

The State of India's

INDIGENOUS AND TRIBAL PEOPLES 2009



Asian Indigenous & Tribal People Network



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The State of India's Indigenous and Tribal Peoples 2009, 31st March 2009

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Photos: AITPN - The team of the National Commission for Protection of Child Rights visiting the Bru IDP camps on 8-9 September 2009 based on the complaints of AITPN

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1. Editorial : NHRIs remain unused

The State of India's Indigenous and Tribal Peoples 2009 covering the events of 2008 is the third issue of the series. Reporting on the human rights situation of over 84.2 million Scheduled Tribes of India is a challenging task. The report covers wide range of issues such as violations of the rights of the indigenous peoples by the security forces and the non-tribals, indigenous peoples and armed conflict, violations of the international humanitarian law by the armed opposition groups, violence against indigenous women and children, alienation of indigenous peoples' land, displacement of indigenous/ tribal peoples, repression under forest laws, failure of affirmative action programmes and state of the National Commission for Scheduled Tribes (NCST), among others.

In such an annual report, often the effectiveness of the National Human Rights Institutions (NHRIs) is not fully reported. The NHRIs remain ineffective as the chapter on the NCST shows. Yet, there is no denying that if the NHRIs are used with effective evidence, they can at times be effective.

In the case of extrajudicial killing of a tribal boy, Rathojoy Reang in Tripura by the security forces, the NHRC has summoned the Home Secretary of the Government of India to appear in person on 4th February 2009 if he failed to provide sanction for prosecution of Major S.S. Dhanda and Nursing Assistant A.K. Sahu of the Assam Rifles. AITPN had filed a complaint with the NHRC (Case Number 20/23/2002-2003) on 25 June 2002 with regard to tortured to death of Rathajoy Reang. Following the complaint, a First Information Report No. 71/2003 was registered in Tripura and a subsequent investigation by the Criminal Investigation Department of the State Government of Tripura found Major S.S. Dhanda and Nursing Assistant A.K. Sahu guilty of killing Mr Reang. On 20 August 2008, the NHRC directed the Ministry of Home Affairs, Government of India to grant sanction for prosecution of Major S.S. Dhanda and Nursing Assistant A.K. Sahu but the Home Ministry refused to give sanction. Summoning of the government of India's Home Secretary by itself is unprecedented and extraordinary. In the last 60 years no member of the armed forces has been prosecuted in North East India where the draconian Armed Forces Special Powers Act, 1958 has been in force.

Some of the other cases in which AITPN has successfully engaged with the National Human Rights Commission are given below:

The State of India's Indigenous and Tribal Peoples 2009

Case No.	Name of the Victim, Place	Nature of cases	Compensation Paid (In Indian Rupees)	Recommendation by NHRC/ Action taken by the Department
24/23/2002-2003	Jitendra Reang, Tripura	Extrajudicial Execution	1,25,000	Victim's brother Chitta Ranjan Reang has been given a job and appointed to the post of Manual Assistant (Group-C) on a fixed pay basis.
121/3/2002-2003	Franchise Mili, Hiralal Dilbar and Bikash Sarika, Assam	Extrajudicial Killing	3,00,000 @ 1,00,000 for each victim	Departmental action has been taken against the accused police officers
1807/12/2005-2006	Kamlabai, Madhya Pradesh	Chopping off the hand	80,000	
28/14/2004-2005/OC	Liyakat Ali, Manipur	Torture		Minor penalty with strict instruction not to repeat such acts in future again
50/34/2003-2004 -WC	Shatuli Devi, Jharkhand	Torture in her pregnancy and miscarriage		Invoke Provisions of Section 13 of the Protection of Human Rights Act, 1993 (Pending)
31/14/2002-2003	Hemanta Kumar Ningombam, Manipur	Torture		Asked for compensation and Invoke Provisions of Section 13 of the Protection of Human Rights Act, 1993 (Pending)
521/34/1/07-08-WC	15-years-old tribal girl	Rape by security forces		Asked final outcome from DGP Jharkhand and SP Bakaro. Explanation sought for delay in FIR registered after a lapse of 18 days from the date of incident and what departmental action was taken (Pending)
8/23/2002-2003	Mayanti Reang, Tripura	Custodial rape		Departmental action has been taken by the State
41/23/4/07-08-PF	Dhananjay Debbarma, Tripura	Extrajudicial killing		Asked for Inquest Report, Post Mortem Report, Magisterial inquiry report and CID investigation report. The case has been placed before the full Commission of NHRC (Pending)
734/12/26/08-09 -WC	A tribal girl, Madhya Pradesh	Rape by security forces	50,000	Erring police personnel has been suspended
39/23/4/07-08-AR	Minor tribal girl, D/o Rajaram Debbarma, Tripura	Custodial rape		Erring police personnel has been suspended and sent to judicial custody

The other sectoral National Institutions too can be used effectively. The visit of National Commission for the Protection of Child Rights (NCPCR) in the relief camps housing over 30,000 Bru displaced tribals in Tripura on 8-9 September 2008 is another example of AITPN's constructive and effective engagement with the sectoral National Institutions. The visit was in response to AITPN's complaint against non-inclusion of over 7,000 Bru children in the ration cards and denial of basic facilities. The NCPCR team members *"were appalled by the sub human conditions under which the families had to survive (in the relief camps)"* and came out with appropriate recommendations in terms of providing food security; health and nutrition; basic education and mid-day meals in all the relief camps; clean drinking water and sanitation facilities; monitoring and data collection with regard to health indicators of children, immunisation status, educational facilities, maternal health; extension of job guarantees under the National Rural Employment Guarantee Scheme to all the camps; and establishment of Nodal Oversight and Grievance Redressal Mechanism with a nodal officer from the district administration and an NGO representative. These recommendations, if implemented by the government, shall have overreaching impacts to improve the conditions of all the IDPs in India.

