



# THE INDIGENOUS WORLD 2013



# THE INDIGENOUS WORLD **2013**

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# THE INDIGENOUS WORLD 2013

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# INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be 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 to West Bengal.

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. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.

Violent conflicts have broken out in indigenous areas all over the country but, above all, in the Northeast and the so-called "central tribal belt". Some of these conflicts have lasted for decades and continue to be the cause of extreme hardship and serious human rights violations for the affected communities.

The Indian government voted in favour of the UNDRIP in the UN General Assembly. However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.

## Legal rights and policy developments

**T**he controversial Land Acquisition, Rehabilitation and Resettlement Bill 2011, which seeks to replace the controversial Land Acquisition Act of 1894 and

provides for mechanisms of land acquisition and adequate rehabilitation of all affected persons, could not be passed in Parliament at the end of 2012. The Bill, introduced into Parliament in September 2011, was referred to the Parliamentary Standing Committee on Rural Development for examination. The Committee submitted its recommendations in May 2012. The Bill was then referred to a Group of Ministers (GoM) due to differences within the Cabinet over certain provisions of the Bill. On 18 December 2012, the Bill, rechristened the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, was hurriedly moved in the Lok Sabha for consideration but deferred until the Budget Session in 2013 following objections by opposition members.<sup>1</sup>

Although the Bill has positive elements, it still has provisions that allow land to be acquired in 5<sup>th</sup> Schedule Areas for private companies and in forest areas in violation of the Forest Rights Act. The draft amendments were recommended by the GoM and finalized by the Minister of Law and Justice on 29 November 2012.<sup>2</sup> The provisions referring to Scheduled Tribes (STs) are found in clauses 38A and B. Clause 38A provides, among other things (e.g. details on monetary compensation), that:

- As far as possible, no acquisition of land shall be made in the Scheduled Areas;
- Where such acquisition does take place it shall be done only as a last resort;
- The prior consent of the concerned local governments (Gram Sabha, Panchayats or the Autonomous District Councils) shall be obtained in all cases of land acquisition in such areas;
- In case of a project involving land acquisition which involves involuntary displacement, a Development Plan shall be prepared, laying down the details of procedure for settling land rights. It shall also contain a programme for the development of alternative fuel, fodder and non-timber forest produce on non-forest lands;
- The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity;
- Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of current laws and regulations shall be treated as null and void and, in the case of acquisition of such lands, rehabilitation



and resettlement benefits shall be made available to the original tribal and Scheduled Caste land owners.

Clause 38B(3) refers to the Forest Rights Act (FRA) of 2006 and simply states that where communities' rights have been recognized under the FRA these rights "shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights." Clearly, this clause is in violation of the FRA. It allows for the acquisition of forest rights following compensation of their monetary value, which defeats the very purpose of the FRA.

At the end of 2012, the much-touted National Tribal Policy could not be finalized by the Ministry of Tribal Affairs despite the Parliamentary Standing Committee on Social Justice and Empowerment urging the Ministry to expedite the matter. In its report tabled in Parliament on 19 December 2012, the Committee asked the Ministry to take “expeditious action” to finalise the National Tribal Policy and place it before Parliament within three months for its consideration.<sup>3</sup>

## **Human rights violations against indigenous peoples**

According to the latest report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,756 cases of atrocities against indigenous peoples/tribals were reported in the country during 2011 as compared to 5,885 cases in 2010, showing a marginal decrease. For 2012, the NCRB statistics are not yet available but cases of human rights violations against indigenous peoples were reported at regular intervals.

### **Human rights violations by the security forces**

In 2012, the security forces were responsible for alleged fake encounter killings, torture, arbitrary arrests and other human rights violations against indigenous peoples.

