

Date:
12.04.2024

To,

The Chairman,
National Commission for Scheduled Tribes
6th Floor, 'B' Wing Lok Nayak Bhawan, Khan Market
New Delhi - 110003

The Vice Chairman,
National Commission for Scheduled Tribes
6th Floor, 'B' Wing Lok Nayak Bhawan, Khan Market
New Delhi - 110003

Shri Arjun Munda,
Cabinet Minister, Ministry of Tribal Affairs,
Rajendra Prasad Road, Shastri Bhawan,
New Delhi - 110001

Sub: - Rebuttal to ANIIDCO's submission to the NCST in response to its notice issued on 02.05.23 seeking facts regarding the allegations by Mr. EAS Sarma that the approval of the mega infrastructure project on Great Nicobar Island violates the constitutional mandate and adversely impacts the lives of local tribals

Ref: - Letter No. 1-1763/ANIIDCO/Projects/2022-23/Vol-II/428 dated 12.05.2023 from Executive Director (GNI), ANIIDCO to the Director, NCST

We are a group of anthropologists, social scientists, environmentalists, scholars of tribal studies and individuals who have worked with the indigenous communities of the Andaman and Nicobar Islands and other indigenous communities in India in various capacities over several decades. We have come together to express our alarm and anguish over 1) the disregard for the rights of the indigenous communities of Great Nicobar Island by the very organizations that have been established for that purpose; 2) the misrepresentation of facts regarding these communities, especially the extent of their dependence on the

places they occupy on the island; and 3) the future of the fast-dwindling populations of the two communities, if the project is not scrapped.

On 11th November, 2022, the Ministry of Environment, Forests and Climate Change (MoEFCC) granted Environmental and CRZ Clearances to the “Holistic Development of Great Nicobar” proposed by the Andaman and Nicobar Islands Integrated Development Corporation Ltd. (ANIIDCO) comprising a transshipment port, an International airport, a power plant and a township spread across 169.08 sq km (including reclaimed area from the sea). **More than half of the project area lies over the Tribal Reserve Area of the island, the riparian and forested regions of which are currently in use by the forest-dwelling Particularly Vulnerable Tribal Group, the Shompen. The project area also covers parts of the south-eastern and western coast where the coastal dwelling Scheduled Tribe, the Great Nicobarese, have their ancestral villages.** In his letter to the Hon’ble President dated 29th January, 2023, Shri E.A.S. Sarma, Former Secretary to the Government of India and Former Commissioner (Tribal Welfare) in the erstwhile Government of Andhra Pradesh has pointed out the violation of the constitutional mandate as well as the legal lacunae in the clearances granted to the project. This letter was forwarded to the National Commission for Scheduled Tribes (NCST), who on 2nd, May, 2023, issued an order directing the Chief Secretary, Shri Keshav Chandra, to submit the facts and information on the action taken on the allegations/matters put forth by the petitioner (Shri E.A.S. Sarma). In response, ANIIDCO made a submission on 12th, May, 2023, and stated that the matter raised by the petitioner is misleading, incorrect, unfounded and without any merit. **This letter is a point-by-point rebuttal of the 15-point submission made by the A&N Administration through ANIIDCO along with some additional points that have been ignored throughout the process of approval of the proposed project.**

1. *ANIIDCO: The Andaman and Nicobar Administration is committed to preserve and protect the Particularly Vulnerable Tribal Groups of the islands and their interests. The Great Nicobar Island (GNI) has tribal reserve measuring 751.010 sq.km. Out of the total area proposed for development measuring 166.10 sq.km, 84.10 sq.km falls within Tribal Reserve. In order to compensate the reduction of Tribal Reserve and to protect the habitat of Shompen and Nicobar tribe, the A&N Administration proposes to re-notify 76.96 sq.km of land in Campbell Bay National Park, Galathea National Park and land outside the National Parks as Tribal Reserve. Therefore, effectively only 7.11 sq.km tribal*

reserve area will be required for de-notification for the project which is only 0.21% of the total tribal reserve area of A&N islands and thus 743.96 sq.km. of the Great Nicobar Island will remain protected as Tribal Reserve.

In their letter dated 12th August, 2021, the Directorate of Tribal Welfare, Andaman and Nicobar Administration, has stated that *“wherever any exemption from the existing provisions of regulations/policies/law of the land are required to be provided for execution of the project, this Directorate will seek required exemption(s) from the competent authority to that effect”* – an undertaking that is reflective of the lack of concerns and the low level of commitment of the administration to preserve and protect the PVTGs of the islands and their interests.

In particular, we wish to point out that Section 11 of the A&N Islands (Protection of Aboriginal Tribes) Regulation of 1955 [AN(PAT)R] promulgated under Article 243 of the Constitution clearly stipulates that any order/ clearance/ court decree inconsistent with that Regulation, or any Rule framed under it, or any order passed in accordance with the same, would not be valid. Since a Tribal Reserve has been notified under Section 3 of that Regulation and since the proceedings under laws such as the Environment (Protection) Act etc. had the effect of intruding into such a notified Tribal Reserve, according to Section 11 of the Regulation, the latter would be legally invalid. Even if a portion of the Tribal Reserve were to be denotified, the justification for such notification should be explicitly stated after due consultation with the affected tribal groups and it shall be consistent with the intent underlying the preamble to the Regulation, namely, for the “protection of the interests” of those tribal groups. Since the denotification order adversely affects the interests of both Shompen and Nicobarese, it violates the very foundation on which the Regulation draws its strength. The Regulation itself is a Presidential pronouncement made under Article 243 and it has sanctity under the Constitution. By issuing a notification summarily to denotify a portion of the Tribal Reserve and thereby adversely affecting the interests of the two tribal groups, the A&N administration has violated an important Constitutional directive.