The state of Tripura has already taken some measures towards implementing the NCPCR recommendations. It has started to enroll the Bru children in the relief cards. The state government has also constituted a Sub-Divisional Level Supervising and Monitoring Committee under Nodal Oversight Redressal Mechanism with two representatives from the Mizoram Bru Displaced Peoples Forum to address various problems relating to the Bru relief camps.

Undoubtedly, there are institutional shortcomings in all the NHRIs but the civil society must be able to use these domestic mechanisms to improve the conditions of the peoples. AITPN's experiences have proved that NHRIs, despite of their shortcomings, can be effective if effective interventions from the civil society organizations are made.

Unfortunately, for vast majority of the indigenous/tribal activists, the National Human Rights Institutions remain an unexplored area!

Paritosh Chakma

Coordinator

2. Executive Summary

A. Tribal/indigenous peoples and armed conflicts

At present, 21 out of 28 states of India are afflicted by armed conflicts. With the exception of Jammu and Kashmir, conflicts in all other states involve indigenous peoples. During 2008, the indigenous peoples continued to be further engulfed into the armed conflicts. Media reports estimated that nearly 1.2 lakh Gutti Koya tribals have fled to Andhra Pradesh's Khammam district from Bastar and Bijapur districts of Chhattisgarh during January-June 2008 to escape violence by the Maoists and the *Salwa Judum* activists.¹

B. Violations of the rights of the indigenous/ tribal peoples

According to the 2007 Annual Report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,532 cases against Scheduled Tribes (or tribals) were reported in the country during 2007 as compared to 5,791 cases in 2006 showing a decline of 4.5% in 2007 over 2006. But the NCRB figures do not reflect the actual intensity of violence against the indigenous peoples of India. During 2007, the conviction rate for crimes against the tribals remained as low as 27%.² Clearly, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 remained largely unimplemented. The Central government failed to introduce the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008 in the Parliament although it was listed for introduction during the Monsoon Session (17 July-23 December 2008).³ The Bill sought to amend Section 14 of the Act to give "absolute jurisdiction" to Special Courts to try the cases under the Act.⁴

The security forces were responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial killing and extrajudicial killings in the name of "counter-terrorism" measures. On 7 January 2008, the para-military Tripura State Rifles (TSR) personnel shot dead one Dhananjoy Debbarma, a 17-year-old tribal school student, mistaking him for an insurgent during a counter-insurgency operation in Kunjaban under Kalyanpur police station of West Tripura district of Tripura.⁵ Dhananjay had gone to the jungles to collect bamboo. The killing led to violent protests by the tribals.⁶

Following the attack on West Bengal Chief Minister Buddhadeb Bhattacharya' life by the Maoists on 2 November 2008, the police inflicted inhuman atrocities on the tribal villagers including women and children in Lalgah in West Midnapur district of West Bengal. Many tribal villagers including school

children were arrested as Maoists.⁷ The tribals protested by cutting off Lalgarh area for nearly a month. The protests were suspended only after Mr Bhattacharjee apologized publicly to the tribals and withdrew some police camps from Lalgarh area.

In Chhattisgarh, the tribals had to face violent retribution from the *Salwa Judum* forces for deposing before the visiting NHRC investigation team. An independent fact-finding team of civil society groups found that 11 houses belonging to the tribals were burnt down by the *Salwa Judum* members at Nendra village in Konta block in Dantewada district in reprisal to depositions by the villagers before the NHRC investigation team on 10 June 2008.⁸

C. Violations by the armed opposition groups

During 2008 the armed opposition groups (AOGs), in particular the Maoists, continued to be involved in killing, abduction, summary trial and execution, and torture. The Maoists continued to kill tribal civilians on the charge of being “police informers”, members of the anti-Maoist civilian militia such as “Salwa Judum” and for not obeying their diktats.

On the night of 17 January 2008, Maoists killed 35-year-old tribal, Samireddy Ganesh of Bhiram village under G. Madugula mandal in Visakhapatnam district of Andhra Pradesh after abducting him on the charge of being a “police informer”. In the custody, the victim was allegedly tortured and then axed to death.⁹ On 27 July 2008, Maoists abducted and killed a tribal leader, Niram Singh Dhruv, ex-head of Amagaon village under Mainpur police station in Chhattisgarh. Accusing him of being a “police informer”, the Maoists tied him to an electricity pole in village square at Amagaon and shot him in the chest.¹⁰

D. Violations of the rights of tribal/indigenous women

Indigenous/tribal women faced violence including killing, torture, rape, and other inhuman and degrading treatment at the hands of the law enforcement personnel, the armed opposition groups, and village pachayats, among others. According to the NCRB, a total of 627 cases of rape of tribal/indigenous women were reported in 2007. There was a marginal decrease since 2006 in which 699 cases of rape of tribal/indigenous women were reported. Out of these 627 rape cases reported during 2007, 45.9% were reported from Madhya Pradesh.¹¹ Non-tribals were involved in these rape cases.

