

Indigenous Rights Quarterly

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UPR Special:

UPR and indigenous peoples

India

Indonesia

Philippines

Also:

Brus: Victims of repression by indigenous peoples

Bangladesh: The Army attacks Buddhism to facilitate illegal settlement

AN INTRODUCTION OF MIZORAM BRU DISPLACED PEOPLES CAMPS.

NAME OF CAMPS	NO. OF FAMILIES	POPULATION ADULT	POPULATION SCHOOL	STRENGTH
1. NANSINGPABA	3052	150095	23773	17668
2. AHSAPABA	982	51009	670	5847
3. MALLADIAL	470	23800	305	2603
4. KANSKALU	580	32201	640	3841
5. HAMSAPABA	312	1623	302	1925
6. KHAKCHANG	208	1030	287	1297
6. TOTAL	3023	28516	4086	33482

By
MIZORAM BRU DISPLACED PEOPLES FORUM
HEADQUARTERS, NANSINGPABA, R.A. CAMPS,
TIZAMA, NORTH.



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Conditions of the Bru relief camps

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CONTENTS

- 1 UPR and indigenous peoples
- 2 Brus: Repression of indigenous peoples by indigenous peoples
- 5 India: No democracy for those living on the margins
- 8 Indonesia: Transmigration, human rights violations and impunity
- 11 The Philippines: All promises, No implementation
- 14 Violations in Maluku
- 15 A critical analysis of "Consultation Draft of the Safeguard Policy Statement" of Asian Development Bank
- 18 Bangladesh: The Army attacks Buddhism to facilitate illegal settlement in the Chittagong Hill Tracts



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EDITORIAL

UPR and indigenous peoples

By 20 November 2007, stakeholders i.e. NGOs and National Human Rights Institutions from the countries being considered during the first session of the UPR in April 2008 had to submit stakeholders' submissions. Three Asian countries having substantial indigenous peoples i.e. India, Indonesia and Philippines were selected to be examined during the first session.

The United Nations General Assembly resolution 60/251 authorising establishment of the UN Human Rights Council - a body at par with other main bodies of the UN sought to address the failure of the Commission on Human Rights - selectivity and politicization while addressing human rights violations. The General Assembly resolution 60/251 provided that the Human Rights Council while "addressing situations of violations of human rights, including gross and systematic violations, and make recommendations thereon" "shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development".

Thus the Universal Periodic Review (UPR) mechanism which will conduct its examination "based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States" and that "the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs".

In its resolution 5/1 on Institutional Building, the Human Rights Council approved the modalities for conducting the Universal Periodic Review. The UPR shall be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council with the participation of the Observer States in the review, including in the interactive dialogue. A group of three rapporteurs, selected by the drawing of lots among the members of the Human Rights Council

and drawn from different Regional Groups will be formed to facilitate each review, including the preparation of the report of the working group. The Rapporteurs will be known as the Troika. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the Troika.

The Working Group of the HRC on UPR will consider its examination based on three key documents: (1) 20 page submission of the State concerned; (2) 10 page compilation of information prepared by the Office of the High Commissioner for Human Rights (OHCHR) based on the information contained in treaty bodies, Special procedures etc and other relevant UN documents and (3) additional 10 page credible and reliable information of the Stakeholders prepared by the OHCHR.

UPR might be a watershed in the history of the UN in terms of scrutinising human rights records of the member States by the States. It might also be all brouhaha. 20 page will remain crucial.

The final "Outcome Document" of the UPR will be adopted by the plenary of the Council. It may include among others an objective and transparent assessment of human rights situation including positive developments and the challenges faced by the country, best practices, voluntary pledges of the country under consideration etc. The subsequent review shall focus *inter-alia* on the implementation of the preceding outcome.

Majority of the civil society organizations could not follow the year-long negotiations at the Human Rights Council on the institution building. Most remain unaware of the Human Rights Council and its mechanism. When the OHCHR came up with the deadline for making stakeholders' submission by 20 November 2007, most regional and national NGOs were unprepared. There was serious lack of time, no past precedence. Often marginalised groups suffer.

Asian Indigenous and Tribal Peoples Network sought to address these gaps and made submissions on India, Indonesia and Philippines to ensure that indigenous issues are not sidelined or subsumed or left out given the conflicting issues. It remains as to how indigenous issues are given priorities by the OHCHR.

UPR might be a watershed in the history of the UN in terms of scrutinising human rights records of the member States. It might also be all brouhaha. Only time will tell but OHCHR's 20 page will remain crucial. ■

Brus: Repression of indigenous peoples by indigenous peoples

Thousands of Brus fled from Mizoram to neighboring Tripura following attacks by some majority Mizo organisations. From 15 October 1997 onwards, Brus from Tungbagin, Kawnmun, Pheileng, Laxmicheraa, Kwartha, Rangdil, Fileng and Tuipuibari areas of then Aizwal district of Mizoram fled for their lives.

Since then they have been housed in six relief camps under Kanchanpur Sub-Division of Tripura.

i. Continued denial of the right repatriation to Mizoram

The state government of Mizoram has been refusing to repatriate the Brus on the ground that not all of them were genuine residents of Mizoram and due to the opposition from the influential Mizo NGOs including Young Mizo Association (YMA) and Mizo Zirlai Pawl (Mizo students union, MZP). Although the Brus themselves claim to be over 29,000 persons in the relief camps in Tripura, the government of Mizoram has claimed that only 543 Bru families comprising of 3,189 persons fled the state in 1997.¹

In November 1997, the State of Tripura decided to stop rations and other basic facilities being provided to the Reangs/Brus in order to coerce them to return to their native place i.e. Mizoram. In order to protect the fundamental rights of the Brus, AITPN filed two petitions before the NHRC of India respectively on 27 November 1997 and 1 December 1997 seeking the NHRC's immediate intervention especially for the protection of the life and liberty of the Reangs/Brus. On 26 December 1997, the NHRC issued notice to the State of Mizoram and the State of Tripura. This was fol-

lowed by visit of a team of NHRC led by Mr Sudarshan Agarwal, Member of NHRC, to take stock of the conditions of the Bru relief camps and held talks with the Chief Secretaries of Mizoram and Tripura, among others. Following the on-the-spot investigation, the NHRC on 27 October 1999 directed the government of Mizoram to take back the Bru IDPs from Tripura as they were lawful inhabitants of Mizoram.

But the state of Mizoram failed to take back any Bru.

About 30,000 Brus, also known as the Reangs, had to flee from Mizoram in late 1997 due to the failure of the State government of Mizoram to fulfil its constitutional responsibility for protection of the lives and liberties of the Brus despite the organised assault on them. The Tripura government sought to make the lives of the Brus difficult by not providing humanitarian assistance in its initial stages.

The Mizoram Bru Displaced Peoples Forum (MBDPF) also filed several appeals with the NHRC, the governments of Tripura and Mizoram for early solution to their problems but to no avail.

On 26 April 2005, a Memorandum of Understanding (MoU) was signed between the Government of Mizoram and the Bru National Liberation front (BNLF), an insurgent group. In the MoU, the state of Mizoram admitted its obligation/duty to repatriate and

resettle the Reangs/Brus, but again questioned the "genuineness" and/or bonafide inhabitation of the Reangs/Brus. The MoU was another deceptive tool to deny the Brus their right to return as it had no consent of the Brus of the relief camps.

About 1,000 members of the Bru National Liberation Front (BNLF) have so far laid down their arms after the signing of the MoU with the government of Mizoram in April 2005 and the government provided them rehabilitation in Mizoram.² Yet, In March 2007, the state government of Mizoram entrusted three Mizo non-governmental organizations - the Young Mizo Association, Mizo Hmeichhe Insuihkhawm Pawl (the apex body of the Mizo women) and Mizo Zirlai Pawl (Mizo students union) - which are known for their anti-minority stands - to verify the credentials of the former Bru rebels. The NGOs reportedly identified 40 former Bru rebels as non-residents of Mizoram.³

The contention of the state of Mizoram that these Brus were not genuine residents of Mizoram is completely false and an excuse not to take them back. In October-November 2007, the Mizoram Bru Displaced Peoples Forum (MBDPF) conducted an on-the-spot survey of 5,328 families residing in the six relief camps at Kanchanpur sub-division of Tripura. According to the survey, 94.22% of the Reangs/Brus in the relief camps have at least one document each, issued by the State of Mizoram, its local authorities as well as constitutional bodies, namely, the Election Commission of India to prove that their bonafide/natural place of inhabitation is Mizoram.

Since April 2007, the state government of Mizoram held a series of

talks with the MBDPF, the last round of discussion being held on 21 November 2007, but no result emerged. In order to prevent the Brus and the AITPN from filing a writ petition before the Supreme Court of India for its intervention for early repatriation of the Brus to Mizoram, the Home Secretary, Government of Mizoram, who was the Chairman of the meeting warned the Bru leaders against going to the Supreme Court. The Home Secretary, Government of Mizoram warned the Bru representatives "not to file petition in the Supreme Court as it can create serious repercussion among the general public which may lead to further delay in the process of repatriation..."

ii. Miserable camp conditions

Presently, a total of 29,545 Brus are living in six relief camps in Tripura. Their camp-wise population is as follows: Kashirampur – 15,499 persons; Longtraikami - 5,137 persons; Hazachara - 2,593 persons; Kashau A & B - 3,305 persons; Khakchang - 1,243 persons and Hamsapara - 1,768 persons.

They have been living in miserable conditions. Since 2001, the new-born babies have been included only in the census but not in the relief cards to make them eligible for food items. Those who have become adult in the last six years continue to be given rations as minor. The ration quota is so inadequate that the Brus do not even report death as it means further reduction of the rations being provided.

