APPENDIX A

MEMORANDUM OF SETTLEMENT

The demands of the GNLF having been considered by the Government of India and the Government of West Bengal and consequent upon the tripartite meeting between Shri Buta Singh, Union Home Minister, Shri Jyoti Basu, Chief Minister of West Bengal and Shri Subhas Ghisingh, President, GNLF at New Delhi on 25th July, 1988, it is hereby agreed between Government of India, Government of West Bengal and GNLF as below:

1. Separate State of Gorkhaland

In the overall national interest and in response to Prime Minister's call, the GNLF agrees to drop the demand for a separate State of Gorkhaland. For the social, economic, educational and cultural advancement of the people residing in the Hill areas of Darjeeling District, it was agreed to have an autonomous Hill Council to be set up under a State Act. The salient features of the Hill Council would be as follows:

(i) The name of the Council will be 'DARJEELING GORKHA HILL COUNCIL'

(ii) The Council will cover the three hill sub-divisions of Darjeeling District, namely, Darjeeling, Kalimpong and Kurseong, plus the Mouzas of Loharghar Tea Gardens, Loharghar Forest, Rangmohan, Barachenga, Panighatta, Choto Adaipur, Peharu, Sukna Part -1, Pantapati Forest-1, Mahanadi Forest, Champasari Forest and Salibari Chhat Part -II within Siliguri sub-division.

(iii) The State Government agrees to lease to the Council after it is formed, or acquire for it the use of such land as may be required and necessary for
administration and developmental purposes, anywhere in the State and in particular in and around 'Darjeeling More' in Siliguri sub-division.

(iv) The executive powers of the Council will cover the following subjects subject to the provisions.

CENTRAL AND STATE LAWS

1. The allotment, occupation or use, setting apart, of land than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purpose, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town.
2. The management of any forest, not being a reserved forest.
3. The use of any canal or watercourse for the purpose of agriculture.
4. Agriculture.
5. Public health and sanitation, hospitals and dispensaries.
6. Tourism
7. Vocational Training
8. Public works – development and planning
9. Construction and maintenance of all roads except national highway and state highways
10. Transport and development of transport
11. Management of burials and burial grounds, cremation and cremation grounds
12. Preservation, protection and improvement of livestock and prevention of animal diseases, veterinary training and practice
13. Ponds and the preservation of cattle trespass
14. Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage,
15. Fisheries
16. Management of markets and fairs not being already managed by Municipal authorities, Panchayat Samiti or GramPanchayats,
17. Education- primary, secondary and higher secondary,
18. Works, Lands and Buildings vested in or in the lawful possession of the Council,
19. Small scale and cottage industries,
(v) The Council shall exercise general powers of supervision over Panchayat Samitis, Gram Panchayats and Municipalities falling within the area of the Council's Jurisdiction
(vi) The General Council will have a total of 42 members of which 28 will be elected and the rest nominated by the State Government.
(vii) There will be an Executive Council and the Chairman and Vice Chairman will be ex-officio members of the Executive Council with the Chairman of the General Council functioning as the Chief Executive Councilor. The Chief Councilor will nominate 5 members to the Executive Council from out of the elected members of the Council and the State Government will nominate 2 members to the Executive Council from out of the non-official nominated members of the General Council.
(viii) The Chairman of the General Council cum Chief Executive Councilor will have the ex-official status and privileges of a Minister in the Council of Ministers in the State.
(ix) The Bill for setting up the Hill Council will be introduced and passed in a special session of the State Legislature which has been summoned. The election to the Hill Council will be held by the 15TH of December, 1988.

2. Restoration of Normalcy:

(i) Review of pending criminal cases:
It is agreed that review will be done by the State Government of all the cases registered under various laws against persons involved in the GNLF agitation. Action will be taken, in the light of the review, not to proceed with prosecution in all cases except those charged with murder. Release of person in custody will follow with withdrawal of cases. This review will be completed within 15 days of signing of this agreement.
(ii) Action against Government servants:
The State Government agrees to withdraw all cases of disciplinary action taken against employees in the context of the agitation. There will be no victimization of Government servants.

(iii) The GNLF agrees to issue a call to its cadre for the surrender of unauthorized arms to the district administration. It will be made clear in the call that such surrender made voluntarily within the prescribed date will not attract any prosecution.

(iv) The GNLF hereby agrees to withdraw all agitational activities and to extend full co-operation to the administration for the maintenance of peace and normalization of the political process in the hill areas of Darjeeling.

