

# Indigenous Peoples Development Framework

---

Indigenous Peoples Development Framework  
Document Stage: Draft for Consultation  
Project Number: TA 7096-IND  
April 2009

## India: Preparing the Energy Efficiency Enhancement Project in the Assam Power Sector

**Assam State Electricity Board (ASEB)**  
**Government of Assam**

---

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

## List of Acronyms

ADB	Asian Development Bank
APs	Affected Persons
DC	District Collector
DSM	Demand Side Management
EA	Executing Agency
ESMU	Environment and Social Management Unit
GOA	Government of Assam
GOI	Government of India
IA	Implementing Agency
IP	Indigenous People
IPDF	Indigenous Peoples Development Framework
IPDP	Indigenous Peoples Development Plan
M&E	Monitoring and Evaluation
MFF	Multi-Tranche Financing Facility
NGOs	Non-Government Organizations
NRRP	National Rehabilitation and Resettlement Policy, 2007
PMU	Project Management Unit
RF	Resettlement Framework
RP	Resettlement Plan
SIA	Social Impact Assessment
STs	Scheduled Tribes

**INDIGENOUS PEOPLES DEVELOPMENT FRAMEWORK**  
**Preparing the Energy Efficiency Enhancement Project in the Assam**  
**Power Sector**

List of Acronyms .....	2
1. Overview and Project Background.....	4
2. Indigenous People .....	4
3. The Indigenous People Development Framework .....	5
4. Procedure for IPDP Preparation .....	6
4.1. Preliminary Screening .....	6
4.2 ... Social Impact Assessment .....	7
4.3 Indigenous Peoples Development Plan .....	7
5. Consultation and Information Disclosure .....	9
6. Institutional Framework.....	9
7. IPDP Budget .....	9
9. Monitoring and Evaluation . .....	10
 Annexure 1: National Legal Framework .....	 11

## **1. Overview and Project Background**

1. The proposed Program will be provided under a multi-tranche financing facility lending approach. The Program, Energy Efficiency Enhancement Project in Assam, is an endeavor to conduct low carbon power sector development, among others, through (i) reducing technical loss and enhancing physical capacity of transmission and distribution network, and (ii) promoting demand side management (DSM) in tandem with increase of power generation capacities mainly by other agencies. Assam State Electricity Board (ASEB) will be the executing Agency (EA) for the MFF.

2. Government of Assam (GoA) through Government of India (GoI) has requested the Asian Development Bank (ADB) for a multi-tranche financing facility (MFF) to partly fund the power sector investment program in the state of Assam. The investment program will cover physical investments in transmission, distribution, energy efficiency, and non-physical investments in management information system. The program will initially finance expansion and upgrade of transmission and distribution systems in the first and second loans (tranches) executed under the MFF. Energy efficiency will be included in the investment program scope, with specific projects/subprojects to be included in subsequent loans. The investments to be supported by ADB will (i) improve quality and reliability of power; (ii) remove transmission bottlenecks; (iii) facilitate in-state and interregional power transfers; (iv) facilitate a reduction in overall system losses; (v) improve energy efficiency, capitalize related carbon market opportunities; and (vi) improve utility operational and financial performance. The proposed program will sustain the reform agenda established with earlier ADB support, and is expected to help to attract other long-term financiers to the sector. The first tranche components will cover construction of 11 new sub stations, augmentation of 8 existing sub stations and construction of 14 new transmission lines.

## **2. Indigenous People**

3. Indigenous peoples (IP) are defined as those having a distinct social, cultural, economic, and political traditions and institutions compared with the mainstream or dominant society. The Asian Development Bank (ADB) defines IPs as those with the following characteristics: (i) descent from population groups present in a given area before territories were defined; (ii) maintenance of cultural and social identities separate from dominant societies and cultures; (iii) self identification and identification by others are being part of a distinct cultural group; (iv) linguistic identity different from that of dominant society; (v) social, cultural, economic, and political traditions and institutions distinct from dominant culture; (vi) economic systems oriented more toward traditional production systems rather than mainstream; and (vii) unique ties and attachments to traditional habitats and ancestral territories.

