of proprietorship will have to be traced historically. Here a significant information provided by the Settlement Officer Keonjhar is noteworthy. " In course of settlement operations, the lands under the possession of individuals, if recognized legally as the raiyati holding is recorded in favour of the individual in raiyati states under the Khewat government of Orissa. All other land are recorded in the following holding of state government according to prescribed classification: (i) Abad Jugya Anabadi. (ii) Abad Ajugya Anabadi (iii) Rekhat. The last category covers village forest, tank, land for future homesteads, developmental and communal.

One particular aspect of the land survey and settlement operations in Orissa deserves special mention. Under Section 36 of the Act, the government may make an order directing that proceedings relating to (a) survey and preparation of record of rights (b) preparation of record of rights and settlement of rent or (c) survey, preparation of record of rights and settlement of rent, shall with respect to any local area, be carried on simultaneously. It is to be noted that simultaneous proceedings does not included here settlement of land, as is done through vesting the power of Collector with the Settlement Officer during the survey and settlement operations in some states.

The rapid overview of the system of land administration and framework of preparation of the record of rights in Orissa has been presented with minimal analytical comments and observations. How actually the property relations of the tribal communities have been affected by the various systems of land administration and survey and settlement operations will be discuss primarily on the basis of field observations made in Keonjhar. Some information obtained from secondary sources about Koraput and Sundargarh districts will also be briefly mentioned here.

10.0 Information Obtained during the field visit in Orissa

After making a fairly through study of the secondary source materials the Study Group paid a short visit to Orissa during 15-19 April, 1986.

The Study Group had a detailed discussion with the senior officers of the Govt. of Orissa. The summary record of the discussion is furnished at Annexure II. The Group had also a separate discussion with Sri Bhaja Mana Behara, Minister of Harijan and Tribal Welfare, Govt. of Orissa. Shri Behera made the following points: (i) In many areas, the prevailing system among the tribal communities is to mention only the name of the head of the lineage as the owner of the land on behalf of the entire lineage. As a result frequently during the preparation of record of rights, the individual households do not come forward to claim their rights. This has created some confusion among the Revenue Officers, many of whom are not well acquainted with the custom prevailing among the tribal communities, (ii) In the matter of restriction against alienation of tribal land, there is an exception in favour of financial institutions. As a result, in several areas action has h/been instituted for recovery of loan under public Demand recovery Act. Shri Behera felt that in the context of the nature of terrain and inadequacy of infrastructural development in the tribal areas, failure to repay loan should be considered sympathetically and it may be premature at this stage to operationalise the exception in favour of financial institutions. At the same time, he felt that this was a matter of general policy which might be relevant for other states as well. He, therefore, wanted the Study Group to examine it in different states and give its suggestion in its report after examining all the pros and cons.

Shri N.C. Behuria, who was Survey and Settlement Officer for major survey in Koraput district and later was Revenue Divisional Commissioner, South Divisions was interviewed. In his settlement report, Shri Behuria had pointed out that though the plane-

table method of cadastral survey which had replaced the earlier chain survey method was much cheaper, it was unsuitable for hilly terrain. During the discussion he stated that his experience in the hills of Ganjam and the information gathered by him in respect of some of the other states also confirm that by this method the details of land use for the purpose of cadastral survey beyond 10 per cent cannot be correctly recorded. On examination of the survey and settlement report and other materials available to the Study Group a few extremely important facts came out. Apart from the constraint of technical nature imposed by the method of survey in the matter of correct measure of the land, there was a policy decision of the Government, as result of which the preparation of recode of right turned into denial of the rights which were enjoyed by the concerned Settlement of Shri Behruia, the Orissa Government had decided in cultivation on hill slopes upto 1 to 10 gradient on every hill would be recognized. and that cultivation further up would be treated as encroachment, liable to be evicted in due course. here two issues are involved. One is the right of the state to other is the right to treat persons carrying on such cultivation right should be exercise. But it does not follow from this that the shifting cultivators who are in the area for generations are encroachers and that the state has the right should be exercised. But it does not follow from this that the shifting cultivators who are in the area for generations are encroachers and that the state has the right to evict them.

It was brought to the notice of Study Group that in Kashipur area kudki pattas were issued by the Raja to the shifting cultivators. Even now these pattas are recognized though they have been made non-heritable. In fact, the shifting cultivators and other

cultivators beyond one in ten gradient slopes, who are mainly tribals cannot be treated as encroachers and evicted without attracting the provisions of law. In this connection the relevant sections of the Madras Land Act, 1908 which operated in the area until recently deserve careful examination. According to Ch. 1 section 15 of the Madras Estate Land Act, 1908 'ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying land holder the rent which is legally due upon it. The crucial question here centres round the concept of agriculture. In case No. II commissioner Vs Ram Krishna Das. A 12, 1959 SC 239 i5w observed that the term 'agricultural' in its ordinary sense means 'cultivation of field and would cannot such basic operations as tilling of land, sowing of seed, plantation and the like; shifting cultivation thus is 'agriculture' within the meaning of the term under Madras Estates Land Act, 1908. Two other questions are also relevant in this connection, whether the shifting cultivators have continuous occupation of the land and whether the paid rent prior to the policy decision of the Government not to recognize them.

The question of continuous occupation can be examined at two levels: one at the level of the community; the other at the level of individuals belonging to the community. It has already been indicated on the authority of Orissa Government publications that both at the community and the individual levels the system of continuous occupation prevails among Section of the Khond and Bhiyas Ramdhyani's Report of early 40's give similar information for many other tribal communities of Orissa. The question of continuous occupation has assumed particular significance in view of another policy decision taken by the Orissa Government in 1972 to the effect that encroachments committed by the

tribals prior to 10 October, 1969, in certain areas should be recoded as their raiyati land without taking any further proceedings. Apart from its questionable legal validity, treating of the cultivators beyond 1 in 10 gradient slope is, thus, contradictory to an important policy decision of the Government. As regards payment of rent mention has been made earlier of collection of the same under mustajari system in Koraput district. After the mustajari system was abolished with effect from 1st July, 1957, rent began to be collected directly from the tenant thus the cultivators even beyond 1 in 10 gradient slope were on all counts ryots under the provisions of Madras Estate Land Act 1908 and it is to be recalled that as early as 1824 Munro had observed that ryot is not a tenant at will he is not removable. It appears that while drawing up the guideline for survey and settlement operation the land control and management system actually prevailing on the ground and the historical roots of the same were not adequately kept in view. As a result perfunctory entries were made in the record of rights. In some villages in Bondo Hills less than 1 per cent of the total land under occupation of the tribals has been entered in the record of rights. In a good number of villages in more accessible part of Koraput district less than 10 per cent of the land under occupation of the tribals for generations have been recorded in their favour.