Sd/-
Subhas Ghisingh
President, GNLF
(On Behalf of GNLF)

Sd/-
C.G. Somiah
Union Home Secretary
(On Behalf of the Central Government)

Sd/-
R.N. Sen Gupta
Chief Secretary
(On Behalf of the Govt. of West Bengal)

In the presence of Union Minister & Chief Minister, Government of West Bengal.

Place: Calcutta Date: 22.8.88
NOTIFICATION

Whereas it has come to the notice of the Central Government that there have some misconceptions about the citizenship at the commencement of the Constitution of India of certain classes of persons commonly known as Gorkhas, who had settled in India at such commencement.

And whereas it is considered necessary to clear some misconceptions; it is hereby clarified as follows:

1. As from the commencement of the Constitution, that is, as from 26.1.1950, every Gorkha who had his domicile in the territory of India, that is in the territories which on 26.1.1950 became part of or constituted the territory of India as defined in Article 1(2) of the Constitution of India, and

   (a) Who was born in the territory of India; or
   (b) Either of whose parents was born in the territory of India; or
   (c) Who had been ordinarily resident in the territory of India for not less than five years before such commencement shall be a citizen of India as provided in Article 5 of the Constitution of India.

2. No such person as is referred to on paragraph (1) above shall be a citizen of India or be deemed to be a citizen of India if he has voluntarily acquired the citizenship of any foreign State, as provided in Article 9 of the Constitution of India.
3. Every person who is a citizen of India at the commencement of the Constitution as aforesaid shall continue to be such a citizen subject to the provisions of any law that may be made of Parliament as provided in Article 10 of the Constitution of India.

4. The provisions of the Citizenship Act, 1965 and the Rules and orders made there under shall apply to the persons referred to in paragraph (1) after the commencement of the Constitution.

Sd/-
Indira Mishra
Joint Secretary to the Government of India
APPENDIX C

MEMORANDUM OF SETTLEMENT BETWEEN GOVERNMENT OF INDIA, GOVERNMENT OF WEST BENGAL AND DARJEELING GORKHA HILL COUNCIL FOR CREATING A NEW COUNCIL FOR THE HILL AREAS OF DARJEELING DISTRICT, UNDER THE SIXTH SCHEDULE OF CONSTITUTION OF INDIA.

1. The Government of India and the Government of West Bengal have been making concerted efforts to fulfill the aspirations of the Hill people of Darjeeling District (West Bengal) relating to their cultural identity, language, education and economic development.

2. On consideration of various demands of Gorkha National Liberation Front (GNLF) and consequent upon tripartite Meeting held on 25.7.1988 at New Delhi between the Union Home Minister of West Bengal and Shri Subhash Ghisingh, President, GNLF, a Memorandum of Settlement (Darjeeling Accord) was signed on 22.8.1988. Pursuant to another meeting between the Union Home Minister and Shri Subhas Ghisingh, President GNLF at New Delhi on 25.7.1988, a further Memorandum of Settlement was signed on 23.8.1988.

3. Pursuant to the above mentioned Settlement, GNLF agreed to drop the demand for a separate State of Gorkhaland and an autonomous hill council, viz, Darjeeling Gorkha Hill Council (DGHC), was set up under 'The Darjeeling Gorkha Hill Council Act, 1988' notified by the Government of West Bengal on 15.10.1988. The hill areas under DGHC comprised of the three hill sub-divisions of Darjeeling District, viz., Darjeeling, Kalimpong & Kurseong and 13 mouzas of Siliguri sub-division of that District.

4. However, Shri Subhas Ghisingh (former Chairman and Chief Executive Councillor, DGHC, presently Administrator) had been demanding constitutional status for the DGHC as, according to him, the above mentioned Settlements could not fulfill the aspirations of the people of
Darjeeling. A series of tripartite meetings were held between Government of India, Government of West Bengal and Shri Subhash Ghisingh to review the implementation of Darjeeling Accord and further issues arising from it. As a result of these meetings, it is hereby agreed in principle to create a self-governing body for the Darjeeling hill areas in the State of West Bengal.

5. Objectives

The objectives of this agreement are to replace the existing Darjeeling Gorkha Hill Council by an autonomous self-governing Council to be known as Gorkha Hill Council, Darjeeling under the Sixth Schedule of the Constitution of India following due consultative, legislative and constitutional processes by the State and Central Governments so as to fulfill economic, educational and linguistic aspirations and the preservation of land rights, socio-cultural and ethnic identity of the hill people; and to speed up the infrastructure development in the hill areas.

