



# THE INDIGENOUS WORLD 2014



# THE INDIGENOUS WORLD **2014**

Copenhagen 2014

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# CONTENTS

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<b>Editorial</b> .....	10
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## PART I – COUNTRY REPORTS

### Arctic

Greenland.....	20
Russian Federation .....	26
Inuit Regions of Canada.....	37

### North America

Canada.....	44
United States of America.....	54

### Mexico and Central America

Mexico .....	66
Guatemala.....	76
Honduras.....	85
Nicaragua.....	93
Costa Rica.....	101

### South America

Colombia .....	112
Venezuela.....	123
Suriname.....	135
French Guyana.....	142
Ecuador .....	148
Peru.....	159
Bolivia.....	167
Brazil .....	176
Paraguay .....	186
Argentina .....	195
Chile .....	203

## **The Pacific**

Australia .....	216
Aotearoa (New Zealand) .....	223

## **East and South East Asia**

Japan.....	232
China .....	239
Taiwan .....	247
Philippines .....	254
Indonesia.....	263
Malaysia .....	276
Thailand.....	284
Cambodia .....	290
Vietnam .....	299
Laos.....	305
Burma.....	313

## **South Asia**

Bangladesh .....	322
Nepal .....	330
India.....	336
Nagalim .....	347

## **Middle East**

Israel.....	354
Palestine.....	359

## **North Africa**

Morocco.....	366
Algeria .....	372

## **West Africa**

Mali.....	378
Niger .....	388

## **East Africa**

Ethiopia .....	396
Kenya .....	400
Uganda.....	411
Tanzania.....	416

## **Central Africa**

Rwanda .....	426
Burundi.....	430
Republic of Congo.....	435
Democratic Republic of Congo (DRC).....	442
Gabon.....	448
Cameroon.....	453

## **Southern Africa**

Namibia .....	460
Botswana.....	468
Zimbabwe.....	475
South Africa.....	482

## **PART II – INTERNATIONAL PROCESSES**

World Conference on Indigenous Peoples .....	490
Alta Outcome Document .....	497
World Conference of Indigenous Women .....	508
UN Permanent Forum on Indigenous Issues .....	512
UN Special Rapporteur on Indigenous Peoples .....	519
UN Expert Mechanism on the Rights of Indigenous Peoples .....	526
UN Human Rights Council .....	531
UN Framework Convention on Climate Change .....	537
Convention on Biological Diversity .....	545
World Heritage Convention.....	552
Business and Human Rights .....	560

Post 2015 Development Agenda and the Sustainable Development Goals .....	567
Inter-American Human Rights System .....	572
African Commission on Human and Peoples' Rights .....	578
Association of Southeast Asian Nations .....	586
The Indigenous Peoples' Forum at IFAD .....	590

### **PART III – GENERAL INFORMATION**

About IWGIA.....	594
IWGIA publications 2013 .....	595

# 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 a long history of indigenous peoples' movements aimed at asserting their rights.

Over the years, violent conflicts have broken out in indigenous areas all over the country but, above all, in the Northeast and in the 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.

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. 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.<sup>1</sup>

## Legal rights and policy developments

In one of the most important developments of the year, the Government of India notified the Right to Fair Compensation and Transparency in Land Acquisition,





Rehabilitation & Resettlement Act, 2013 (LARR Act) on 27 September 2013.<sup>2</sup> The LARR Act<sup>3</sup> lays down various provisions and directions to be followed while acquiring land in the country and provides for rehabilitation and resettlement. It replaces the draconian Land Acquisition Act of 1894. The LARR Act has special provisions for the Scheduled Tribes (STs) and the Scheduled Castes.

Article 41 states that: “As far as possible, no acquisition of land shall be made in the Scheduled Areas” and “Where such acquisition does take place it shall be done only as a demonstrable last resort” (paragraphs 1 and 2) Furthermore, it provides that in case of acquisition or alienation land in the Scheduled Areas, the prior consent of the concerned local governments (Gram Sabha or the Panchayats or the autonomous District Councils) shall be obtained in all cases.