4. In India, Schedule Tribes (STs) have characteristics covered by the above definition. The Indian Constitution (Article 342) defines Scheduled Tribes (STs) as those with special characteristics such as (i) primitive traits, (ii) distinctive culture, (iii) shyness with the public at large, (iv) geographical isolation, (v) social and economic backwardness. The Constitution specifically recognizes most vulnerable tribes as 'scheduled tribes'. Constitutional protection and programs for tribal development have brought significant changes since 1947 which played a major role in bringing STs into mainstream society. Recognition as a 'scheduled tribe' (ST) confers entitlements to affirmative action programs including reserved seats in legislatures, various subsidies and separate educational facilities. However, the majority of tribal

communities continue to be vulnerable even today in comparison to mainstream society and this is reflected in the socio-economic conditions and problems they often encounter such as land alienation, indebtedness, deprivation of forest rights, all of which are further compounded by low literacy and high drop-out rates and prevalence of poverty.

5. According to the Census of India 2001, 8.2 percent of the Indian population is classified as ST. In comparison to the national figure, Assam has 12.5 percent of its populations classified as ST. The STs in Assam, based on the 2001 census, comprised 3,308,570 of the total State population of 26, 655,528. Tribal and non-tribal communities have lived side-by-side leading to acculturation and assimilation to mainstream societies. Many STs no longer keep their traditions/cultures and individuals and groups of STs have settled amongst non-tribal populations.

6. Extensive consultations have been carried out and will be undertaken during the program preparation. Though classified as STs, their social, cultural, economic, and political characteristics do not differ from non-IP groups. These are the same conditions in other program areas. Therefore, it is not expected that the Investment Program will have any IP impacts. However, to ensure that impacts on IPs are addressed consistent with ADB's Policy on Indigenous Peoples (1998), an Indigenous Peoples Development Framework (IPDF) has been prepared for the Investment Program and its future tranches. Additionally, special action has been addressed in the Resettlement Plan (RP) by providing additional assistances to deal with these affected households.

### **3. The Indigenous Peoples Development Framework**

7. This IPDF is intended to guide selection and preparation of subprojects under the Investment Program to ensure distribution of program benefits and promote development of IPs in the program area. Due to the long-term program duration, and future sub project identification, an IPDF has been prepared to guide further program implementation. In case significant impacts on IPs are identified, this IPDF framework will be applied during subproject preparation, in accordance with requirements for future tranches and *ADB's Indigenous Peoples Policy (1998)*.

8. A full Indigenous Peoples Development Plan (IPDP) is required if there exists:

- (i) Impacts on customary rights of use and access to land and natural resources;
- (ii) Effects on socioeconomic and cultural integrity;
- (iii) effects on livelihood, and social security status; and/or
- (iv) Other impacts that may alter or undermine indigenous knowledge and customary institutions.

9. If impacts are insignificant, specific actions in favor of IPs can be incorporated within the Resettlement Plan (RP) for the sub-project.<sup>1</sup> This would ensure appropriate mitigation and benefits for IP. The National Resettlement and Rehabilitation Policy, 2007 (NRRP 2007) ensures wide range of benefits and provisions to the STs in case their land is to be acquired.

---

<sup>1</sup> Impacts are insignificant when fewer than 100 indigenous people are affected.

Additionally, there are various other relevant national policies and laws have been referred in the IPDF which aim at development of the tribes in India. Some of them are: (i) The Fifth Schedule of the constitution of India, (ii) Provisions of the Panchayat Extension to the Scheduled Areas Act (PESA)-1996, (iii) The Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act -2006, (iv) Draft National Tribal Policy-2006, and (v) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The summary of these provisions and national legal policy framework are described in Annex 1. All the impacts (if foreseen) will be addressed adequately as per the National and ADB's policy. ASEB will ensure that key institutions including local governments are involved in implementation of all the social issues. ASEB will be responsible for addressing the IP issues in case there are any impacts on IPs in the future tranche sub projects. Additionally, the tribal welfare department will be involved for implementation of IPDF.

10. The IPDP policy framework is based on the overall local and national development strategies and *ADB's Policy on Indigenous Peoples (1998)*. The principal objectives are to:

- (i) ensure IPs affected by any sub-project will benefit from the Investment Program;
- (ii) ensure IPs inclusion in the entire process of preparation, implementation, and monitoring of program activities;
- (iii) ensure benefits from subprojects are available to IPs more than or at least equal to other affected groups; this may require giving preference to IPs as vulnerable groups over others on certain benefits under the Investment Program; and
- (iv) provide a base for IPs in the area to receive adequate development attention.

