

THE INDIGENOUS WORLD 2015

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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. 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.

High-Level Committee report submitted

In August 2013, the then United Progressive Alliance government constituted a High-Level Committee headed by tribal expert and eminent sociologist, Virginius Xaxa, to examine the socio-economic, health and educational status of Scheduled Tribes (STs) and "suggest policy initiatives as well as effective outcome-oriented measures to improve development indicators and strengthen public service delivery to STs."¹ The Committee submitted its report to the new government led by Bharatiya Janata Party on 29 May 2014. The High-Level Committee made several major recommendations, some of which are briefly summarized here:



Legal and administrative framework

The High-Level Committee recommends that laws and policies enacted by the Parliament and State legislatures should not be automatically applied in the Fifth Schedule Areas (tribal areas in mainland India) but that their applicability should be decided by the Governor with the advice of the Tribes Advisory Council (TAC), the mandatory advisory bodies on “tribal welfare and advancement” in states with Fifth Schedule Areas. The Committee recommends broadening the mandate of the TAC and transforming it into the Tribes Advisory, Protective and Developmental Council. All constitutional provisions, laws, policies and administrative matters pertaining to the Scheduled Tribes should come under its ambit, and the Tribal

Welfare Department should be made accountable to it. A state's tribal development plan should be approved by the TAC (or its replacement, the Tribes Advisory, Protective and Developmental Council) before it is placed before the Legislative Assembly.

The model of the Autonomous Councils, local self-rule bodies at district level with limited autonomy in Sixth Schedule areas (tribal areas in Northeast India), should be extended to the Fifth Schedule Areas, as has been provided for in the Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996.

Funding of Autonomous Councils in Sixth Schedule areas should not be left to the arbitrary discretion of the state governments any more. Instead, Autonomous Councils should be covered by the State Finance Commission, which is empowered to lay down appropriate principles of resource distribution between the state and the Autonomous Council.

Livelihoods and employment

According to the High-Level Committee report, credit and marketing facilities need to be extended to the STs. Delivery of social justice must be monitored by the National Commission for Scheduled Tribes, both at the national and state levels.

The government should follow a transparent policy with regard to employment opportunities for STs in the public sector. Special attention should be given to the Particularly Vulnerable Tribal Groups (PVTGs) among the tribes. The Ministry of Tribal Affairs should ensure that all states having PVTGs should utilize the grants received under Special Central Assistance to implement micro-projects specifically targeting individual PVTGs.

A National Institute of Tribal Development should be created as an autonomous research organization exclusively for undertaking research on STs.

Education

The High-Level Committee stresses that the Right of Children to Free and Compulsory Education Act, 2009 should be strictly implemented in tribal areas. Institutions of Integrated Tribal Development Projects/Agencies and micro-project support to tribal schools should be strengthened to prevent dropouts. Furthermore, the report recommends that the government establish well-run residential schools up to class 12 within a radius of ten kilometres from their homes in order to pro-

vide comprehensive facilities for marginalized children, including quality education, health care and academic support classes. Residential schools should be set up specifically for Nomadic Tribes.

Health

The Committee recommends that the Ministry of Health and Family Welfare should adopt a “Tribal Health Plan” with proposed goals such as attaining the United Nations Millennium Development Goals on health and nutrition for the Scheduled Tribe population in India by the year 2020, and bringing the health, sanitation and nutrition status of the Scheduled Tribe population up to the same level as that of the non-Scheduled Tribe population in the respective states by the year 2025. Annual Tribal Health Plans should be generated at all levels by the year 2017 and 8.6 percent of the total Health Sector Plan and non-plan budget allocated and spent, in proportion to the Scheduled Tribes population, plus 10 percent of the Tribal Sub Plan budget for the implementation of the Tribal Health Plan.

Instead of deploying unwilling doctors and health staff from outside into the Scheduled Areas, the Committee recommends the selection, training and deployment of local Scheduled Tribe candidates at village, block and district levels as an effective long term solution.

Land alienation, displacement and enforced migration

According to the report of the High-Level Committee, the exercise of “eminent domain” and definition of “public purpose”, which are used by the state to legitimize land alienation for development and public infrastructure projects, should be severely limited in tribal areas. The right of tribal communities to say “no” to acquisition of their land, and their right to access and manage forests and other common property resources should be recognized. Furthermore, the Committee recommends that the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 should be amended by incorporating a suitable provision to safeguard tribal land and community resources in Scheduled Areas, and disallow acquisition by a non-tribal, including private companies.