On 6 January 2012, a Bhil tribal died in custody in the Sorwa police station in Alirajpur district of Madhya Pradesh. He was picked up on 5 January 2012 by the police after being named in a First Information Report as the prime suspect in a murder case.<sup>4</sup>

On 3 February 2012, the police tortured a tribal woman, her two children and brother at Jhallar police station in Betul District, Madhya Pradesh. The victims were brought to Jhallar police station for questioning in connection with the death of the woman’s husband on 3 February 2012. The victims were allegedly subjected to physical and mental torture by the police while in their custody. Two of the victims were minors and detention of minors is illegal under the Juvenile Justice (Prevention and Care of Children) Act of 2000.<sup>5</sup>

On 2 February 2012, two persons from Karoudi Khurd village under Barhi police station in Katni district of Madhya Pradesh claimed to have lost Rs.600. They suspected a 15-year old Class VIII student. They caught the victim and locked him up in their house while villagers gathered to thrash the boy, alleging he was a thief. They then took the boy to Barhi police station. At the police station,

the victim was locked up and beaten by the policemen. When he kept denying having stolen the money, four policemen allegedly inflicted electric shocks to his genitals and he sustained severe bodily injuries. Seeing that the teenager was in a critical condition, the police took him back to the village and left him a few metres from the hamlet. The local Scheduled Cast-Scheduled Tribes atrocities police station<sup>6</sup> refused to entertain the victim's complaint against the accused policemen, stating that there was no evidence. The victim then went to the office of the Superintendent of Police but there, too, his complaint was not entertained. In a report submitted to the National Human Rights Commission, the police denied the allegation of police torture but stated that departmental action had been taken against two police officers for their inaction and negligence.<sup>7</sup>

On 22 March 2012, a 40-year-old tribal woman was raped by four persons, including two members of the India Reserve Battalion (at Keinou village in Bishnupur district of Manipur).<sup>8</sup>

From 10-12 July 2012, a 60-year-old tribal woman was allegedly illegally detained for three days and tortured at Kotwali police station in Bundi district of Rajasthan. On 10 July, the victim, a widow, was allegedly forcibly picked up by police from a sheltered home in connection with cases related to one of her sons, who was accused of theft. The victim alleged that she was not allowed to leave the police station and was detained for three days in the lock-up and tortured by male policemen during interrogation. The victim suffered injuries and could hardly walk.<sup>9</sup>

On 13 July 2012, three tribals were killed by police in an alleged fake encounter at Mowamari village under Dudhnoi police station in Goalpara district of Assam. Police claimed all three youths were members of a banned organization and killed them during an encounter. The families of the deceased alleged that they were killed in cold blood in a fake encounter after being picked up on suspicion of being militants.<sup>10</sup>

On 17 September 2012, a tribal was tortured at Ganganagar police station under Gandecherra Sub-Division in Dhalai district of Tripura. The victim belongs to the Reang community, which is identified as a Particularly Vulnerable Tribal Group. He was picked up by police along with a tribal woman from his house. The police allegedly demanded Rs. 1000 for his release. He failed to pay, however, after which he was subjected to a beating by three policemen. The victim sustained serious injuries and one of his eyes was damaged.<sup>11</sup>

On 21 December 2012, a team of security personnel in army fatigues picked up three tribals from Narayanpur Bazar under Mushapur police station in Baksa

district, Assam. On 23 December 2012, the dead body of one of them was recovered, while another one survived with multiple injuries and walked back home. However, the whereabouts of the third remains unknown. It is suspected that he was also extrajudicially killed.<sup>12</sup>

### **Human rights violations by armed opposition groups**

Armed opposition groups continued to be involved in gross violations of international humanitarian law, including killings, abductions and torture, during 2012.

