

THE INDIGENOUS WORLD 2007

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THE INDIGENOUS WORLD 2007

Compilation and editing: Sille Stidsen

Regional editors:

The Circumpolar North & North America: Sille Stidsen

Central America and the Circum Caribbean: Alejandro Parellada & Sille Stidsen

South America: Alejandro Parellada

New Zealand, Australia and the Pacific: Sille Stidsen and Christian Erni

Asia: Christian Erni

Middle East: Sille Stidsen

Africa: Marianne Wiben Jensen

International Processes: Lola García-Alix

Cover, typesetting and maps: Jorge Monrás

English translation and proof reading: Elaine Bolton

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Interim Director: Lola García-Alix

Administrator: Anni Hammerlund



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**INTERNATIONAL WORK GROUP
FOR INDIGENOUS AFFAIRS**

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

Tel: (45) 35 27 05 00 - Fax: (45) 35 27 05 07

E-mail: iwgia@iwgia.org - Web: www.iwgia.org

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INDIA

In India, 461 ethnic groups are recognized as so-called Scheduled Tribes, and it is these “tribals” that are considered India’s indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called “central tribal belt” stretching from Rajasthan in the west to West Bengal in the east. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples’ rights to land and self-governance. These laws have numerous shortcomings, however, and their implementation is far from satisfactory. India therefore has a long history of indigenous peoples’ movements aimed at asserting their rights, which have often provoked violent repression from the state.

Legal rights and policy developments

India’s indigenous peoples continue to live on the lowest rung of the political, economic and social ladder. Apart from human rights violations perpetrated by the security forces and the armed opposition



groups, Adivasis in mainland India also face violations of their rights at the hands of non-tribals. Non-implementation of constitutional safeguards and impunity create a vicious cycle of violence against indigenous peoples.

Apart from violations of civil and political rights, indigenous peoples continue to face land alienation, displacement, and false prosecution for accessing minor forest produce. As India's booming economy requires more resources, indigenous peoples' land and resources have been further targeted. Forcible acquisition of the lands of indigenous peoples has led to frequent protest and the state has often silenced such protests through the indiscriminate use of fire-arms, as was evident from the massacre of 14 Adivasis by the Orissa Police at Kalinga

Nagar, Orissa on 2 January 2006. Policies such as the Orissa Rehabilitation and Resettlement Policy, adopted in May 2006, have failed to address the plight of the displaced indigenous peoples as this policy, *inter alia*, excluded over 1.4 million persons displaced in Orissa by the state government between 1951 and 2006.¹

The forest laws also victimise indigenous peoples. The adoption of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in December 2006 has been marked by controversy, among other things because of the inclusion of "other traditional forest dwellers". Initially, the Draft Bill referred only to the Scheduled Tribes, the indigenous peoples of India. However, the joint parliamentary committee recommended inclusion of "other traditional forest dwellers" i.e. non-tribals who have been living for at least three generations prior to the 13 December 2005 in forest areas and who depend on the forest or forest land for bona fide livelihood needs. As stated in the foregoing paragraphs, non-tribals too have been responsible for atrocities against tribals. Many of these other traditional forest dwellers are landlords and have been responsible for the pauperization of the Adivasis in many areas.

A national policy only outlines the intent of the government and is not legally binding. It cannot therefore address the shortcomings of any law, which are legally binding. On 21 July 2006, the government of India made the revised Draft National Tribal Policy² public but only gave until 10 August 2006 to comment on it. With the assistance of IWGIA, the Asian Indigenous and Tribal Peoples' Network organized a National Consultation on the Revised Draft National Tribal Policy on 6-7 August 2006 and made comments. The Ministry of Tribal Affairs, however, failed to come up with a final draft during 2006.