By the system of survey and settlement operations which was undertaken in Koraput district according to the guidelines provided by the Board of Revenue, the rights of tribals not only in respect of their agricultural land beyond 1 in 10 gradient slope failed to be recorded, but also in some villages at least their rights in respect of trees planted by them

failed to be recorded. In one village of Bissum Cuttack Block while only 2.50 acres of land below 10 per cent slope cut of the total land of 936.13 acres in the village was recorded in favour of the tribals, several thousand jack fruit trees (owned by individual households) and at least two thousand mango trees (communally owned by Wadaka lineage group) located on higher slopes were found to be one lands which were recorded as state land. The market value of the existing stock of these trees was estimated to be around Rs. 40 lakhs. Incidentally it is to be noted that this village is inhabited by a primitive tribe - the Dongria Khonds and that there are only 44 tribal households in the village. Thus, the tribals of this village are poor not because they lack in resources but because of non-recognition of the resources by the state either for determination of 'property rights' or for formulating the development strategy.

In Kenojhar district similar state of affairs was found to prevail. During the period of ex-Princes' state, survey and settlement operations of some sort were conducted several times. The one during 1892-1900 was more elaborate than the previous one. The latest one, before independence was that of 1914-1918. But these surveys did not cover the areas inhabited by the most important indigenous tribes of the district, the Bhuiyans and the Juangs. In Bhuiya Pir however a register showing the tax of each person was maintained; but in Juang Pir there was no such register the headman distributed the rent for the village as a whole. In the villages of the open tract, the village as headman maintained a rent-roll (ekpadia) showing the area, name and rent against each person.

Plough tax on agriculturists and a house tax on non-agriculturist was imposed in Bhuiyan area. In Juang Pir, a produce rent was fixed. For instance one year old goat had to be given during Dusserah by the headman in addition to the produce rent which was specified in the patta issued in his name for the whole village.

Prior to settlement of 1892-1909 all wet lands only were assessed to rent. While for all other kinds of lands, the tenants paid no rent in money, they were under obligation to sell a portion of the produce at less than market rates to Maharaja and were also liable to bethi or force labour. This bethi system was chiefly responsible for the outbreak of a reabellion in 1891 A.D.

The boundaries of the Bhuiyan villages were fixed as per traditional norms and many disputes on the boundary were being settle by mutual discussion between the concerned villages after some religious rites. The note submitted by the Collector to the Study Group categorically observed that 'traditionally the Juangs and Bhuiyans residing in the respective pirs considered that the lands of the village belonged to the village community and they lands of the village belonged to the village community and they were free to use them in any manner they like. The pirs were not subject to any land survey and settlement till the operation taken up in the year 1970 and completed recently. In the same note it was further mentioned that "shifting cultivation was indirectly recognized. The village

headman had power to distribute land for cultivation and to apportion the produce rent." While the raiyats living outside Juang and Bhuiya pir used to pay nistar cess along with land revenue, the Juangs and Bhuiyas residing in their respective pirs were not required to pay nistar cess. They were granted rights and concessions by the British Administration in 1956 for sale of timber under the provisions of Forest Act and royalty was exempted.

The Unsurveyed areas of Bhuiya pir and Juang pir were taken up for a regular survey and settlement operation vide notification of the Government dated 27 October, 1970. Consequent on the implementation of the survey and settlement operation in under the provision of Orissa Survey and Settlement Act, 1958, the village boundaries have been fixed more or less on a permanent basis and lands held by individual Bhuiya and Junag families have been settled with rayati status. The lands subjected to shifting cultivation have not been recognized although the practice is still in vogue. The following principles have been observed in preparing the record of rights in Bhuiya pir and Juang pir:

(i) In village where raiyatwari ekpadi or tenant ledger was available, area equivalent to the extent noted in the same were recorded in the name of concerned rayat (In 1931-32, such ekpadi showing the area, name and rent of each raiyat was prepared to facilitate collection of land revenue.

(ii) Where such ekpadias were not available, the land held by each tenant as on 23rd October, 1976 were given raiyati status unless otherwise objectionable.

(iii) For land possessed by the Juangs and Bhuiyas after the above date, they were treated as encroachers. The non-Bhuiya and non-Juang immigrants were also treated as encroachers in respect of land held by them unless they completed seven years by 7th July, 1947, when the Bhuiya Pir and Juang Pir Immigration Act came into force.

The Settlement Officer made available to the Study Group the abstract of the record of rights prepared in respect of five Juang villages. The same given below:

(Area shown in hectares)

Kaansa	Talu Champei	Upper Champei		Taranipani	Ghungi
Total area of village	543.9120	1082.9400	518.1591	578.3500	801.86
Total cultivated area	131.4935	37.5000	119.0200	57.2600	21.880
Total homesteads	2.8325	0.5800	0.2650	1.7950	0.5050
Abad Jogya anabadi	48.3000	1.2550	107.9830	2.0700	0.8100
Jungle	68.5100	41.4720	45.7600	5.000	20.4000
Other	292.7760	1003.3880	245.1311	34.29507	58.2700
Totay rayati Khata	86	33	30	33	35
Total Rayati lands	134.3261	38.0800	119.2850	59.0550	22.3850
Tribal land holders	82	33	26	33	35
Land recorded in the name of tribals	127.8360	30.0800	115.3550	50.550	22.3850
Average size of holding of tribals	1.5590	1.1439	4.4367	1.7895	0.639

The data show that by the system adopted during the survey and settlement operation conducted for the first time in the last decade in Juang and Bhuiya areas, only 2.48 per cent to 23.50 per cent of the land in the Juang village which have been almost exclusively inhabited by them for centuries could be recorded in the names of the tribals in the record of rights.

The Study Group visited a Juang village Tala champei. There were 45 Juang households.. Land below 10 percent slope under possession of the tribals were entered in favour of the tribals in the record of rights the rest including village wastelands were shown as owned by the state. In this village both settled agriculture and shifting cultivation are practiced. The villagers stated that earlier when more land was available for shifting cultivation, the plots of each household to be covered in produ-cycle were more or less fixed. With scarcity of land and many families taking to settled agriculture, the traditional system of regulation has tended to breakdown. People carry on poducultivation wherever it is convenient within the jurisdiction of the village. The villagers further stated that during recording of the lands reclaimed for settled agriculture some adjustments were made by the settlement personnel so as to accommodate a few families who dis not have such land. One village stated that he was unhappy at the loss or some reclaimed land in this manner, but as it is not graceful according to their custom to refuse to share resources with co-villagers he did not strongly object. This raises a question whether during the preparation of record of rights and inquiries about possession, tribal ethos of individual

possession subsumed in community in possession was not mixed up with the administrative procedure of particularistic right of possession of individual households.

10.1 Apart from his concurrence with the facts noted here, as a member of the judiciary justice Sen has given a separate note drawing pointed attention to the incongruity of non-recognition of corporate rights of the tribal communities on land. The same is furnished at Annexure IV.