Presently, a Bru adult gets cash dole of Rs 2.90 per day and a minor gets Rs 1.45 per day. 450 grams of rice is being provided to per adult Bru per day while 225 gram rice is being provided to per minor per day. This ration is highly inadequate. Yet, on 15 October 2007, the Food, Civil

Supplies and Consumer Affairs Department, Government of Tripura reduced the monthly rice allocation being provided to the relief camps under the Public Distribution System (PDS), inter alia, on the ground that there is no separate allocation of rice from the Government of India for them.

Medical facilities are almost non-existent. Only when the death of the Brus takes epidemic proportion, the doctors visit the camps. The conditions of children and pregnant women are the worst. As there are no primary health care centers, pregnant women are forced to deliver their babies at the relief camps. Maternal mortality is quite high and as are also the common diseases.

Most tube wells are out of order. The Brus are forced to drink water from the streams and ponds, thereby causing water-borne diseases. Sanitation facilities are non-existent.

The Tripura government has made a mockery of the right to education, as it has failed to provide educational facilities to the children in the camps. Only primary education under the Sarva Siksha Abhiyan (Education for All) programme has been extended to the Bru relief camps in limited proportion. There is no scope for higher education for their children. Effectively, over 5,000 minors have been denied the right to education and an entire generation of the Brus has been kept illiterate in the last ten years.

The MBDPF in its letters dated 26.06.07 and 20.07.07 addressed to the Ministry of Human Resource Development, Government of India and Sub-Divisional Magistrate, Kanchanpur, Tripura (N) respectively pointed out the lack of basic amenities etc. at the relief camps. But as of now no adequate relief has been provided.

The Mizoram government questions the genuineness of the Brus. A survey by the Mizoram Bru Displaced Peoples Forum in October-November 2007 of 5,328 families residing in the six relief camps at Kanchanpur sub-division of Tripura shows that an estimated 94.22% of the Reangs/Brus in the relief camps have at least one document each, issued by the State of Mizoram and its agencies.

In addition, there is no security for the camp inmates. It has come to light that about 35 Bru children (aged between five and 15 years) went missing from the refugee camps during the last five years. The state government of Tripura has ordered an inquiry into the incident and to take all possible steps to trace the children.⁴

iii. Step children: Discrimination against the Brus

The government of India does not have any policy to deal with the problems of displacement due to ethnic conflicts or insurgency. Hence, ad hoc policies are applied while dealing with the IDPs and those who enjoy proximity with New Delhi enjoy more benefits while providing relief. This is however not to say or suggest that the conditions of any IDP community anywhere in India is up to the level of satisfaction.

But that the discrimination against the displaced Bru indigenous peoples is glaring. This comes to light when the facilities provided to the Brus are compared with that of the

Kashmiri Pandits who have been displaced from Jammu and Kashmir.

Although the conditions of the Kashmiri Pandits are not satisfactory by any standards, yet they are being provided more benefits than the Bru displaced peoples. In addition to basic dry rations, the Kashmiri Pandits are being provided cash assistance of Rs 1,000/- per head per month subject to a maximum of Rs 4,000/- per family per month both at Jammu and Delhi relief camps. Other State governments are also providing relief to Kashmiri Pandits residing in their States as per scales fixed by them from their own budgets. In contrast, a Bru adult gets cash dole of Rs 2.90 per day (i.e. Rs 87 per month) and a minor gets Rs 1.45 per day (i.e. Rs 43.5 per month). In addition, merely 450 gram of rice is being provided to per adult Bru per day while 225 gram rice is being provided to per minor per day, which is highly inadequate. Yet, on 15 October 2007, the government of Tripura further reduced the ration supply to the relief camps on the ground that there is no separate allocation of rice from the Government of India for the Brus displaced people.

As for rehabilitation and resettlement of the Kashmiri Pandits, 5,242 two-room tenements are being constructed at an expenditure of Rs 270 crore under the Prime Minister's Reconstruction Plan for the State for all Kashmiri migrants residing in camps in the Jammu region; Rs 20 crores has been approved by Government of India for construction of 200 two-bed room flats at Sheikpora in Budgam district; Rs 10 crores has been provided to the State of Jammu and Kashmir for reconstruction and renovation of houses and shrines at Kheer Bhavani and Mattan and 18 three-room flats have been constructed at Mattan for tem-

porary stay of Kashmiri migrants till they are able to return to their houses in the Valley. On the other hand, the Brus do not get funds even to repair their bamboo huts.

In education, the benefits enjoyed by the Kashmiri migrant students include reservation of seats in technical/ professional institutions; extension of date of admission by about 30 days; relaxation in cut-off

Information obtained from the Ministry of Home Affairs under the Right to Information show that Brus face systematic discrimination in terms of access to education, health-care, housing, employment and food in comparison to the Kashmiri Pandits who were displaced under similar circumstances. Many of these issues have been challenged by Asian Indigenous and Tribal Peoples Network in a writ petition filed before the Supreme Court of India.

percentage up to 10% subject to minimum eligibility requirement; increase in intake capacity up to 5% - course wise; and facilitation of migration in second and subsequent years. But the Bru children are being provided only primary education under Sarva Shiksha Abhiyan (SSA) and they enjoy no reservation or other benefits in higher educational institutions, including professional/technical institutions.

To protect and restrain sale of properties left behind by the Kashmiri migrants in the Valley, the government of Jammu and Kashmir enacted two laws- The J&K Migrants Immovable Property (Preservation,

Protection and Restraint of Distress Sales) Act of 1997, and J&K Migrants (Stay of Proceedings) Act of 1997. In addition, 50% of the loss of immovable property, subject to a ceiling of Rs 1 lakh, is paid as compensation for the property damaged in insurgency. Union Ministry of Home Affairs has constituted a Standing Committee to review issues concerning Kashmiri migrants on a quarterly basis; the government of Jammu and Kashmir has constituted an Apex Level Committee under the Chairmanship of its Revenue, Relief and Rehabilitation Minister; and the government of Delhi has constituted a Nodal Committee with representation from Kashmiri migrants to look after the welfare of the Kashmiri Pandit displaced peoples.

On the other hand, the state government of Mizoram has not taken any measure to protect the houses, land and other properties of the displaced Brus in Mizoram. No compensation has been ever paid for damage of immovable properties of the Brus. There is no committee, either formed by State government of Mizoram or Tripura or the Government of India for the welfare of the Brus and to determine their repatriation and resettlement in Mizoram.

Many of these issues have been challenged by Asian Indigenous and Tribal Peoples Network in a writ petition before the Supreme Court of India. ■

Endnotes

1. Ensure legitimate Bru refugees: MPC, The Newslink, 24 November 2007
2. Bru refugees threaten hunger strike in Tripura, The Newslink, 7 February 2007
3. Bru identification process not going smoothly, The Newslink, 19 March 2007
4. 35 children go missing from refugee camps; probe ordered, The Shillong Times, 30 October 2007

India:

No democracy for those living on the margins

[Contribution of IWGIA and AITPN under the Universal Periodic Review of the Human Rights Council]

I. Situation of indigenous and tribal peoples on the ground

Human rights situation of the indigenous and tribal peoples in India remain grim, its future bleak. Since independence indigenous peoples were rightly seen as victims of development and encroachments by non-tribals. The pauperisation of the tribals continued unabated and unchecked. The affirmative action programmes could not simply keep the pace with the marginalization of the indigenous and tribal peoples.

Presently, the situation of the tribals fits into a classical left wing extremism. According to the figures of the Ministry of Home Affairs 21 out of 28 States are afflicted by armed conflict and majority of these States are afflicted by the Naxalite conflicts, the extreme left wing armed opposition groups. The Naxals (Maoists) are active mainly in the tribal belts in mainland India. Neither the Naxal movement is led by the tribals, nor do the demands of the Naxalites relate to the tribals. The tribal simply fit into their class-war of the Naxalites. They are victims as well as perpetrators, and the pawns of the conflict.

The government continues with its knee-jerk reactions. The Forest Rights Act, 2006 was adopted in December 2006 but it is yet to be implemented. The Relief and Rehabilitation Policy has been revised twice since 2003, the latest one was made public in November 2007. A National Tribal Policy has been in the pipeline since 2004. Now, the government has proposed to set up a Land Commission.

All the measures are up in the air. As the conflict intensifies, the tribals will get further brutalized.

a. Land alienation

The constitutional safeguards as provided in the 5th Schedule and 6th Schedule to the Constitution of India and various other State level laws which among others prohibit transfer of the lands of the tribal people have failed to prevent widespread land alienation of the tribals. The root cause of the land alienation has been the Land Acquisition Act of 1894 under which the government can exercise its sovereign power to take away any land in the name of "public purposes".

The non-tribals have also illegally occupied hundreds of thousands of acres of land belonging to tribals by force, allurement and acquiring tribal lands in the name of tribal wives after marrying them. According to the 2004-2005 Annual Report of Ministry of Rural Development of the government of India, 3,75,164 cases of tribal land alienation have been registered covering 85,52,82 acres of land in 10 States. Out of these, only 1,62,650 cases had been disposed in favour of tribals covering a total area of 4,47,314 acres while 1,54,993 cases covering an area of 3,63,493 acres of land had been decided against the tribals by the Courts on various grounds.¹

b. Development and victimization of the tribals

Indigenous/tribal peoples who constituted 8% of the total population of India as per 1991 census also constituted 55.1% of the total development project-induced displaced persons up to 1990 on account of mega developmental projects like dams, mining, industries and conservation of

nature etc.² And they were seldom rehabilitated. As India's booming economy requires more resources, indigenous/tribal peoples face more displacement.

In the last three years, the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004 has to be amended twice – in 2006 and 2007. But the National Policy on Resettlement and Rehabilitation of 2007 also failed to address the problems arising out of the State exercising its sovereign power to forcibly acquire lands of anybody under the Land Acquisition Act of 1894.

c. Failure to ensure forest rights

The National Forest Policy of 1988 recognises symbiotic relationship between forest and tribal people. Yet, the tribals have been systematically victimized under the Forest Act of 1927. When the Forest Conservation Act of 1980 came into force, hundreds of thousands of tribal people became encroachers overnight on the lands they had been living for generations. On 23 November 2001, the Supreme Court altogether stayed the regularisation of tribal villages in forest areas in the case of Godavarman Thirumalpad vs Union of India in Interlocutory Application No.703 in Writ Petition No. 202/95.