2) Secondly, the Tribal Reserve Areas being de-notified and re-notified do not correspond to the areas that the tribals have been using. Even without knowing the patterns of land use by the two communities, the Shompen (PVTG) and the Great Nicobarese (ST), the administration has allowed a project that spans over 166.10 sq km of land of which more than fifty percent falls under the Tribal Reserve. The premise of just “any” land being “equal” and hence replaceable or suited for the needs of the tribals by the administration (reflected in the calculation of the total area that will remain protected as a Tribal reserve and the percentage of land effectively de-notified) is flawed and indicative of the lack of understanding about the needs of the indigenous people as well as the bio-geophysical heterogeneity of the island by the UT administration. The fact that has not been admitted so far by the A&N Administration is that the forested and riparian regions of the proposed project area are actually foraging grounds and also contain habitations of the Shompen community. In addition, some parts of the land like the region proximal to Laxmi Nagar village at 24km, that is to be re-notified as a Tribal Reserve were proposed to be re-notified long ago because the Shompen of the 27th km band and those of the Kokeon region were observed visiting these areas for bonafide subsistence hunting and foraging. Similarly, The Directorate of Tribal Welfare and the then Chief Secretary A&N Islands were made aware of this by the then member of the Andaman Nicobar Tribal Research and Training Institute Advisory Board, Dr. Manish Chandi (letter dated 18/12/2017), but no action was taken since then.

2. ANIIDCO: The Holistic Development of Great Nicobar Island is a Project and not a Policy Matter. Therefore, the UT Administration has consulted the issue with the Ministry of Tribal Affairs and obtained the No Objection Certificate from Ministry.

The Holistic Development of Great Nicobar may be a project, but the laws and policies protecting the Scheduled Tribes and the Particularly Vulnerable Tribal Groups in the Andaman and Nicobar Islands are not, and hold far greater legitimacy and permanence. Approvals granted for the Holistic Development of Great Nicobar have impugned on multiple laws and policies that protect the rights of the tribal communities. Since the safeguards of the Scheduled Tribal groups including Particularly Vulnerable Tribal Groups in GNI have come into question, the NCST is within its constitutional mandate in seeking clarifications.

3. ANIIDCO: Section 3 of the A&N (Protection of Aboriginal Tribe) Regulation, 1956 empowers A&N Administration to declare reserve tribal area specifying the limits of such area. Accordingly, the Empowered Committee of the UT Administration has recommended de-notification of Tribal reserve and Ministry of Tribal Affairs vide letter dated 18.11.2020 has given no objection for the proposal for de-notification of tribal reserve area in Great Nicobar island subject to compliance under Scheduled Tribes and Other Traditional Forests Dwellers (recognition of Forests Rights) Act 2006.

Why did the Empowered Committee constituted by the UT administration not consult the Tribal Council of Great Nicobar before deciding on the de-notification and re-notification as per the specified requirement to be compliant with the RoFR 2006? Why were the decisions by the UT Empowered Committee and Ministry of Tribal Affairs' NOC to de-notify the Tribal Reserve Area not made public and not declared, especially during the Public Hearing held at Campbell Bay on 27.01.2022?

Further, the Ministry of Tribal Affairs in the aforementioned No Objection Certificate dated 18th November, 2020 has granted the NOC for the project **subject** to the following conditions/compliance under the Forest Rights Act, 2006 (as stated in MoTA's NOC):

- (i) *As per FRA, it is only Gram Sabha, as defined therein, which is the competent authority to certify that there is no claim pending for settlement under the Act i.e. there is no claim pending for recognition and vesting forest rights and occupation in forest land in forest dwelling Scheduled tribes (FDSTs) and other Traditional forest dwellers (OTFDs) under FRA, 2006. The forest rights, especially the habitat rights of the Shompen, who are eligible, should therefore be recognized as per the statutory requirement under FRA, 2006, which is a law passed by the Parliament. This may be ensured in accordance with Section 4(5) of the FRA.*
- (ii) **Since FRA is a regulatory kind of Act, for initiating any development on forest land, compliance of FRA is required in such projects.** *MoEFCC issued an order dated 03.08.2009 on ensuring compliance of FRA. This may be adhered to while processing the matter.*
- (iii) *Further, the Hon'ble Supreme Court in its order dated 18.04.2013 ruled that the consent of the Gram Sabha is required for setting up of development projects on forest land.*
- (iv) *The Shompen are eligible under the FRA, 2006 and the RFCTLARR, 201 for compensation for the loss of their habitat. Such a fair compensation may be devised*

and the compensatory package may be deployed exclusively and in addition to the resources already available for the welfare and development of the Shompen, while ensuring that their survival as a community, unique identity, culture and heritage are protected and preserved.