Following a public outcry, especially in Manipur, against the Armed Forces (Special Powers) Act of 1958, which empowers members of the Armed Forces to search and arrest suspects without a warrant or to use force against persons or property even to the point of causing death, the government of India established a Committee to Review the Act under the chairmanship of Justice Jeevan Reddy. In June 2005, the Justice Jeevan Reddy Committee submitted its report, urging a repeal of the Armed Forces (Special Powers) Act and its replacement "by a more humane Act". In November 2006, the central government sent the re-

port to the relevant state governments for their comments. This was despite the fact that the Review Committee had already taken the views of these into consideration before finalizing its recommendations, and it thus seemed to be a way of further delaying the implementation of the Review Committee's recommendations.

Indigenous peoples engulfed by increasing armed conflicts

In 2006, the government of India and various state governments in north-east India continued peace processes with a number of armed opposition groups seeking varying degrees of autonomy and the right to self-determination. Cease-fire agreements have been in force with the National Socialist Council of Nagalim (Issac-Muivah group) since 1 August 1997, the National Socialist Council of Nagaland (Khaplang group) since 28 April 2004, the National Democratic Front of Bodoland since 1 June 2005, the United People's Democratic Solidarity of Assam since 1 August 2002, Diga Halim Daoga of Assam since 1 January 2003 and the Achik National Volunteer Council in Meghalaya since 23 July 2004. However, a lack of substantive progress in the peace processes is omnipresent.

While the peace processes continue in the north-east, more and more indigenous peoples are finding themselves engulfed in increasing low-intensity armed conflicts. At present, 20 out of 28 states of India are afflicted by armed conflicts. The seven north-eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura have been afflicted by armed conflicts over demands for self-determination. By December 2006, 13 other states – Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal in mainland India were under pressure from the Naxalites, ultra-left wing armed opposition groups also commonly known as Maoists. The Naxalites claim to represent the poor, Dalits and Adivasis and demand establishment of a proletarian state in India. All these areas afflicted by Maoist conflicts are mainly inhabited by indigenous peoples.

The Naxalite movement is neither an Adivasi movement nor is it led by the Adivasis but Adivasis do form a majority of its cadres. The state governments, especially the Chhattisgarh government, also involved the Adivasis in the anti-Naxalite *Salwa Judum* peace campaign. The Adivasis have therefore been both victims and perpetrators.

Human rights violations against indigenous peoples

According to the 2005 Annual Report of the National Crime Records Bureau of the government of India, a crime against indigenous people was committed every 29 minutes. A total of 5,713 cases of atrocities against indigenous peoples were reported in the country in 2005 as compared to 5,535 cases in 2004, showing an increase of 3.2%. These included 1,283 cases reported under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 and 162 cases under the Protection of Civil Rights Act. Of the 7,981 persons who stood trial after being charged with crimes committed against Scheduled Tribes, only 1,934 or 24.4% were convicted.³

Human rights violations by the security forces: the Kalinga Nagar killings

Each year, a large number of tribals are killed by the security forces. Human rights violations, including arbitrary deprivation of the right to life, have been a common feature of law and order enforcement, especially in armed conflict situations or during the forcible acquisition of indigenous peoples' lands for industrial projects. The killing of 14 Adivasis at Kalinga Nagar, Orissa on 2 January 2006 symbolised the use of disproportionate force against the Adivasis. According to a fact-finding team of the People's Union for Civil Liberties, when the Tata Iron and Steel Co Ltd - with the help of the district administration - undertook the leveling of the land where their industrial plant was to be established on 2 January 2006, about 300-400 Adivasi protestors, including women and children, wanted to enter the rope cordon. The

police tried to stop them and used “stun shells”, along with tear gas shells and rubber bullets. Later, in the melee, one policeman, Gopabandhu Mohanty, slipped and fell into the hands of the protesting tribals and was killed by the angry crowd.