The women were vulnerable and discriminated because of their sex. On 12 March 2008, a tribal woman identified as Aapaima Mog (21 years) (wife of Polo

Mog) was allegedly raped and killed by Jagadish Shil, a Special Police Officer (SPO) of District Armed Reserve (DAR) at Avangacherra village (Chefru Mog Para) under Baikhura police station in South district of Tripura. An investigation by the police confirmed that the SPO had killed the victim after rape.¹²

On 6 October 2008, a tribal woman identified as Gujriya, wife of Hakma, was forced by the village panchayat to dip her hands into a vessel filled with boiling water to prove her innocence after she was accused of being a “witch” at Khara village in Sirohi district of Rajasthan. Later, she was allegedly beaten up with hot iron rods.¹³ In another clear case of denial of justice on the ground of sex, the Showuba Village Council in Nagaland let off the four rapists by merely fining them Rs 15 each after they had abducted and raped a pregnant tribal woman on 27 August 2008 at Showuba village near Dimapur in Nagaland.¹⁴

E. Violations of the rights of tribal/indigenous children

The tribal/ indigenous children were vulnerable at the hands of the security forces, the armed opposition groups and the society at large. The protectors turned predators. On 24 January 2008, a 10-year old tribal girl (name withheld) was allegedly raped by police constable Arvind Kumar Das at Chandli village in Giridih district of Jharkhand. The accused constable was arrested and suspended following a complaint by the victim’s family.¹⁵ Again on 3 July 2008, a 14-year-old tribal girl (name withheld) was allegedly raped by Head Constable Zakir Khan posted at Bisthan Police post in Khargone district of Madhya Pradesh. The accused barged into the victim’s house near the Bisthan police post when she was alone and raped her. Later, the victim was admitted to the Khargone district hospital in a critical condition.¹⁶

F. Alienation of tribal land

Despite of the Constitutional and various legal protections against alienation of tribal land, the problem is widespread and alarming. The Ministry of Rural Development of the Government of India in its 2007-2008 Annual Report states, “The State Governments have accepted the policy of prohibiting the transfer of land from tribals to nontribals and for restoration of alienated tribal lands to them. The States with large tribal population have since enacted laws for this purpose.” The 2007-2008 Annual Report further states, “Reports received from various States, indicate that 5.06 lakh cases of tribal land alienation have been registered, covering 9.02 lakh acres of land, of which 2.25 lakh cases have been disposed off in favour of tribals covering a total area of 5.00 lakh acres. 1.99 lakh cases covering an area of 4.11 lakh acres have been rejected by the Courts on various grounds”.¹⁷

Once the tribal lands have been alienated, it is extremely difficult to restore the land to the original tribal owners. A few states such as Jharkhand have been providing legal aid to the tribal victims to help them restore their lands. But not many lawyers were interested to fight the cases for the tribals for merely Rs 5,000 per case as part of Jharkhand government's legal aid assistance. The state government of Jharkhand has provided an annual budget of Rs 50 lakh for its legal aid programme for the poor tribals but the authorities have reportedly spent less than 10% of the total budget over the last six years.¹⁸

G. Displacement of indigenous/ tribal peoples

Development-induced displacement

The indigenous/ tribal peoples who constituted 8% of the total population of India at 1991 census also constituted 55.1% of the total development project-induced displaced persons up to 1990. The Ministry of Tribal Affairs in its Draft National Policy on the Tribals stated that nearly 85.39 lakh tribals have been displaced until 1990 on account of mega developmental projects like dams, mining, industries and conservation of nature etc.¹⁹ Tens of thousands of tribals have been displaced from 1990 onwards without proper rehabilitation. Yet, no study has been conducted in regard to displacement and rehabilitation of tribals in the country.

The tribals across India have been protesting against various so-called development projects like dams, mining, and industrial plants. On 8 August 2008, the Supreme Court allowed POSCO India Pvt Ltd, a subsidiary of Korea-based POSCO, to build its Rs 51,000-crore steel plant in Paradeep in Jagatsinghpur district of Orissa.²⁰ On the same day, the Supreme Court also allowed Sterlite India Limited, a subsidiary of Britain's Vedanta Resources Plc, to mine bauxite in Niyamgiri hills in Kalahandi district of Orissa considered sacred by Dongria Kondh tribe.²¹ The Supreme Court's order has undermined the tribal protests and encouraged further acquisition of lands of the tribals leading to their displacement without proper rehabilitation, destruction of their culture and posing threats to their survival in the name of development.

Conflict-induced displacement

According to the estimate of AITPN, a total of 4,01,425 tribals have been displaced due to the armed conflicts and ethnic conflicts across India. This included 47,940 Adivasis in Chhattisgarh,²² 2,03,485 tribals (Bodos, Santhals and Garos) in Asom (formerly Assam), about 1,20,000 Gutteri Koya tribals (from Chhattisgarh) in Andhra Pradesh²³ and 30,000 Brus in Tripura.

The displaced people have been living miserable lives. The National Commission for Protection of Child Rights (NCPCR), which sent a fact finding team to Dantewada district in Chattisgarh and Khammam district in Andhra Pradesh in December 2007, has expressed serious concern about health, nutrition and education conditions of the displaced children.²⁴ Initially, the state government of Andhra Pradesh had provided benefits of various schemes including ration cards, jobs under the National Rural Employment Guarantee Scheme to about 1.2 lakh Gutti Koya tribals who fled Chhattisgarh to take shelter in Khammam district of Andhra Pradesh but later withdrew these facilities following the killing of more than 30 Greyhound police commandos by the Maoists in an ambush at Chitrakonda reservoir in Orissa on 29 June 2008.²⁵

In September 2008, the National Commission for Protection of Child Rights said the team was *“appalled by the sub human conditions under which the families had to survive.... There was none or little, if any, registration of births and deaths, marginal immunisation, no health facilities or primary health centres, no functional schools, no safe drinking water, poor sanitation and inadequate rations”* in the Bru relief camps in Tripura.²⁶

Displacement due to security reasons

In Mizoram, a total of 35,438 Chakma tribals from 5,790 families in 49 villages would be displaced due to the ongoing India-Bangladesh fencing project which is being constructed for security reasons. Till date there is no plan to resettle the fencing affected families. The Home Department of Mizoram has refused to consider the out-fenced victims as “displaced” because “the Fencing Line is not the boundary of Indo-Bangladesh Border”. In other words, it is uncertain whether the government of Mizoram will provide the fencing victims adequate resettlement and rehabilitation.

H. Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act came into force on 1 January 2008 but the Act remained largely unimplemented across India. Tribals continued to be arrested for accessing minor forest produce, evicted from their lands, their huts gutted and even killed by the forest officials. On 8 February 2008, forest guards shot dead a 16-year-old tribal boy Shyamal Rabha at the Buxa Tiger Reserve in Jalpaiguri district of West Bengal. The forest officials accused him of being a “timber smuggler” but the locals and family members said he and three others had gone to the forest to collect firewood for domestic use.²⁷

On 2 July 2008, Jalgaon Khandesh Forest Department officials and personnel of State Reserve Police Force burnt down 125 huts and forcibly evicted over 400 Pardhi tribals from forest land near Wadoda village under Jalgaon Jamod taluka in Buldhana district of Maharashtra.²⁸ On 4 December 2008, forest officials allegedly set ablaze 17 huts belonging to tribals near Malbazar in Jalpaiguri district of West Bengal when the tribals allegedly failed to show the land documents.²⁹

I. Failure of the affirmative action programmes

The Constitution of India provides for “positive discrimination” in favour of the tribals but these affirmative action programmes have not been properly implemented.

Non-implementation of the reservations in employment

The Scheduled Tribes (STs) and the Scheduled Castes (SCs) are provided mandatory reservation of 7.5% and 15% respectively in government jobs. But almost all the departments of the government have failed to ensure this prescribed minimum representation of the SCs and STs. The Parliamentary Standing Committee on Welfare of Scheduled Castes and Scheduled Tribes stated that as of 1 January 2005, the overall representation in Groups A, B, C and D posts in the government of India services among SCs was 11.9%, 13.7%, 16.4% and 18.3% respectively and the representation of STs was 4.3%, 4.5%, 6.5% and 6.9% respectively.³⁰ Various departments often blame the lack of “suitable candidates” among tribals to fill up the vacancies. This is not true.

Non-use and mis-use of tribal funds

Various state governments do not fully utilize or misutilized the funds allocated to them for tribal development. A report by the Comptroller & Auditor General of India, tabled in the Jharkhand State Assembly in March 2008, found that the Jharkhand government used only Rs 85.55 crore out of Rs 183.84 crore it had received from the Centre during 2003-2007 under the Integrated Tribal Development Project. The unused funds were kept in banks and the interest it earned was used to repair official buildings.³¹

Funds could not be released for the development of tribals due to failure of the various state governments to submit Utilization of Certificate under the Fiscal Responsibility and Budget Management Act. During 2007-08, the Ministry of Tribal Affairs had to withhold grants under Special Central Assistance to the Tribal Sub Plan to the states of Asom, Bihar, Chhattisgarh, Jharkhand, Jammu & Kashmir, Madhya Pradesh, Tamil Nadu, Tripura, Uttar Pradesh and

Uttarakhand due to their inability to furnish Utilization Certificates and unspent balances.³²

Lack of awareness of the schemes

The Parliamentary Standing Committee on Social Justice and Empowerment stated that the Ministry of Tribal Affairs has not taken “sufficient steps” to generate awareness among tribal people about the various schemes being implemented for their upliftment.³³

J. The state of National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes (NCST) is a powerful constitutional body mandated to protect and promote the rights of the indigenous and tribal peoples. But it has been hamstrung due to its lack of independence. The NCST has framed such Rules of Procedures which has made it subservient to the State. Rule 83 of Rules of Procedure of the NCST states - “All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission” which has undoubtedly reduced the NCST into being another department of the Government of India. The NCST has no financial autonomy.

The NCST’s investigation procedure is deeply flawed. As per its Rules of Procedure, the NCST has to take prior permission from the concerned state government to investigate any human rights violation in that state and NCST team members are expected to follow the “norms” prescribed by the state authorities. The NCST has no power to implement its recommendations.

The NCST suffers from acute shortage of human and financial resources. The sanctioned strength of staff is 124 in the Headquarters in Delhi as well as the six Regional Offices. But the actual strength of staff never reached the sanctioned strength during the last five years of its functioning. There were only 89 staff in position as on 1 December 2004; only 85 staff in position as on 31 December 2005; only 83 staff in position as on 31 December 2006; and only 83 staff in position as on 31 December 2007.³⁴ This has hugely impacted the functioning of the NCST including its ability even to reply to queries under the RTI Act. It is true that the NCST lacks sufficient funds but ironically, it has failed to utilize the allocated funds optimally. The NCST has failed to utilize Rs. 59,99,000/- during the financial year 2004-2005; Rs.1,27,94,000/- during financial year 2005-2006 and Rs. 1,14,54,473/- during financial year 2006-2007.³⁵

K. Denial of voting rights to Chakmas and Hajongs

The Electoral Registration Officers (EROs) and Assistant Electoral Registration Officers (AEROs), who are officials appointed by the State Government of Arunachal Pradesh, continue to willfully violate the guidelines/orders of the Election Commission of India (ECI) with regard to the enrolment of the Chakmas and Hajongs as voters. During 2005-2008, the ECI has held four summary revisions and one Intensive Revision of electoral rolls in Arunachal Pradesh but rather than increasing, the number of Chakma and Hajong voters has consistently decreased during the last 5 years. For example, in 46-Chowkham Assembly Constituency the total of 323 voters in 2004 came down to 291 in 2008, in 49-Bordumsa-Diyun Assembly Constituency, the total of 1164 voters in 2004 came down to 1134 in 2008. In 50-Miao Assembly Constituency names of only 4 new Chakma voters out of about 3500 claimants have been included during the last 5 years. The ECI failed to fix accountability for serious/willful non-compliance of its directions/guidelines by the local electoral officers although the ECI's own officials found prima facie grave wrongdoings by these local electoral officers.