The Maoists continued to kill innocent tribals on charges of being “police informers”, or simply for not obeying their diktats. During 2012, the Maoists allegedly killed several tribals, among others in Koraput, Malkangiri and Koraput districts in Orissa,<sup>13</sup> and in Sukma district of Chhattisgarh.<sup>14</sup>

Apart from killings, the Maoists were also accused of sexual crimes. On 4 November 2012, two minor tribal girls, aged 12 to 14 years, allegedly raped by suspected Maoists, were rescued by security forces from the jungles of Bijapur district in Chhattisgarh. The medical examination of the two girls confirmed sexual abuse.<sup>15</sup>

### **Alienation of tribal land**

The 5<sup>th</sup> Schedule and 6<sup>th</sup> Schedule to the Constitution of India provide stringent protection of land belonging to tribal peoples. In addition, at the state level, there is a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and providing for the restoration of alienated tribal lands to them. Yet the lands of tribals continued to be alienated.

On 26 April 2012, Minister of State in the Ministry of Rural Development stated in the Lok Sabha that 437,173 cases of tribal land alienation had been registered, covering 661,806 acres of land in the states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura. Of the 437,173 cases, 217,396 cases had been disposed in favour of tribals, covering an area of 412,865 acres. However, 190,573 cases went against the tribals, covering an area of 334,684 acres. Another 30,687 cases remained pending in the Courts, covering an area of 54,247 acres.<sup>16</sup>

## **The conditions of tribal internally-displaced people**

### **Development-induced displacement**

The government admits that displacement of Scheduled Tribe people takes place during various development projects. However, there are no official figures available regarding such displacements. The National Rehabilitation and Resettlement Policy 2007 was formulated to address the problem of displacements resulting from development projects. The Policy sets out the basic minimum requirements for all projects which lead to involuntary displacements. The policy has been circulated to various States and Union Territories for implementation.<sup>17</sup> However, the States are totally indifferent towards the plight of the tribals, who have been denied rehabilitation and compensation when their lands have been acquired for development projects.

### **Conflict-induced displacement**

In 2012, the government failed to ensure proper repatriation and rehabilitation for conflict-induced internally-displaced people (IDP), including tribals.

In 2012, Assam witnessed another round of communal clashes between the Bodo tribals and Muslims in Bodoland Territorial Area Districts (BTAD) consisting of Baksa, Chirang, Kokrajhar and Udalgiri districts and, since July, neighbouring Dhubri district. The clashes displaced over 400,000 people from both the Bodo tribal and Muslim communities.<sup>18</sup> The state government started the rehabilitation process but hundreds of IDP families from both communities were still living in relief camps at the end of the year.

At least 30,000 Bru (also called Reangs) tribals of Mizoram continued to languish in the relief camps in Tripura at the end of 2012. The fourth phase of repatriation of Bru refugees, which began on 26 April 2012, ended in failure<sup>19</sup> despite the visit of then Union Home Minister P. Chidambaram to Tripura and Mizoram.

The plight of at least 30,000 Gutti Koya tribals of Chhattisgarh<sup>20</sup> who are living in miserable conditions in Khammam, Warangal and East Godavari districts of Andhra Pradesh continued to be deplorable. For example, the Gutti Koyas living in temporary accommodation in Khammam district have been denied Scheduled Tribe certificates in the district. Revenue officials have been refusing to issue the certificates to them as the Gutti Koya tribal group is not included on the list of Scheduled Tribes in Andhra Pradesh even though they are classified as tribals in Chhattisgarh. As a

result, the tribals were not able to access government schemes and justice under Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.<sup>21</sup>

## Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the FRA) has been touted as progressive legislation aimed at undoing the “historical injustice” committed against the forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been living in the forests for centuries. However, the implementing rules for the FRA, passed in 2007, have ended up perpetuating the historical injustices.

As of 31 January 2012, a total of 3,168,478 land rights claims had been received across the country. Of these, a total of 2,724,162 cases (85.98% of the total received) had been disposed, out of which 1,251,490 titles (45.94%) had been distributed and 1,472,672 claims (54%) rejected. In terms of the rejection rate, Uttarakhand is at the top with 100%, followed by Himachal Pradesh (99.62%), Bihar (98.12%), Karnataka (95.66%), Uttar Pradesh (80.48%), West Bengal (73.12%), Maharashtra (67.91%), Madhya Pradesh (63.32%), Chhattisgarh (55.86%), Jharkhand (53.13%), Assam (50.94%), Rajasthan (49.85%), Andhra Pradesh (47.76%), Gujarat (30.95%), Orissa (30.75%), Kerala (16.95%), and Tripura (15.07%). The rejection rate of 11 states is above 50 per cent.