In a project involving land acquisition that includes the involuntary displacement of Scheduled Castes or Scheduled Tribes, a development plan shall be prepared including, among other things, the details of the procedure for selling land, and a programme for developing alternatives for fuel, fodder and non-timber forest products on non-forest lands.

The Act defines the procedures for paying compensation and provides that the affected families shall be resettled “preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity” (paragraph 7).

Furthermore, Article 41 includes a provision by which any alienation of lands belonging to members of the Scheduled Tribes and Scheduled Castes conducted in disregard of existing laws and regulations “shall be treated as null and void” (Article 9). It deals with fishing rights in hydro-electric project areas and additional compensation payments in case of resettlement outside the district.

Article 42 ensures the continuation of reservation benefits for members of Scheduled Tribes and the Scheduled Castes in the resettlement area and provides that families belonging to Scheduled Tribes who are residing in areas covered by the Fifth Schedule or the Sixth Schedule to the Constitution and are then relocated outside those areas will continue to enjoy the “statutory safeguards, entitlements and benefits” in the resettlement areas regardless of whether the resettlement area is a Fifth or Sixth Schedule area or not. Finally, this article provides that any rights obtained by a community under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 “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.” (Article 3). The LARR Act comes into force on 1 January 2014.

On 14 August 2013, in furtherance of its commitment and with a view to creating conditions that are conducive to the development of the tribal communities, the Government of India constituted a High Level Committee (HLC) to prepare a position paper on the current socio-economic, health and educational status of Scheduled Tribes (STs) and to suggest a way forward.<sup>4</sup>

Immediately following the establishment of the HLC, the Ministry of Health and Family Welfare reportedly established another Expert Committee to draft a “national framework and roadmap to improve the appropriateness, access, and quality of health services among the tribal population”. The Expert Committee

was asked to submit its report within six months,<sup>5</sup> exactly the same timeframe as given to the HLC.

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

Atrocities against indigenous peoples are increasing. According to the latest report of the National Crime Records Bureau of the Ministry of Home Affairs, a total of 5,922 cases of atrocities were reported in the country during 2012 as compared to 5,756 cases in 2011, an increase of 2.88 percent. Of the total 5,922 cases, 1,311 were registered under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989, while 729 cases were rapes and 156 were murders, among others. The NCRB statistics are not yet available for 2013. These are only the cases of atrocities committed by non-tribals that are reported and do not include cases of human rights violations by the security forces.

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

In 2013, the security forces continued to be responsible for fake encounter killings, torture, arbitrary arrests and other human rights violations against indigenous peoples. A few of these cases are reported here to provide an idea of the scope of human rights violations committed by the security forces. In February 2013, five tribals, including a minor, were illegally detained at the Tamulpur police station in Baksa district of Assam without being taken before the Court or Juvenile Justice Board. The police picked them up for questioning after an engineer was abducted by cadres of a banned insurgent outfit.<sup>6</sup>

In March 2013, two tribal sisters were raped by a police officer identified as Norul Islam, Officer-in-Charge (OC) of Ampati police station in South Garo Hills district of Meghalaya. Both victims were stopped by a police patrol party when they were on their way to the local village market. Thereafter, the victims were taken to the police station where they were subjected to interrogation and raped at gun point. In May 2013, the accused again forcefully entered the house of the two victims and raped them at gun point. The accused had threatened the victims and their family with dire consequences if they made the matter public. The father of the victims finally lodged a complaint with the police on 1 June 2013<sup>7</sup> following

which a case was registered at Ampati police station. However, at the end of 2013 the accused absconded.<sup>8</sup>

On 1 April 2013, an Adivasi man died following alleged torture by the Army at No.1 Jamuguri village under Tamulpur police station in Baksa district of Assam. The deceased was picked up at around 11.30 pm by a group of army personnel who entered his house on the pretext of searching for arms. He died on the morning of the next day. Family members allege that the deceased died due to torture in army custody.<sup>9</sup>