In order to avenge the killing of Mr. Mohanty, other policemen ran amok and fired indiscriminately.⁴ All this happened in the presence of the District Collector Saswat Mishra and Superintendent of Police Binoytosh Mishra.⁵ Of the victims, two were shot in the back apparently while trying to flee, and two more were shot in the forehead at point-blank range.⁶

Out of the 14 persons killed, the bodies of six of them were sent for autopsy. In a further act of barbarism, the five dead bodies handed over to the Adivasis following post mortem had had their hands chopped off at the wrist without the consent of their relatives, on the pretext of taking fingerprints.⁷ In addition, the genital organs of all six, including a woman, had been mutilated during the post mortem.⁸

The state government of Orissa ordered a judicial inquiry headed by Justice A S Naidu into the killings at Kalinga Nagar⁹ but, by the end of 2006, the inquiry was still not completed.

Violation of humanitarian laws by the armed opposition groups: massacre of Adivasi civilians by the Naxalites

The armed opposition groups were also responsible for gross violations of international humanitarian laws such as “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; and passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples” as provided under the Geneva Conventions.

In 2006, the Naxalites committed chilling massacres of the innocent tribal civilians in Chhattisgarh for their participation in the anti-Naxalite *Salwa Judum* campaign, irrespective of whether they had partici-

pated of their own volition or by force. Civilians were often targeted indiscriminately, as shown by the following three major massacres.

On the morning of 28 February 2006, 27 Adivasis were killed and at least 32 others injured in a landmine blast and subsequent attack by the Naxalites at Darbhaguda village under Konta Tehsil of Dantewada district in Chhattisgarh. The victims were returning to the relief camp at Errabore set up by the state government as a counter-insurgency measure. They were returning after attending a *Salwa Judum* meeting at Dornapal relief camp. According to the survivors, around 150-200 Naxalites emerged from the forests on both sides of the road and clubbed or stabbed to death 17 of those injured in the explosion.¹⁰

On 25 April 2006, the Naxalites kidnapped 52 tribals, including 13 women, from Manikonta village in Dantewada district of Chhattisgarh as they were returning to the relief camp at Dornapal. The victims had gone to their village to retrieve their personal belongings. The Naxalites killed 15 Adivasis in custody and released the rest. While the bullet-ridden bodies of two abducted villagers were recovered on 28 April 2006, the bodies of 13 other villagers were recovered from a deep forest with their throats cut. The bodies also bore multiple wounds.¹¹ According to the survivors, the Naxalites "selected" 13 of the hostages, tied their hands behind them, blindfolded them and then repeatedly stabbed them before slitting their throats in front of the other hostages. The hostages were allegedly denied adequate food and were forced to drink urine when they demanded water.¹²

In a pre-dawn strike on 17 July 2006, around 1,000 armed Naxalites swooped down on the Errabore relief camp in Dantewada district and massacred 31 civilians, including an infant and a 6-year-old girl, and injured 21 others.¹³ Five victims were burnt alive while others were hacked to death.¹⁴ The Naxalites also abducted 41 tribals, including 32 women, from the relief camp. On 18 July 2006, the Naxalites killed six of those abducted¹⁵ while the rest were later released.

Violence against indigenous women

Indigenous women are vulnerable to violence, including rape, from non-tribals, the security forces and the armed opposition groups.

In its 2005 Annual Report, the National Crime Records Bureau recorded a total of 640 cases of rape of tribal women in India in 2005 as against 566 cases in 2004, thus showing an increase of 13.1 per cent in 2005. Out of these 640 rape cases, 294 cases or 45.9% were reported from Madhya Pradesh alone.¹⁶ Non-tribals were responsible for these rapes. On the night of 28 May 2006, two tribal women, one of whom was identified as Rekha Bai of Khargaon district of Madhya Pradesh, were allegedly raped by activists of Bajrang Dal, a Hindu fundamentalist group, as punishment for converting to Christianity. When the victims went to the local police station to file a complaint, the police refused to register the complaint, alleging that it was false.¹⁷ On 1 June 2006, a counter complaint was filed against the victims and their husbands. The police registered the First Information Report under Section 3 of the Madhya Pradesh Freedom of Religion Act of 1968 against the victims and their husbands for allegedly converting or attempting to convert others to Christianity by use of force or by inducement or by any fraudulent means.