In 2006, the government of India brought the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The government of India till today has failed to notify the Rules of Procedures of the Forest Rights Act of 2006. In the meanwhile, tribals

continue to be prosecuted for accessing minor forest produce. There were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 and 30 June 2004 under different Sections of the Forest Act of 1927 in Chhattisgarh as on 8 November 2005,³ and 2,531 such cases were pending against tribals in Orissa as on 10 March 2005.⁴

d. Conflicts, human rights violations and discrimination against indigenous IDPs

Presently, 21 out of 28 States of India are afflicted by internal armed conflicts. All the areas afflicted by internal armed conflicts, except Jammu and Kashmir are pre-dominantly inhabited by indigenous and tribal peoples. They suffer serious human rights violations from both the security forces and the armed opposition groups and impunity under sections 6 of the Armed Forces Special Powers Act of 1958 and 197 of the Criminal Procedure Code has further perpetuated the human rights violations.

Indigenous/tribal peoples also constitute over 40.6% (1,86,225) of 4,58,225 conflict-induced internally displaced persons (IDPs) in India.⁵ They face discrimination in terms of basic services provided by the State. While a displaced Kashmiri Pandit received Rs 750 per month, an adult Bru indigenous person received only Rs. 2.67 paise a day i.e. Rs 80 per month.⁶

e. Status of Particularly Vulnerable Tribal Groups (PVTGs)

Many of the PVTGs have been on the verge of extinction. As per statistics of 1991, there were only 24 Sentinelese, 32 Great Andamense, 89 Jarawa, 101 Onge and 131 Shom Pen. There were only 23 families comprising about 100 members of Karbong tribe reportedly surviving in Tripura⁷ but the government of India has not recognized the

Karbong tribe as "Particularly Vulnerable Tribal Group". There are specific programmes meant for the development of the PVTGs but their implementation has been poor and the government has failed to establish independent monitoring mechanism.

f. Status of the So-called Denotified Tribal Groups

The British identified some tribal groups as "criminal tribes under the Criminal Tribes Act of 1871. The government of India identifies them as "habitual offenders" under the Habitual Offenders Act of 1952. The stigma continues including in the administration of justice. The government has established a National Commission on the Denotified Tribes but it does not have the same power and functions like the National Commission for Scheduled Tribes.

II. Assessment of India's human rights obligations and commitments

The government of India has failed to implement its obligations and commitment as provided under the Constitution and international human rights law.

AFFIRMATIVE ACTIONS

a. Non-implementation of the reservations in employment

The government failed to implement 7.5% job reservations in government sectors for the Scheduled Tribes (both in terms of recruitment and promotion) as provided under the Constitution of India. There were thousands of backlog vacancies for the Scheduled Tribes across the country. For example, according to figures available with the Ministry of Social Justice & Empowerment in September 2006, the share of Scheduled Tribes in the government services such as Group 'A' was 4.1

per cent, Group 'B' at 4.6 per cent, Group 'C' at 6.7 per cent and Group 'D' at 6.7 per cent against the reserved quota of 7.5 per cent in each group.⁸

b. Failure to implement Tribal Sub Plan

Under Article 271, the government of India is required to launch various schemes for the development of the tribals. But these schemes and programmes have remained largely poorly implemented. Funds allocated for the Scheduled Tribes have been either diverted or not utilized. Since the Fiscal Responsibility and Budget Management Act came into force in July 2004, which requires submission of utilization reports by the State governments, a total of Rs 1,522.90 crores (Rs 15,229 millions) could not be released by the Ministry of Tribal Affairs to various state governments as of December 2005 because these state governments did not submit utilization reports for the funds earlier disbursed to them.⁹ The government of India has failed to develop independent monitoring mechanism for proper utilization of the funds meant for the tribal people.

NATIONAL MECHANISMS

a. The National Commission for the Scheduled Tribes

In 2004, the National Commission for Scheduled Tribes (NCST) was established to address violations and ensure the rights of the tribals. But it has miserably failed to live up to its mandate because of inherent flaws including in appointment procedures, lack of powers to enforce its rulings or recommendation, and lack of resources. Most surprisingly, the NCST has also adopted such rules of procedures which made the Commission subservient to the State authorities. The NCST's head office has 12 officers to look after the rights of 84

million indigenous/tribal peoples.

In fact, none of the Annual Reports of the National Commission for the Scheduled Tribes have so far been made public.

b. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 has not been implemented properly. In 2005, the overall conviction rate for the crimes against the Scheduled Tribes was only 24.2%. Conviction rates under SC/ST (Prevention of Atrocities) Act) and Protection of Civil Rights Act were only 20.4% and 25% respectively.¹⁰ Many States governments have also failed to set up special courts to try the offences against the Scheduled Castes and Scheduled Tribes as provided under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

LACK OF RESPECT FOR THE SUPREME COURT

The government of India shows scant regard for the Supreme Court and a number of judgements have not been implemented.

a. Citizenship rights to the Chakmas and Hajongs

On 9 January 1996, the Supreme Court in its judgement in the case of NHRC Vs State of Arunachal Pradesh [WP 9C) No. 720 of 1995], among others, directed the government of India to process the citizenship applications of the Chakmas and Hajongs. More than a decade has passed, the government of India failed to process a single citizenship application. A fresh writ petition [W.P[C] No. 510 of 2007] for implementation of the 1996 judgement is being considered by the Supreme Court again!

b. Failure to shut down Andaman Trunk Road

In 2002, the Supreme Court directed the government to close down the Andaman Trunk Road that runs along and through the Jarawa Tribal Reserve in Andaman and Nicobar Island and threatens the survival of the Jarawas, whose population as per 1991 statistics was only 89 persons. But the government failed to shut down the Andaman Trunk Road until today.

If the government does not implement Supreme Court judgements, it is unlikely to implement the recommendations of the Committees established by it. Therefore, the recommendations of the Justice B P Jeevan Reddy Committee on the Review of the Armed Forces Special Powers Act of 1958 (2006) and Administrative Reforms Commission (2007) on the repeal of the AFSPA remain unimplemented.

III. Enhancement of State's capacity/technical cooperation

The Human Rights Council should recommend technical cooperation programmes for the National Commission for Scheduled Tribes, National Commission for Scheduled Castes, National Commission for Women, National Commission for Protection of Child Rights, National Commission for Minorities, National Commission for Denotified Tribes etc.

There should be technical cooperation programmes for collection of disaggregated data.

There should be a technical cooperation programmes for implementation of the ILO Convention No. 107 relating to indigenous and tribal peoples including increasing sensitivity of the judiciary on the rights of indigenous and tribal peoples.

IV. Cooperation with HRC, Treaty Bodies and OHCHR

The government failed to ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance, and the ILO Convention No 169 on Indigenous and Tribal Peoples in Independent Countries.

The government of India has so far failed to extend open invitation and specific invitations to many Special Procedures including Special Rapporteur on the situation of human rights and fundamental freedoms on indigenous peoples.

The periodic report to the Human Rights Committee has been pending since December 2001. The government has also failed to implement the recommendations of the Treaty Bodies. ■

Endnotes

1. Available at: <http://rural.nic.in/annual-rep0405/annualreport0405.htm>
2. Right over forest land for tribals in the offing, *The Indian Express*, 6 February 2006
3. Over two lakh forest cases against Chhattisgarh tribals to be withdrawn, *The Hitavada*, 11 November 2005
4. Naxalite bodies demand probe into police firing, *The Statesman*, 14 March 2005
5. The State of India's Indigenous and Tribal Peoples 2007, Asian Indigenous and Tribal Peoples Network
6. India Human Rights Report 2006, Asian Centre for Human Rights
7. Only 23 families still surviving, *The Sentinel*, 25 June 2005
8. Quota as affirmative tool has failed: Report, *The Pioneer*, 4 September 2006
9. 17th Report of the Standing Committee on Social Justice and Empowerment (2005-2006) May, 2006
10. 2005 Annual Report of National Crime Records Bureau, Government of India

Indonesia:

Transmigration, human rights violations and impunity

[Contribution under the Universal Periodic Review of the Human Rights Council by AITPN]

I. Human rights situation on the ground

a. Impunity: Key factor encouraging continued human rights violations

Despite establishment of democracy, the Indonesian military (TNI) plays the central role in law enforcement and therefore, law enforcement remains militaristic. Impunity to the security forces continues to encourage widespread human rights violations. Even the highest judiciary has been acting as the agent of the government by delivering anti-rights judgements. The judiciary failed to establish accountability with regard to the gross human rights violations in East Timor and the murder of prominent human rights defender Munir Said Thalib on 7 September 2004 by exonerating the main accused Polycarpus Budihari Priyanto on 3 October 2006.¹ Earlier, in September 2005, two senior police officers - Brigadier General Johnny Wainal Usman and Senior Commissioner Daud Sihombing were acquitted by a Special Human Rights Court in Makassar even after the National Human Rights Commission, Komnas HAM, found them guilty for allowing the killing of three Papuan students and the torture of over 100 others in Abepura on 7 December 2000.² Impunity is all pervasive.

b. Transmigration: The root cause of the conflicts

Serious conflicts following the fall of Soeharto regime in 1998 in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West

Kalimantan, among others displaced 1.3 million persons across the Archipelago.³ These conflicts were often described as "civil unrest", "separatist" and "inter-communal violence". In reality, these conflicts took place between the transmigrasis - an estimated 3.6 million Javanese, Madurese and Balinese - who were planted on the lands of indigenous peoples across the Islands. The Operations Evaluation Department of World Bank which studied five out of seven transmigration programmes supported by the World Bank in its report in January 1994 stated, "Transmigration had a major negative and probably irreversible impact on indigenous people, particularly the Kubu Rimba. With the extensive forest clearing now underway in T2 as part of the development of the uncleared areas to oil palm, the Kubu Rimba have been (and are being) displaced".⁴ These negative effects have never been addressed by either the World Bank or Indonesian government and continue to underlie the conflicts in Indonesia.

c. The West Papua imbroglio:

A scrutiny of the human rights situation in Indonesia cannot be complete without reference to the situation in West Papua. It does not necessarily mean debating whether Papua was allowed to exercise the right of self-determination under the Act of Free Choice. But the denial of self-determination which Indonesia promised under the Papua Special Autonomy Law No. 21/2001 and continued flagrant human rights

violations in West Papua where foreigners are not given free access must be raised.