On the intervening night of 17-18 May 2013, eight tribals, including three minors, were killed when the combined team of Central Reserve Police Force, Chhattisgarh Armed Force and Police at Edakmetta village under Gangalur police station in Bijapur district of Chhattisgarh fired on a village group during an anti-Maoist operation. The deceased, along with the villagers, had gathered to celebrate Beej Pandum, a festival heralding the beginning of the farming season. The security forces claimed the anti-Maoist operation was conducted following receipt of an intelligence report of a large number of Maoists holding a meeting in the village and claimed that the deceased could have been killed in crossfire between the security forces and Maoists.<sup>10</sup>

On 8 December 2013, a tribal was killed by a joint team of army and police at Kumarsali village under Bijni Police Station in Chirang district of Assam. The deceased was a Class 12 student. Family members alleged that in the early morning of 8 December 2013, the deceased had gone to the paddy field to fetch the plough, where he was shot dead by the joint team on suspicion of being a member of a banned insurgent group.<sup>11</sup>

On the intervening night of 10-11 December 2013, two tribal boys aged 12 and 15 years of age were killed in an alleged fake encounter by a joint team of the army and the police at Raidwngbari village under Runikhata Police Station in Chirang district of Assam. A 13-year-old boy sustained serious injuries in the incident. The joint team reportedly raided the house of a suspect and the minors were killed when they opened fire during the raid. The joint team claimed that the deceased were members of a banned armed opposition group and that they were killed in an encounter. However, villagers alleged that the boys were innocent and shot dead at point blank range.<sup>12</sup>

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

Armed opposition groups, in particular the Maoists, continued to be responsible for gross violations of international humanitarian law, including killings, during 2013. The Maoists continued to kill innocent tribals on charges of being “police informers”, or simply for not obeying their diktats. Some of the alleged killings by the Maoists in 2013 took place at Umarpal village in Rajnandgaon district, Chhattisgarh on 27 January;<sup>13</sup> at Laheri village in Gadchiroli district, Maharashtra on 27 March;<sup>14</sup> at Kurmanur village in Malkangiri district, Odisha, on 2 April;<sup>15</sup> at Kianga village in Malkangiri district, Odisha on 24 April;<sup>16</sup> at Murkinar village in Bijapur district, Chhattisgarh in 21 May;<sup>17</sup> at Materu village in Malkangiri district, Odisha on 24 October;<sup>18</sup> and at Bailigumma village in Malkangiri district, Odisha on 19 November;<sup>19</sup> among others.

Sex crimes and abuse against women and girls by Maoists continued to be reported in 2013. In October 2013, some Maoists - including women - who surrendered to the police in Odisha, alleged that top Maoist leaders were sexually exploiting the girls. One of the Maoist women who surrendered alleged that the Maoists kidnap innocent village girls and, after enlisting them into Dalams (armed squads), exploit them physically.<sup>20</sup>

### **Alienation of tribal land**

The laws prohibiting the sale or transfer of tribal lands to non-tribals and restoring alienated tribal lands remained ineffective over the year as the lands of tribals continued to be alienated. There is no information as to how many alienated lands have been restored. The Ministry of Rural Development has not published the status of tribal land alienation under the heading “Prevention of Alienation and Restoration of Alienated Tribal Lands” in its Annual Reports since 2007-2008.<sup>21</sup> There is obviously a lack of seriousness being shown to the issue of restoring alienated land. For example, in October 2013, the Chief Secretary of Kerala stated that only 530 hectares of alienated land would be restored to the tribal people of Attappady Hills in Kerala under the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975 as amended in 1996, while as many as 10,796.16 acres of land had been alienated according to a government survey.<sup>22</sup>