#### **4. Procedures for IPDP Preparation**

11. This IPDF seeks to ensure that IPs are informed, consulted, and mobilized to participate in the sub-projects. Their participation can either provide them benefits with more certainty, or protect them from any potential impacts of the sub-project. The main features of the IPDP will be a preliminary screening process, a social impact assessment (SIA) to determine the degree and nature of impact of each sub-project, and an action plan developed if warranted. Consultations with and participation of IP communities, their leaders, and local government representatives will be an integral part of the overall IPDP.<sup>2</sup>

##### **4.1 Preliminary Screening**

12. ASEB through its Project Management Unit (PMU), Implementing Agency (EA) and the Social Development cum Resettlement Specialist under the proposed Environment and Social Management Unit (ESMU) will visit all IP communities and villages near subproject sites or areas being affected and influenced by sub-project sites. ASEB will ensure that public meetings are held in selected communities to provide information on the Investment Program and the sub-project. During the visits, community leaders and other participants will present their views on the Investment Program and subproject. At this visit, ASEB will undertake a screening for IP

---

<sup>2</sup> The IPDPs components are: preliminary screening, social impact assessment, mitigation measures, development assistance, and project monitoring.

populations with the help of IP community leaders and local leaders. The screening will check for the following:

- (i) Name(s) of IP community group(s) in the area;
- (ii) Total number of IP community groups in the area;
- (iii) Percentage of IP community population to that of area population; and
- (iv) Number and percentage of IP households to be affected by the subproject.

13. ESMU will also accomplish an IP assessment checklist. The results of the preliminary screening will be provided to the PMU for review as part of the pre-feasibility assessment of the subproject. If the results show that there are IP households in the zone of influence of the proposed sub-project, an SIA will be planned for those areas.

#### **4.2 Social Impact Assessment**

14. ASEB will undertake SIA as part of the detailed technical feasibility report and resettlement planning. The SIA will gather relevant information on demographic data; social, cultural, and economic situation; and both positive and negative social, cultural and economic impacts. Information will be gathered through separate group meetings within the IP community, including IP leaders; group of IP men and women, especially those who live in the zone of influence of the proposed work under the sub-project. Discussions will focus on impacts of the sub-project as well as recommendations on the design of the sub-project and the Investment Program. The ESMU will be responsible for analyzing the SIA and for leading the development of an action plan with the IP community leaders. If the SIA indicates that the potential impact of the proposed sub-project will be significantly adverse—threatening the cultural practices and IP sources of livelihood, or that the IP community rejects sub-project works—the PMU will consider other design options to minimize such adverse impacts. If IP communities support the sub-project, implementation of an IPDP will be developed.

#### **4.3 Indigenous Peoples Development Plan**

15. The IPDP is time-bound, with an adequate budget for its implementation. An acceptable IPDP addresses the (i) aspirations, needs, and preferred options of the affected IPs; (ii) local social organization, cultural beliefs, ancestral territory, and resource use patterns among the affected IPs; (iii) potential impacts on IPs; (iv) measures to avoid, mitigate, or compensate for the adverse sub-project effects; (v) measures to ensure sub-project benefits will accrue to IPs; (vi) measures to strengthen social, legal, and technical capabilities of government institutions to address IPs issues; (vii) the possibility of involving local organizations and non-governmental organizations with expertise in IPs issues; (viii) budget allocation; and (ix) monitoring. Where there is land acquisition in IP communities, the Investment Program will ensure their rights will not be violated and that they be compensated for the use of any part of their land in a manner that is culturally acceptable to the affected IPs.<sup>3</sup> The IPDP will include:

---

<sup>3</sup> The compensation will follow the Resettlement Policy Framework of the Project which provides various entitlements to the ST/IPs.

- (i) **Baseline data:** Base line data will be collected both from the primary and secondary sources. The survey will be designed to collect baseline data on their socio-economic and cultural aspect which will help in identifying the intensity of impact on IP. This baseline data will be collected as part of the baseline data collection for resettlement planning. The socio economic data collected during the resettlement planning will cover the project influence zone which will be identified based on the vicinity of the sub project area. This will include not only the project affected are rather a broader area of project impact zone.
- (ii) **Land tenure information:** Details on land tenure and usage patterns will be collected in order to measure the dependency of IPs on land.
- (iii) **Local participation:** IPDPs will be developed using a participatory approach with due consultation with local IP communities. The views of the IP will be recorded and will be incorporated in the IPDP.
- (iv) **Technical identification of development enhancement or mitigation activities:** Detailed design will be developed or modified based on IPDP inputs to ensure better benefits are accorded to IPs.
- (v) **Institutional arrangement:** Detailed institutional arrangements will be prepared defining tasks for each stakeholder group.
- (vi) **Implementation schedule:** The implementation schedule will be consistent with the overall program implementation schedule and any compensation or applicable mitigation measures will be accomplished prior to the civil work.
- (vii) **Monitoring and evaluation:** The IPDP will be internally monitored by the ESMU, and an external agency engaged by the PMU/ASEB.
- (viii) **Cost estimate and financing plan:** Based on impacts, a budget will be prepared for the implementation of the IPDP and the PMU/ASEB will be responsible for providing the budget.