Indigenous women were also meted out inhuman and degrading treatment. On 21 August 2006, a group of upper-caste youths, including Mukesh Rawat and Raghuvir Rawat, allegedly stripped four tribal women at Bhevad in Punchi hills in Shivpuri district of Madhya Pradesh. The victims, who were returning home after collecting firewood from the forest, managed to escape from the clutches of the non-tribal youths and ran home naked.¹⁸

In May 2006, three persons identified as Hiralal, Sitaram and Rajesh reportedly molested a tribal woman named Munnibai, wife of Jagdish Parahi, resident of Raipura village of Kasrvad block under Khargone district of Madhya Pradesh. The accused tore her clothes, stripped her and paraded her naked in the village. Her only fault was to enquire as to why her son, Veeru, was beaten up by Sitaram, one of the accused.¹⁹

The security forces were responsible for violence against indigenous women as well. On 8 February 2006, a group of soldiers of the 36th Battalion of the Assam Rifles, a para-military force, allegedly gang raped four tribal women at Sachindraroazapara village under Gobindabari block in Dhalai District of Tripura during a search operation. One of the victims was the pregnant wife of one Pradhanjoy Tripura

who subsequently suffered a miscarriage and had to be rushed to hospital at Kailashahar.²⁰ On 15 February 2006, two of the three rape victims recorded their statements before the Chief Judicial Magistrate, confirming sexual assault by the soldiers.²¹

The armed opposition groups were also accused of the rape of indigenous women. In January 2006, Hmar civil society groups alleged that cadres belonging to the armed opposition group, the United National Liberation Front (UNLF), had raped 21 Hmar tribal girls aged between 13 and 17 years at Lungthulien village in the Tipaimukh division of Churachandpur district of Manipur.²² In March 2006, the state government of Manipur ordered a Judicial Commission of Inquiry²³ headed by retired Justice SP Rajkhowa to conduct the investigation.²⁴ On 3 June 2006, a lone-member fact-finding panel from the National Commission for Women stated that though there was no direct medical evidence of rape, secondary evidence in the form of trauma, depression, psychological disorder and various other signs associated with rape and molestation had been enough to conclude that the girls had been raped.²⁵

Land alienation

The Constitution of India, under the 5th and 6th Schedules, protects the land rights of the indigenous peoples. In addition, various state governments have adopted state-level laws prohibiting the transfer of lands from indigenous peoples to “non-tribals”. Some of these laws were adopted during British rule. Yet such guarantees have proved ineffective in preventing widespread land alienation.

Land alienation in Andhra Pradesh

Tribal lands have been alienated by force, allurement and deception. The state government of Andhra Pradesh informed the State Assembly in March 2006 that non-tribal individuals had adopted dubious methods by which to illegally occupy tribal lands in the names of tribal women, after marrying them. As many as 57,367 acres of land earmarked for the tribals in the Scheduled Areas was under the illegal occupation of non-tribal individuals in West Godavari district.²⁶

According to present estimates, non-tribals hold as much as 48 per cent of the land in Scheduled Areas of Andhra Pradesh. Since the Andhra Pradesh Scheduled Areas Land Transfer Regulation came into effect in 1959, and as of September 2005, 72,001 cases of land alienation had been detected involving 321,685 acres of land in the state. These were stated to be only half of the actual land alienations in Scheduled Areas. Out of these 72,001 cases registered under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 70,183 cases were disposed of and 47.47% of the cases involving 162,989 acres were decided against the tribals.²⁷ The state-government sponsored *Giri Nyayam*, Legal Assistance Programme for Land, had been able to restore only some 106,477 acres of land to tribals in 29,873 cases as of June 2006.²⁸