Apart from many prisoners of conscience, West Papua continues to witness serious human rights violations. The World Council of Churches stated that the number of reported cases of extra-judicial killings and arbitrary detention and torture reached an all time high of 136 and 838 cases respectively as on 14 October 2003 since the much-proclaimed reform period (1998-2001).⁵ The Papuan human rights organisation, ELSHAM has recorded 19 summary executions including of Tolinawimban Gire, Yustinus Murib, Derek Murib, Pastor Elisa Tabuni, Moses Douw, Marinus Kogoya, Sodema Hubi, Mokaneak Kossy, Marius Marian and Yunus Giay, 18 cases of arbitrary arrests, 157 cases of torture and two cases of enforced disappearances in Papua from 2001 to 2006.⁶ Human Rights Watch documented 14 cases of human rights violations including extrajudicial killings which took place in 2005 and 2006 out of which members of the police forces were found responsible in 10 cases.⁷ The West Papua National Authority based in Australia in a memorandum to United Nations Secretary-General Ban Ki-Moon on 2 November 2007 cited specific cases of killing and enforced disappearances by the State.⁸

An estimated 20,000 Papuans have been internally displaced due to the military operations and some 13,500 refugees fled across the border to Papua New Guinea since the Papua

Special Autonomy Law was passed in 2001.⁹

d. Stop the proposed Kalimantan Border Oil Palm Mega-project:

The proposed Kalimantan Border Oil Palm Mega-project being implemented by the Indonesian State Plantation Corporation (PT Perkenunan Nusantara) requires 18 million hectares of land at the heart of Borneo. It will destroy the identity of all indigenous Dayak people in Kalimantan through displacement and will eventually reduce them to plantation labourers. While Indonesian government has put the project temporarily on hold, AITPN has received credible reports that lands from indigenous peoples are being acquired by force, fraudulent means and inducements for various private companies. In effect, the project is still on!

e. Persecution of religious minorities:

Religious freedom remains a critical issue of Indonesia not only because of the increased fundamentalism but also because of the preferential treatment given to the six officially recognized religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. "Other non-recognised religions" face discrimination and restrictions. In October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned 13 religious sects, including Ahmadiya, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs of indigenous peoples.¹⁰ On the other hand, Civil Registration Act adopted by the Indonesian House of Representatives on 8 December 2006 requires citizens to state their faith on legal documents like identity cards and birth certificates etc.¹¹

f. Persecution of human rights defenders:

Human rights activism remains dangerous, not only because Indonesian government failed to ensure accountability for the murder of Munir but also because the State has a systematic policy to persecute the human rights defenders, especially in Papua. On 1 April 2007, Franciskus Madhu (30), a Roman Catholic priest was shot dead in his church by three unidentified gunmen in Lubuagan in northern Kalinga province.¹²

The Indonesian Army, the TNI is contemptuous of Ms Hina Jilani, UN Secretary General's Special Representative on human rights defenders. Ms Jilani visited Indonesia from 5-12 June 2007 and Mr Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura; Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid, Manokwari; and Mr Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province called on her in Jakarta. On return, they were threatened by officials from the intelligence and Indonesian Armed Forces who dared to gave their names and telephone numbers. The Komnas Ham was requested to investigate but it failed to investigate these allegations.

II. State's human rights obligations and commitments

Indonesia has failed to fulfill its obligations and commitment at national and international level.

a. No recognition of ulayat, customary, rights

The Constitution of Indonesia of

1945 under Article 18 and Article 28 recognizes the "traditional communities" and their cultural identities and traditional rights and the same were affirmed by the Act No. 39 of 1999 on Human Rights. Yet a number of Acts such as the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes failed to recognize the ulayat, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian Law No. 5 of 1960. Further, Presidential Instruction No. 26 of 1998 banned the use of the terms "indigenous" and "non-indigenous" in all official documents.

b. Failure to amend the Criminal Code

The Indonesian government also failed to amend the draconian Criminal Code introduced during the Dutch colonial period which has been widely used by the government to intimidate critics. On 17 July 2007, Constitutional Court declared Article 154 and Article 155 of Indonesian Criminal Code that banned expression of "feelings of hostility, hatred or contempt" as unconstitutional.¹³ These are piecemeal solutions while the Criminal Code requires complete repeal to bring conformity with its treaty obligations as required under Articles 7 of the Act No. 39 of 1999 on Human Rights.

c. Failure to strengthen the NHRC

The Komisi Nasional Hak Asasi Manusia (KOMNAS HAM), the National Human Rights Commission and Human Rights

Tribunal remain ineffective. The Konmas Ham cannot be judged simply from its robust findings of the crimes against humanity that were perpetrated in Jakarta in 1984 (Tanjung Priok), 1997 and 1998 (Trisakti, Semanggi and the riots accompanying the fall of Soeharto); East Timor in 1999; and at least three times in Papua —2000 (Abepura), 2001 (Wasior), 2003 (Wamena) because of its inability to implement its own findings in these cases of human rights violations.

d. Failure on international human rights obligations

Considering that international laws are not self-executing, Indonesian government has failed to bring conformity with the ratified treaties at domestic level. In addition, it failed to withdraw the reservations to the Treaties ratified by it.

Indonesia has also not ratified key international instruments like Convention for the Protection of All Persons from Enforced Disappearance, ILO Convention No. 169 relating to Indigenous and Tribal Peoples in Independent Countries, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and

child pornography, and 1st and 2nd Optional protocols to the ICCPR.

III. Enhancement of State's capacity

AITPN recommends that the following areas should be considered for technical cooperation:

- Considering the absence of disaggregated data on indigenous peoples on human rights violations is an area which requires technical cooperation;
- Increased understanding of human rights for judiciary through judicial colleges;
- Establishment of a National Institutions on the traditional communities/indigenous peoples.

IV. Cooperation with HRC, Treaty Bodies and OHCHR

Indonesia has failed to issue standing invitations to the Special Procedures and extend an invitation to the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

The government of Indonesia also failed to establish mechanism for implementation of the recommendations of the Treaty Bodies.

Indonesia failed to submit various periodic reports under Convention on the Elimination of All Forms of Discrimination against Women since 13 October 2001, under International Covenant on Civil and Political Rights since 23 May 2007 and under Convention on the Rights of the Child since October 2007. ■

Endnotes

1. Indonesia: Acquittal Bolsters Impunity for Munir's Murder, HRW, October 6, 2006
2. West Papua Crisis: Don't blame the Safe Haven, Asian Centre for Human Rights, 29 March 2006.
3. Specific groups and individuals: Mass

Exoduses and displaced persons - Report of the representative of the Secretary-General on Internally Displaced Persons submitted in accordance with commission resolution 2001/54, E/CN.4/2002/95/Add.2, 15 February 2002 (Economic and Social Council)

4. Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbln0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a00d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>
5. World Council of Churches: "violations, systematically planned and executed", West Papua Action Newsletter No. 14, October 2003, available at: <http://westpapuaaction.buz.org/newsletter/no14.htm#Top>
6. No human rights improvement under special autonomy, TAPOL Bulletin No. 185, January 2007, <http://tapol.gn.apc.org/bulletin/2007/Bull185.htm#otsus>
7. Out of Sight, Endemic Abuse and Impunity in Papua's Central Highlands, HRW, available at: <http://hrw.org/reports/2007/papua0707/>
8. Source: Free West Papua.com, available at <http://freewestpapua.com/node/165>
9. "Dynamics of Conflict and Displacement in Papua, Indonesia" Edited by Eva-Lotta E. Hedman, Refugee Studies Centre, September 2007 <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper42.pdf>
10. International Religious Freedom Report 2006, Indonesia chapter, US Department of State, available at <http://www.state.gov/g/drl/rls/irfi/2006/71341.htm>
11. Indonesian House passes controversial bill into law, People's Daily Online, 9 December 2006, available at: http://english.people.com.cn/200612/09/eng20061209_330484.html
12. Indonesian Catholic priest killed in Kalinga, The Manila Times, 3 April 2007 http://www.manilatimes.net/national/2007/apr/03/yehey/top_stories/20070403top3.html
13. Court move opens up free speech, The Jakarta Post, 18 July 2007.

The Philippines:

All promises, No implementation

[Contribution under the Universal Periodic Review of the Human Rights Council AITPN]

I. Human Rights Situation on the ground

The Philippines despite having overthrown Ferdinand Marcos' regime over two decades ago still remain military oriented in its law enforcement. The armed conflicts with the Moro National Liberation Front (MNLF), Moro Islamic Liberation Front (MILF), Abu Sayyaf Group (ASG), Communist Party of the Philippines (CPP) and New Peoples' Army (NPA) in the post September 11th period give the excuse for politically motivated executions of the human rights defenders including indigenous rights activists and journalists. Even the judges were not spared!

a. Impunity for killing defenders, journalists and judges:

Extrajudicial killings and enforced disappearances remain endemic under President Gloria Macapagal-Arroyo's rule. Since President Gloria Macapagal-Arroyo came to power in 2001, hundreds of people including human rights activists, lawyers, journalists and church workers, leftist political activists and laymen have been killed. Most of the victims were affiliated with cause-oriented groups, including leaders from indigenous communities. According to Karapatan (Alliance for the Advancement of People's Rights), a total of 885 people have been killed extra-judicially and 183 persons have disappeared from January 2001 to June 2007.¹ More than 50 persons have been killed so far in 2007.²

Even the judges were not spared. About 10 judges have been killed

since Gloria Macapagal-Arroyo became President in 2001. In none of these cases, the perpetrator was brought to justice. Many judges have also been threatened.³ If the judges are not safe, who else will be safe in this country?