6. Area

The area of the proposed Council under the Sixth Schedule shall comprise all the mouzas, villages and areas as per Annexure A to be notified by the State Government. Any further alteration to the list can be made on the basis of mutual agreement between the Govt. of West Bengal and DGHC, prior to the enactment of Constitution Amendment Act. The above mentioned mouzas, villages and areas shall be comprised in 3 contiguous hill sub-divisions of Darjeeling, Kalimpong and Kurseong of Darjeeling District after reorganization of the existing sub-divisions of Darjeeling District by the Govt. of West Bengal within a period of 3 months of the signing of this agreement.

7. Status of New Council

7.1 The Government of West Bengal would repeal at appropriate time the existing 'The Darjeeling Hill Council Act, 1988' to pave the way for creation of a new autonomous Council under Sixth Schedule of the Constitution of India. Government of India would initiate necessary consultative, legislative and constitutional steps to amend Article 244 of the Constitution
appropriately, to include administration of the hill areas of West Bengal in the Sixth Schedule.

7.2 The provisions of the Sixth Schedule as and when amended and other relevant Articles of the Constitution of India will apply to the new Council, mutatis mutandis in terms of this Settlement. The safeguards for the non tribals in the new Council area, inter alia, will include the following:

7.2.1 Provisions of Para 1(2) of Sixth Schedule regarding Autonomous Regions will however not be applicable to the new Council.

7.2.2 A provision will be made in Para 2(1) of the Sixth Schedule for increasing the number of members for new Council up to 33 out of which 10 will be reserved for Scheduled Tribes, 15 for non tribal communities, 3 open for all communities and 5 to be nominated by Governor of West Bengal from the unrepresented communities.

From new Council area of which at least two should be women. Nominated members will have the same rights and privileges as other members including voting rights. Election from the 28 constituencies of the new Council shall be on the basis of adult franchise. The terms of the elected members of the new Council shall be for 5 years.

7.2.3 Safeguards for the settlement rights, transfer and inheritance of property etc of non tribals will be suitably incorporated in Para 3 of the Sixth Schedule. Any such Law may be made by the new Council in the regard will not in particular:

(a) Extinguish the rights and privileges enjoyed by any citizen of India in respect of his land at the commencement of the new Council, and

(b) Bar any citizen from acquiring land by way of inheritance, allotment, settlement or by way of transfer if such citizens were eligible for such bonafide acquisition of land within the new Council areas.

7.2.4. Provision will be added in Para 6 of Sixth Schedule that in the new Council area, language and medium of instruction in educational institutions will not be changed without approval of the State Government.
7.2.4 Para 10 of the Sixth Schedule will not be applicable to the new Council area.

7.2.5 The amendments to the Sixth Schedule shall include provision in such a manner that non tribals are not disadvantaged in relation to the rights enjoyed by them at the commencement of the new Council and their rights and privileges including and rights are fully protected.

7.3 These amendments will be carried out after following due consultative and legislative processes.

8. Powers and Functions

8.1 The new Council shall have legislative powers in respect to subjects mutually agreed with State Government to be transferred to it. The list of Subjects is given in Annexure B. Any further alteration to this list can be made on the mutual basis.

8.2 There shall be an Executive Council comprising not more than 6 Executive Members from amongst the members of the General Council, one of whom shall be the Chief and another one the Deputy Chief of the said Executive Council. To ensure adequate representation for the non-tribal members in the Executive Council, at least 2 members of the Executive Council would be non-tribals. There shall be no bar on nominated members being appointed as members of the Executive Council.

8.3 The new Council shall have the full control over the officers and staff appointed by and connected with the delegated subjects working in the Council area. In case of all India Service Officers and State Government Officers on deputation to the Council, it can only recommend suitable action to the State Government. Annual Confidential Reports of all the Officers shall, however be written by the appropriate authority in the new Council.

8.4 The new Council shall also be competent to make appointments for all posts under its control in accordance with the rules of appointment
followed by the Government of West Bengal. However, the posts where recruitment is made on the recommendation of West Bengal Public Service Commission shall not be covered under this provision. The new Council may constitute a Selection Board for appointments to be made by it and may also make rules, with the approval of the Governor of West Bengal, to regulate appointments and to ensure adequate representation for all communities living in the new Council area.

8.5 All new posts within the Council be created with the concurrence of State Government. The Council shall also abide by the decision of the Government of West Bengal in respect of abolition of temporarily keeping vacant any post.

8.6 Development of functions and bodies within the competence of DGHC shall be transferred to the new Council.

8.7 The new Council would have the same powers of supervision over the lower tiers of Panchayats as the existing DGHC. The existing arrangement of lower tiers of Panchayats would continue under the new Council. In the event, Panchayat Raj system ceases to be in force in the new Council area, the powers of the Panchayat Raj institutions in such matters shall be vested with the new Council.