10.2 On behalf of the Govt. of Orissa, one note on the problem of cadastral survey beyond 10 per cent slope was given to the Study Group. It specifically referred to the survey in Bondo hill and inter-alia stated as follows. "The problem of survey above 10 percent slope would be more acute when the cadastral survey of Upper Bondo Holl is taken up. Except the system of plain-table no other accurate method of survey of the area above 10 percent detail survey is available with us for doing this work and in case of by plane-table method will not be possible. the problem has already been brought to the notice of the Board of Revenue, Orissa by the Deputy Director, Survey and Map Publication, Orissa and we forwarded a note to the Survey of India for inclusion of this problem as an item of the Agenda of the Conference to be organized by the Survey of India during 1986". "During the detailed cadastral survey of a village, each individual holdings to be surveyed including the homestead lands, cultivated lands and other given government lands in a particulars scale of survey. As per the existing practice, in case a Hill is situated upto a certain limit only upto 0 (nine degree) slope and the rest extent are

left unsurveyed. The hill portions are surveyed and shown as one plot only. So far no procedure has been laid down for survey of all details of the slopes of the hills in the plain-table method of cadastral survey."

A copy of the note is furnished at Annexure Two facts come out from this. First, contrary to the objective of survey and settlement operation as stated by the Board of Revenue and quoted earlier in this report, it has not been possible to make accurate measure of tribal land in the upper reaches hill tracts. Second, contrary to the claims made in the Survey and Settlement Reports in the hilly tracts complete cadastral survey of land upto certain degree of slope. In the context of this fact the legal status of the survey documents requires a closer look.

10.3 As the note given by the Govt. of Orissa also refer to a problem of technical nature relating to cadastral survey beyond 10 per cent slope and as according to this note the matter was taken up by the Orrisa Government with the Survey of India, the Surveyor General of India was contacted on behalf of the study group. It was found that he was not seized with the problem till the time of the discussion.

11.0 Information Obtained through Interviews at Various levels

11.1 Dr. L.K. Mahapatra, the then Vice Chancellor of Utkal University and Dr. B.N. Sinha, Professor of Geography who were interviewed drew attention of the Study Group to the problem of tribals dislodged from their habitat as a sequel to development projects. Dr. Mahapatra particularly referred to the problem of the oustees of Indravati Hydro-electric project. According to the rules framed by the Rehabilitation Advisory Committee chaired by Revenue Divisional Commissioner of South Division of Orissa, those who do not have property rights on land are not eligible to any compensation for loss of land. As the Govt. Refuse to accept right of possession of swidden cultivators on lands on which they have subsisted for generations "beyond memories path" they are not entitled to any compensation for loss of land. This in the words of Dr. Mahapatra is "highly exploitative in favour of state" and contrasts very unjustly when it is kept in view that under normal rules even adverse possession of government land for 12 years is regularised in favour of the encroachers. Reference has been made earlier of the report of the Commissioner for Scheduled Castes and Scheduled Tribes for the year 1960-61 which indicated how in the wake of development the tribals were divested of their land and what was the reaction of the tribals to the same. It has been brought to the notice of the Study Group that even now, the situation remains basically the same. Out of 999 acres of land covered by Cashew nut plantations in the 60's only 56 acres were allotted to tribals. Naturally they did not take kindly to it. In 1984 they uprooted cashew-nut planted over 95 acres of land at Jiljira of Kashipur block.

11.2 During the discussion with the local officials President Bar Association, local MLA, Chairman of the Panchayat Samities, social workers, tribal representatives and others at

Keonjhar and also with some well informed humanists like Shri Gopinath Mohanti at Bhubaneswar the members of the study Group were impressed with the general awareness of the historical contexts of the access of the tribal communities to land-based resources. In other words in the intellectual moral climate of Orissa, one could feel a deeprooted respect for the customary rights of the tribals. If inspite of the same development processes have not gone all along desirable lines, it is primarily because of the one way flow of development communication. The members of the Study Group feel that in this matter the academic community also has great responsibilities.

Justice Sen and Prof. Roy Burman had a series of discussions with Justice H.K. Mahapatra and Justice G.K. Mishra at Cuttack. Both of them stated that the tribals generally avoided coming to the Court. In the context of this fact recording to customary rights of the tribals assumes great importance. According to the procedure prescribed for survey and settlement operations, village notes depicting the customary rights are required to be prepared. During interview with the Director, Tribal and Harijan Research and Training Institute and his colleagues, it came out that though in tribal development planning the institute is closely associated, there is scope for closer collaboration in the matter of recording the customary rights in an appropriate manner.

12.0 Recapitulation, Supplementary Observation and Recommendation

In view of the circumstances beyond its control which have been explained at para 4.0 and annexure I, the Study Group on Land Holding Systems in Tribal Areas could carry out its inquiries in the state of Orissa only. In this section the information provided in Section 7.0 to 11.0 have been recapitulated and rearranged keeping to the terms of reference of the Study Group, supplemented by other observations wherever necessary and then in the light of the same recommendations have been made.

12.1 In the matter of determination of land and land based resources in the tribal areas of Orissa, the Study Group came across two hurdles.

A. In the recent decades cadastral surveys have been carried out in the hills by plain-table method which enables such surveys to be done upto 10 percent slope only. As a result, though it is claimed that except for very small areas survey and settlement operations has been completed throughout Orissa, actually in may per cent slope only. According to tan official note submitted to the Study Group all lands beyond 10 per cent slope have been shown in a single entry, because of the constraint imposed by the method of survey. In Keonjhar it was found that even this 10 per cent slope was a theoretical proposition. As per guidelines evolved in 1974, for undertaking survey and settlement operations in Juangpirh, the upper reaches of the hills were to be reserved for forests and the lower

parts of the slopes were to be earmarked for grazing purposes. While this had the effect of the abortion of community rights over varying extents of land on the hill slope in favour of the state the line of demarcation between what might be called the 'upper reaches' and the 'lower reaches' tended to be determined subjectively. In some villages the slopes were entirely gentle and the drawal of lines between the upper and lower slopes was obviously arbitrary. The field situation was thus an eye-opener. Information available from the settlement report of Koraput also indicated that lands beyond 10 per cent state and the actual occupants of such lands were shown as 'encroachers'. The Study Group feels that the validity of the procedure in terms of the normative base of the laws of the country should be carefully examined.

It is stated that prior to the Second World War, cadastral surveys were generally conducted by chain survey method. While the plain-table method involves much less cost for the state, it costs the land-holders dearly. In Keonjhar only 2.48 per cent to 23.50 per cent of land to which tribal communities of the five villages (about which data were obtained from the Settlement Officer), have rights of access for economic use, were found to be recorded to their favour.

The data available from Koraput show that in some villages even 1 per cent of the land under actual occupation of the concerned tribal communities have not been recoded in their favour in the record of rights. In those villages almost entire lands has been

recorded in favour of the state. It has been mentioned to the members of the Study Group by knowledgeable persons that many tribals look upon the survey and settlement operations as an operation of confiscation of their land rights. The Study Group cannot help feeling that there is something in the tribal perception of the situation which merits a thorough probe.