In view of the widespread discontent among tribal people who have been displaced from their lands regarding poor resettlement and rehabilitation, a High-Level Fact-finding Committee/Enquiry Committee should be set up to investigate the quality of resettlement and rehabilitation in all medium and major development projects undertaken in the last 50 years in Scheduled Areas and tribal-dominated districts of states without Scheduled Areas.

The Committee also recommends that, in order to prevent illegal land alienation of tribal land, the Land Transfer Regulations/Tenancy laws of all Fifth Schedule Areas should be suitably amended to ensure Gram Sabha (village council) participation in the identification, investigation and restoration of lands to tribal people; plenary powers could be given to Gram Sabhas to fight cases of tribal land alienation collectively, as an individual tribal cannot afford to face prolonged legal battles; and the Gram Sabha should be empowered to restore the alienated land on detection, pending the long legal battle, in order to potentially discourage a prospective non-tribal buyer of land in Scheduled Areas.

Legal and constitutional issues

The High-Level Committee recommends strengthening the implementation of laws, notably the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Committee also recognizes the need to set up a Judicial Commission to investigate cases filed against tribals and their supporters who have been jailed for so-called “naxal offences”, i.e. for alleged collaboration with the Maoist (Naxalite) insurgents, or for their resistance and protest against projects.

However, the present government has not yet implemented any of the recommendations of the High-Level Committee. On the contrary, on 29 December 2014 the Union Cabinet came up with an Ordinance to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in order to make land acquisitions easier by doing away with the requirement for consent of the affected people, and for a social impact assessment for projects in the areas of defence and defence production, rural infrastructure (including rural electrification), affordable housing, industrial corridors and social infrastructure projects, including public-private partnerships.²

A more positive development is the introduction of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 in the Lok Sabha (Lower House of Parliament) by the Minister for Social Justice and Empowerment on 16 July 2014. The Bill seeks to reinforce the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which addresses atrocities committed against the Scheduled Castes (SCs) and Scheduled Tribes. While the Prevention of Atrocities Act, 1989 already states that a non-SC or non-ST public servant who neglects his duties relating to SCs or STs shall be punishable with imprisonment of six months to one year, the Bill specifies these duties, including, among other things, registering a complaint or First Information Report, reading out information given orally before taking the signature of the informant, and giving a copy of this information to the informant, etc. The Bill also provides for the establishment of an Exclusive Special Court at the district level (or a Special Court in districts with fewer cases) to try offences against SCs and STs and for the establishment of an adequate number of courts to ensure that cases are disposed of within two months.³

Human rights violations against indigenous peoples

India has witnessed an increase in atrocities against indigenous peoples/tribals in recent years. According to the “Crime in India 2013” report, published in 2014 by the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 6,793 crimes committed against tribals were reported in the country during 2013, as compared to 5,922 cases in 2012, an increase of 14.7%.⁴ These are only the reported cases of atrocities committed by non-tribals, and do not include cases of human rights violations by the security forces.

Human rights violations by the security forces

During 2014, large areas of central and Northeast India remained affected by armed conflicts and the security forces continued to be responsible for human rights violations against indigenous peoples. In these areas, the tribals are sandwiched between the armed opposition groups (AOGs) and the security forces. On 3 September, two innocent tribal villagers were killed by the security forces in an alleged fake encounter in Gumla district of Jharkhand.⁵ In Chhattisgarh, at least

26 local tribals were beaten up by Central Reserve Police Force (CRPF) personnel at Kokenar and Chote Tongpal region in Sukma district on 26 November, after they protested against the detention of a woman for her alleged involvement with Maoist insurgents. Six of the victims, including three elderly women, were taken to Jagdalpur hospital with fractures and critical injuries. After 14 CRPF personnel were killed in a major Maoist ambush in Sukma district on 1 December, five tribals from Kasalpadh village, also in Chhattisgarh, were allegedly beaten and dragged to the nearest CRPF camp by CRPF personnel for failing to alert them about the Maoists' movements.⁶