In the wake of severe criticism over systematic extrajudicial killings, on 21 August 2006, President Gloria Macapagal Arroyo issued Administrative Order No. 157 to set up "Independent Commission to Address Media and Activist Killings" (also known as Melo Commission) headed by former Supreme Court Justice Jose Melo to investigate the killings and to submit recommendations to the President on policies and actions, including appropriate prosecution of the guilty and legislative proposals to end such killings. Justice Melo once worked as assistant to Mrs. Arroyo's late father, President Diosdado Macapagal. President Arroyo claimed that the recommendations of the Melo Commission have been followed and 76 criminal cases on political killings were on trial, 33 being prepared for prosecution as of mid-October 2007. While six persons including a former police sergeant and a former soldier have allegedly been convicted⁴, the detailed information about those accused was not made public. Unless rank and file of the guilty security personnel is disclosed, the claims of the government cannot be taken on its face value.

Earlier on 12 May 2006, President Arroyo's administration formed the Task Force Usig, a Philippine National Police (PNP) body led by

Deputy Director General Avelino Razon. The police as expected gave a clean chit to the government. It proclaimed "There is no government policy —official or unofficial, formal or informal, written or covert — to suppress political dissent and fundamental constitutional freedoms, much less torture or murder critical journalists, leftist elements or the political opposition." It further accused 23 of the 111 activists killed of having links to the Communist Party of the Philippines (CPP) and New People's Army (NPA).⁵

b. Indigenous peoples: Disproportionate victims of human rights violations

Indigenous peoples of Philippines have been disproportionate victims of the human rights violations in the so-called war against terror. They have also been the primary targets of evictions from their ancestral domains because of unsustainable development activities like mining and logging in their lands and territories.

The indigenous rights defenders have been systematically eliminated. According to the Indigenous Peoples Human Rights Watch, 123 indigenous persons were killed from 2001 February to 11 January 2007, including 42 deaths in 2006.⁶ On 3 October 2007, environmental activist Armin Marin of Sibuyan in Romblon was killed while town residents were staging a protest against Sibuyan Nickel Property Development Corporation.⁷ On 8 June 2006, indigenous leader Markus Bangit from Cordillera was killed.⁸ There

has not been any accountability for these killings.

The adoption of the Mining Act of 1995 and the Supreme Court's decision to uphold its constitutional validity removed all legal obstacles for mining operations in the country.⁹ The Cordillera Peoples Alliance stated that 1.2 million hectares of the Cordillera's total land area of 1.8-million hectare were already covered by foreign corporations' mining applications.¹⁰ According to Federation of Indigenous Peoples of the Philippines (KAMP) more than 16,000 indigenous small scale miners and more than 100,000 indigenous peasant families will lose their livelihood sources if the government approves the mining applications. Two projects, the Teresa Gold Project in Mangkayan and Padcal Sto. Tomas Copper Expansion Project in Tuba, were already under operation.¹¹

Indigenous peoples have also been displaced as a result of the conflicts. According to Internal Displacement Monitoring Centre, an estimated 100,000 peoples were displaced from their homes due to armed conflict and human rights abuses in 2006.¹²

c. Violations of the rights of women

Women face serious human rights violations, including sexual violence. According to Senate President Manuel Villar, an average of 20 cases of violence against women is reported everyday in the country.¹³ The Philippines National Police recorded 253 rapes in January and February 2007.¹⁴ The provisions in the Code of Muslim Personal Laws which permit the marriage of girls under 18 years and polygamy; and the policy of some schools dismissing an unmarried female student (but not her male partner) if she got pregnant¹⁵ are highly discriminatory against the girls.

The women do not have proportionate representation in the Parliament. Presently, there are only four women out of 24 members in the Senate and 56 women out of the 236 members in the House of Representatives.¹⁶

d. Violations of the rights of the child

The implementation of the laws on juveniles is extremely poor. According to the Department of Social Welfare and Development, there were 4,039 children in conflict with the law in the country as of July 2007. Of these, more than 300 were detained at the New Bilibid Prisons, 590 were locked up in city jails, 406 in police detention cells, among others, in violation to the Republic Act No. 9344 also called the Juvenile Justice Welfare Act of 2006. More than 1,000 children in conflict with law were languishing in sub human conditions in jails together with adult criminals.¹⁷

According to the Salinlahi Alliance for Children's Concerns, 60 children or seven percent of the victims of extrajudicial killings recorded by the human rights group from 2001 to 2007 in the Autonomous Region of Muslim Mindanao (ARMM) were children.¹⁸

e. Violations of the rights of the prisoners

Prison conditions remain deplorable due to overcrowding, sub-standard facilities and lack of basic facilities. This has reportedly been confirmed by International Committee of Red Cross (ICRC) which is allowed to visit prisons.¹⁹ There were about 35,000 inmates who fought for space in jails maintained by the Bureau of Jail Management and Penology in 2001. The number increased to 69,500 as of October 2007. Overcrowding resulted in spread of

diseases such as tuberculosis and sanitation problems. As per government estimates, the population in government jails could reach to more than 114,930 by 2010. However, new facilities are being made.²⁰

II. State's human rights obligations and commitments

There are several provisions in the 1987 constitution and several national legislations in the Philippines which uphold the rights of the citizens including the indigenous peoples. Yet, these are not implemented in practice.

a. Constitution: Political autonomy

The 1987 Constitution of Philippines recognizes the right of Muslims and indigenous peoples of Cordillera to self-determination in the form of autonomy. But there has not been genuine autonomy for the Cordillera peoples. The indigenous peoples of Cordillera rejected two Organic Acts for Cordillera Regional Autonomy of 1990 and 1998 because of the failure of the Acts to grant self-governance and control over their land and natural resources.²¹ The same is being followed with regard to the Moros in Mindanao.

b. Draconian anti-terror law: Human Security Act of 2007

The Human Security Act (HAS) of 2007 is a disingenuous attempt to fool international community. It is actually the latest anti-terror law and empowers the security forces to detain suspects without warrant or charges up to three days which can be extended beyond three days by approval from a human rights officer under section 19 of the HSA. A conviction for terror offences could result in a 40-year jail sentence without the benefit of parole.²² Article III, Section 3 of the 1987

Constitution provides that any evidence obtained through wiretapping or voice recording cannot be used in any court proceeding. But the new law allows the state to use tape recorded evidence to pin down a suspect, in violation of the 1987 Constitution.²³

c. Indigenous Peoples Rights Act, 1997

In 1997, the government of the Philippines adopted the Indigenous Peoples Rights Act (IPRA). The Act created the National Commission on Indigenous Peoples (NCIP) mandated to formulate and implement policies, plans and programs for the recognition, promotion and protection of the rights and well-being of Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) with due regard to their beliefs, customs, traditions and institutions.

Cultural Communities/Indigenous Peoples (ICC/IPs) with due regard to their beliefs, customs, traditions and institutions.

d. Land Titling: Long delays

In the Philippines, there are an estimated five million hectares of ancestral domains exists based on combined pending claims for direct application for CADT and claims for conversion of Certificate of Ancestral Domain Claim (CADC) into Certificate of Ancestral Domain Title (CADT). The figure could be much higher as lack of accurate data on the actual extent and location of ancestral domains and lands nationwide continue to affect the efficient planning, targeting and implementation of ancestral domain and land titling.²⁴

Lack of funds and boundary disputes delay the processing of ancestral land titles. According to NCIP Ancestral Domain Bureau director Myrna Cagaoas, NCIP has issued a total of 150 Certificates of Ancestral Land Titles and 56 CADTs comprising an area of 1,114,857.17 hectares as of 4 January 2007. The NCIP could not fund all the processes since the

agency's budget for ancestral domain is merely Pesos 31 million a year.²⁵ In fact, the first CADT comprising ancestral domain of 29,444.34 hectares was issued to the Bago tribe of Bakun, Benguet only on 20 July 2002 and another covering 11,811.6 hectares was issued to the Manobo tribe of Lanuza, Surigao Province on 30 November 2002 after almost five years of IPRA implementation.²⁶

III. Enhancement of State's capacity

Most of the capacity building programmes are focused on Philippines' National Human Rights Commission. The Human Rights Council should emphasize for capacity building programmes of the National Commission on Indigenous Peoples including for titling of the lands of the indigenous peoples.

IV. Cooperation with HRC, Treaty Bodies and OHCHR

The government of Philippines has failed to extend Open invitation/Standing invitation to the Special Procedures. Since 2003, only Special Rapporteur on extrajudicial, summary or arbitrary executions (12 to 21 February 2007) has been invited to visit.

The government of Philippines has ratified most instruments but seldom implements the same at national level. The government of Philippines also failed to submit periodic reports under International Convention on the Elimination of All Forms of Racial Discrimination since 1998; under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment since 1992; under International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families since July 2004, under Optional Protocol to the Convention on the Rights of the

Child on the sale of children child prostitution and child pornography since June 2004, under the International Covenant on Civil and Political Rights since November 2006, and under Convention on the Rights of the Child since September 2007.

In a nutshell, the government of Philippines neither implements the Treaties nor has anything to report to the Treaty Bodies.