Further, from the official note furnished to the Study Group on behalf of the Government of Orissa, it appears that the disturbing situation found in Orissa is partly the outcome of the practice, which is not exclusive to Orissa alone. The Study Group strongly feels that a thorough study of the effect of the various techniques of survey on the land rights of the tribals and other hill dwelling communities should be carried out in all the hill areas of the county in consultation with the Surveyor General of India.

B. The second impediment in assessing the land based resources is partly cultural and partly technological. The conventional practice is to consider those endowments of nature as resources which have known commodity value in agriculture, horticulture, forestry, animal husbandry, mining etc. But in recent years there is growing realization that the endowments of nature like weeds, non-descript plants which were so long considered waste by the tribal communities concerned. In fact many of these constitute the core of the survival system, particularly of the more primitive tribal communities. While the Tribal and Harijan Research and Training Institute, Government of Orissa, has made some study

of the resources of this type, no cognizance of the same has been made in designing the land administration system of the state or in preparing the guideline for survey and settlement operation. This type of administrative conservatism may not however be unique to Orissa alone.

As a result of the two foregoing hurdles there is no systematic resource appraisal for the entire state of Orissa from the point of view of the tribal communities. The Study Group recommends that in the interest of tribal resource and need-based development the hiatus in perception and operation as broadly outlined should be urgently removed.

12.2.1 In determining the extant land holding patterns obtaining among the tribal communities, the Study Group finds that the record-of-rights is not always a satisfactory guide. A note given by the Settlement Officer, Keonjhar mentions that in course of settlement operations lands under the possession of individuals, if recognized legally, as the raiyati holding is recorded, in favour of the individual in raiyat status under the Khewat of the Government of Orissa; all other lands are recorded under different categories of holdings of the State Government. Thus, the record of rights does not take into cognizance the communal holdings of the tribals, though the Deputy Commissioner of Keonjhar in his note confirmed that 'traditionally the Juangs and the Bhuiyans residing in the respective pirs considered that the lands of the village belonged to the village community and they were free to use them in any manner they liked.' In fact not only the Deputy Commissioner of Keonjhar but the acknowledged tribal experts of Orissa and

even several publications of the research organization of the Govt. of Orissa, have made repeated references to the prevalence of collective rights of tribal communities in respect of land and land-based resources.

12.2.2 A comparison of the provisions in Orissa Survey and Settlement Act of 1958 and Chhota Nagpur Tenancy Act, 1908 shows that while some of rights of communal nature are required to be entered in the record of rights in Chhota Nagpur, are not required to be entered in the corresponding documents in Orissa. The Study Group recommends that a comparative study of the provisions in the Survey and Settlement Acts or Manuals of the different states having tribal concentration about the nature of entries to be made in the record of rights should be made so as to ensure that the rights relevant for the tribals are appropriately recorded.

12.2.3 Apart from the non-recognition by the state of the traditional communal rights, there is also the problem of determining the appropriate legal equivalences of the indigenous concepts of rights and of the operative arrangements for the exercise of such rights as prevail among the tribal communities. A beginning in this direction was made by the Census Organisation in 1961, but the Study Group has not come across any evidence of this being systematically followed by the Census Organisation of any other organization since then. However, the information provided by the Census Organisation as part of 1961 census has been culled out in respect of Orissa and included in this report

at para 8.1. Besides comparative data on possession of land by agriculture labour households among the tribal and total rural population of Orissa as provided by the Labour Bureau, Ministry of Labour, Government of India have been included, for whatever may be the worth of the same.

12.2.4 It has been brought to the notice of the Study Group that in many tribal areas legal recognition of "possession of individuals and 'rai-yati holdings' does not cover all possessions of individuals". Reference has been made at para 7.5 of the findings of the research organization of the Govt. of Orissa that among some tribes, there are individual rights subsumed within community control, management and ownership. It is obvious that as a sequel to non-recognition of communal rights the embedded rights of tribal individuals also fail to be recorded. In this connection the Study Group would like to draw pointed attention to the insightful observation of justice Hidayatullah that historically speaking separation of individual from the community in matters of property relations concerning land is not a part of Indian Tradition, it is a colonial hangover. The far reaching implication of this observation requires to be worked out in detail.

12.2.5 The Study Group has tried to understand the factors inhibiting the recognition of corporate rights of the tribal communities. It has come across the following four major arguments in favour of non-recognition of communal rights (A) communal rights have disintegrated and do not actually exist on ground (B) communal rights provide cover for

the influential section of the community to usurp the relivence rights (c) Communal rights are not compatible with market oriented development process (d) Though communal rights as such are not recorded in the record of rights, these are often recorded as common facilities owned, controlled and managed by the State or other agencies on being assigned by the State.

While undoubtedly the communal system has lost much of its vigour in many areas, it is to be noted that the impressionistic view of its disintegration is frequently tied up with romantic unhistorical notion of its content and manner of its functioning. In reality it exists in different forms. In the last century, Baden Powell differentiated the lands left to common use like grazing from the whole village land held in common by the proprietors themselves. In the latter case, in many areas customarily the landholders held a right to a farm with a certain characteristics and not to specified plots. In this system individual right of occupation emanates out of communal right of alienation. In the matter of management of communal lands also different systems prevail on the ground. More common is the system of management by the community as a whole. Where, however, the community system articulates with the State system or where the community is subjected to external pressures oligaritic management on behalf of the community tends to consolidate itself. But, as by definition, communal system is ultimately sustained by the moral bindings within the community, internal democratic process never comes to a complete stop. The Study Group feels that rather than conjectural generalization of the disintegration of the communal land system, intensive studies of its persistence, change,

decay and reinvigoration (whatever may be the real fact) should be conducted in the relevant historical context. Similarly rather than generalizing on the role of influential sections among the tribals in the management and control of communal lands, the dialectics is of neo-feudalisation and democratization, both of which are logical possibilities and about both of which empirical data are available from different parts of the county, should be contextually studies in depth. As regards compatibility of communal system with development process, the World Bank has in recent years published convincing data from different parts of the world. A recent publication from U.S.S.R. also has emphasized its relevance for Third World countries in some contexts. In India some experiments in this comparative data from other parts of the World should also be taken into consideration in formulating policy decision regarding communal land system. As regards recording the common facilities as state property, the Study Group feels that this will weaken the process of participatory development and democratic decentralization.

12.2.6 The Study Group feels that whatever facts on the ground so warrant, 'tribal community organisation' should be recognized as a privileged raiyat in the same manner as Lord Jagannath, or a plantation is regarded as a privileged raiyat. The lacunae in the recording of the communal rights as well as the embedded individual rights as brought out in the paras 12.2.1 to 12.2.5 raise the more fundamental question of adequacy or inadequacy of the policy platform in regard to land reforms in the tribal areas: The cornerstone of land reforms in India has appropriately been abolition of exploitative

intermediaries between the state and the land user. But where individual rights are embedded in communal rights, removal of the community as intermediary removes the necessary condition for the concentrated individuals to enjoy their rights. The Study Group recommends that keeping the foregoing fact in view, the land reform policy and programme in the tribal areas should be subjected to most thorough re-examination.