The main reasons for the majority of the cases going in favour of the non-tribals were attributed to a lack of understanding of the laws on the part of the implementing authorities, an absence of legal support to tribals and, in most cases, the tribals not being a party to the proceedings.²⁹ In one such case of alienation of tribal land, it took 37 years for Ms Kumra Munku Bai, a Gond tribal of Jaongon in Adilabad district of Andhra Pradesh, to recover her father's land from B Shankar, a non-tribal money lender, and not without the help of Member of Parliament, Mr. Jairam Ramesh. Her father, Todsam Gangu, who owned 18 acres of agricultural land, took a loan of Rupees 1400 in 1969 (today approximately US\$32) from the money lender, and agreed to lease out his land for three years. But the money lender refused to return the land. Gangu approached the authorities but, for lack of guidance and legal help, the case dragged on and Gangu passed away in the meanwhile. In March 2006, after due enquiry, the local authorities passed eviction orders against the non-tribal money lender, and handed back possession of the land, now valued at 300,000 Rupees (US\$6,800), to Manku Bai's family.³⁰

Indigenous internally displaced persons

Indigenous peoples have disproportionately been the victims of development and conflict-induced displacement. While by 2001 they constituted 8.2% of the total population, they comprised 55.1% of the 8.54

million persons displaced in India by development projects or conflict between 1950 and 1990.³¹

Development-induced displacement

The case of the Narmada Dam exemplifies the issue of the displacement of tribals without proper rehabilitation. Following the Narmada Control Authority's permission, given on 8 March 2006, to raise the height of the Sardar Sarovar Dam from 110.64 metres to 121.92 metres, *Narmada Bachao Andolan* (NBA – a people's movement against the dam) activists started a hunger strike in April 2006 to demand the rehabilitation of over 35,000 project-affected families who were yet to be resettled. A Group of Ministers comprising the Union Minister of Water Resources, Saifuddin Soz, the Union Minister of Social Justice and Empowerment, Meira Kumar, and the Minister of State in the Prime Minister's Office, Prithviraj Chauhan, visited the resettlement and rehabilitation sites, as well as the submergence sites at Khalghat, Dharampuri, Lakhangaon, Borlai 1, 2 and 3, Awalda, Piplud, Nisarpur and Picchodi in Madhya Pradesh on 7 April 2006. In their report, "A Brief Note on the Assessment of Resettlement and Rehabilitation Sites and Submergence of Villages of the Sardar Sarovar Project" to Prime Minister Dr. Manmohan Singh on 9 April 2006, the Group of Ministers held that the rehabilitation and resettlement of the project-affected families had not taken place in consonance with the orders of the Supreme Court. In order to re-write the reports of the Group of Ministers, the Prime Minister constituted the Oversight Group, headed by V.K. Shungulu. The Oversight Group euphemistically held that the lack of relief and rehabilitation and other deficiencies in most sites could be removed by developing under-developed plots and proper maintenance and repair of roads and buildings, etc. These tasks, which appeared quite simple to the Oversight Group, have not been undertaken by the authorities in the last two decades. On the basis of the Oversight Group's report, the Prime Minister of India submitted before the Supreme Court on 10 July 2006 that the construction of the dam should not be stopped and the Supreme Court allowed the raising of the height of the dam up to 119 meters in all blocks.