8.8 The Offices of the District Magistrate and Superintendent of Police will be outside the superintendence and control of the new Council.

8.9 The State Government would provide an amount, to be decided every year on population ratio basis, as grants-in-aid in two equal installments to the new Council for executing development works. The proportionate share for new Council shall be calculated on the basis of the plan funds available after setting aside the funds required for earmarked sectors and the salary. This amount may be reduced proportionately if the state plan allocation is reduced or there is plan cut due to resource problem. In addition, the new Council will be paid a suitable amount of plan funds and non-plan funds to cover the office expenses and the salaries of the staff.
disburse the salaries of the staff under their control and would ensure strict economy in the matter.

8.10 The new Council shall prepare a plan with the amounts likely to be available for development works, both under State share and Central share, covering any or all the activities and choosing the amount for the investment under the same in any year covering all groups of people in a fair and equitable manner. This plan will be a sub set of the State plan and would be treated as its integral part. Once the plan of the State, including the new Council plan, gets the approval of the Planning Commission, the new council authority shall start execution of their plan in the new Council area. Modifications, if any, made by the Planning Commission in the new Council proposal shall be binding on the new Council authority. The State Government shall not divert the funds allocated to the new Council to other heads and also ensure its timely release. The new Council may have Planning Department to prepare the plans for the new Council area to be submitted to Planning Commission through the Government of West Bengal.

8.11 The executive functions of the new Council shall be exercised through its Principal Secretary who shall be an officer of the rank not below that of Commissioner/Secretary of Government of West Bengal. The sanctioning powers of Government of West Bengal shall be vested with the Principal Secretary of the new Council and sanctioning powers of head(s) of the Department(s) including for technical sanction shall be conferred on the senior most officer of that Department preferably not below the rank of Additional Director, who may be designated as Director of the new Council for that Department. The Principal Secretary and other officers shall exercise their powers under the overall guidance and supervision of the new Council.

9. Additional Development Packages for the new Council

9.1. The State Government, within the limitation of financial and other constrains, may offer or allow the new Council to offer, possible and
sustainable additional incentives for attracting private investment in the new Council area and would also support projects for external funding.

9.2. In order to accelerate the development of the region and to meet the aspirations of the people, the Government of India will provide financial assistance of Rs. 30 crore per annum for 5 years for projects to develop the social – economic infrastructure in the new Council area over and above the normal plan assistance to the State of West Bengal. Suitable mechanism will be built in the system to ensure that the funds are transferred to the new Council in time and at regular intervals. A list of projects which should be considered to be taken up in the new Council areas is in Annexure C.

10. Immediately after the signing of the agreement and till such time the process of Constitutional amendment is carried out, and the new Council is put in place, the administration of the area shall continue to be with the existing DGHC constituted under the existing Act. To achieve the objectives of the present MOS, the steps as enumerated hereunder would be taken by the parties to the settlement:

Sd/- (Subhas Ghisingh) Sd/- (V.K.Duggal) Sd/- (A.K. Deb)
Administrator Home Secretary Chief Secretary
DGHC Govt. of India Govt. of West Bengal

(i) Transfer of 16 Mouzas / Villages from Siliguri sub-division and consequent legislative enactments, if any, required to include them in DGHC Area

(ii) Elections to the DGHC and to Panchayat bodies in the DGHC area in accordance with the relevant provisions of the Constitution / existing Laws of the Central / existing Laws of the Central / State Governments.
(iii) Resolution by State Legislative Assembly recommending the grant of Sixth Schedule status for Darjeeling Hill areas and any other Legislative process as may be necessary precedent initiating process for amending Article 244 of the Constitution.

(iv) Amendment of Article 244 of the Constitution.

(v) Amendment of Sixth Schedule through Parliamentary Act and enactment of any other consequential Parliamentary Act(s)

(vi) Dissolution of the DGHC and repeal of the DGHC Act 1988 with appropriate saving clause


11. This in principal Memorandum of Settlement is the full and final settlement of the Darjeeling Hill Areas issue and no further demands in this regard would be entertained. The implementation of this Memorandum shall be periodically reviewed by the Government of West Bengal with DGHC.