12.3 & 12.4 As regards the nature and extent of dependence of tribal communities on land resources and their awareness of the economic values of such resources, the Study Group has come across useful qualitative data in the various publications of the Tribal and Harijan Research and Training Institute. It would be useful if the Institute compiles these information and brings out the same in a single publication.

12.5 Due to lack of personnel it has been possible for the Study Group to make a very limited study of the extent of recognition the right of access of tribal communities to land and land-based resources. Orissa Forest Act, 1972 recognises such right theoretically in respect of village forest but as according to the stipulations in the Orissa village Forest Rules, 1985, the right of preparing and approving the working plan vests with Forest Department's officials, it is difficult to envisage, to what extent the needs of the village communities will be satisfied through such arrangement. The Study Group recommends that a well-coordinated inquiry in this regard should be instituted in Orissa as well as in other states in cooperation with the Tribal Research Institute.

12.6.1 It has been suggested from responsible sources that sometimes during the preparation of record of rights, individual tribal households indicate the respective lineage heads as the owner of entire land in occupation of the lineage resulting in large areas being declared surplus. It is possible that different tribes have different customs in such matter. During the preparation of record of rights appropriate guidelines should be drawn up with the help of the Tribal and Harijan Research Institute and in consultation with the tribal leaders.

12.6.2 Cases have been reported from Keonjhar where tribal lands taken up for cultivation by non-tribals like Gaura and Patro in the context of symbiotic relationship of production, consumption and circulation of commodities have been recorded in favour of latter without reference to the totality of relationship. A slight variant of this problem has been reported from Korapu resulting in inter-ethnic tension. Due to constraint of time and personnel the Study Group could not examine in depth the various aspects of this complex problem. From a rapid review of ethnographic literature, it is felt that problems of the same order exist in other states also. It will be necessary to formulate an appropriate policy platform after a thorough documentation of the same at the all India level.

12.7.1 As regards changes in the matter of control of and access to land and land-based resources mention has been made of the findings of the Commissioner for Scheduled

Castes and Scheduled Tribes in 1960-61 of how cashewnut plantation programme for the benefit of the tribals actually led to their being divested of their customary right of access to lands for economic use. In the same report the commissioner mentioned that in their resentment, the tribals had destroyed some of the plantations. It has been brought to the notice of the Committee that the same process of dispossession through development continues in some cases even now and that in 1984, some new cashewnut plantations were damaged by the tribals. When it is kept in view that the Report of the Commissioner for Scheduled Castes and Scheduled Tribes is placed before the Parliament and discussed there, one would have to give deep thought to the question as to why his report failed to prevent the occurrence of a situation which is of the same type as was mentioned by his predecessor quarter of a century earlier.

12.7.2 Dispossession through development is most widely practiced in the wake of the major hydel and industrial projects. It has been stated to the Study Group that even though community resources constitute the main source of livelihood for a good number of tribal households, they are not entitled to compensation which is basically tagged with recorded rights on the lands from which they are dislodged as a sequel to the implementation of the major projects. Even in those cases where compensation is paid, the rates of compensation are related to the disappearing market rates, which are utterly inadequate to rehabilitate the persons concerned in the new economy. In this connection the Report of the Working Group on Development of Scheduled Tribes during Seventh Five Year Plan 1985-90 (circulated by the Ministry of Home Affairs, Government of

India) was brought to the notice of the Study Group. In this report inter-alia the following important suggestions have been made:

- (a) A policy for rehabilitation of project displaced persons may be formulated at the national level,
- (b) Among other things, the policy should enjoin that rehabilitation of displaced persons, particularly the tribals, should form an integral part of all industrial, irrigation, power mining and forest and wild life projects of certain magnitude,
- (c) Any project, displacing tribals should give preference to Scheduled Tribes in jobs under it and at least one member from each displaced family must be taken in, as far as possible,
- (d) In ancillary units, which may be set up to supply semi-finished/finished goods to the main project, similar reservation of jobs for the displaced tribal families should be made applicable to all government, corporate and joint sector units,
- (e) Supporting services like dairy, fishery, carpentry around the main project should be encouraged exclusively through tribal people,
- (f) the cost of rehabilitation should form an integral part of the project and in all cases, must include cost required to train the tribals in the jobs and services mentioned above
- (g) Group/community rehabilitation should be the rule in case of displaced tribals
- (h) Where the tribals are already agriculturists preference should be given to settlement in agriculture,
- (i) Special note should be taken of food gatherers, hunters, forest produce collectors, graziers, forest land cultivators, shifting cultivators and tribal artisans depending on forest raw materials,
- (j) The principle of allotting land to the affected tribal population in the benefited area i.e. in the ayacut of the irrigation projects must be clearly accepted and where necessary smaller irrigation projects including lift projects be taken up in new sites earmarked for the oustees for agricultural rehabilitation ,
- (k) Keeping in view the lead-time for planning and implementing of resettlement

proposals and the time of physical occupation of the land of the project for submergence under the project, the Settlement Officers should prepare draft schemes of resettlement for approval before execution, (l) The rates and form of compensation given to the tribals displaced in the wake of post development projects should be critically evaluated, (m) Since open transactions in the tribal land are few on account of protective legislation in force in the area compensation in terms of capitalized value of income should be resorted to in preference to the sale data method. All compensation amount should be deposited in favour of the concerned tribals in pass book in the nearby post office or bank (n) Emergency Provision should not be applied under Land Acquisition Act, 1894 indiscriminately to tribal land (o) The coal-bearing Areas (Acquisition and Development) Act, 1957 should be amended, if need be, to ensure adequate compensation and rehabilitation benefits to the tribals (p) The question of levy of access on saleable products and visible benefits may be examined for projects involving displacement in tribal areas.

While it was not possible for the Study Group to critically examine the suggestions, it is obvious that these suggestions, if implemented will go a long way to mitigate the hardship of the project oustees. The Study Group is also aware of a point of view that in addition to rehabilitation assistance, equity shares should be allotted to the displaced persons in the development projects, instead of moving them away from playing active role in development through the payment of compensation. It was, however, not possible for the Group to examine the feasibility of this line of approach.

12.7.3 In the public demand recovery law of Orissa, certain institutions like banks and cooperatives have been assigned the privileged position in the sense that they can take over the land assets of the tribals in case of default and sell them. The Study Group is of the view that while the institutions might continue to occupy the privileged position, operative norms should be laid down to ensure that the land is not sold to non-tribals and that through the disposal of the land, community's access to and control and management of land resources of corporate nature is not adversely affected. The Group is, however, aware that for operationalising the suggestion it will be necessary to spell out the specific steps in some detail. This can be done only after comparative data have been obtained for the different parts of the country.