(v) Care should also be taken to ensure that the adverse impact of development on the life and survival of the Shompen is prevented and the development process is able to enable them to thrive.

Neither these conditions as stipulated by MoTA, nor the provision under FRA, 2006, to recognize the rights of the Autonomous Regional Group (the Tribal Council in this case) have been implemented in obtaining the NOC for diversion of forest for the project. In fact, the whole of the forest area used by the Shompen as their foraging grounds should be granted to the Shompen as Community Forest Rights under the FRA. That this has not so far been done is an evidence of a lacuna in the implementation of the FRA in the A & N Islands.

4. ANIIDCO: As mentioned above, as per Section 3 of the A&N Islands (Protection of Aboriginal Tribe) Regulation, 1956, the Hon'ble Lt. Governor, A&N Islands has constituted Empowered committee to examine the proposal for de-notification of tribal reserved area by involving senior officers of concerned Govt. Departments, Joint Secretary, Ministry of Tribal Affairs, Govt. of India, Head of Office, Anthropological Survey of India and Prof. Visvajit Pandya Anthropologist as members of the Committee.

Even though Prof. Vishvajit Pandya was a member of the Empowered Committee, and the video report he submitted includes the response of the three broad communities of islanders, the Great Nicobarese, the Shompen, and the settlers, the report that he and his team submitted, was not given any consideration in the committees' decision. The statements from the Great Nicobarese, the Shompen, and even the settlers in the video report were completely ignored. In the report, the Great Nicobarese had stated that they wished to return to their ancestral villages on the coasts of southern Great Nicobar; the Shompen said they did not want any development in their areas and warned 'developers' to stay out of their land. The settlers mentioned the need for critical infrastructure such as for health and education and how tourism might increase employment opportunities within the island. The senior officers of the concerned govt. departments including the Ministry of Tribal Affairs and Anthropological Survey of India, who were part of the Empowered Committee

have completely failed to acknowledge and accept the views of the island-dwelling communities.

Moreover, till date the circular for the de-notification and re-notification of the Tribal Reserve Area has not been made public and neither are the minutes of the meetings of the Empowered Committee.

5. ANIIDCO: *The Shompen Policy notified in the year 2015 allows large scale development proposals in Great Nicobar Island subject to consultation with the Ministry, Directorate of Tribal Welfare and AAJVS. The necessary consultation with the Ministry of Tribal Affairs, Govt of India has been done in the case and also obtained the No Objection Certificate.*

The No Objection Certificate from the Ministry of Tribal Affairs is granted subject to the compliance of the FRA, 2006, and the conditions mentioned in point no. 3. Secondly, during the meetings held among the SDLC members between the 13th - 16th of August, 2022, the officer of AAJVS had clearly mentioned that the Shompen group in the Kokeon area will suffer because of the construction activities but this statement was not recorded in the proceedings of the meeting of the SDLC and which came to light later in the letter dated 22nd, November, 2022 in which the Tribal council had withdrawn their consent for the diversion of forest.

Moreover, it is well known to the local administration as well as several advisors/subsidiaries to the ANI administration such as the AAJVS, ZSI, MES, GREF, and local contractors that a group of Shompen regularly visit the Galathea river mouth for fishing and hunting. The site of the designated power plant overlaps with the area frequented by the Shompen of the Kirasis band and Buja yae band in the forests of the Galathea river basin, as has been pointed out in the aforementioned letter dated 22-11-2022 withdrawing the NOC by Tribal Council. Additionally, the Shompen who have been living in New Chingenh along with the Great Nicobarese have time and again expressed their wish to go back to their pre-tsunami village. It is clear from the statement drafted by ANIIDCO that all the functionaries that were mandated to protect and safeguard the rights of the Great Nicobarese and the Shompen have not only failed to perform their constitutional duties but continue to remain in denial.

6. ANIIDCO: *Further, the Empowered Committee in the meeting held on 30.09.2020 has deliberated the issue of impact of project on the tribes of GNI*

and it was unanimously observed that the de-notification of tribal reserved area for Phase-1 would be considered subject to the following

- i. The interests of tribal population especially Shompen, a Particularly Vulnerable Tribal Group are not affected adversely.*
- ii. Strict implementation of the provision of PAT regulation to protect the interest of the Shompen.*
- iii. The displacement of tribals will not be allowed.*
- iv. Eco-tourism will be regulated in effective manner.*

If the de-notification is subject to the four aspects as decided by the Empowered Committee and enunciated by ANIIDCO, then,

i. Based on the information provided on the Kirasis Shompen (including other Shompen bands of the Galathea river basin region) in point (5), it is unequivocally clear that the interests of Shompen, a PVTG are certainly getting affected and wantonly neglected by the project proponents. The Shompen are so heavily reliant on Galathea and the evergreen forests that abound in its basin, that any change in the river system due to unavoidable pollution/leakages that are emitted from a large-scale infrastructure or hot water discharge from the power plant is going to have an impact on how they use the river and the productive forests in which they subsist as per their choice of livelihood.