Signed on the 6th December, 2005 at New Delhi in the presence of Shri Shivraj V. Patil, Hon'ble Union Home Minister and Shri Buddhadeb Bhattacharya, Chief Minister of West Bengal.
ANNEXURE A

List of villages/ Mouzas to be included in the proposed Council under Sixth Schedule for Darjeeling Hill Areas

1. All the Mouzas under the Darjeeling Sub-division of Darjeeling District
2. All the Mouzas under the Kurseong Sub-division of Darjeeling District
3. All the Mouzas under the Kaimpong sub-division of Darjeeling District
4. (a) List of Mouzas under Siliguri sub-division of Darjeeling District which are already part of DGHC and which are proposed to be transferred to Kurseong sub-division:
   (1) Lohagar Tea Garden (J.L. No. 2 of Naxalbari P.S.) to Mirik P.S.
   (2) Lohagar Forest (J.L. No 3 of Naxalbari P.S.) to Mirik P.S.
   (3) Rangmohan (J.L. No. 5 of Naxalbari P.S.) to Mirik P.S.
   (4) Bara Chenga (J.L. No 6 of Naxalbari P.S.) to Mirik P.S.
   (5) Panighata (J.L. No 76 of Naxalbari P.S.) of Mirik P.S.
   (6) Pantapari Forest (J.L. No 81 of Naxalbari P.S.) to Mirik P.S.
   (7) Sitong Forest (J.L. No. 1 of Pradhannagar P.S.) to Kurseong P.S.
   (8) Champasari Forest (J.L No. 4 of Pradhannagar P.S) to Kurseong P.S.
   (9) Mahanadi Forest (J.L. No 5 of Pradhannagar P.S.) to Kurseong P.S.
   (10) Sukuna Forest (J.L. No. 6 OF Matigara P.S) to Kurseong P.S.
   (11) Sukuna FOREST (J.L. No 7 of Matigara P.S.) to Kurseong P.S.
   (12) Paharu (J.L.No 10 of Matigara P.S.) to Kurseong P.S.
   (13) Chotta Adalpur (J.L. No. 11 of Matigara P.S. to Kurseong P.S.
   (14) Shalbari Chhat Dwitiya Khanda (J.L No 33 of Pradhannagar P.S. to Kurseong P.S.

4. (b) List of Mouzas under Siliguri sub-division of Darjeeling District to be included in the proposed Council and which are proposed to be transferred to Kurseong sub-division of Darjeeling District:

1. Sevoke Hill Forest (J.L. No. 2 of Pradhannagar P.S.) to Kurseong P.S.
2. Sevoke Forest (J.L. No 3 of Pradhannagar P.S. to Kurseong P.S.
ANNEXURE B

List of Subjects proposed to be transferred to the New Council

1. The allotment, occupation or use or setting apart of land other than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purposes, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town. Such allotment, occupant or use, or setting apart of land shall be subject to the provisions of the West Bengal Land Reform Act, 1955 and the rules made there under.

2. The management of any forest, not being a reserved forest. Explanation “Reserved forest” shall mean a reserved forest as constituted under the Indian Forest Act, 1927.

3. The use of any canal or watercourse for the purpose of agriculture.

4. Agriculture

5. Public health and sanitation, hospitals and dispensaries

6. Tourism

7. Vocational training

8. Public works - development and planning

9. Construction and maintenance of all roads except national highways and State highways

10. Transport and development of transport

11. Management of burials and burial grounds, cremations and cremation grounds

12. Prevention, protection and improvement of livestock and prevention of animal diseases, veterinary training and practice.

13. Pounds and the prevention of cattle trespass

14. Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage

15. Fisheries
16. Management of markets and fairs, not being already managed by municipal authorities, Panchayat Samitis or Gram Panchayats
17. Education – primary, secondary and higher secondary
18. Works, lands and buildings vested in or in the possession of the General Council
19. Small scale and cottage industries

**ANNEXURE C**

**List of Projects to be taken up by the Council**

1. Upgradation of the existing educational infrastructure by way of renovation / addition of buildings, providing modern facilities for teaching such as computers, science laboratories etc. from primary level to college level in Council area
2. Establishment of a cultural complex at Darjeeling to promote and develop Hill tradition and cultural heritage.
3. Establishment of super-specialty hospital with modern facilities at Darjeeling and upgradation of sub-divisional and block level hospitals and PHCs
4. Establishment / improvement of the sports infrastructure in District and Sub-divisional Headquarters.
5. Provision of Food processing plants, integrated agro processing Park and cold storage facilities.
7. Establishment of modern dairy, fishery, horticulture and poultry farms / training centres at different places to encourage youths for self employment.
8. Development of adequate infrastructure to promote tourism in Council areas
9. Upgradation and strengthening of the existing facilities in veterinary hospitals in Council area.
AN APPEAL