Endnotes

1. Beltran Wants to Probe Witness Protection Program, Slays and Disappearances, By Alexander Martin Remollino, *Bulatlat*, Vol. VII, No. 25, July 29-Aug. 4, 2007
2. PHILIPPINES: INDIGENOUS DEFENDERS ON THE LINE OF FIRE, AITPN, IRQ, II/11/06: 29 December 2006
3. I-Team report, Judicial reforms seek to end impunity, *Inquirer.Net*, 1 November 2007
4. Arroyo affirms: We have no tolerance for rights violations, *Inquirer.net*, 15 October 2007
5. PHILIPPINES: INDIGENOUS DEFENDERS ON THE LINE OF FIRE, AITPN, IRQ, II/11/06: 29 December 2006
6. The Pattern of Human Rights Violations of Indigenous Peoples Continues—UN Special Rapporteur Rodolfo Stavenhagen, Cordillera Peoples Alliance, available at: http://www.cpapills.org/campaigns/unsr%20updates_8feb07.htm
7. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28-November 3, 2007
8. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, *The Bulatlat*, Vol. VI, No. 24, July 23 - 29, 2006
9. Open-Pit Mining Destroyed Village in Zambales, By Abner Bolos, *The Bulatlat*, Dec. 31, 2006 - Jan. 6, 2007
10. London Anti-Mining Confab Blames GMA, TNCs for Killings, Harassment, By Arthur L. Allad-IW, Vol. VII, No. 38, October 28-November 3, 2007
11. Five Years Down the Drain for Indigenous Peoples, By Jhong Dela Cruz, *The Bulatlat*,

Violations in Maluku

- Vol. VI, No. 24, July 23 - 29, 2006
12. Children Again are Casualties of War in ARMM, By Mae-Fe Ancheta-Templa, Bulatlat, Vol. VII, No. 30, September 2-8, 2007
 13. 20 cases of abuses against women happen in RP daily, records show, Sun.Star Manila, 11 March 2007
 14. Available at: <http://www.pnp.gov.ph/stat/content/stat/2007/crime%20statistics%20jan-may2007.xls>
 15. Test for women legislators, Inquirer.Net, 13 November 2007, available at: http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529
 16. Test for women legislators, Inquirer.Net, 13 November 2007, available at: http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=100529
 17. Proper way to arrest youth offenders explained in primers, Inquirer.Net, 30 Oct. 2007
 18. Children not spared from human rights violations—activists, Inquirer.Net, 18 September 2007
 19. ICRC cites deplorable jails conditions, available at: http://www.bjmp.gov.ph/Press%20Releases/08092007_icrc.html
 20. Justice as circus, Inquirer.Net, 30 Oct. 2007
 21. Militants Skeptical of New Autonomy Push for Cordi, By Arthur L. Allad-IW, Bulatlat, Vol. VII, No. 25, July 29-Aug 4, 2007
 22. Philippines approves terror bill, BBC News, 20 February 2007
 23. Republic Act of 9372 or the Human Security Act of 2007
 24. NCIP, MTPDP for Indigenous Peoples, 2004-2008
 25. Agency set to give more domain titles, 15 February 2007, Sun.Star Bagui, available at: <http://www.sunstar.com.ph/static/bag/2007/02/15/news/agency.set.to.give.more.domain.titles.html>
 26. 2002 Annual Report of the National Commission on Indigenous People of the Philippines

Asian Indigenous and Tribal Peoples Network has been receiving consistent reports of serious human rights violations including involuntary disappearances and torture of indigenous AlifUrus in Maluku, Indonesia.

In January 2007, an activist identified as Harun Haikutty (32) of Waraloin village in Ceram in Maluku was murdered allegedly by the Indonesian company "Pt Abde Guna Bahari" owned by the country's Vice President Jusuf Kalla. The deceased was at the forefront in the protest against the illegally logging of tropical hardwoods around Waraloin village by the company.

As the protest against the logging company grew louder, Harud had suddenly disappeared. Later, his mutilated body was recovered at the location of the Pt Abde Guna Bahari company in January 2007. The dead body bore marks of stabbing and his head was severed with a chain saw. But the police failed to take any action against the company or to investigate the killing. When the family members and the villagers demanded an inquiry into the murder of Harud, the logging company threatened them with dire consequences if they did not remain silent. In protest, the family of the deceased took some chain saws and other equipments of the logging company but these equipments were forcibly recovered by the company with the

help of the Indonesian police and military.

There have also been reports of arbitrary arrest and denial of fair trial. On 28 June 2007, 25 Moluccans were arrested for performing the "Tjakalele", a traditional war dance carrying the National Flag of the Republik Maluku Selatan (Republic of the South Moluccas, RMS) before the President of Indonesia, Susilo Bambang Yudhoyono and the inter-

Asian Indigenous and Tribal Peoples Network has been receiving consistent reports of serious human rights violations including involuntary disappearances and torture of indigenous AlifUrus in Maluku, Indonesia. The situation in Malukus calls for immediate intervention of the Indonesian and international human rights community.

national delegates as a show of peaceful protest during a function in Maluku. The Indonesian President was there to officially launch the Indonesian National Family Planning programme. Apart from their aspirations for independence, the Maluku people were also against the Indonesian

National Family Planning programme (which restricted the number of children of a couple to two) because they felt that it was unnecessarily imposed on them as Maluku was not so overpopulated like the island of Java and saw it as a measure of suppression.

The police and the military immediately used force to arrest the 25 Moluccans for their peaceful protest and sent to prison. They were charged with being the members of the Republik Maluku Selatan (Republic of the South Moluccas, RMS).

A critical analysis of “Consultation Draft of the Safeguard Policy Statement” of Asian Development Bank

In October 2007, Asian Development Bank released its “Consultation Draft of the Safeguard Policy Statement” and held “Indigenous Peoples’ Consultation” in Manila, Philippines on 27 November 2007.

ADB’s Consultation Draft of the Safeguard Policy Statement in general and its “Safeguard Requirements for Borrowers/Clients on Indigenous Peoples” (hereinafter referred as “Indigenous Peoples Safeguards”) in particular are deeply flawed. A cursory reading of the Indigenous Peoples Safeguards shows that the ADB places excessive trust on the borrowers/clients at the cost of the fundamental rights of the indigenous peoples.

I. General concerns

a. Lack of borrower’s obligations under international law

The Asian Development Bank has virtually kept the borrowers/clients outside the purview of the international laws. They do not have any obligation under international law. The ADB has overlooked various mechanisms and polices on indigenous peoples approved by the United Nations including the Declaration on the Rights of Indigenous Peoples.

b. No responsibility for the ADB

The ADB has also shunned its responsibilities under international law towards the indigenous peoples once the projects are awarded to the borrowers/clients. The draft policy states that the ADB shall take legal remedies including suspension or cancellation of the project if “a

borrower/client fails to comply with legal agreements on safeguard requirements”.

The problem is that the indigenous peoples have no say in the implementation of the projects. The indigenous peoples should be made “full or at least proforma party” in the legal agreements between the Bank and the borrower/client so that the Asian Development Bank is directly responsible for the safeguards of the interests of the indigenous peoples and the indigenous peoples as stakeholders can exercise their powers to act in the event of failure on the part of the borrower/client to comply with ADB’s policy.

c. No clarity about the timing for applicability of the policy

The ADB’s Indigenous Peoples Safeguards fail to clarify the trigger timing. Specifically, whether the applicability of the “safeguard requirements” shall start prior to or after the signing of the agreement with the borrower/client remains unclear. AITPN suggested that the safeguard requirements should apply from the moment dialogue with the borrower is held (i.e. prior to the screening of a project) and the responsibility to ensure compliance shall form part of the MOU or Contract.

d. Reject ADB’s “Country Safeguard System”

The ADB lays strong emphasis, rather over-emphasis, on the Country Safeguard Systems which is defined as a “mean a country’s legal and institutional framework,

consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures, which pertain to the policy areas of environmental and social safeguards”. It is well known that across Asia, the legal and institutional frameworks of most of the countries are “anti-indigenous peoples”. In a few countries like India and the Philippines the rights of indigenous peoples recognized under the law have been systematically undermined by the judiciary especially with regard to “land for land compensation” in case of forced evictions and the right to free, prior and informed consent. The yardsticks provided by the ADB for determination for “equivalence and acceptability” of the Country Safeguard System by the ADB does not meet international obligations of the borrowers/clients.

In this regard, AITPN suggested that Country Safeguard System should be done away with and ADB should develop its own system based on international obligations of the borrowers/ the State parties.

II. Specific concerns with the “safeguard requirements on indigenous peoples”

a. Consultation is not consent

The ADB only recognizes “Free, Prior and Informed Consultation and Broad Community Support”. But “consultation” is not “consent” and this is an attempt to undermine established international law. Article 10 of the UN Declaration on the Rights of Indigenous Peoples

recognizes the “the right to free, prior and informed consent”.

The non-recognition of the right to “consent” denies the right to say “no” to any project which adversely affects indigenous peoples. Therefore, the draft safeguard requirements do not provide any provision for abandonment/cancellation of any project before its commencement.

Under Section 11, the ADB states, “When the borrower/client and the affected Indigenous Peoples have serious differences and disagreements on the project, its components, or IPP, the borrower/client should adopt good faith negotiations for them to resolve such differences and disagreements”. Therefore, the intention is clear: by hook or crook, continue with the project. This is indeed contrary to the ADB’s proposed accountability mechanism which states “ADB may exercise legal remedies including suspension, cancellation, or acceleration of maturity” for failure of compliance. If the project is opposed from the beginning by indigenous peoples why would the ADB wait till it has to resort to extreme measures? Or is it a case the ADB believes that accountability shall be an exception.

b. Screening of project: Borrower the judge and jury

The screening of the project will be conducted by the borrower/client with the help of qualified experts. Many countries still do not recognize the indigenous peoples in their countries. Hence, without any guidelines in place as to how to choose the qualified experts, the so-called experts will simply act as cronies to the borrower. In order to prevent the borrower from becoming both the judge and the jury, the ADB should conduct the

A cursory reading of the ADB’s Draft Safeguard Policy Statement in general and its “Safeguard Requirements for Borrowers/Clients on Indigenous Peoples” in particular shows that the ADB places excessive trust on the borrowers/clients at the cost of the fundamental rights of the indigenous peoples.