ii. Strict implementation of the provisions of PAT Regulation to protect the interests of the Shompen is not in place even with the current population. At least two cases have surfaced in the past six months which involved people trespassing the boundary of the Tribal Reserve and in another instance where a few Shompen men were encountered during a picnic in the tourism zone of the forest beyond the 10 km EW road, offered snacks, video graphed and the video was uploaded on YouTube, a highly popular video aggregating platform. Neither is there any measure to prevent such activities nor is there any action taken against those violating the PAT regulation. Appropriate signage and awareness among regulatory bodies and civic society in Campbell Bay is still highly lacking. The PAT regulation has been stripped of its 'teeth' and reduced to a 'scarecrow'.

iii. With regard to the displacement of tribals, as has been the case since the settlement of ex-servicemen families on the island in the 1960s, the Shompen in the Magar nallah area and those living in the present villages of Joginder Nagar and Laxmi Nagar deserted their huts and moved in the interiors of the forest, such displacements are not noticed until it's too late. They occur as a result of disturbances caused by the construction of roads and settlements. This project will result in the displacement of 2-3 Shompen settlements (Kirasis, Kurchinom, Buja yae and possibly Re-Pakao) located in the Galathea river basin forests. This fact has gone unacknowledged by the project proponent and the committee that has granted clearances.

The Great Nicobarese have time and again requested both the A&N Administration and high-ranking Government officials who visit them from time to time, to enable their return to their traditional homeland, from where they were displaced to Campbell Bay and New Chingenh after the 2004 tsunami. That their ancestral lands are proposed to be used for tourism establishments, power plant and other infrastructure to cater to non-islanders who will be brought in to occupy their land is of concern; all they are requesting is that they wish to return to their homeland. The A&N Administration has not done anything to facilitate their rehabilitation, while the ex-servicemen families of 5 out of 6 revenue villages were re-settled in their own villages after the tsunami, the Great Nicobarese have not been allowed to return to their natal villages.

iv. Are there any examples of eco-tourism being implemented in a controlled manner anywhere in the Andaman and Nicobar Islands? Multiple instances have emerged from places like Shaheed Dweep and Swaraj Dweep in the Andamans where the locals are facing a shortage of water and electricity during the tourist season. There is no mention of how exactly eco-tourism will be regulated on the island.

7. *ANIIDCO: With regard to consultation with AnSI, it is pertinent to mention that Head of Office/Superintending Anthropologist, AnSI, Port Blair is one of the members of the Empowered Committee constituted by the Hon'ble Lieutenant Governor, A&N Administration for the purpose of de-notification of tribal reserve related to GNI project. Apart from AnSI, renowned Anthropologists Prof Visvajit Pandya was also a member of the Empowered Committee so that interests of*

the tribes of GNI may be protected in the wake of holistic development of GNI project. Therefore, it is incorrect to say that due consultation with the AnSI was not done in this case.

What was the purpose of the consultation if the comments of Prof. Vishwajit Pandya were not incorporated? The video report submitted to the Niti Aayog by Prof. Pandya has members of the Shompen community clearly stating that they were against any disturbances to their forested and riparian habitats and those of the Great Nicobarese community reiterating their demand to return to their ancestral villages. Why was this submission not entered into the records and discussed by the committee? The actions of the committee reeks of obscuring factual responses and opinions of indigenous/tribal islanders, disempowering the very communities it is mandated to protect.

8. *ANIIDCO: Vide Notification dated 7.6.2022, the President of India has delegated the powers of the State Government to the Administrator/Hon'ble Lt Governor, A&N islands under the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forests Rights) Act 2006 within the said Union Territory. Accordingly, the Hon'ble Lt. Governor, A&N islands has constituted the Sub-Divisional Level Committee (SDLC), District Level Committee (DLC) and State Level Monitoring Committee (SLMC) vide Order No. 148 dated 26.7.2022.*

It is noteworthy that the Sub-Divisional Level Committee, the District Level Committee, and the State Level Monitoring Committee were constituted on 26th, July, 2022 just before the meetings were held with the Tribal Council between 13th and 16th, August, 2022 to get an NOC for the diversion of 166.10 sq. km of forest. However, several questions remain unanswered: Is the constitution of the committees the only function that has been delegated to the Hon'ble Lieutenant Governor under the RoFR Act, 2006? Has the UT Administration made any efforts to inform the forest dependent, scheduled tribal communities of the islands about the Forest Rights Act? How many claims have been filed by the forest dependent, scheduled tribal communities in the UT to date?

As per the latest Monthly Progress Report for the implementation of the Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, for the period ending on 31st December 2023, not a single claim has been filed from the Andaman and Nicobar Islands. The remarks section reads: ***"The Andaman & Nicobar Administration has informed that the area***

inhabited by the Scheduled tribes in the Union territory Andaman and Nicobar Islands has been declared as Reserved Areas under the Andaman and Nicobar Islands (Protection of Aboriginal Tribes), their interests are fully protected under the said Regulation by exclusively preserving the area for them in which they enjoy unfettered rights to use forest products for their bonafide use, so no claim as such is therefore settlement under the Scheduled Tribes and Other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006. And nobody qualifies for being the traditional forest dwellers having resided on the forest/land/tribal reserve for the bonafide livelihood needs for three generations (75 years), prior to 13.12.2005 for the purpose of recognition of forest right under the above said Act. However, for the month of January 2022, the UT has reported NIL information for the first time.”