16. The ESMU will prepare IPDPs if required and will submit this to the PMU, IA for review and finalization. Approved IPDPs will be provided to ADB for review and approval prior to implementation. The IPDP policy and measures must comply with ADB's Policy on Indigenous Peoples (1998).

#### **4.3 Specific Action:**

17. If the SIA determines that the sub-project will likely have only limited impacts on tribal populations, then only a "Specific Action" (SA), and not an IPDP, is required to address the limited impacts. The Specific Action needs to be a detailed section of the Resettlement Plan which sets out how such limited impacts will be addressed. This decision will depend on the severity of impacts on tribal communities affected by the subproject.

## **5. Consultation and Information Disclosure**

18. The IPDP will be prepared in consultation with affected IP groups. The mitigation measures and strategies will be presented to them by the ESMU and will be made available to them in IA and PMU offices. Inputs from the IPs through ESMU will be considered in sub-project design and the final IPDP. Relevant information will be gathered through focus group meetings with tribal leaders and groups of tribal men and women in the sub-project. Discussions will focus on positive and negative impacts of the sub-project as well as their recommendations on how to enhance positive impacts and avoid/minimize adverse impacts. The IPDP will be translated into local IP language(s), if any, prior to implementation. PMU/ASEB will be responsible for implementation of the IPDP and will ensure resolution of any dispute arising out of the implementation process. The PMU/ASEB will further ensure that adequate budget will be available to implement the IPDP.

## **6. Institutional Framework**

19. ASEB will function as the EA of the proposed MFF. The respective transmission and distribution companies will be the IAs for the proposed investment program. There is already an existing PMU which is functional and is responsible for implementing the ADB Phase-1 loan and is also responsible for the preparatory work for the proposed program. Keeping in view the capacity of ASEB and its existing PMU, it is proposed that an Environment and Social Management Unit (ESMU) will be set up within the PMU along with other engineering units to address environmental and social issues of the program, and will be headed by Environmental Specialist and Social Development cum Resettlement Specialist. The ESMU will be assisted by one Environment and one Social Development cum Resettlement Specialist who will be responsible for the field activities.

20. In the preparation of subproject IPDPs, the PMU will have overall coordination, financing, and monitoring responsibilities. The ESMU will prepare and supervise implementation. Since IP issues are sensitive, the PMU will ensure that the ESMU has knowledge and experience of working among IP groups and is available for assisting in the planning and implementation of IPDPs for the Investment Program. The PMU will ensure that the ESMU to assist the IA and PMU in planning IPDPs for subprojects is familiar with ADB policy and requirements for IPDPs. The social development cum resettlement specialists as proposed under the ESMU will be responsible for the IP issues in addition to the resettlement activities. The institutional mechanism proposed in the resettlement framework will also be applicable to the IP issues.

## **7. IPDP Budget**

21. The PMU/ASEB will provide sufficient resources to formulate IPDPs in sub-projects which will have impacts on IPs. A detailed budget will be prepared by the PMU taking into account all activities associated with the formulation and implementation of IPDPs. Each IPDP will have its own budget. Such budgets will be an integral part of the sub-project cost, and will be made available during project implementation. However, the PMU/ASEB, in advance, has to have the tentative budget ready for each financial year so that the PMU/ASEB can provide the budget on a timely basis in order to avoid any delay in sub-project implementation. The PMU/ASEB will be responsible for making the budget available for implementation of IPDP.