AGAINST THE DENIAL OF CONSTITUTIONAL JUSTICE TO THE

SCHEDULED CASTES

IN THE GORKHA HILL COUNCIL, DARJEELING

UNDER THE SIXTH SCHEDULE

BY

ALL INDIAN NEPALI SCHEDULED CASTES ASSOCIATION -
A NON-POLITICAL AND NON-GOVERNMENTAL ORGANISATION OF
INDIAN CITIZENS OF NEPALI COMMUNITY
All Indian Nepali Scheduled Castes Association
Estd.: 1947
Registration No.: S/4550/61-62
C/O Shree Biswakarma Samaj, Chandmari, Darjeeling - 734 101

Ref. No.: AINSCA/DJ/3/Ill     Dated: 18th January 2006

Hon'ble President,
Republic of India,
Rashtrapati Bhawan,
New Delhi.

Most Respected Sir,

1. According to Para 7.2.2 of the Memorandum of Settlement between the Government of India, Government of West Bengal and Darjeeling Gorkha Hill Council on the 6th December 2005 a provision will be made under the Sixth Schedule for increasing the number of members for the new Council upto 33 out of which 10 will be reserved for Scheduled Tribes, 15 for Non-Tribal Communities, 3 open for all Communities and 5 to be nominated by Governor of West Bengal from the unrepresented communities from new Council areas of which at least 2 (two) should be Women.

2. Articles 330, 332, 243T (74th amendment), 243D (73rd amendment) of the Constitution of India provide for reservation of seats for Scheduled Castes in the House of People, State Legislatures, Municipalities and Panchayats respectively. Unfortunately and strangely the
representation of Scheduled Castes whose population is 72,056 (9.11%) out of the total population of 790591 in the Darjeeling Gorkha Hill Council area has been totally and deliberately ignored. This has caused not only deep concern and disappointment but also spread apprehension about their rights and privileges as provided in the Constitution of India, being surreptitiously ignored in future. This apprehension is further strengthened by the fact that there was a strong move in 1994 to delist the Nepali Scheduled Castes from the State List and enlist them as "Other Backward Classes". But because of the toughest stand taken by this Association, the sinister move was foiled.

3. We are particularly pained by the fact that the Memorandum was signed in the presence of Shri Shivraj V. Patil, Hon'ble Home Minister, Govt. of India and Shri Buddhadev Bhattacharya, Hon’ble Chief Minister Govt. of West Bengal. The Government of India in particular cannot ignore the Constitution of India. We apprehend that this may be a beginning to suppress the entire Scheduled Castes of India from their Constitutional Rights. Undoubtedly it is a very dangerous conspiracy and we apprehend that this will have a far reaching and unexpected retaliation by the Dalits of India.

4. The existing Darjeeling Gorkha Hill Council Act has provided one seat by nomination for the Scheduled
Castes in the Council. Darjeeling Dooars Scheduled Castes and Scheduled Tribes Welfare Association, of which the undersigned is also the President, filed a Writ Petition No 1277 (W) of 1999 against the State of West Bengal. Curiously the State of West Bengal did not contest the Writ application. As directed by the Hon’ble High Court, the State Govt. called the representatives of the Association for hearing. We appeared in the hearing but the West Bengal Govt. vide letter No. 92-HA dated 7th March 2000 turned down our demand. We have again filed a Writ Petition No. 5943 (W) of 2004 in the High Court, Kolkata.

5. Since it is proposed to create a new Council under Sixth Schedule of Constitution of India, we request that before the Bill is introduced in the Parliament, 3 seats on the basis of 9.11% be provided for Scheduled Castes by election to the Council by amending Para 7.2.2 of the Memorandum. Since the hill area of Darjeeling District is within the State of West Bengal, it is the sole responsibility of the Govt. of West Bengal to abide by the provisions of the Constitution. Nobody is above the Constitution of India. This will avoid a Public Interest Litigation being filed in the Supreme Court of India. We would like to reiterate that we will vehemently oppose any move to provide us reservation by Nomination without first amending Articles 330, 332, 243D, 243T of the Constitution.
6. In view of the fact stated above we the members of the Scheduled Castes request your honour not to deny us our Constitutional Rights, instead kindly take up our cause and safeguard our interest by providing 3 (three) seats by election to Council.