On 6 September 2012, the Government of India notified the FRA Rules 2012. The amended rules are certainly an improvement but the distribution of titles continues to be slow. By the end of 2012, the claims filed had increased to 3,237,656. However, only 27,686 titles had been distributed in 11 months, which brought the total of distributed titles up to merely 1,279,076. With 1,512,254 claims rejected, the rejection rate continued to be higher than the distribution rate.<sup>22</sup>

In its report submitted to Parliament on 19 December 2012, the Parliamentary Standing Committee on Social Justice and Empowerment, while taking note of the slow progress in distribution of title deeds under the ST and Other Traditional Forest Dweller Act, asked the Ministry of Tribal Affairs to involve itself in the implementation process and appropriately guide the states. The report stated, “State governments should be sensitised about their obligations

towards the Act and persuaded to initiate action at the earliest so that the work of distribution to title deeds take off without any further delay.”<sup>23</sup>

## **Slow implementation of reservation in employment**

In a welcome development, the Constitution (117<sup>th</sup> Amendment) Bill 2012 was passed by the Rajya Sabha, the Upper House of Parliament, on 19 December 2012. The Bill, which provides for government job promotions to be reserved for SCs and STs in proportion to their population, was approved by the Union Cabinet on 5 September 2012.<sup>24</sup> A Special Promotion Drive for SCs, STs and Other Backward Castes (OBC) since November 2008 had failed to achieve its target. According to a Note from the Department of Personnel and Training to the Cabinet, various departments and State-run undertakings had only been able to fill 17,898 of the 30,968 vacancies identified in the promotion quota as of March 2012.<sup>25</sup>

The situation was similar in direct recruitment. As of March 2012, various government departments had provided jobs to 27,540 SCs, STs and OBCs as opposed to an identified backlog of 46,552 vacant posts.<sup>26</sup>

## **Development fund for tribals reduced**

In its report tabled in Parliament on 19 December 2012, the Parliamentary Standing Committee on Social Justice and Empowerment expressed the “utmost concern” at lower funding allocations for tribals in 2012-13. The Committee pulled up the Ministry of Tribal Affairs for not seriously pursuing the matter with the Ministry of Finance and the Planning Commission with regard to a higher budget and asked the Ministry to appraise it of the action taken by it in this regard. The Committee had noted that, in contrast with the 96.650 billion Rupees (1.86 billion US\$) requested for its annual plan by the Ministry during the year 2012-13, the Planning Commission had allocated only 40.9 billion Rupees (US\$ 786 million). As a result of the reduced allocation, which is less than 50 per cent of the requested budget, proposed new initiatives such as Adivasi Bhavan, the National Tribal Information System, or the planned 114 new

schools-cum-vocational training centres in Left-Wing Extremist tribal districts, could not be implemented during the year.<sup>27</sup> ○

## Notes and references

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- 27 Thirtieth Report on the action taken by the Government on the observations/recommendations contained in the Twenty-fifth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha) on Demands for Grants (2012-13) of the Ministry of Tribal Affairs.

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## THE INDIGENOUS WORLD 2013

This yearbook contains a comprehensive update on the current situation of indigenous peoples and their human rights, and provides an overview of the most important developments in international and regional processes during 2012.

In 67 articles, indigenous and non-indigenous scholars and activists provide their insight and knowledge to the book with country reports covering most of the indigenous world, and updated information on international and regional processes relating to indigenous peoples.

*The Indigenous World 2013* is an essential source of information and indispensable tool for those who need to be informed about the most recent issues and developments that have impacted on indigenous peoples worldwide.