3. Indigenous peoples and armed conflicts

At present, 21 out of 28 states of India are afflicted by armed conflicts. The seven North-Eastern states of Arunachal Pradesh, Asom (formerly Assam), Manipur, Meghalaya, Mizoram, Nagaland and Tripura have been afflicted by armed conflicts over demands for self-determination and autonomy. At least 13 other states - Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal in mainland India were afflicted by the Naxalite conflict. With the exception of Jammu and Kashmir, conflicts in all other states involve indigenous peoples irrespective of whether the armed groups are led by indigenous peoples or non-indigenous peoples like the Maoists' leaders. There have been reports of serious human rights violations by the security forces and the armed opposition groups.

During 2008, the indigenous peoples continued to be further engulfed into the armed conflicts. Media reports estimated that nearly 1.2 lakh Gutti Koya tribals of Bastar and Bijapur districts of Chhattisgarh have fled to Andhra Pradesh's border district of Khammam during January-June 2008 to escape violence by the Maoists and the *Salwa Judum* activists.³⁶ Initially they were provided humanitarian assistance but these were later withdrawn after the Maoists' attack on 29 June 2008 killing over 30 Greyhound personnel, an elite police commando force of Andhra Pradesh. The displaced tribals were branded as "Maoist supporters".³⁷

In Chhattisgarh, the Maoists blocked supply of humanitarian aid to the relief camps housing villagers displaced due to the conflict. In January 2008, the Maoists blocked aid to Dantewada's Jagargunda area. The Maoists also sought to block aids to the relief camp in Maraiguda which forced the authorities to sent relief materials to the Maraiguda relief camp through an adjoining route from Andhra Pradesh.³⁸

4. Violations of the rights of the indigenous/ tribal peoples

According to the 2007 Annual Report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,532 cases against Scheduled Tribes (or tribals) were reported in the country during 2007 as compared to 5,791 cases in 2006 showing a decline of 4.5% in 2007 over 2006. But the NCRB figures do not reflect the actual intensity of violence against the indigenous peoples of India. Majority of the atrocities are not reported and when brought to the police authorities, they sometimes refused to register. The conviction rate of the accused also remained low. Only 8,228 persons out of 9,483 persons arrested for crimes committed against Scheduled Tribes could be charge-sheeted accounting for 86.8% charge-sheeting rate but the conviction rate remained as low as 27% during 2007.³⁹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 remains largely unimplemented.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008 was listed for introduction during the monsoon session of Parliament (17 July – 23 December 2008) but was finally not introduced.⁴⁰ It has been reported that the Ministry of Social Justice and Empowerment has proposed amendments to the SCs/STs (Prevention of Atrocities) Act of 1989 to simplify trial procedures and strengthen the system of monitoring. The Ministry has reportedly proposed to amend Section 14 of the Act to give “absolute jurisdiction” to Special Courts, constituted to try the cases under the Act. According to the proposal, Special Courts would be made competent to try the cases as the “Courts of original jurisdiction”.⁴¹

a. Violations of the right to life

The security forces have been responsible for the violations of the right to life of the indigenous peoples across India.

On 12 February 2008, a tribal identified as Balka Vasava, accused in a murder case, died in the lockup of Garudeshwar police station in Dediapada in Narmada district of Gujarat. The police said he had committed suicide by hanging. The postmortem report by a three-doctor panel in Rajpipla Civil Hospital also stated Vasava died due to asphyxiation after hanging. But the deceased's father Trikam and son Movariya, who were in the lockup being accused in the same case along with the deceased have claimed that the deceased had been tortured by the police during interrogation. On 13 February 2008, the deceased's brother Shankar approached the Chief Judicial Magistrate (CJM) Court in Rajpipla demanding another postmortem in presence of the

family's representatives. The CJM of Rajpipla ordered re-postmortem in the SSG Hospital in Vadodara. The CJM also ordered the postmortem would be conducted by a panel of doctors and a senior expert in forensic science and medicines, Dr Vijay Shah, would remain present as a representative to witness the process. On 15 February 2008, the state government of Gujarat moved the Gujarat High Court against the order of the lower court.⁴²

On 18 April 2008, Bajibo Chakma (son of Gyana Ranjan Chakma) of Shanitpur village under Diyun police station in Changlang district of Arunachal Pradesh was tortured to death in the lock-up of Miao police station under Miao Sub-division in Changlang district. The deceased had eloped with a girl namely Shoba Rani Chakma and the girls' family had filed a case of kidnapping with the Miao Police station (case no. 02/08). The villagers handed over the deceased to the police but after 4-5 hours in custody he died. On 19 April 2008, Sub-Inspector N.W. Wangham tried to hand over the dead body to the deceased's relatives after conducting the post mortem. But the relatives refused to accept the body. Surprisingly, the police buried the body by hiring labourers.⁴³