## **The conditions of the internally displaced tribal peoples**

### **Development-induced displacement**

The government admits that displacement of Scheduled Tribe people takes place in connection with various development projects. However, there is no official figure available of displacement caused by development projects. The states are indifferent towards the plight of the tribals and they are denied proper rehabilitation and compensation. For example, tribals who were displaced by the Indira Sagar irrigation project in Andhra Pradesh still had not been rehabilitated as of May 2013.<sup>23</sup>

### **Conflict-induced displacement**

Tribals suffer disproportionately from involuntary displacement as a result of armed conflicts. At the end of 2013, around 27,000 Bru tribals from Mizoram continued to live displaced in six relief camps in Tripura (see previous issues of *The Indigenous World*), and around 20,405 tribals were living in three districts of Bijapur, Sukma and Dantewada of Chhattisgarh.<sup>24</sup>

The conditions of the IDPs in the relief camps remained deplorable. The camps in Chhattisgarh were without basic amenities. In November 2013, the Asian Centre for Human Rights, a human rights organization, was informed during a field visit that the government was supplying food and other amenities only to Jagargunda relief camp in Sukma district. The residents of the remaining camps were having to manage for themselves.<sup>25</sup> In relief camps in Tripura, Bru IDP children were not issued birth certificates. This denial of birth certificates was raised by a team of the National Commission for Protection of Child Rights that visited one of the camps, namely Naisingpara relief camp, on 25 and 26 October 2013.<sup>26</sup>

### **Repression under forest laws**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter 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 FRA rules have simply ended up perpetuating the historical injustices.

According to information available from the Ministry of Tribal Affairs, a total of 3,539,793 claims had been received across the country by 30 September 2013. Of these, a total of 3,078,483 (86.96% of the total received) have been disposed of, out of which 1,406,971 titles (1,386,116 individual and 20,855 community titles) or 39.74% were distributed and 1,671,512 claims (1,661,325 individual and 10,187 community titles) or 54.29% were rejected.<sup>27</sup> Eleven states, namely Uttarakhand, Bihar, Karnataka, Himachal Pradesh, Uttar Pradesh, West Bengal, Maharashtra, Madhya Pradesh, Chhattisgarh, Jharkhand and Assam, had rejection rates of over 50 percent.<sup>28</sup>

The benefits of the FRA have been denied to many tribals. For example, tribals belonging to the Chakma community in Cachar and Nagaon districts of Assam are denied their rights. They are treated as encroachers and live under threat of eviction. On 11 April 2013, the houses of several Chakma tribals were burnt and destroyed by a team from the Forestry Department during an eviction in Nagaon district of Assam.<sup>29</sup>

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

The Scheduled Tribes (STs) continue to be inadequately represented in the posts and services of central and state-level government. In fact, the STs are the most deprived. As of 8 May 2013, there was a backlog of vacancies for STs with central government of 12,195 posts, followed by Other Backward Classes with 8,332 posts and the Scheduled Castes with 6,961 posts.<sup>30</sup>

On 23 May 2013, the Union Cabinet, presided over by Prime Minister Dr Manmohan Singh, approved a Special Recruitment Drive to fill the backlog in reserved vacancies, including that for the STs, by 2013.<sup>31</sup> Earlier, on 4 January 2013, the Ministry of Personnel, Public Grievances and Pensions issued instructions to appoint Liaison Officers in each Ministry and Department to enforce the policy and orders on reservation in central government posts and services.<sup>32</sup> This was an acknowledgement of the consistent failure of the government to properly implement the reservation policy.

There is no reservation policy in the private sector for weaker sections of the community, including Scheduled Tribes. Instead of reservation, the private sector

has made a commitment to the concept of affirmative action through the implementation of various social justice schemes for these sections of the population. However, the action taken to implement this affirmative action programme on the part of the private sector has remained far from satisfactory. In April 2013, Prime Minister Manmohan Singh made a statement indicating that “affirmative action must not remain simply a paper exercise, but a living reality”.<sup>33</sup>