Human rights violations by armed opposition groups

Armed opposition groups continued to be responsible for gross violations of international humanitarian law, including killings, during 2014. On the night of 23 December, militants of the National Democratic Front of Boroland, Songbijit faction (NDFB-S) launched serial attacks on Adivasi villages. These Adivasis are the descendants of labourers brought to Assam by the British to work in tea plantations, who are now living in the Bodo areas. At least 80 persons including women and children were killed in the attacks in Assam's Sonitpur, Kokrajhar, Chirang and Udalguri districts. The NDFB-S cadres reportedly targeted the Adivasis, suspecting them of passing information to the security forces, which had conducted a counterinsurgency operation against the group, killing three of its cadres on 21 December.⁷ Furthermore, five Bodo tribals were also killed in retaliatory attacks by miscreants from the Adivasi communities.⁸ The attacks led to a humanitarian crisis, displacing over 300,000 people, mainly Adivasis.⁹ Earlier, on 21 August, NDFB-S militants killed a 16-year-old schoolgirl at Dwimuguri village in Chirang district of Assam. The militants reportedly arrived at Dwimuguri village and forced the villagers to gather at a place, where they shot Priya dead for allegedly passing on information that had led to the killing of five NDFB-S cadres by the security forces a day earlier.¹⁰

The Maoists continued to kill innocent tribals on charges of being "police informers", or simply for not obeying their diktats. During 2014, the Maoists targeted tribals mostly in Malkangiri and Koraput districts of Odisha state. Some of the alleged killings by the Maoists in 2014 took place at Ralegada village in Malkangiri district of Odisha on 2 April,¹¹ at Talagoluru village in Koraput district on 11 May,¹² at Pilibadi and Upar Renga villages in Koraput district on 19 July,¹³ at Badliguda village in Malkangiri district on 24 July,¹⁴ at Dasini village in Koraput district on 26 July,¹⁵ at

Erbanpalli village in Malkangiri district on 29 September,¹⁶ at Materu village in Malkangiri district on 24 October,¹⁷ in Kalimela area in Malkangiri district on 29 October,¹⁸ and at Sriguda village in Koraput district on 6 November,¹⁹ among others.

Alienation of tribal land

The 5th and 6th Schedule to the Constitution of India provide stringent provisions for the 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 lands to the tribals. Yet these laws remain ineffective, as the lands of tribals continue to be alienated. While the latest data on alienation of tribal land is not available, in April 2012, the Government of India informed Parliament that 437,173 cases of tribal land alienation had been registered, covering 661,806 acres of land in the country, out of which 217,396 cases were disposed of in favour of the tribals, and 190,573 cases were decided against the tribal landowners in the courts.²⁰ As of 28 July 2014, in Assam alone, around 190,000 bighas (in Assam, equal to 25,460 ha) of land in the state's 30 tribal blocks and 17 tribal belts were reportedly under encroachment by non-tribals.²¹

The Government of India's lack of a serious response towards the land alienation of tribals can be gauged from its failure to make public the report of the High-Level Committee, which includes radical recommendations on land alienation, at the end of 2014.

Internally displaced tribal peoples

Conflict-induced displacement

As mentioned above, the murderous attacks by the NDFB-S on Adivasis in Assam on 23 December displaced over 300,000 persons, who have taken shelter in 85 relief camps in Sonitpur, Kokrajhar, Udalguri and Chirang districts of Assam. Out of these IDPs, there are 287,182 Adivasis sheltered in 65 relief camps, and 13,091 Bodos in 20 relief camps. In addition, many Adivasis have also fled to the neighbouring states of Arunachal Pradesh and West Bengal. The IDPs are living in dismal conditions in overcrowded relief camps that lack basic facilities.²²

Development–induced displacement

The government admits that the displacement of Scheduled Tribe people is taking place as a result of various development projects. However, there is no official figure available of the displacement caused by development projects. During 2014, the tribals continued to resist attempts by the government to acquire their lands for mining and other industrial projects.²³ Thousands of tribals from nearly 27 villages in Manavar Tehsil of Dhar district in Madhya Pradesh are facing displacement due to the acquisition of their agricultural land for a proposed cement plant. The tribals have protested against this land acquisition.²⁴

Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter the Forest Rights Act) has been touted as a progressive piece of legislation aimed at undoing the “historic injustice” committed against the forest-dwelling Scheduled Tribes and other traditional forest dwellers who have lived in the forests for centuries. However, the rights of a large number of forest-dwelling tribals continue to be denied under the Act. According to the Ministry of Tribal Affairs, as of 30 September 2014, a total of 3,853,977 land claims had been received across the country under the Forest Rights Act. Of these, a total of 3,189,324 claims (82.75% of the total received) have been disposed of, for which 1,494,933 titles were distributed and 33,765 titles were ready for distribution. However, 1,694,391 claims (52.87% of the total disposed of) were rejected.²⁵ There have been credible reports of arbitrary rejections of claims made under the Forest Rights Act. Yet the Ministry of Tribal Affairs claimed that: “No such cases where violation of this Act has been established have come to the notice of the Government.” It merely places the onus of implementing the Forest Rights Act on the state governments.²⁶