On 28 July 2008, a tribal youth identified as Papu Thakur was allegedly tortured to death at Silwani Police Station in Raisen district of Madhya Pradesh. The police claimed that the deceased had committed suicide by hanging himself from the window of the bathroom of the station.⁴⁴

On 6 December 2008, a tribal youth identified as Jaba Gusar was allegedly tortured to death in the custody of Daporijo police station and Dumporijo police station in Upper Subansiri district of Arunachal Pradesh. According to All Taging Students' Union the deceased along with two friends were arrested by a police team led by officer-in-charge of Daporijo police station after they had met with an accident while returning from Dumporijo on a bike. The three were taken to a hospital where the Medical Officer declared the injuries as normal. But the police led by officer-in-charge of Daporijo police station allegedly beat them before handing over to the officer-in-charge of Dumporijo police station. The victims were again allegedly tortured in the custody of the Dumporijo police station. As their condition deteriorated, police took them to hospital where Jaba Gusar succumbed to his injuries.⁴⁵ Following a complaint from Asian Centre for Human Rights, a Delhi based human rights NGO, the NHRC has served a notice to the state government to submit the requisite information/ reports pertaining to the case.⁴⁶

In the name of anti-insurgency operations, the security forces have been responsible for the violation of the right to life of the indigenous peoples.

On 7 January 2008, the para-military Tripura State Rifles (TSR) personnel shot dead one Dhananjay Debbarma, a 17-year-old tribal school student, mistaking him for an insurgent during a counter-insurgency operation in Kunjaban under Kalyanpur police station of West Tripura district of Tripura.⁴⁷ Dhananjay had gone to the jungles to collect bamboo. The killing led to violent protests by tribals.⁴⁸

On 21 April 2008, three tribals identified as Choronjoy Reang (21), Pudirai Reang (23) and Sonaton Tripura were shot dead by the joint forces of 8th TSR and Tripura Police of Longtorai Valley Police Station led by Officer-in-Charge Hemonta Debbarma during a counter-insurgency operation at Bijoy Master Para under Longtorai police station in Dhalai district of Tripura. The deceased had gone to work in their *Jhum* fields at Bijoy Master Para. After the deceased's family members lodged a complaint against the killing at Longtorai police station, the police and TSR personnel allegedly threatened the deceased's families.⁴⁹

On the night of 22 November 2008, a tribal villager identified as Junesh Rait was shot dead and another villager Karnel Badarait was seriously injured by the police and paramilitary Central Reserve Police Force (CRPF) during an anti-Maoists operation near Kutuniganda village under Adaba police station in Gajapati district of Orissa.⁵⁰ Injured victim Karnel Badarait stated that they were fired at by the security personnel when they were searching for their cattle in the jungle.⁵¹

Naxalism and Salwa Judum: Human Rights violations in Chhattisgarh

In Chhattisgarh, the cadres of the *Salwa Judum* – an anti-Naxalite civilian vigilante group sponsored by the state government – have been responsible for serious human rights violations. In May 2008 the Planning Commission described the *Salwa Judum* as “an abdication of the state itself” and called for its immediate scrapping.⁵² On 31 March 2008, while hearing two petitions - Writ Petition (Civil) No.250/07 (*Nandini Sundar and Others Vs. State of Chhattisgarh*) and Writ petition (Criminal) No.119/07 (*Kartam Joga and Others Vs. State of Chhattisgarh*) – seeking to disband *Salwa Judum*, the Supreme Court noted that it was illegal to “give arms to somebody and allow him to kill” and that this could make the state an “abettor of the offence under Section 302 of the Indian Penal Code.”⁵³ On 16 April 2008, the Supreme Court asked the National Human Rights Commission (NHRC) to investigate into the allegations of human rights violations by the *Salwa Judum* and the Maoists.

The NHRC squarely blamed the Naxalites for gross human rights violations including “selectively” killing *Salwa Judum* leaders and supporters, innocent

tribals and security personnel (para 6.26 of the report). The NHRC said “allegations levelled in the petition against Salwa Judum are prima facie true to the extent of burning of houses and looting of property” (para 6.25 of the report). However, in some instances, the security forces and Special Police Officers (SPOs) were prima facie responsible for “extra judicial killings” but the allegations of rapes levelled against the SPOs and security forces could not be substantiated during the enquiry. The NHRC almost justified the Salwa Judum campaign saying that *“The tribals cannot be denied the right to defend themselves against the atrocities perpetrated by the Naxalites, especially when the law enforcers are themselves ineffective or not present.”*⁵⁴

The NHRC, *inter alia*, provided the following recommendations: the authorities should provide adequate security in the relief camps, and create conditions for the safe return of all the displaced families and rehabilitate the displaced families “under the accepted national and international norms”; the State Government should ensure registration of FIRs; launch impartial investigation into all cases of atrocities by the security forces, the Special Police Officers and the Salwa Judum activists; provide compensation to those who have lost their houses/belongings in arson/looting, irrespective of the perpetrators; the state government should prepare a village-wise list of all missing persons; School/Ashram buildings must not be used to house security forces; the security force personnel who are deployed in the area, especially for the protection of Camps, should be sensitized about human rights; uniform policies should be adopted with regard to distribution of rations and provision of other facilities in the relief camps in both Dantewada and Bijapur districts. About a possible solution to the problem, the NHRC stated that this problem is “complicated” and had its roots in socio-economic deprivation, including lack of job opportunities. The NHRC recommended that a “multi-pronged strategy” should be adopted in stead of a “security-centric approach”.⁵⁵