## Development fund for tribals diverted

The Government of India has been implementing various schemes for the Scheduled Tribes, including the Tribal Sub-Plan (TSP), since the Fifth Five-Year Plan (1974-1979). These programmes have, however, failed to achieve their objectives. Huge amounts of TSP funds have either been diverted and misused or remained unspent. Because of this diversion of TSP funds, tribals have been deprived of the socio-economic development envisaged in the plan. Central ministries and departments have been diverting funds meant for targeted TSP into universal schemes or programmes that have little to do with the welfare of tribals.<sup>34</sup>

In December 2013, the Legislative Assembly of Karnataka passed the “Karnataka Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilisation of Financial Resources) Bill 2013 with the aim of preventing the diversion of funds and of spending the funds allocated on schemes that directly benefit the Scheduled Caste and Scheduled Tribe population.”<sup>35</sup> ○

## Notes and references

- 1 Despite the fact that Adivasi, a term commonly used in India, means “original people”, the Government of India claims that, due to its long and complex history of migration and exchange and mixing of cultural and physical traits, it is not possible to identify any group as “indigenous” in relation to other groups, and that therefore all ethnic groups currently living in India are equally “indigenous”. See Erni, C. (ed.) 2008. *The Concept of Indigenous Peoples in Asia*. Copenhagen: IWGIA; p. 367ff
- 2 See <http://indiacode.nic.in/acts-in-pdf/302013.pdf>
- 3 The LARR Act was passed by the Lok Sabha (lower house of the Indian Parliament) on 29 August 2013 and in the Rajya Sabha (upper house of the Indian Parliament) on 4 September 2013
- 4 Notification available at: <http://tribal.nic.in/WriteReadData/userfiles/file/highlightPMO.pdf>
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- 6 Information received from Asian Centre for Human Rights.
- 7 See "Rape accused Police officer escapes custody", *Meghalaya Times*, 2 June 2013, available at: <http://meghalayatimes.info/index.php/front-page/19960-rape-accused-police-officer-escapes-custody>
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- 9 Information received from Asian Centre for Human Rights.
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- 14 See "Naxals kill tribal youth on suspicion of police informer", *The Times of India*, 28 March 2013, available at: <http://www.hindustantimes.com/india-news/naxals-kill-tribal-youth-on-suspicion-of-police-informer/article1-1033462.aspx>
- 15 See "Rebels kill two 'informers'", *The Telegraph*, 26 April 2013, available at [http://www.telegraphindia.com/1130426/jsp/odisha/story\\_16827394.jsp#.UwMtMWKSqQM](http://www.telegraphindia.com/1130426/jsp/odisha/story_16827394.jsp#.UwMtMWKSqQM)
- 16 See "Rebels kill two 'informers'", *The Telegraph*, 26 April 2013, available at [http://www.telegraphindia.com/1130426/jsp/odisha/story\\_16827394.jsp#.UwMtMWKSqQM](http://www.telegraphindia.com/1130426/jsp/odisha/story_16827394.jsp#.UwMtMWKSqQM)
- 17 See "Maoists hang tribal man after sentencing him to death at Kangaroo Court", *The Daily Bhaskar*, 23 May 2013, available at: <http://daily.bhaskar.com/article/MP-OTC-maoists-hang-tribal-man-after-sentencing-him-to-death-at-kangaroo-court-4271717-NOR.html>
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- 29 Information received from Asian Centre for Human Rights.
- 30 "Vacancies in Government Departments", print release issued by the Ministry of Personnel, Public Grievances & Pensions on 08-May-2013 17:40 IST through the Press Information Bureau; available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=95845>
- 31 Government approved Special Recruitment Drive to Fill Backlog Vacancies for SC, ST & OBCs; available at: <http://www.jagranjosh.com/current-affairs/government-approved-special-recruitment-drive-to-fill-backlog-vacancies-for-sc-st-obcs-1369367331-1>
- 32 Office Memorandum No.43011/153/2010-Estt.(Res.), Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), dated 4 January, 2013 available at <http://www.gconnect.in/orders-in-brief/reservation/reservation-in-central-government-nomination-of-liaison-officer.html>
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