Across India, tribal peoples are being illegally evicted from their ancestral homelands in the name of conservation, particularly for tiger reserves. Those who resist such evictions face threats and harassment from the forest authorities. The tribals are promised land, housing and money as compensation but often receive very little or nothing.²⁷ Three tribal villages are currently facing imminent eviction from Similipal Tiger Reserve in Odisha. In September 2014, members of the

Munda tribe in Similipal Tiger Reserve met India's Forest Department where they were "threatened" and "cheated" into signing an eviction document drawn up by the foresters.²⁸ Three out of six villages have already been removed from the Similipal Tiger Reserve. However the 32 families of the Khadia tribe who were evicted from Similipal in December 2013 are now living in dire conditions in make-shift tents, having to rely on government hand-outs for their survival and have not received the compensation they were promised.²⁹

Nagalim

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India and north-west Burma. The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation. The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a ceasefire and, since then, have held regular peace talks. Largely as a result of India's divide-and-rule tactics, the armed movement was split into several factions fighting each other. In 2010, a reconciliation process started among the main armed factions, the NSCN-IM, the Government of the People's Republic of Nagaland/National Socialist Council of Nagaland (GPRN/NSCN) and the Naga National Council (NNC).

2014 did not see much progress in the efforts to find a permanent settlement to the Indo-Naga political problem. The talks between the Government of India (GoI) and the NSCN-IM were low profiled and did not take center stage in the public discussions. The reconciliation process facilitated by Forum for Naga Reconciliation (FNR) moved a step forward by signing the "Lenten Agreement" among the armed groups but it still faces the challenge of translating agreements into reality. Further, the hope for an alternative political arrangement for the Na-

gas in Manipur too took a backstage with the toppling of the Congress-led central government.

The peace talks and the reconciliation process

The Bharatiya Janata Party led National Democratic Alliance (NDA) government was sworn into office in May 2014. Following this, the government appointed a new interlocutor, RN Ravi, Chairman of the Joint Intelligence Committee for the Indo-Naga peace talk. The NDA government remained silent over the issue of peace talks until Kiren Rijiju, Minister of State for Home on 29th June spoke to reporters on the sidelines of the 6th Asian Ministerial Conference on Disaster Risk Reduction in Bangkok, Thailand. He announced to the reporters that the peace processes in the Northeast will develop gradually under the new government and noted that peace talks will be action-oriented³⁰. However, without explanation, he made a categorical remark that it will take more time to bring the National Socialist Council of Nagaland and the United Liberation Front of Assam on board and to find a solution. This remark sent out waves of skepticism among news readers of the region. Newspapers reported a few rounds of official negotiations between the government and NSCN-IM but nothing on concrete results. It was in this context that the Nagaland unit of the Congress on 2nd December expressed disappointment over Prime Minister Narendra Modi's silence on the Naga peace process during his two-day visit to the state.

The demand for an alternative arrangement for the Nagas in Manipur

The Nagas in southern Nagalim, led by the United Naga Council (UNC), has been demanding for an interim alternative political arrangement for the Nagas of Manipur state since 2010. According to the UNC, during the 7th tripartite talk held on 6th February 2014, it was agreed that the government would institute a high-profile committee to translate the demand for an alternative arrangement into a political reality³¹. This committee was not constituted before the national general election that took place in April-May, and the new BJP-led NDA government has not shown any interest in instituting the committee or in taking the issue forward.

The human rights situation in southern Nagalim also did not improve in 2014. Mr. Ngalangzar Malue, an Autonomous District Council member of Ukhrul District was killed by an unidentified gunman on the 12th of July about 22 kms away from

Ukhrul District Headquarter. The Manipur government sent hundreds of Manipur Police Commando (MPC) and Indian Reserved Battalion (IRB) to Ukhrul District Headquarters and arrested eight cadres of the NSCN-IM. Further, the government imposed *Section 144* of the Criminal Procedure Code (*S.144 CrPC*) which prohibits free movement and the assembly of more than five people. The law is intended to provide for an emergency when there is a major violence or where there is an apprehension of a serious disturbance of the public tranquility. The imposition of S.144 CrPC suspended the freedom of movement and association of the public for nearly two month causing harm to the social, economic and mental health of the people in and around Ukhrul District Headquarters. This unexplained action of the state was condemned by several national and international human rights organisations and the outraged public protested for weeks. On 30th August, two young men, Mr. Mayopam Ramror and Ramkashing Vashi were killed when the MPC and IRB commandos indiscriminately open fired on the peaceful protestors. ○

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