On 19 September 2008, the Supreme Court asked the Chhattisgarh government to implement the recommendations of the National Human Rights Commission.⁵⁶ On 5 February 2009, while perusing the action taken report (ATR) filed by the Chhattisgarh government on the recommendations made by the NHRC, a Bench comprising Chief Justice K G Balakrishnan and Justice P Sathasivam observed - “We do not underestimate the enormity of the problem (Naxalism). But State should not encourage the common man by arming them to fight Naxalites.”⁵⁷

The tribals had to face violent retribution for deposing before the visiting NHRC investigation team. On 26 June 2008, an independent fact-finding team of people's groups from Madhya Pradesh including the Narmada Bachao

Andolan, Bhopal Gas Peedit Mahila Udyog Sangathan, and Madhya Pradesh Mahila Manch which visited Nendra village in Konta block in Dantewada district of Chhattisgarh found that 11 houses belonging to the *Advasis* (tribals) of this village had been burnt down by the *Salwa Judum* members in reprisal for depositions by the villagers before the NHRC investigation team on 10 June 2008. According to the residents of Nendra village, a group of more than 100 persons came from *Salwa Judum* relief camp at Erabor at about 8.30 am on 15 June 2008. The group was armed and some of them were in uniform. On seeing the advancing group, the tribals fled. However two persons who could not flee were caught and beaten up. The attackers then proceeded to burn down 11 houses in the village. The victims whose houses were burnt were identified as Madka Unga Bima, Madvi Madka, son of Joga, Madvi Ganga, son of Poja, Madvi Joga Budra, Madvi Ganga Mooka, Madvi Raja Kosa, Madvi Joga Masa, Madvi Adma Inga, Sodi Irma Bima, Madkam Kosa Dewa, and Madkam Ganga Adma. The independent fact finding team has also learnt that during 2005-2008, 16 men and women and at least nine children of Nendra village were killed by the members of the *Salwa Judum* and the security personnel. At least 4 women have been raped. Over 150 houses have been burnt down by the *Salwa Judum* members.⁵⁸

b. Arbitrary arrest, illegal detention and torture

In 2008 the security forces were responsible for arbitrary arrest, illegal detention and torture. During 2008, tribal and indigenous peoples faced gross human rights violations by the security forces during the conduct of anti-insurgency operations.

On 2 November 2008, the Maoists tried to blow up West Bengal Chief Minister Buddhadeb Bhattacharjee's convoy but missed it. In the name of search operations, the police swooped down upon the tribal villagers in Lalgarh in West Midnapur district of West Bengal. During the raids the police committed "excesses" against the tribal villagers including women and children and arrested several tribals including school-children dubbing them as "Maoists".⁵⁹ In protest, the tribals felled hundreds of trees to block the roads and virtually declared the area as "a Republic". On 7 December 2008, the tribals suspended their protests⁶⁰ after Chief Minister Buddhadeb Bhattacharjee tendered an apology in the State Assembly,⁶¹ withdrew some police camps from Lalgarh,⁶² removed the inspector-in-charge of Lalgarh police station and dropped charges against eight arrested tribal villagers, including three schoolboys.⁶³ On 7 December 2008, a team led by Secretary of Tribal Welfare and Backward Classes R.D. Meena went to Midnapore to record statements of the tribal victims. A group of 10 women from Chhotopelia village in Lalgarh block came

to Midnapore escorted by a leader of the People's Committee Against Police Atrocities formed to protest the police atrocities in Lalgah. Recounting the tale of horrors, a tribal woman Chhitamoni Murmu (40) said the police hit them with *lathis* (sticks) and rifle butts, and kicked them relentlessly on the night of 4 November 2008. Chhitamoni Murmu was hit on her left eye with rifle butt which almost damaged her vision. Another tribal woman Purnima Murmu (25) also alleged that she was "repeatedly hit" with rifle butts on the chest and stomach.⁶⁴

On 13 January 2008, four tribals identified as Ms Sabita Tripura (20), Ms Bhagyabati Tripura (25), Mr Lalu Kumar Tripura (18) and Mr Binoy Debbarma (22) were arrested by para-military Tripura State Rifles personnel while they were returning home after collecting fire-woods from jungle and charged with providing food to the "militants" at Bowa Yong Khor Kami village under Salema police station in Dhalai district of Tripura. The victims were allegedly tortured during their five-day police remand at Salema police station.⁶⁵

On 14 March 2008, Ramtulonga Reang alias Raichurang, a small businessman, was arrested by personnel of 14th Assam Rifles from Naisingpara in North Tripura district, Tripura, on the charge of providing assistance to the "militants". He was taken to the 14th Assam Rifles Headquarters at Kanchanpur and allegedly tortured to extract a confession. On 15 March 2008, he was handed over to the police who produced him before the Court. The Court sent him to judicial custody at Kamalpur Sub-jail in Dhalai district.⁶⁶

In September 2008, police led by Inspector A Rocky reportedly stripped, chained and tortured Maruthan, an Irula tribal, for 37 days during interrogation in connection with alleged rape and murder of a tribal woman in Kerala. His only fault was that he was the first to see body of the woman near a rivulet in September 2007 in Attappadi and informed other community members.⁶⁷ On 1 October 2008, AITPN filed a complaint with the National Commission for Scheduled Tribes.⁶⁸ Pursuant to the notice of the NCST, the Director General of Police, Kerala, submitted report to the NCST denying the allegation of torture of Maruthan by the police. The DGP, Kerala also sent the inquiry report of the Deputy Superintendent of Police, Special Mobile Squad & Agali, Palakkad district dated 25 October 2008. AITPN has found several inconsistencies in the reports submitted by the concerned authorities. According to the medical records submitted by the police, the victim was shown admitted simultaneously in two different hospitals - Government Tribal Speciality Hospital, Kottathara, P.O. Attappady, Palakkad district where the victim was admitted treated for six days from 6.40 pm of 31.7. 2008 to 6 pm of 5.8.2008 and at Primary Health Centre, Sholayoor, Sholayoor P.O., Attappady, Palakkad