12.7.4 The Study Group has also addressed itself to the problem of transfer of land by individual tribals to individual non-tribals and feels that this is a symptom of imbalance among the different elements of planned development. The nature of imbalance may however, vary from area to area and tribe to tribe.

While the Study Group recommends a comprehensive study of the imbalance covering diverse socio-ecological niche in all the tribal areas of the country, as an interim measure it suggests that the authority for grant of permission for transfer of land from an individual tribal to an individual non-tribal should be exercised by the Collector or Deputy Commissioner only and it should not be delegated a lower level. Besides "Watch-dog committees consisting of tribal representatives, social workers, social analysts should

be constituted at the district level to maintain vigilance over the broad trend of alienation of tribal land to both public and private agencies as well as to individuals.

Annexure I

Changes in the Composition of the Study Group and the organizational Infra-structure Available to the Group

In may, 1986, Dr, Bhupender Singh was transferred to Orissa as Commissioner, Agriculture and Rural Development. It was, however, felt that continuity in the functional arrangement should maintained. Dr. Singh continued to be associated with the Group a member and on 7 th August, 1986, Miss K. Dutt, Deputy Adviser (BC&TC), Planning Commission was appointed to serve as Secretary of the Study Group.

Until 16th October, 1986, it was not possible for the Planning Commission to place any staff exclusively at the disposal of the Study Group. When Dr. Bhupender Singh was Member-Secretary of the Study Group and also was functioning as Advisor, Planning Commission, secretarial assistance was provided by his personal staff. Part-time technical assistance was rendered by Shri P.K. Mohanty, senior Research Officer, Planning Commission during the tenure of Dr. Bhupender Singh and even afterwards. Though his assistance was highly appreciated by the members of the Study Group it was obvious that due to pressure of his active work in the Planning Commission, he could cope only with a fraction of the task required by the Group.

In the absence of effective secretarial and technical assistance, the Group could visit only one state, namely, Orissa and as background material, extracts from the book of Prof. B.K. Roy Burman on "Historical, Ecology of Land Survey and Settlement Operate in Tribal Areas and Challenges of Development" were circulated among the members who participated in the tour.

After the departure of Dr. Bhupender Singh to Orissa, at the instance of the Deputy Chairman, Planning Commission, Shri, U. Sarat Chandran, served as Liaison Officer of the Study Group for a fortnight in the second half of July, 1986. he helped in organizing a meeting of the Study Group on 25 th July, 1986.

Since 28 th October, 1986, a Private Secretary had been effectively placed at the disposal of the Chairman of the Study Group. On 29 th October, the Chairman received a letter issued on 23 rd October informing him that the Study Group was expected to submit its report before 30 November as the Minister had given an assurance to this effect to the Lok Sabha on 13 th August. 1986.

On 13 th November, 1986, another communication was received by the Chairman which while confirming that the term of the Group would expire on 30 th November, 1986, informed him that it would not be possible for the Planning Commission to spare the services of any officer to serve as the Secretary of the Study Group. In the same communication an offer made by the Secretary of the Planning Commission on 31 st

October, 1986 that the chairman could appoint a Consultant and it was suggested that the consultant could serve as the Secretary.

On 18th November, 1986, the chairman was informed that he would be heading another Study Team which would function till 31st March 1987 and that the consultant could be appointed for that period and not for about a fortnight only as it appeared from the communication of 13th November, 1986. But as this arrangement would create a number of problems regarding the administrative arrangement of the Study and as it would hardly serve any practical purpose for finalization of the present report, no consultant was appointed.

QUESTIONNAIRE ON LAND HOLDING SYSTEM IN TRIBAL AREAS

1. a) Name of the responding Organisation/ Person with designation.

b) Address:

2. Tribe and area for which the information has been furnished:

3. Acts/ordinances/ Regulations/Orders/concerned with land holding systems of the tribals (including agricultural land, forest, minor, forest products, pasturage, minerals, water ways etc.) (If possible please furnish a copy)

a) Title of the Acts/Ordinance/Regulation/ Order.

b) Reference number and data.

c) Salient features of the content.

d) Extent of implementation and problem faced, if any.

e) Particulars of available commentaries/Evaluation and monitoring reports.

4. a) Salient features of customary law concerning land holding system (including agricultural land, forest, minor forest products, pasturage, minerals, water ways etc.) of the concerned tribal community.

b) In case of any publication regarding law, particulars of the same (title of publication, name of author, publisher, address) and if possible please furnish copy of the publication.

5. Particulars of survey and settlement operations, which have been carried out in the area involving the concerned tribal community.

a) Years;

b) Name of settlement officer;

c) Method of survey (e.g. chain-survey, plane-table etc.)

d) Special instruction about type of land/right to be covered /excluded.

e) Dispute if any about the type of land/right to be covered in any particular manner.

f) Any other problem faced during the survey and settlement operation.

g) In case of any publication/document commenting on/evaluating the survey and settlement operation, particulars of the same (title of publication, author, publisher, address), and if possible please furnish a copy of the publication.

6. In the event of any court case concerning any aspect of land system of the tribal community particulars of the same. (If possible a copy to the record may be furnished).
7. Opinion about the compatibility of the land holding system of the tribal as provided in the statutes/enforced by the Government with the principles of equity, social justice, productivity, technological development, and employment opportunity of male and female working force.
8. Opinion about the compatibility of the customary land holding system of the tribe with the principles of equity, social justice, productivity, technological development and employment opportunity of male and female working force.
9. Particulars of development activities having bearing on land holding systems of the tribals and problems faced if any.
10. In case of displacement of any section of the population of the tribe as a sequel to the implementation of massive hydel, industrial, mining and other productive/developmental project whether in addition to de-jure rights, de-facto access to land and land based resources of individuals and/or groups have also been taken into consideration in planning the rehabilitation measures.
11. Suggestions if any about any modification needed in the statutory/customary land holding system of the tribe.

12. Extent and form of land alienation of the Tribals, protective and restorative measures envisaged. Impact of implementation of the same and problem faced.

12. Any other relevant information, comment and observation.

Annexure-III

SUMMARY RECORD OF THE MEETING HELD IN THE OFFICE ROOM OR SECRETARY REVENUE GOVT. OF ORISSA DURING THE VISIT OF THE STUDY GROUP ON LAND HOLDING SYSTEM HELD ON 20.4.86

The Study Group of Land Holding System in Tribal Areas, set up by Planning Commission with Dr. B.K. Roy Burman as Chairman, Visited Orissa from 15 th to 19 th April 86. Among their other engagements, the Committee (Dr. Roy Burman, (Retd.), Justice Sri Sen and Mr. Murkhot Ramunni) met the member of Board of Revenue, Commissioner cum Secretary, Revenue Deptt. and other officers of Revenue Department 16.4.86. The Officers present during discussion is as per enclosure- A. The Chairman of the Study Group explained the background in which the study Group was set up by the Planning Commission. He indicated that the Group has selected Orissa for their study because different systems of land tenures and land laws are in different parts of Orissa and also almost all major tribes of the central tribal belt are found in Orissa.