The constitution and responsibilities of the committees are also questionable. How many Nicobarese are among the members of the SDLC and SLMC other than the Chairman of the Tribal Council? Was the quorum that is mandatory for the SDLC, DLC and SLMC met with? Was the Great Nicobarese community explained by the SDLC that they would not be able to go back to their ancestral villages and would lose rights over the said area? Have the community members been told that more than 50% of the project area falls into the Tribal Reserve which will be de-notified? Were the Shompen consulted to understand how they use the areas for their livelihood that are to be de-notified and re-notified as Tribal Reserves? Why aren't any Shompen living in or using the forested areas to be notified as Tribal Reserve? What are the reasons why those forest patches remain unsuitable for Shompen residences?

9. *ANIIDCO: Further, the field functionaries of Andaman Adim Janjati Vikas Samiti (AAJVS) who is working for the welfare of PVTGs since 1976 onwards has been included in the Sub Divisional Committee and District Level Committee constituted under the Forest Rights Act to represent the Shompen tribe as they have valuable insights into the concerns of tribal communities and work closely with the tribal communities, understand their needs and challenges, and help to design and implement programs that address their specific issues. With regard to Nicobari tribe, the office bearer of Tribal council of Great Nicobar has been included as one of the members of FRA committees.*

Firstly, the comments of the AAJVS member about the impact on the Shompen were not incorporated in the proceedings of the SDLC, which is a heinous and

motivated act to suppress facts. Secondly, how many members (regular employees of the AAJVS) are conversant with and can comprehend and converse with the Shompen in their own language for them to explain the nuances of the project, and understand their needs, and challenges? The meeting was conducted haphazardly and the Chairman of the Tribal Council as well as the village Captains were repeatedly and verbally assured that the rights of the tribal communities would be upheld. The Tribal Council was not categorically told that the Nicobarese would not be able to return to their pre-tsunami village at Old Chingenh (Galathea Bay) and others. They were also not told that a large chunk of the forest area that they depend on would be diverted and would no longer be protected as a Tribal Reserve. Following this, the signature of the Chairman Tribal Council was obtained for a No Objection Certificate, which was withdrawn when the community found out what the exact purpose of the NOC was. **Given that the office bearer of the Tribal Council was a member of an FRA committee, the withdrawal of his signature from the NOC renders the whole exercise null and void.**

10. ANIIDCO: *Consequently, RoFR (Recognition of Forest Rights) certificate has been issued on 18.08.2022 by the District Level Committee (DLC) as per the FRA, 2006. As per section 6(6) of FRA Act the decision of the District Level Committee on the record of the Forest Right will be final and binding.*

The sequence of events that led up to the signing of the NOC by the Chairman of the Tribal Council and the AAJVS Officer as mentioned in Tribal Council's letter dated 22nd November, 2022, clearly indicates that the SDLC meeting and its purpose were not widely advertised to the Great Nicobarese community and only the Chairman of the Tribal Council was initially called to sign, which deprived him of the opportunity/right to internally consult within his community. Moreover, it is not clear to whom the RoFR certificate was issued. What category of RoFR was issued, for which land specifying location, and measuring what area? The DLC overlooked all these violations and granted an RoFR certificate. The letter withdrawing the NOC signed by the Chairman of the Tribal Council was sent to the Assistant Commissioner, Campbell Bay and the District Commissioner (Nicobar) who are the members of the SDLC and the DLC respectively. As per section 6(6) of the FRA, 2006 "*no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case*" which means that **the DLC has failed to execute**

its duty in this regard when it issued the RoFR certificate without resolving the matter put forth by the Great Nicobarese community.

11. ANIIDCO: The Chairman, tribal council (Great Nicobar & Little Nicobar Island) also attended the public hearing held on 27.01.2022 in connection with Environmental Clearance and EIA for the GNI project, on behalf of the tribal community.

The Chairman of the Tribal Council did attend the Public Hearing and mentioned very clearly that they wish to return to their ancestral villages. This point raised by him was entirely ignored and not addressed at any point in the process of the Environmental Clearance. Additionally, all the information in point no. 5 was communicated by the members of the Indian Anthropological Association in their submission made during the Public Hearing. Despite that the inaction on the part of the project proponent is indicative of their insensitivity and indifference towards the indigenous communities and their welfare and raises questions on their attitude and commitment towards the 'holistic' component of their project.

12. ANIIDCO: As per the terms and conditions of grant of EC & CRZ clearance by MoEF&CC vide letter dt. 11.11.2022, Geo fencing cum surveillance towers has been stipulated for the protection of the tribal habitat, the UT Administration is envisaging the state of art Geo fencing solution equipped with Optical/Thermal cameras, Satellite Phones, Drones, Solar Power system and Wireless Network equipment to protect the PVTGs habitat from any kind of poachers, trespassers etc.