## **8. Monitoring and Evaluation**

22. Implementation of the IPDP will be monitored regularly. The PMU will establish a monitoring system involving ESMU, representative of affected IP groups, and nongovernmental and community-based organizations to ensure participatory monitoring arrangements. A set of monitoring indicators will be determined during IPDP implementation. The PMU will also prepare appropriate monitoring formats for effective internal and external monitoring and reporting requirements. Independent monitoring will be undertaken through nongovernmental or community-based organizations or an individual engaged by the EA/ASEB with ADB concurrence to carry out external monitoring of the IPDP operations for the whole Investment Program. Monitoring will be carried out twice a year during project implementation. These reports will be submitted to the IA, EA and ADB for review. The PMU and IA through the ESMU will be responsible for determining if any follow-up actions are necessary and ensuring any necessary actions are taken regarding the implementation of IPDPs.

## **ANNEX 1: LEGAL FRAMEWORK**

### **1. National Legal and Policy Framework**

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

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

#### **1.1. The Fifth Schedule**

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

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

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

5. The Parliament of India passed the Provisions of the Panchayats Extension to the Scheduled Areas Act (PESA), 1996, to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. This Act accords statutory status to the Gram Sabhas in Schedule V areas with wide-ranging powers and authority. This aspect was

missing from the provisions of the 73rd Constitutional Amendment. The Act has recognized the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources—land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas through self governance.

6. Important Provisions of the PESA 1996:

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

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

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

8. This Act, notwithstanding any other law in force, and subject to the provisions of the Act, extends to the whole of India except the State of Jammu and Kashmir. This Act is for members or community of the Scheduled Tribes who primarily reside in forests or forest lands for their livelihood, including Scheduled Tribe pastoralist communities or the members or community of the Scheduled Tribes who have been residing in the forest for 75 years.

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

- (i). Title rights (i.e. ownership)- Refers to land that is being farmed by Tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted;
- (ii) User rights- Refers to minor forest produce (also including ownership), to grazing areas, ponds for fishing, to pastoralist routes, etc.
- (iii) Relief and development rights- Refers to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection;
- (iv) Forest management rights- Refers to protect forests and wildlife.
- (v) Rights to indigenous knowledge- Refers to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- (vi) Traditional rights- Refers to any other traditional rights enjoyed by forest dwellers except (a) right of hunting or trapping or extracting any part of any wild animal.

10. Recognition, Restoration and Vesting of Forest Rights include: (i) In critical wildlife habitats, forest rights may be modified or people resettled provided they meet the provisions as detailed in the Act; (ii) The recognition and vesting of forest rights under this Act applies to forest ST/forest dwellers occupying land before 13th December 2005; (iii) The right under this Act is heritable, but also alienable or transferable, and shall be registered jointly in the name of both the spouses or single head as the case may be; (iv) Other than provided, no forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete; (v) The forest rights recognized under the occupation of an individual or family or community on the date of commencement of this Act shall be restricted to the area under actual occupation and shall not exceed 4 hectares; (vi) Forest right will be conferred free of all encumbrances, including procedural clearance under the Forest (Conservation ) Act, except for those specified under this Act; and (vii) Under this Act the forest dweller has the right to land provided he can establish that that he was displaced from his dwelling and cultivation

without land compensation due to State development interventions and where land has not been used for the said purpose within five years of acquisition.

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

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

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

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

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

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

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

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

18. The strategy for implementing the policy includes addressing of tenurial insecurity among Tribals by amending State anti-alienation land laws, amending the Indian Registration Act and establishing fast track courts to deal with tribal alienation reorienting institutional arrangements in the Scheduled/ Tribal areas, strengthening and revamping of the administrative machinery; developing a quantifiable Tribal Development Index (TDI); linking devolution of funds to improvements in TDI so as to bring STs and tribal areas up to par with national level standards of living by 2020; preparation of a separate tribal-centric strategy for each sector; strengthening Integrated Tribal Development Plans/ITDAs, Modified Area Development Approaches and Clusters in tribal areas; introducing a single line administration in the Scheduled/ Tribal areas; adopting an area planning approach in the Scheduled/ Tribal Areas; adopting a

Tribal Sub-Plan Strategy in letter and spirit; converging efforts and resources; devising an appropriate personnel policy to ensure the presence of Government functionaries in far-flung tribal areas; supporting voluntary action in the service deficient far-flung areas; developing an appropriate communication strategy to effectively reach the STs; encouraging academic, anthropological and policy research; putting in place an institutionalised system of monitoring and evaluation mechanism for concurrent feedback and linked to outcomes; and, empowerment of the community in terms of the provisions of the PESA Act to transfer resources and benefits directly to the Gram Sabhas.

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

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

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

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