2) In course of his preliminary observations, the Chairman of the Study Group made the following observations:

a) On the eve of preparation the Plan, it was observed that landlessness is increasing and despite regulatory measure, land alienation from tribals to non-tribals is going on freely.

b) A study of the dependence of tribals on different resources should be made in Orissa. He indicated that a study had been made by Administrative Staff College, Hyderabad and by Gujarat Government.

c) Access of tribals to different resources including lands must not be curtailed in the name of executing development programmes and projects taken up by different agencies of Government. It has been the experience that large projects in industries, irrigation and mining sectors have often deprived tribals in several states of their land resources.

d) Traditionally collection of minor forest produce is a prerogative the tribals, but in course of the decades minor forests produce have become a revenue earning resource of the state which has led to commercialization of procurement operations leading to the collecting agencies pushing out the tribal collectors.

e) Implementation of laws concerning tribal interest should be in the hand of dedicated officials.

f) The survey and settlement operations taken up in tribal areas should take into account the realities of hilly terrains on which tribals live so as to record their rights and interest faithfully. Ordinarily settlement operation is limited to agricultural lands in hilly areas. The observation made in Ramadhyani Report and Cobden Ramsay Report should be taken into consideration.

g) Chairmna of the Study Group want to have the benefit of the State Govt's experience in the Anohal-system of Revenue Administration and the Bhudan movement.

h) He also wanted to know what the rights of the tribals are on the trees planted on their own lands and planted by their forefathers either on their own lands or in forests.

(3) Jusitce Sen said that the legal as well as customary rights of tribals on land and forests should be protected.

(4) Mr. Ramunni observed that because of lack of coordination between different departments, some times the tribal wonder whether there is one Government. In that context, he advocated that the voluntary organizations should be involved in tribal development and the officers's accountability should be pinpointed.

(5) The Member, Board of Revenue gave a resume of the land revenue systems and administration prevalent in Southern, Coastal and Northern Orissa including ex-principally states. He informed that State Government are contemplating to introduce a single window system of revenue administration combinding land Reforms, Settlement and consolidation etc. On the role of LAMPS, the member observed that as the chairman of high level committee on the cooperative institutions, his experience has been that while the credit operations are being carried reasonably well, the procurement performance is not upto the mark barring a few exceptions. About 30-40% of the MFP

are being handled by the LAMPS. The State Government are taking steps to streamline the functioning of the LAMPS in tribal areas. Under the anti-poverty land based programmes, usufruct rights are given to tribals on areas where mulberry, tassar and other plantation are taken up. On shifting cultivation, the Member Board of Revenue, was of the view that intra-tribal rights over podu ravaged lands should not be recognized (for that matter, over any Government assets including forests) in the interest of the ecosystem. On the implementation of the Land Reforms Act, the member observed that Orissa's performance in this regard has been quite satisfactory. He also informed the Committee that land based schemes of State Government are more favorable than the norms of the Government of India. He also said that Government servants areas generally reluctant to be posted to tribal areas because of lack of basic amenities and facilities. Government have therefore, recently, introduced an incentive scheme, the details of which can be had from the Government order on the subject. Member observed that I.T.D. Ps. In Orissa are functioning properly and Government have taken a decision to post officers on first promotion to tribal areas. He also pointed out another characteristic in the tribal areas in that unless a tribal leader is also an elder, he ordinarily does not carry weight.

(6) The Deputy Director, Land Records and Surveys explained the problems of survey operations beyond 10 slop. (He subsequently gave a note on the subject as well as 'status rules' which have been handed over to the Chairman of the Study Group).

7) Secretary, Revenue Department indicated that land which have been recorded above 10 degree slope may not be accurate as far as area is concerned.

8) The Land Reforms Commissioner highlighted the performance of the State Government in restoration of land to the tribals illegally alienated and in distribution of ceiling surplus land to the landless tribals. While 36,043 acres of land have been restored to 31,321 tribals in the scheduled areas under Regulation 2 of 1956, 6697 acres have been restored to 4,406 tribals in the non-scheduled areas under the relevant provisions of the O.L.R. Act 70% of the surplus land vested in government shall be settled with persons belonging to Scheduled Tribals and Scheduled Castes. Out of 1,37,156 acres of surplus land distributed till the end of 28,286, as much as 57,268 acres have been distributed to 41,952 tribals. The land Reform Commissioner, however observed that the present scale of financial assistance at the rate of Rs. 1000/- per aces is highly inadequate for a landless person to develop his land to enable him to earn a living therefrom. On the functional norm of Revenue Department he indicated that it was not a fact that tribals' land holdings recorded jointly (in the names of tribals of different generations of the same family) have been taken as one unit for the purpose of calculations of the coiling under Land Reforms Act.

9) Commissioner-cum-Secretary, Revenue Department in course of discussion observed that community lands earlier used to b in the hands of benevolent persons of the village community. But because of th pressure of land resources over the decades, one can not be sure whether community lands can be safe in the hands of individuals in the present day

situation. He clarified that plantations which are looked after by the villagers are generally recorded as village forest, the management of which is the responsibility of the villagers. In this context, he gave the example of the SIDA programme. He further, observed that the percentage of landless persons in Orissa is not on the increase. He observed that it cannot be said with certainty that some ceiling surplus lands distributed to tribals are not finding their way back to the original holders. The basic reason for such a situation is lack of adequate assistance and where with alls at the disposal of the allottees. In any case, the State Government are trying to cover such allottees under different anti-poverty programmes. Secretary, Revenue Department briefly outlined the proposed amendments, (which have been cleared by the Tribes Advisory Council) to the different provisions of Regulation-2 (copy of the relevant proceedings of the Tribes Advisory Council on this matter was handed over to the Chairman later by the H. & T.W. Department). Commissioner -cum-Secretary, Revenue Department felt that after the proposed amendments go through, trees will be considered as part and parcel of the land. He assured the Study Group that State Government are fully aware of their responsibility and are taking steps to plug the Loopholes in different revenue laws. In this context, he explained that the penalty is being increased from Rs. 200/- per acre to Rs. 1000/- for illegal occupation of tribal lands. Besides, provision for imprisonment is being made. The 30 year possession rule is being increased to 60 years in case of tribal lands, permission for transfer of land by a tribal to non-tribal would be given only by Collector or Addl. Collectors only when the transfer of has lands in excess of a viable minimum holding, and the ban period of transfer by ceiling/Govt. waste land allottees will be made 30 years. Secretary, Revenue Department observed that the problem, caused to the displaced tribals