Various state governments have been signing Memoranda of Understanding (MoUs) for the establishment of industries, often on the lands of indigenous peoples, to attract much-vaunted foreign direct investment and investment by national corporate bodies. The Jharkhand government has reportedly signed over 42 MoU with investors since it became a state in 2000. Approximately 47,445 acres of land would be required for projects in mineral-rich Kolhan Region, which was likely to affect about 10,000 families.³² A study by the People's Union for Civil Liberties has shown that over 7.4 million tribals were displaced in Jharkhand by different projects between 1950 and 1990. Only 1.85 million of these displaced tribals have received some rehabilitation.³³ The Orissa government also signed 42 MoUs with companies between 2002 and 2005.³⁴ The MoU with Korean steel major Pohang Steel Company, signed on 22 June 2005 for the establishment of a steel plant at Paradeep in Jagatsinghpur district in Orissa with a total investment of US\$12 billion, will result in the displacement of around 4,000 tribal families.³⁵ Another 80,000 to 100,000 tribals from 50 villages in Subdega and Balisankra blocks in Jharsuguda district of Orissa faced imminent displacement due to the proposed dam on the Ib river.³⁶

In October 2005, the central government granted "forest and environmental clearance" for the 46-meter-high multi-purpose Polavaram dam being built across the Godavari River in West Godavari district of Andhra Pradesh.³⁷ The Union Ministry of Environment and Forests also admitted that about 193,350 persons would be displaced in three states – Andhra Pradesh (175,275), Orissa (6,316) and Chhattisgarh (1,766). Around 150,000 of these are indigenous.³⁸

Displaced persons are seldom rehabilitated. Since 1972 around 1,600 families in Karnataka have been evicted from the Nagarhole National Park of Kodagu district. After evicting the tribals, the state government has allegedly been promoting jungle lodges inside the park.³⁹ It was reported in early 2006 that about 250 tribal families who have been shifted out of the Nagarhole National Park to Nagapura in the last three years have not been provided with even the necessary facilities such as electricity supply, hospital, proper infrastructure, etc.⁴⁰

Conflict-induced displacement

Indigenous peoples also constitute the majority of over 600,000 conflict-induced internally displaced persons (IDPs) in India. The indigenous peoples have been displaced because of intra-indigenous peoples' conflicts, conflicts between different armed opposition groups as well as by state governments for counter-insurgency operations and other security measures such as the Indo-Bangladesh Border fencing. Indigenous peoples who have been internally displaced by these conflicts include 33,362 displaced Bodos and Santhals in Kokrajhar district and 74,123 displaced Bodos and Santhals in Gosaigaon district of Assam; about 35,000 Brus (also known as Reangs) from Mizoram who took refuge in Tripura in October 1997; and 43,740 displaced Adivasis living in the anti-Naxalite *Salwa Judum* camps in Dantewada district of Chhattisgarh.

At the beginning of 2006, there were 44,000 Karbi and Dimasa IDPs who had been displaced because of the internecine conflict between October and December 2005 that claimed over 90 lives in Karbi Anglong district of Assam. By the end of 2006, they had all returned to their villages, but without a modicum of rehabilitation. The state government of Assam even failed to provide the compensation of 300,000 Rupees (approx. US\$6,726) announced for the relatives of those killed.

Indigenous IDPs faced discrimination in terms of access to basic humanitarian services. While a displaced Kashmiri Pandit, a sect of Hindu Pandits who ancestrally originate from the Kashmir Valley, received 750 Rupees (US\$17) per month, an adult Bru IDP in Tripura State received only 80 Rupees (US\$1.8) per month.

Thousands of indigenous peoples have been displaced because of the Indo-Bangladesh border fencing along the 4,096.7 km-long border running through the five Indian states of West Bengal, Assam, Meghalaya, Tripura and Mizoram.⁴¹ About 40 villages in the Nongjri to Dawki and Dawki to Jaliakhola sectors in Jaintia Hill district of Meghalaya will fall outside the fence, on the Bangladeshi side, if the fencing work is completed.⁴² In March 2006, the state government of Meghalaya temporarily suspended the border fencing works following protests by the indigenous peoples in Khasi

and Jaintia Hills as their villages had fallen on the other side of the border due to fencing.⁴³

In Mizoram, the "Indo-Bangladesh Border Fencing Affected Families Resettlement Demand Committee of Mizoram" conducted a house-to-house survey and found that the fencing will displace a total of 5,790 Chakma tribal families, consisting of 35,438 persons from 49 villages. These villages are located on the banks of four rivers namely the Thega, Karnaphuli, Harina and Sajek rivers, which form the natural boundary between India and Bangladesh.⁴⁴ The fencing has been continuing without the provision of any assistance to the displaced Chakma families.