Thanking you Sir,

Your faithfully,

(Kaman Singh Ramudamu)
President

Copy to:-

____________________________________

____________________________________

____________________________________
PART 1 - Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL
SCHEDULED CASTES AND TRIBES WELFARE DEPARTMENT

Writers' Buildings, Calcutta

Calcutta, the 1st December, 1995

M-6/82(1)

NOTIFICATION

WHEREAS "backward classes" has been defined in clause (a) of section 2 of the West Bengal Commission for Backward Classes Act, 1993 (West Ben. Act 1 of 1993) (hereinafter referred to as the said Act), for the purpose of the said Act, to mean such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the State Government in the list;

AND WHEREAS "lists" has been defined in clause (c) of section 2 of the said Act mean list prepared by the Government of West Bengal from time to time for the purpose of making provision for the reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of West Bengal and any local or other statutory authority within the territory of West. NOW, THEREFORE, in
pursuance of the provisions of clause (a), read with clause (c), of section 2, and sub-section (2) of section 9, of the said Act, and in continuation of notification No. 370-TW/EC/M-6/82(1), dated the 12th May, 1995, the Governor is pleased hereby to specify further in the list below the backward classes for the purpose of the said Act.

**LIST**

1. Bhujel
2. Newar
3. Mangar (Thapa, Rana)
4. Nembang
5. Sampang
6. Bungchheng
7. Thami
8. Jogi
9. Dhimal

*By order of the Governor,*

*U.K. RAY,*

*Secretary to the Govt. of West Bengal*
MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 8th January, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2003 and is hereby published for general information :-

THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS
(AMENDMENT) ACT, 2002

No. 10 of 2003

(7th January, 2003)

An Act to provide for the inclusion in the lists of Scheduled Tribes, of certain tribes or tribal communities or parts of or groups within tribes or tribal communities, equivalent names or synonyms of such tribes
or communities, removal of area restrictions and bifurcation and clubbing of entries; imposition of area restriction in respect of certain castes in the lists of Scheduled Castes, and the exclusion of certain Castes and Tribes from the lists of Scheduled Castes and Scheduled Tribes, in relation to the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal:

Be it enacted by Parliament in the Fifty third Year of the Republic of India as follows:-

1. This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002.

2. In this Act, unless the context otherwise required--

(a) "Scheduled Castes Order" means the Constitution (Scheduled Castes) Order, 1950, made by the President under article 341 of the Constitution.

(b) "Scheduled Tribes Order" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967 and the Constitution (Sikkim) Scheduled Tribes Order, 1978, made by the President under article 342 of the Constitution.

3. The Scheduled Castes Order is hereby amended in the manner and to the extent specified in the First Schedule.

(n) in PART XVI.-- West Bengal, after entry 38, insert--

- "39 Limbu (Subba)

- 40 Tamang."

(3) in the Constitution (Sikkim) Scheduled Tribes Order, 1978, after entry 2, insert--

"3. Limbu

4. Tamang."

-K.N. CHATURVEDI,
Additional Secy. to the Govt. of India.
Memorandum

Demand for the identification and recognition of the Lepcha tribes of the Darjeeling District, West Bengal, under the 'Primitive Tribal Group' list.
To

Memorandum

Subject: Demand for the identification and recognition of the Lepcha tribes of the Darjeeling District, West Bengal, under the 'Primitive Tribal Group' list.

1. The Lepchas, the one and only indigenous tribe of the Darjeeling District, West Bengal, are a vanishing tribe. Their ancient and very rich language, literature, and cultural heritage is fast dying out. The future of the Lepchas of the Darjeeling District certainly looks bleak, barren, and empty.

2. Lepcha Population in the Darjeeling District: The Census figures for the period 1872 to 1991, given at Annex A to this letter, clearly show and indicate that the growth rate of the Lepcha population in the Darjeeling District is extremely low. Compared to other communities, the Lepchas' growth rate is, it is not far too wrong to state, almost stagnant and, sometimes, it has decreased also. It is likely that the Lepchas of the Darjeeling District, probably, one day, may face a danger of near extinction.

3. Agricultural Technology: 99.99% of the Lepchas live in remote, inaccessible hilly villages in the Darjeeling District of West Bengal. Most Lepchas are agriculturists with a pre-agricultural level of technology. Waddell, L.A. aptly wrote in his famous book, Among the Himalayas (1899), 'Lepchas represent the state of primitive man when he subsists by hunting, fishing, and gathering wild fruits and digging roots'. Their methods of farming are still crude and ancient, resulting in very poor food production and output. It is not surprising that they continue to subsist on herbs and roots from the jungle even today which may be detrimental to their health and fertility. Most Lepchas in the villages are below the poverty line, without any basic facilities. More than 60% of them are in debts.