because of large projects is primarily of the centre to persuade the different project authorities to take at least one person in their employment from each of the displaced families. He also said that in Orissa, it has been the experience that some time tribals do not move to other places even though they are given lands and other rehabilitation facilities. For irrigation policy. On the collection MFD, Secretary, Revenue Department indicated that the middlemen do play a mischievous role and starting of processing units in the tribal belt will go a long way for ensuring a remunerative price to tribals. On shifting cultivation, secretary, Revenue Department indicated that the cycle of regeneration has increased. Earlier, the cycle was about 4 years. Now almost every year, the same land is being cultivated. Shifting cultivation is generally practiced on reserve lands and reserve-forests. Hence, the conflict between the forest authority and the shifting cultivator. The only way will be to give them usufruct rights backed by proper assistance for scientific cultivation. Except in reserve forest or reserve land, lands on which shifting cultivation was practiced has been recorded by and large during the settlement operations. He gave the example of Dangria Kondh Agency area where shifting cultivators have been rehabilitated. He gave a resume of the State Government experience in Anchal Sasan and Bhudan movement. He was of the view that the experience of the State Government is far from satisfactory in these records. The Bhoodan Samiti had obtained donation of 13.55 lakhs acres. But gift papers in many cases are not available. Govt. are thinking to confer rayati rights to Bhoodan land allottees since at present their status is only that of grantees. Attempts are being made for simplification and village community lands is proposed to be given to Gramshabha. The 'Bagayats' is treated as community lands. Defayati right has

the right of usufruct is recognized. Voluntary organisations by and large have been experienced to be exploitative in Orissa due to lack of awakening of the tribals.

10) Member, Board of Revenue indicated that there is urgent need for development of roads for tribal areas and he agrees with the Chairman of the Study Group that there should be a unified line of command in developmental administration in tribal areas.

Member, Board of Revenue gave an account of activities in Phulbani, Koraput, Ganjam, Keonjhar Districts from grants received by the State Government from Government of India under Article 275 (1) of the constitution.

(11) The Chairman of the Study Group observed that State Government should be alert, so that, no feudal rights in any form are created on community lands. Any development strategy of tribal areas should take into account of the resource base of the tribals.

Annexure - IV

NOTE GIVEN BY JUSTICE D.M. SEN

1. We were required by the terms of reference, among other things, to study the laws pertaining to land holding systems in the tribal areas of India. So far, we could visit only Orrisa -----where there are in predominant tribal groups namely doangs and Bhuiyas.

2. Before regular settlement operations were started in these areas inhabited by daongs and Bhuiyas.

2. Before regular settlement operations were stated in these areas inhabited by doings and Bhuiyas, the entire land was under occupation or in some sort of use exclusively by these two tribal groups. Part of the land would be under individual or family occupation and the rest would be under individual or family occupation and the rest would be for the use of enjoyment of the tribal communities in what we may say their 'corporate' capacity. The juangs and Bhuiyas had thus an unfettered right to enjoy the resources of the land in question for their economic needs, individual, family or community-wise. They also had a similar right to forest produce. They had been enjoying these rights more or less from time immemorial until the new settlement operations were started when a totally new concept of land ownership and land use emerged therefrom. We found that after the settlement operations, only such land that was under individual or family occupation was

recorded as the holdings of member of the two tribes, the rest including all community lands, waste land and forests were recorded as state property. There was, thus suddenly an erosion of most of their existing rights over the land and forests which they had been enjoying from time immemorial.

3. No doubt, one must appreciate that forests must not be denuded; too short a jhumming cycle must be discouraged; and the needs for ecology must be given due importance. However, in order to ensure all these, there need not be a total deprivation of all rights that the tribals had enjoyed so far over the land areas held by them for centuries past. A viable compromise should be found between the economic and social needs for the tribals and need for preservation of forests, proper land use and other ecological factors. All the existing rights of the tribals over their lands, so far held by them, should not be suddenly derecognized; what should be aimed at is that the manner of exercise of traditional tribal rights over their lands and forests should be regulated and controlled in the higher interests of ecology of the country.

4. We were told that after the settlement operations land ranging from only 2.48% to 23.5% in Juangs and Bhuiyas areas had been entered in the names of the tribals in the Record of Rights. Such an abridgment of their existing rights over the lands and forests traditionally held by them so far is pregnant with dangerous consequences.

Annexure - V

1. During meeting on 16.4.86 with the Study Group of Govt. of India, a point was raised by one of the member of the Team as to how the cadastral survey is being done on the land above 10% slope particularly in Bonda Hill area where final publication in some of the villages has been completed. The final publication has been completed in some of the villages of Lower Bonda Hills. In major portion of the area of these villages, the slope was below 10% which has been surveyed in detail by the Plane-table method. As regards the fields lying above 10% slope, the cadastral survey was not attempted because at that time, there was no cultivation above 10% slope of these areas. Therefore, these areas above 10 % slope were kept as Hill Blocks dividing into Ac. 40 patches and assigning different plot numbers for each patch and included in Govt. Khata. However, these plots of Ac. 40 are imaginary plot such divided in the maps by dotted lines for the convenience of area extraction but on the field, there is no ridge demarcating these Ac. 40 patch.

2. The problem of survey above 10% slope would be more acute when the cadastral survey of Upper Bonda Hills is taken up. Except the system of Plane-table survey, no other accurate method of survey is available with us for doing this work and in case of survey of the area above 10% slope, detail survey by plane-table method will not be possible. This problem had already been brought to the notice of the Board of Revenue, Orissa by the Deputy Director, Surveys and Map Publication, Orissa and we forwarded a

note to the Survey of India for inclusion of this problem as an item of the Agenda of the Conference to be organized by the Survey of India during 1986.

3. During the detailed cadastral survey of a village, each individual holding is to be surveyed including the momestead lands, cultivated lands and other government lands in a particular scale of survey. As per the existing practice, in case a Hill is situated inside a village limit, the cadastral details are surveyed upto a certain limit only i.e. upto 9 (nine degree) slope and the rest extent are left un-surveyed. The hill portions are surveyed and shown as one plot only. So far no procedure has been laid down for survey of all details of the slope of the hills in the plain-table method of cadastral survey. Only such details are surveyed by Survey of India in the Topo map. In the recent years, townships have come upon many hill slopes. Even cultivable lands are leased out particularly to the tribals in hill slopes where virtually they were in possession of the same for long. It is not possible to map, the surface areas of the hills in the cadastral maps as only horizontal distances are measured and mapped by cutting the chain method. In such cases the actual extent of surface area under ownership or possession of different persons are not shown in the map. But in view of spreading of land rights over such hill slope lands it is felt necessary that such rights should find specific mention in cadastral maps as well as registers.

Under the circumstances it is the consideration if some suitable procedure can be adopted for the purpose.

The Board of Revenue proposes to raise this point in the next meeting of the Survey of India for clarification instruction during the next meeting which is being held by the Survey of India in Mizoram towards June, 1986.

(B. Raut)

Dy. D.K.R. & S.