The establishment of military infrastructure such as firing ranges, training centres and camps also often resulted in the displacement of considerable numbers of tribals. On 22 August 2006, thousands of people, especially tribals, demonstrated before the district secretariat demanding the closure of the army firing range in Netharhat town of Latehar district of Jharkhand. The range covers 1,471 sq km spread over 245 villages of Latehar and Gumla districts. As of 24 August 2006, 30 cases had been filed by the local residents against the army relating to rape, attempt to rape, forceful removal of animals, etc.⁴⁵

The armed opposition groups were also responsible for displacement. Some 1,000 Hmars from the Lungtulien, Parbung, Tulbung and Mawlia areas of Churachandpur district of Manipur fled to Mizoram following clashes between the armed opposition groups, the Hmar People's Convention (Democratic) and the United National Liberation Front (UNLF) in January 2006.⁴⁶ They were housed at Sakawrdai relief camps in Mizoram⁴⁷ and, by the end of 2006, they had returned to their villages.

The majority of the internally displaced people could not return until now simply because of the failure of the state governments. While the Assam government took no visible steps to rehabilitate the internally displaced persons in Bodoland areas, the Mizoram government simply refuses to take back the Brus sheltered in relief camps in Tripura State on frivolous grounds.

Repression under forest laws

The indigenous peoples continued to face eviction from their traditional habitat under the Forest Conservation Act of 1980. In May 2006, the Forest Department of Tripura issued eviction notices to about 43,215 tribal families comprising around 215,000 tribals, ordering them to immediately vacate their traditional habitat pursuant to a Supreme Court directive to clear all forest land encroached upon by human settlers (read more about this in *The Indigenous World 2002-2003, 2004, 4005, 2006*). These tribal people were allotted so-called forest lands by the Revenue Department under the Tripura Land Revenue and Land Reforms Act, 1960 but the state government had failed to regularise them.⁴⁸

Thousands of indigenous people face prosecution for accessing minor forest produce, one of their means of survival since time immemorial. In November 2005, the Forest Department of Chhattisgarh reportedly decided to close 257,226 forest cases registered against 162,692 tribals between 1953 and 30 June 2004 under Sections 26, 33, 41 of the Indian Forest Act 1927 pertaining primarily to the illegal felling of trees for domestic use and ferrying of wood by bullock carts.⁴⁹ Section 3(1)(c) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognised the “right of ownership, access to collect, use, and dispose of minor forest produce which has traditionally been collected within or outside village boundaries”. But the Act failed to address the plight of those Adivasis who have been charged under the Indian Forest Act of 1927 and the Forest Conservation Act of 1980 for accessing the same minor forest produce. Nor does the Recognition of Forest Rights Act address the plight of those Adivasis who have been displaced from their habitat because of the creation of national parks.

Affirmative actions

The constitution of India provided an array of affirmative action programmes for the Scheduled Tribes and the Scheduled Castes, includ-

ing reservation in the parliament, education, employment etc. These affirmative action programmes have been instrumental in bridging the social, political and economic disparities. Yet these programmes could have further bridged the disparities had the government of India and various state governments been serious about their implementation.

On 19 October 2006, a five-judge Constitution Bench of the Supreme Court of India extended the concept of “creamy layer” to the Scheduled Tribes and Scheduled Castes for exclusion from the affirmative action programmes for those who no longer require such programmes because of their income or employment situation. The Supreme Court had previously identified the “creamy layer” only for the Other Backward Classes.⁵⁰ The judgement, if implemented, will have serious negative consequences considering that the government has consistently failed to fill the vacancies reserved for, among others, the tribals. As of March 2006, there were about 121,000 vacancies in the police force for Scheduled Castes and Scheduled Tribes across the country.⁵¹ In addition, about 20% (nearly 2,000) of the places for Scheduled Caste and Scheduled Tribe students remain vacant every year in Delhi University.⁵² Unless the government takes measures to address the Supreme Court judgement, identification of the “creamy layer” of the tribals will further deprive them of access to affirmative actions.