4. Literacy: The Lepchas have extremely low level of literacy. Economically very backward Lepchas can hardly afford to send their children to good schools, colleges, and universities for higher education. Good Schools and colleges are found in big towns and cities which are very
expensive and beyond the reach of the poor Lepcha parents. Another serious set-back those few fortunate school going Lepcha children are facing today in the Darjeeling Hills is that they are made to learn and compete in alien languages; obviously, the Lepcha children from far-off villages can hardly compete with them. Gurudev Rabindranath Tagore's immortal words, 'Matri bhasa, matri dudh', are, unfortunately, not being applied in the case of the Lepchas of the Darjeeling District of West Bengal as yet. The Lepcha language has not been recognised and introduced in the schools and colleges for the Lepcha children in the Darjeeling Hills, whereas, the Government of Sikkim recognised and introduced the Lepcha language for the Lepcha children up to the Degree Level in Sikkim. The Lepcha children in the Darjeeling District are not faring well in the schools and colleges at all.

5. Owing to very slow growth rate of population, lack of advanced methods of agricultural technology, extremely low level of literacy, and difficulty in preventing land alienation, the Lepchas are doomed, destined to perish in their own homeland, the Darjeeling District of West Bengal, unless the Central Government of India immediately comes to their rescue by identifying and recognising them under the 'Primitive Tribal Group' list with immediate effect.

It is good to report that the Government of West Bengal has already recommended the Lepcha tribes of the Darjeeling District, West Bengal, for inclusion under the 'Primitive Tribal Group' list. Memo No 1161/C.R.I. dated 17.01.2000, of the Backward Classes Welfare Department, Government of West Bengal, is self explanatory. It is enclosed at Annexure 'B' to the Memorandum. Inspite of the Government of West Bengal's recommendation to include the Indigenous Lepcha tribes of West Bengal under the Primitive Tribal Group List, sadly, no action has been taken by the Central Government of India. What happened to the recommendation made by the Government of West Bengal; it remains a mystery.

6. The indigenous Lepcha tribes of the Darjeeling District, West Bengal, are also deprived of their political seats, reservations in their own homeland unlike Sikkim. The socio-economic and political conditions for the Lepcha tribes of the Darjeeling District must be strongly protected by recognising and listing them under the Primitive Tribal Group.

7. Considering the above facts, figures, and circumstances and keeping in view of the constitutional obligation towards the upliftment of the tribes and the demand being so urgent in nature for ensuring social, educational, economical, and political justice in respect of the indigenous Lepcha tribes, we shall be very grateful to you if you could be kind enough to look into this matter sympathetically and ensure that our demand, 'Identification and Recognition of the indigenous Lepcha tribes of the Darjeeling District, West Bengal, under the 'Primitive Tribal Group List' is met at your earliest convenience. If the Indigenous Lepchas of Sikkim is recognised and listed under the Primitive Tribal Group, the same Indigenous Lepcha tribes of the Darjeeling District, West Bengal, must also be recognised, listed, and protected under the Primitive Tribal Group, concurrently, for the development of the poor, backward, indigenous Lepcha tribes living in the Darjeeling District, West Bengal. When the Limboos and Tamangs were recognised as Scheduled Tribes, it was concurrently recognised in Sikkim and West Bengal. Socio-economic, and politically very backward, poor indigenous Lepcha tribes of West Bengal must be recognised, listed under the Primitive Tribal Group. The Lepcha tribes of the Darjeeling District, West Bengal, must not be discriminated, differentiated against each other.

We are looking forward to hearing from you at your earliest convenience.

With warm regards.

Yours faithfully,

LYANGSONG TAMSANG
General Secretary
Government of West Bengal
Cultural Research Institute
Backward Classes Welfare Department
P-1/4, C.I.T. Scheme No. VII M, V.I.P. Road
P.O. Kankurgachi, Calcutta - 700 054.


To
Shri Lyan Song Tamsang
General Secretary
The Lepcha Association
Kalimpong - 734 301
Darjeeling
West Bengal.

Sir,

With reference to your no. LA-I dated 17.07.2000, it is to inform you that the original letter has already been sent to the Backward Classes Welfare Department vide this office memo no. 1152/CRI dated 11.01.2001 with request to take up the matter with the Ministry of Tribal Affairs, Government of India.

In this connection, it may be mentioned here that, the State Government has already recommended Lepchas for inclusion in the list under 'Primitive Tribal Group'.

Yours faithfully,

Sd/- S.M. Chakraborty
Deputy Director
Cultural Research Institute

Memo No. 1161(1)/CRI Date 17/01/01

Copy forwarded for information to:-

Shri Mirsa Tirkey
President
Akhil Bharatiya Adivasi Vikas Parishad, West Bengal Branch
Santragachi Station Road
Over Kona Expressway, Jagacha
P.O. C.I.P. Colony

[Signature]
Deputy Director
Cultural Research Institute