The proposal to use Geo fencing cum surveillance towers that has been stipulated for the protection of the tribal habitat is not in keeping with the dense canopy and extreme weather conditions of the island. More importantly, the effect of fencing the Shompen and their forest on their bonafide movement and needs, has not been assessed. How can this exercise be conducted when not a single resident of Campbell bay can converse logically with the Shompen in their own language? Besides, there has been no mention of how the labor force, who will be bought from all over the country will be sensitized about the tribes and their safety. Enough damage has been done by outsiders being the ones to introduce alcohol and tobacco to the Shompen, many also indulging in the

hunting of the Nicobar Megapode, Wild Pig, Water monitor lizard, Saltwater Crocodiles, etc. all of which are on Schedule 1 of the Wildlife Protection Act, 1972 . Such a large influx of people will pose a serious challenge and result in a reduction in the already scant food resources available to the Shompen community who live off these resources from their forest. There are reports that construction workers who were brought in after the tsunami to build settlements have never left the island and have encroached upon forest lands. The UT Administration has been unsuccessful in tackling the already prevalent exploitation and violation of the rights of the Shompen PVTG.

Secondly, the EIA or EMP reports prepared so far have failed to address how the air, water, soil, and noise pollution generated due to the heavy influx of people and the massive scale of the proposed project will be restricted to the site and prevented from penetrating and contaminating the food and water resources of the forest that the Shompen directly consume. To list a few examples of what the EIA/EMP reports have completely missed addressing: The proposed translocation of crocodiles from the sites of the project will effectively remove an important food resource of the Shompen, the destruction of hectares of corals and mangroves, the bulldozing of a million trees. The shift of the southern Shompen settlements to move away from the destroyed landscape will trigger a domino effect forcing the Shompen bands to shift closer to one another and compete. This will bring them into conflict with each other for limited resources thereby irreversibly affecting the social dynamics, food security, physical/mental health and the quality of habitat and livelihood resources of this PVTG who are already recognized for their vulnerability to such drastic changes in their livelihoods by the Government of India. It is important to note that Shompen have over several decades expressly avoided contact with outsiders in their habitat and do not wish outsiders in their settlements without their consent; Their choices and vulnerability is evident in , the suicide of late shri Kakein in 2018 who expressed his dilemma of identity as a Shompen living amidst mainlanders and Nicobarese were not conducive to his choices when kept away from traditional livelihood practices, and also accidental deaths on consuming spurious alcohol from the sea at Pulo Kunji village in 1999. These incidents should serve as clear indicators of their extreme vulnerability in the face of rapid acculturation and wish to remain amidst their own, rather than in a multicultural society.

13. *ANIIDCO: Further, in pursuance to the terms and conditions of grant of EC & CRZ clearance for the project, monitoring committee has also been constituted under the Chairmanship of DC (Nicobar) to oversee welfare and issues related to Shompen and Nicobarese and the A&N Administration will establish a Special Medical Unit along with state of art infrastructure, medicines and qualified medical staff at GNI to monitor human induced diseases due to expected influx of large population both domestic and international.*

The committee that has been constituted under the chairmanship of the DC (Nicobar) to oversee welfare and issues related to Shompen and Nicobarese has not yet revealed its members despite several RTIs filed for the same. Who are the members of this committee? Do any of them have any linguistic proficiency in being able to communicate in Shompen language? Have they previously worked with either of the two communities? How many meetings have they held with the community members? Additionally, how does forming this committee address the impact on the Shompen groups that are still uncontactable? If the UT administration is so confident about the committee aiding the tribal communities, why isn't it sharing details about its members or the minutes of meetings that have been held so far? Since bureaucrat-led committees have not worked out in the past, how is it expected to work this time, and that too in violation of the hands-off approach of the Shompen Policy. In the first place the approach should be to not create conditions that allow for exposure of diseases that the Shompen have no immunity for.

In the rush to acquire speedy approvals for the project, the UT Administration has already endangered the Shompen PVTG to diseases, as is clear by the following events:

When the NITI Aayog invited the Request for Proposals (RfP) for the project during the ongoing COVID-19 pandemic in September, 2020, despite requests from interested bidders to extend the due date, this was not done. Instead the bidders were allowed to travel to the island.

Secondly, the socio-economic surveys for this project were also conducted during the pandemic in December 2020 and the Shompen huts in Trinket Bay (Northeast coast of Great Nicobar Island, far from the proposed project area) were visited without considering the repercussions if they were to catch the virus from the EIA consultants who were allowed to travel to the remote island

amidst the restrictions/curfew placed on rest of the public. In fact, EIA consultants conducting Focused Group Discussions with the Nicobarese community in Rajiv Nagar were photographed with large groups without protective masks on at least two occasions.