The budgetary allocations intended for the welfare of the tribal peoples under various welfare schemes such as the Tribal Sub-Plan, Special Central Assistance under Article 275 of the Constitution etc. are often grossly misused or underused. In the capital Delhi, as of January 2006 the state government had utilized only 7.4 million Rupees (US\$167,180) of the 53.3 million Rupees (US\$1,204,150) sanctioned for the year 2005-2006 for the scheme of free supply of stationery to Scheduled Castes\Scheduled Tribes\Other Backward Classed\Minorities in schools. Only 18,040 students benefited as opposed to the target of 74,000 students. Other scholarship schemes, including the Open Merit Scholarship Scheme, met the same fate.⁵³ The state governments often divert such unutilized funds for the benefit of the majority population.

Vulnerable tribal communities

Many tribal communities such as the Birhores,⁵⁴ Chero, Paharia and Malpahari in Jharkhand,⁵⁵ Abuj Madias and Baigas of Chhattisgarh,⁵⁶ Karbongs of Tripura,⁵⁷ the Great Andamanese, Onges, Shompens, Jarawas, and Sentinelese of the Andaman and Nicobar islands,⁵⁸ are on the verge of extinction due to the government's apathy.

In 2002, the Supreme Court ordered the closure of those parts of the Andaman Trunk Road that run along and through the Jarawa Tribal Reserve as it threatens their survival. But the Andaman Trunk Road continued to remain open in 2006, in gross contempt of the Supreme Court orders.⁵⁹ According to a report presented to the Planning Commission in August 2006, the Jarawas faced the dual challenges of losing their habitat and saving themselves from sexual exploitation by outsiders because of the construction of the Andaman Trunk Road.⁶⁰

The government of India launched specific programmes for the so-called "Primitive Tribal Groups". The National Commission for Scheduled Tribes stated in February 2006 that although the central government had sanctioned 1 Billion Rupees (US\$22.6 million) in 2003 for the development of so-called primitive tribes – the Baigas, Pahari Korbas, Abuj Madias and Birhors – in Chhattisgarh, it had failed to uplift their conditions. Even the central government-aided midday meal scheme for primary school children and the Antodaya scheme – an Indian government programme to distribute highly subsidised grain to the "poorest of the poor" among the rural population - were absent in the areas dominated by these tribes.⁶¹

Denial of voting rights to Chakmas and Hajongs

On 9 January 1996, in its judgment in the case of *National Human Rights Commission versus State of Arunachal Pradesh & Another*, the Supreme Court of India directed the government of India and the state government of Arunachal Pradesh to process the citizenship applications of the Chakma and Hajong tribals. A total of 4,627 Chakmas and Hajongs who migrated from the Chittagong Hill Tracts of then East Pakistan

submitted citizenship applications in 1997 and 1998. By the end of 2006, the government of India had failed to determine even a single application.

In addition, about 14,000 Chakmas and Hajongs, who are citizens by birth, also continued to be denied registration on the electoral roll in Arunachal Pradesh. On 23 March 2005, the Election Commission of India issued specific guidelines for registration of the eligible Chakma and Hajong voters. Instead of complying with those guidelines, the Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers who are also employees of the state government summarily rejected the applications of the Chakma and Hajong citizens for their names to be included. The Election Commission of India suspended publication of electoral rolls for all four Chakma and Hajong-inhabited State Assembly constituencies and sent a team to investigate in February 2006. By the end of 2006, the Election Commission of India had failed to give its final verdict. □

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