There is something wrong when the ADB seeks to shirk its responsibility to the borrowers.

screening with the help of indigenous experts.

c. No representation of indigenous peoples for Social Impact Assessment

The present draft provides that “When screening confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced expert(s) to carry out a full social impact assessment, and if adverse impacts on Indigenous Peoples are identified, prepare an IPP [Indigenous Peoples Planning] in conjunction with the feasibility study”.

But the indigenous peoples have been totally left out of the Social Impact Assessment study, which is so crucial if the factual adverse impacts of the project on the indigenous peoples are to be presented. While indigenous experts must be mandatorily included in the SIA team, it is also essential that the ADB must be equally responsible for the Social Assessment. The SIA study must be made public.

d. Indigenous Peoples Planning

The preparation of the Indigenous

Peoples Plan is as crucial as the Social Impact Assessment and hence the inclusion of the indigenous peoples must be made mandatory which is not the case at present. Another matter of serious concern is that the draft requirements do not provide answers as to under what circumstances a project can be rejected at any stage. The requirements assert unequivocally that a project must continue whatever be the adverse impacts on the indigenous peoples. This is quite frightening considering that the ADB does not include projects which “promotes racism” in its list of prohibited investment activities.

e. Information disclosure

This provision also provides excessive control to the borrower relating to indigenous peoples. In fact, it provides that “(i) draft IPP/Indigenous Peoples Planning Framework (IPPF) endorsed by the borrower/client, before appraisal.”

Since the borrower under the current text is mandated to conduct the SIA and prepare Indigenous Peoples Plan, the suggestion that the draft IPP too will be endorsed by the borrower is ridiculous and self-serving. In an age of the right to information, the procedure for information disclosure is quite outdated.

Instead of the borrower, the ADB should take the responsibility to disclose all the information to the public and disclosing all information in all stages must form a part of the agreement signed with the borrower.

f. Grievance mechanism

The present draft on Indigenous Peoples Safeguards provides for the creation of a grievance mechanism by the borrower against itself. In a way, the borrower is being asked to

act as judge and jury on itself! It is a case of too much “good faith on the borrower/client”. It violates internationally accepted principles on independence and impartiality on any grievance mechanism.

In this regard, AITPN recommended that the ADB should establish its own grievance mechanism consistent with internationally accepted principles on independence and impartiality on any grievance mechanism.

g. Monitoring and reporting

The draft Indigenous Peoples Safeguards provides that monitoring and reporting on the implementation of the IPP is to be done by the borrower. It also suggests that borrower hire external experts. It is clear that borrowers are not interested in developing safeguard policies on indigenous peoples. The ADB should develop independent monitoring mechanism for implementation of the IPP with the full participation of indigenous peoples’ experts.

h. Project completion

It is strange that borrower is also given the responsibility to conduct assessment of implementation of the IPP and the degree of compliance with indigenous peoples related loan covenants. The ABD must conduct the study itself, among others, for the lessons learnt for future operations involving indigenous peoples.

i. Special considerations: No land rights for indigenous peoples

The Asian Development Bank uses the ancestral domains, land and related natural resources to mislead. The critical issue is not ADB’s promises to take measures to recognize land rights as provided under para 45 and para 46 under

Special Considerations. These provisions assume that indigenous peoples do not have any land rights.

The critical issue is where indigenous peoples have their land rights recognized under normal laws or specific laws such as the 5th and 6th Schedules of the Constitution of India which guarantee land for land as compensation. Even in these cases, the ADB under para 47 proposes “resettlement” of the indigenous peoples without making any reference as to how indigenous peoples’ lands will be acquired. Obviously, the land acquisition laws shall be applied, and the ADB support acquisition of the lands of indigenous peoples irrespective of the legal and constitutional guarantees through the creation of so-called “culturally appropriate livelihood restoration measures” which are just jargons, never used by any borrower or Bank. The United Nations Committee on Economic, Social and Cultural Rights under its General Comments No. 7 relating to “the right to adequate housing: forced evictions” concluded that forced evictions are prima facie incompatible with the requirements of the Covenant (ICESCR) and laid the legal guidelines that must be respected by the borrower and the ADB.

The ADB also does not use rights based approaches with regard to commercial development of natural and cultural resources (para 48 and 49) as provided under International Covenant on Civil and Political Rights, UN Convention on Biological Diversity etc.

In fact, under Para 50 relating to physical relocation of indigenous peoples, the ADB gives the discretion to the borrower either to explore alternate project designs or

The ADB does not use rights based approaches with regard to commercial development of natural and cultural resources as provided under International Covenant on Civil and Political Rights, UN Convention on Biological Diversity etc.

carry out physical relocation of indigenous peoples without recognizing the rights of the indigenous peoples under national law or obligation of the borrowers under international law. The use of the terms “where possible” is nothing but providing the license to “relocate”. Moreover, the word “relocate” denotes the necessity to resort to such a measure which in reality is forced and therefore involves “arbitrariness and of illegality”.

It is not the borrower but the lender i.e. the ADB which must ensure that there is no force involved.

Even under para 51 relating to restriction of access to protected areas and natural resources, there is no reference to the safeguards relating to indigenous peoples as provided under the declaration of the World Parks Congress (Durban 2004) and article 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

Most surprisingly, the prohibited investment activity of Asian Development Bank does not include project or investment activities, which are prima facie racist or involve violations of the right to life. In fact, any violation of the right to life in the conflicts involving the ADB supported projects must be the threshold for the “suspension and cancellation” of the projects. ■

Bangladesh: The Army attacks Buddhism to facilitate illegal settlement in the Chittagong Hill Tracts

On 25 January 2008, indigenous Jumma peoples are scheduled to hold a large religious gathering at Sarnath Arannyo Kuthir, a Buddhist temple at Karallyachari in Khagrachari Hill district of the Chittagong Hill Tracts (CHTs). The Bangladeshi authorities have banned the meeting. It is unclear if the meeting will go ahead. As we upload this Weekly Review, the Deputy Commissioner of Khagrachari district is holding a meeting with the local Jumma elders of Karallyachari to decide the fate of the religious gathering while the Bangladesh army personnel have been seizing the bikes and other vehicles. But if the meeting takes place it is likely that the government will use violence to suppress it.

The government's actions at the temple are a microcosm of an ongoing and long established State policy to establish a homogenous Bengali Muslim society; a policy that implies the destruction of the identity of the indigenous Jumma peoples through a process of illegal and often violent settlement of the Bengali Muslim settlers.

With international community's attention focused on Bangladesh's parliamentary elections the caretaker government is free to execute the ethnic cleansing policy in the CHTs without external interference.

Background to the Sarnath Arannyo Kuthir:

The banning of the religious gathering comes as part of a pattern of wider attacks on the religion of the indigenous communities. On 14 January 2008, the Bangladesh Police arrested Reverend Arya Jyoti

Bhikkhu, Head Priest of Sarnath Arannyo Kuthir, after a settler, Abdul Majid, son of late Akad Zaman from Karallyachari cluster village, filed a First Information Report (No. 1 of dated 11/1/2008) under sections 143, 447, 379, 427, 506 and 109 of the Bangladesh Penal Code. The complainant accused

The government of Bangladesh recently sought to ban a large religious gathering at Sarnath Arannyo Kuthir, a Buddhist temple at Karallyachari in Khagrachari Hill district of the CHTs. The government's actions at the temple are a microcosm of an ongoing and long established State policy to establish a homogenous Bengali Muslim society; a policy that implies the destruction of the identity of the indigenous Jumma peoples through a process of illegal and often violent settlement of the Bengali Muslim settlers.

about 500 indigenous peoples including Rev Aryo Joti Bhikkhu and Late(!) Tumbo Chakma of committing offences of illegal gathering, theft and destruction to private properties. In reality, it appears that these indigenous Jummas were making temporary houses to accommodate the Buddhist monks and the devotees within the temple premise.

On 21 January 2008, the Additional District Magistrate of Khagrachari Mr Manindra Kishor Majumder in a

communication (je.pra.kha/je.em/tin-75/2008-63) ordered the Officer-in-Charge of Mahalachari Police Station area to issue show cause on the headmen and Karbaris (traditional village chiefs) of Karallyachari area as to why they had failed to notify the administration about the religious programme. He also ordered that the court examine the land documents of the temple and threatened legal action against the headmen and Karbaris if they failed to provide satisfactory documentation.

On 21 January 2008, Bangladesh army personnel prevented local people from constructing a makeshift bridge over the river Chengi at Karallyachari - Paujyachari area under Mahalchari Police Station. The bridge was being prepared for the religious programme.

Targeting of the Buddhist temples:

The events at Sarnath Arannyo Kuthir are not isolated. Across the CHTs, Buddhist temples have been targeted for destruction by the authorities. Indigenous Buddhist Chakmas and Marmas usually live in and around their temples. Once temples are destroyed the area can be more easily cleared for illegal plain settlers.

In August 2007, illegal settlers and the Bangladesh army personnel tried to take over the lands of the Sadhana Tila Buddhist temple of Babuchara area under Dighinala upazila in Khagrachari district. As national and international protest grew, the de-facto ruler of the country General Moeen U Ahmed visited Dighinala on 28 August 2007 and assured locals that the temple will not be

destroyed.

On 12 September 2007, Khagrachari district authorities banned the “construction of new Mosque, Hindu temple and Buddhist temple” in Mahalchari sub-division without prior permission of the authorities. While the order does not specifically target any religious group, given the long history of well documented evidence of violations against the Jumma peoples the political reality is that the order is targeted at the indigenous peoples and their religion i.e. Buddhism.