14. *ANIIDCO: From the above facts, it is evident all procedures mandated in the Act/Regulations/Policies have been followed. Further, due consultation with the tribal experts including ANSI has also been done in order to ensure the safety, protection, welfare and wellbeing of the PVTGs in the wake of Holistic Development of GNI project. The Empowered Committee in its observations has clearly stated that the interests of tribal population especially Shompen, a Particularly Vulnerable Tribal Group will not be affected adversely. The displacement of tribals will not be allowed. The Eco-tourism will be regulated in the effective manner and the provisions of PAT Regulation will be implemented strictly.*

The statements mentioned in points 1-13 by ANIIDCO in their letter are incomplete, inaccurate, and deficient in many crucial details that were suppressed to enable the approval of the project. The Empowered Committee should clarify what it thinks are the interests of the Shompen and the Great Nicobarese with regard to the issues expressed by the Tribal Council in their letter dated 20th August, 2022. It should also clarify which kind or what scale of “affects” on the interests of the two tribes will be rated as “adverse”? When the respondent states that “The displacement of tribals will not be allowed”, is it aware of the past events that took place on the island that led to the displacement of the tribals? Isn't inaction in facilitating the return to ancestral homelands an indirect means and mechanism of ensuring displacement? The entire community of Great Nicobarese not being allowed to return to their ancestral land, is nothing but displacement. 3 Shompen settlements in the forest will be directly affected by the clear felling of the forests in the Galathea river basin. This is also nothing but displacement.

These communities are not going to advertise the issues they are facing, nor will they seek permission before leaving from locations where they feel disturbed, hence the question of “not allowing displacement” does not arise.

15. *ANIIDCO: The contention of the petitioner is found to be misleading, incorrect, unfounded and without any merit.*

This issues with the approval of the Competent Authority.

The contention of the petitioner Dr. EAS Sarma has been echoed in the letters submitted by the members of the Anthropological Association of India as well as several researchers, environmentalists, ex-bureaucrats, and individuals who have previously worked closely with these communities and have an understanding of their lifestyle, culture, and their past, present and future needs. In fact, the letters from the Tribal Council of Little and Great Nicobar Island itself are in complete coherence with the views of Dr Sarma.

We, the undersigned, who have engaged with the indigenous communities of the island and/or have been following the proceedings of the approval of this project closely, are in complete disagreement with the manner in which ANIIDCO has misrepresented several facts regarding the communities' views on the project, the procedure of acquiring NOCs, RoFR certificate and clearances and the fulfillment of the conditions mandated by the Ministry of Tribal Affairs in its NOC for the de-notification of Tribal Reserve Area. We stand by the petitioner's appeal and urge the NCST to take swift action in the matter and scrap the project.

Additional points:

1. How the EIA report mentions the impact on the Great Nicobarese community:

The repeated insistence of the EIA consultant and the project proponent in the documents submitted to the EAC committee that the Nicobarese have assimilated to modern society and adapted modern way of life is the biggest example of how little consideration and research has gone into the preparation of these reports and how low their awareness is. Much like the Great Andamanese tribe was composed of 12 sub-tribes, the Nicobarese are also a highly heterogeneous community. Great Nicobar, being the largest island in Nicobar has two linguistically and culturally distinct sub-tribes of the Great Nicobarese that can be demarcated as the southern Great Nicobarese (traditionally living in villages from Chingenh to Kopenheat/Pulokunji until 2004 tsunami) and the northern Great Nicobarese (traditionally living in villages from Pulobed/Ramukkai, Renhong, Rekoret, Re Maun until 2004 tsunami). Two dialects are in use between these two communities- the Great Nicobarese and Little Nicobarese languages. The Nicobarese living in the Central and Northern groups of Nicobar Islands are also different and have different dialects amongst

themselves and names for each other. A total of six dialects are used in the Nicobar archipelago, therefore, treating the Nicobarese as a homogenous community is incorrect. This generalized treatment works in favour of the UT administration because the modern way of life adopted by the Nicobarese of one island, can be projected on a sub-tribe of Nicobarese from another island, and can be passed off as a mark of not being dependent on forests anymore. The southern Nicobarese of Great Nicobar, the same group of people who have been asking to be relocated to their ancestral villages for several years, is merely comprised of ~420 individuals, making them the smallest population of a linguistically and culturally distinct sub-group of the Nicobarese tribe in the world.

2. Post-tsunami rehabilitation of the Great Nicobarese:

After the tsunami while the settlers whose villages got washed off were relocated to newly built settlements in the pre-tsunami localities (except Vijaynagar) over the years, the southern Great Nicobarese were built temporary settlements in Campbell Bay and New Chingenh, both of which are far away from their ancestral villages located in the Southeastern and Western coast of Great Nicobar. The temporary settlements were made permanent in 2011, against the wishes of the community while they were being told that the road to Galathea was being built after which the process of return could begin. Several letters have been written appealing to the administration to provide basic aid in the form of some equipment for leveling of ground, etc. but even that is being denied. The community is perfectly capable of building their own houses with locally sourced material but it will need some basic support in the initial years of relocation. And now the administration has completely ignored this appeal, and has not even mentioned to the community in clear terms that their return will not be possible.