On 5 November 2007, Major Qamruzzaman, Commander of Babuchara zone, summoned Sneha Moy Chakma and Santosh Jibon Chakma to his camp and ordered them not to use loudspeakers to announce the Katin Chivor Danotsav, the Buddhist festival that follows the end of the rain retreat of Buddhist monks.

On 31 December 2007, a group of army personnel led by Captain Sohel, Commander of Shuknachari Indra Singh Karbari Para camp of the Bangladesh Army, demolished Bhujulichuk Kuthir, a Buddhist meditation centre in Lakshmichari Upazila in Khagrachari district. Captain Shohel threatened witnesses on a prior attack that: “We will not tolerate any Buddha house here; we want only Allah’s house”.

On 17 January 2008, the Commanding Officer of Baghaihat zone in Rangamati district threatened Reverend Dwip Bongshaw Bhikkhu, the Head Priest of Bishwa Moitri Bouddha Vihar at Hazachara village in Baghaihat. The Commanding officer threatened to demolish the temple if the priest did not leave.

The motivation for taking land of the Sadhana Tila Buddhist temple and

its surrounding areas is simple: further illegal settlement. Asian Centre for Human Rights (ACHR) is in possession of a letter dated 19 November 2007 issued by Md. Sulut Zaman, Deputy Secretary of the Ministry of Chittagong Hill Tracts Affairs (MoCHTA). It orders the Deputy Commissioner of Khagrachari district to illegally settle 812 families into the lands of the indigenous Jummas at Babuchara area, Baghaichari mouza under Dighinala upazila (sub- district) in Khagrachari district.

Despite the increasing rate of illegal settlement and blatant human rights violations in the CHTs, international concern is hard to discern. Even Human Rights Watch and Amnesty International omitted reference to the CHTs in their Annual reports 2007.

Land grabbing:

There are many other recent incidents of forcible land grabbing. In December 2007, illegal plain settlers led by Md. Wahab from Burighat under Rangamati district forcibly grabbed 25 acres of land belonging to the indigenous Jumma people at Hatimara village under Burighat Mouza in Rangamati district.

During March 2007-November 2007, a total of 399.22 acres of land belonging to 133 Jumma individuals and a primary school in 14 villages under four Unions of Mahalchari police station and Khagrachari Sadar police station under Kagrachari district have been illegally and forcibly grabbed by the illegal plain settlers with direct help from the army.

At a press conference in Dhaka on 19 January 2008, representatives of the

Committee for Protection of Land in Bandarban called upon the government to cancel the ongoing process of acquiring 9,560 acres of land for the purpose of expansion of Ruma Garrison. The government is presently at the final stage of acquiring 9,560 acres of land for the purpose of expansion of Ruma Garrison in three Mouzas of Galenga, Pantola and Sengum under Ruma Upazilla in Bandarban. Out of the total land to be acquired, 1,569.06 acres belong to the indigenous peoples and 4,000 acres belong to the Forest Department. The project will lead to displacement of 4,315 indigenous persons from 644 families. Way back in 1988, a joint study team of Bandarban District Administration and the Bangladesh Military stated that the project would be disastrous for the local indigenous peoples.

Background to the CHTs crisis:

The root of the CHTs crisis lies in the policies of the government of Bangladesh which seek to establish homogenous Bengali muslim society. This implies the destruction of the identity of the indigenous Jumma peoples. ‘Jumma’ is the collective name for the eleven tribes of the CHTs.

Over the last 50 years, hundreds of thousands of Bengali settlers have been moved onto Jumma land. Successive regimes in East Pakistan, and later Bangladesh have supported the influx of Bengali-speaking Muslim migrants into the 5,000 sq km Hill Tracts, which is sparsely populated in comparison to the rest of the country. The settlement has been carried out with varying degrees of violence, including in earlier periods massacre.

Today, as a result of the aggressive settlement policy, the Chittagong Hill Tracts has a population of 900,000 which is evenly divided

between Muslim homesteaders and the indigenous Jummas.

On 2 December 1997, the government of Bangladesh and the Jummas signed a peace accord that brought an end to the long running insurgency. It committed the government to removing military camps from the region and to ending the illegal occupation of Jumma land by settlers and the army.

Since emergency rule was declared in Bangladesh in January 2007, arrests, torture and extrajudicial killings of Jummas have escalated. Jumma activists have been targeted by the Bangladesh military taking advantage of the emergency. Since the declaration of Emergency on 11 January 2007, at least 50 Jumma activists have been arrested, including 20 members of Parbatya Chattagram Jana Sanghati Samity (PCJSS) and 10 members of United People's Democratic Front (UPDF).

False cases such as extortion, kidnapping, murder etc have been lodged against arrested jumma activists. During raids, the Bangladesh military plant arms and ammunitions and claim to have recovered the same from the houses of the indigenous activists to provide grounds for arrest. Most cases have been filed under Section 16(b) of the Emergency Power Rules of 2007 which denies release on bail to the accused during the enquiry, investigation and trial of the case.

Prospects:

The state has been carrying out illegal land grabbing in CHT since independence. There should be no doubt about the central government's long term intentions in the CHT. The deliberate destruction of religious centres and intimidation of the priests is part of the political strategy to realize the aim.

The Army (the de facto government) is actively involved in the ongoing settlement policy. There is no protection under the law: the rule of law in Bangladesh is subverted to political interference, weak institutions and an indifference to human rights. And the history of grave violations of human rights and ongoing arrest and torture and extra-judicial execution of Jumma activists means any protest carries a high risk.

Jumma culture centres around the religion and the community derives a sense of protection from the religion. Attacking the religion is intended to dissipate Jumma communities. The attacks facilitate a climate of fear that undermines what remains of any organized peaceful resistance to the settlement policy.

The international community:

Despite the increasing rate of illegal settlement and blatant human rights violations, international concern is hard to discern. Even Human Rights Watch and Amnesty International omitted reference to the CHTs in their Annual reports 2007.

In more ways than one, international community is responsible for the gradual extinction of indigenous Jumma peoples in Bangladesh. They had funded the programmes for implantation of plain settlers into the CHTs. While speaking about peace in the CHTs, they continue to remain mute witness as the government of Bangladesh continues to provide free rations only to the illegal plain settlers.

The failure to condemn state sponsored racism has given a free hand to the authorities in Dhaka to take measures that will eventually destroy the identity of the indigenous Jumma peoples.

Courtesy: Asian Centre for Human Rights ■

Contd. from pg 14

AITPN is presently in possession of a list of 45 Maluccans, aged between 20 and 67, who have been arrested and sent to jail for peaceful show of dissent.

They have been allegedly tortured brutally in custody. But no independent human rights or humanitarian organization has been provided access to them in detention.

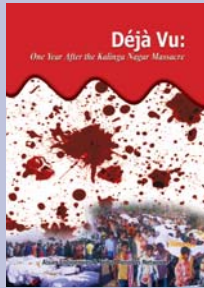
They were deprived of fair trial. Since their arrest, the prisoners were not allowed access to anybody including their lawyers and family members. Yet, the court convicted them. Six of them were given death penalty, some others life imprisonment and the rest at least 17 years of imprisonment.

On 13 October 2007 between 2.30 and 4.30 am, the Indonesian police and military arrested five AlifUrus indigenous peoples identified as Novi Adolph (32), Isak Saimima (31), Ferdinan Noya (33), Yohanis Siplolo (45) and Deni de Fretes (45) from their homes on the charges of being the members of the Republik Maluku Selatan (Republic of the South Moluccas, RMS). About 35 members of the Indonesian police and the military raided their homes in the island of Ceram but found nothing to prove their involvement with the RMS. Yet they were arrested. Similarly, on 27 October 2007 at around 4 pm, Dominggus Salamena (44) was arrested by the police and the military on the charges of being involved with the RMS.

The six AlifUrus have been imprisoned without any trial.

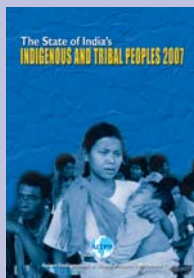
The situation in Malukus calls for immediate intervention of the Indonesian human rights organisations as well as the international human rights community. ■

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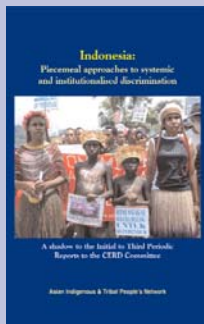
Déjà vu: One Year After the Kalinga Nagar Massacre, January 2007

This report examines the wider issues surrounding the Kalinga Nagar massacre like land alienation as a result of industrialisation, dispossession without rehabilitation and the denial of justice to the tribal peoples and government's apathy towards them. It also analyses the Rehabilitation and Resettlement Policy 2006 of the Orissa government which was enacted after the Kalinga Nagar massacre.



The State of India's Indigenous and Tribal Peoples 2007, March 2007

The State of India's Indigenous and Tribal Peoples 2007 also reports on the violations of civil and political rights in particular by the security forces and the armed opposition groups, atrocities by the non-tribals and an analysis of the non-implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; violence against indigenous women; land rights and land alienation; status of indigenous Internally Displaced Persons; repression under forest laws and denial of access to minor forest produce; non-implementation of the affirmative action programmes; status of the Particularly Vulnerable Tribal Groups and the Denotified Tribes; and the state of the right to food, health and education of the indigenous/tribal peoples of India.



Indonesia: Piecemeal approaches to systemic and institutionalised discrimination, August 2007

This is a shadow report to the Initial to Third Periodic Reports (CERD/C/IDN/3 of 4 April 2006) of the government of Indonesia submitted under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The message of the periodic reports can be summarised in one sentence: since discrimination is prohibited under Law No. 39 of 1999 concerning human rights, there are no violations of the provisions of ICERD. Indonesia stands exposed with this shadow report.