3. The impact of post-tsunami rehabilitation of the Great Nicobarese on the Shompen

Before the tsunami the Great Nicobarese played the role of a conduit between the Shompen people and the administration. Having co-existed on one island over hundreds of years, both communities have negotiated the areas they occupy on the island, acknowledged their co-dependence on one another, and forged deep associations that anthropologists themselves don't fully

understand to date. The administration on the other hand has time and again ignored these less-understood facets about the tribal communities and enforced poor, ill-thought-out decisions on the tribal communities under the garb of welfare. This was evident when after the tsunami the Great Nicobarese were relocated from their villages on the southern coast of the island to the administrative center in Campbell Bay - a decision whose repercussions the community is still contending with. As a result of the relocation of the Great Nicobarese, the Shompen bands who were in contact with them were now left with no option but to engage with the administration for rations when they were experiencing a deficit in food resources. It is only because of this decision, that the Shompen groups who had never engaged with the administration for several decades (Kokeon, Kirasis, Buja-yae), have come to depend on the administration for ration supply, rather than their traditional associations with their Great Nicobarese counterparts and neighbors. **It is pertinent to note that no field staff and officers of the AAJVS nor any other government entity or even civil society in Great Nicobar can speak in the Shompen or Great Nicobarese languages.**

4. Violation of International Conventions and denial of the Fundamental Rights under the Indian Constitution:

The well-being of indigenous peoples and local communities comes under the purview of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Human Rights Standards, and Article 8(j) of the Convention on Biological Diversity (CBD), all of which India is a signatory to. The apathy of the Andaman and Nicobar Administration towards the appeals of the Great Nicobarese made over two decades, invoke other issues such as clause 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as they are being denied the fundamental right to their traditional land for home and livelihood as enshrined in the Indian Constitution.

Concluding remarks:

When the construction of the Andaman Trunk Road (ATR) began in 1960, it was hailed to be an important project for military movement and a lifeline for islanders of the settlement. The indigenous Jarawas protested with all their might but ended up having to leave their territory and retreat into the deeper areas of the forest. For years they have suffered unspeakable loss - loss of lives to conflict with poachers from the settlement, and unwittingly been infected with diseases like measles, suffered dysentery from unclean diets when in

contact with mainlander society in the islands, been subjected to electrocution at fences erected around encroachments used for plantations connected to electric main lines; to firing, and above all, loss of their land and their way of life. As committees on committees were constituted to examine the impact of the road on the Jarawas, day tours operated by ANIIDCO and private tour operators went on and the Jarawas continued being introduced to intoxicants and alien food and were paraded as tourist attractions and were even sexually exploited, a practice that continues to date. In 2002, the Supreme Court had ordered the closure of the road where it passes through the Jarawa territory and yet, that road continues to operate and gets upgraded in absolute disregard towards the rights of the indigenous islanders and the highest court of law.

In his note titled, 'Jarawa contact – ours with them, theirs with us', late Mr. Samir Acharya, the then Secretary of the Society for Andaman & Nicobar Ecology, had written this: "The Jarawas were traumatized by the large-scale tree-felling and use of noisy heavy machinery for construction of the road, which probably also drove away their prey species. The road also effectively cut off their free access to the east coast resulting in further loss of habitat and shrinkage of their area available for resource gathering." The same thing will be repeated in the case of Great Nicobar as well and no amount of committees and court orders will be able to undo the destruction this project entails once it begins.

If this project is not scrapped, the A&N Administration and the Government of India will be knowingly subjecting the indigenous communities of the Great Nicobar Island to irreversible damage, which will in due course lead to their extinction. The southern Great Nicobarese have barely recovered from the aftermath of the tsunami, and if the project is not stopped, they will be forced to see their ancestral land getting ravaged by pillars, earth cutters, and dredgers. The forest-dwelling Shompen community will be subjected to the unfathomable trauma of seeing a million trees cut.

We challenge every single point that ANIIDCO has written in its response to NCST and strongly oppose the Great Nicobar project. We appeal to the A&N Administration and the Govt. of India to (1) Scrap the project (2) Facilitate the return of the southern Great Nicobarese to their ancestral villages and (3) Notify the Tribal Reserve Area in the island in places that are outside of the reserve and are used by the Shompen and (4) Follow the due process of recognition of rights

over claims for the land used and/or currently and/or historically occupied by the Great Nicobarese and the Shompen as mandated under the Forest Rights Act 2006 with formation of Gram Sabhas comprising the members of both the communities and ensuring their full participation. We urge the National Commission for Scheduled Tribes and the Ministry of Tribal Affairs to intervene immediately and put a halt to this project before it's too late.

Sincerely,

1. Dr. Vishvajit Pandya, Former Director, Andaman & Nicobar Tribal Research Institute
2. Dr. Madhumita Mazumdar, Team member, Project ANG KATHA, Andaman & Nicobar Tribal Research Institute
3. Dr. Manish Chandi, Independent Researcher, Former member, Tribal Welfare & Research Advisory Board, A&N Administration
4. Prof. Ajay Saini, Assistant Professor, IIT Delhi
5. Dr. T.N. Pandit, Fomer Director, Anthropological Survey of India
6. Dr. Anstice Justin, Former Deputy Director, Anthropological Survey of India
7. Ashish Kothari, Kalpavris and Vikalp Sangam
8. Nicholas Barla, Adivasi Samanway Manch Bharat, Delhi
9. Dr. Virginius Xaxa, Former Professor, Delhi School of Economics, Delhi University
10. Ruby Hembrom, Publisher, Adivaani
11. Adv. Purnima Upadhyay, Founder, KHOJ
12. Prof. Mukul Sharma, Environmental Writer and Author