District where the victim was treated for six days during 31.7. 2008 - 5.8.2008. It is not possible that the same victim can be admitted and treated at the same time in two different hospitals. The fact that the victim had to be treated for six days and from the prescription given by the doctors it is clear that the victim's condition was serious. It also appeared that the alleged signature of Dr. Prem Sulaja Latha appearing on his alleged written statement dated 21.10.08 does not match with his alleged signature appearing on the prescription slip dated 31.7.2008. More than half of the 21 witnesses interviewed by the investigation officer (i.e. the Deputy Superintendent of Police, Special Mobile Squad & Agali, Palakkad district) were police personnel who were junior to the prime accused Inspector A.A. Rockey. Hence, their submissions cannot be said to be independent and impartial.⁶⁹

On 7 October 2008, a tribal identified as Kana Gesapara (40) was allegedly tortured by Beat Head Constable Janaksinh Rana and Constable Indu Rana - who belonged to the upper castes - at Nanikati village in Surendranagar district in Gujarat. The police constables came looking for the victim after his wife filed a complaint against him in the local police station. The police dragged the victim to the Panchayat office in the village and stripped and tortured in full public view. Further the victim alleged that the police pushed a stick wrapped with petrol-soaked cloth up the victim's rectum before putting the stick in his mouth. Thereafter, they took him to the Ramji Temple in the village and forced him to lie down and beaten up with sticks. Later, he was forced to wear a *ghaghra* (a kind of lady wear) and walk carrying his pants and shoes on his head till the panchayat office, where he was also forced to dance. Finally, the accused policemen took him to the Panitola police station and detained him for a night with hands being tied behind.⁷⁰

5. Violations of the IHL by the armed opposition groups

The armed opposition groups continued to be involved in gross violation of human rights including killings, abductions and torture etc during 2008.

a. Killings by the Maoists

The Naxalites (Maoists) were the worst violators of the rights of the tribal and indigenous peoples. The Maoists continued to kill tribal civilians on the charge of being “police informers”, members of the anti-Maoist civilian militia such as “Salwa Judum” and for not obeying their diktats.

On the night of 17 January 2008, Maoists killed 35-year-old tribal, Samireddy Ganesh of Bhiram village under G. Madugula mandal in Visakhapatnam district of Andhra Pradesh after abducting him on the charge of being a “police informer”. The Maoists reportedly way laid him on the Pulusumamidi ghat road under Boitili panchayat of G. Madugula mandal and took him away into the forests. In the custody, he was allegedly tortured and then axed to death. His body was thrown on the road to create chilling fear among the villagers.⁷¹

On 20 March 2008, the Maoists killed three tribal villagers, who were activists of *Salwa Judum* after abducting them from a relief camp in Mathwara village in Bijapur district of Chhattisgarh. The Maoists killed them by slitting their throats.⁷²

On 6 May 2008, armed Maoists kidnapped four tribals from Yampuram village under Pamedu police station in Bijapur district of Chhattisgarh. Three of them were reportedly killed by the Maoists and their bodies dumped on the village outskirts. The Maoists reportedly held the tribal youths responsible for the Pamedu encounter in which 17 Maoists were killed in a joint operation by the Chhattisgarh Police and elite police commandos, Greyhounds of Andhra Pradesh in March 2008.⁷³

On 27 July 2008, Maoists abducted and killed a tribal leader, Niram Singh Dhruv, ex-head of Amagaon village under Mainpur police station in Chhattisgarh. Accusing him of being a “police informer”, the Maoists tied him to an electricity pole in village square at Amagaon and shot him in the chest.⁷⁴

On 13 October 2008, the Maoists killed two tribals identified as Madivi Bandi, village head of Bandigumpu in Khammam district of Andhra Pradesh and

Bhuka Venkanna, a resident of Dongala Jaggaram village in Khammam district – after kidnapping them. Bhuka Venkanna was accused of collecting money from the migrant tribals to put up a new settlement. He was reportedly tried in a *Jana Adalat* in Chhattisgarh. Both the bodies reportedly bore stab injuries.⁷⁵

On 1 December 2008, Maoists killed two tribals - Vantala Rama Rao, 40, and Killo Sanadu, 36, after abducting them from Ramaraopalem village in Visakhapatnam district of Andhra Pradesh. The deceased were accused of being “police informers”.⁷⁶

On 11 December 2008, the Maoists shot dead a tribal leader, Sudhir Mandi at Jordanga village in West Midnapore district of West Bengal. The deceased had played a leading role in an anti-Maoist protest in Belpahari on December 9. The armed Maoists overpowered him when he was returning home with his wife on a bicycle from the weekly bazaar. The Maoists shot him and slit his throat. Mandi died on the spot.⁷⁷

b. Killings in the North East

The *gaonburas* (village chiefs) and *dobashis* (chiefs of Naga customary courts) tried to restore peace between the Naga warring factions but the peace move suffered jolt after the killing of two prominent Naga village chiefs by the National Socialist Council of Nagaland (NSCN) factions. On 29 June 2008, the NSCN (IM) abducted a prominent village chief - Khezheto Chishi, village chief of Yesholuto village under Zunheboto district, from a hotel room in Kohima, Nagaland. He was later killed for his alleged nexus with the rival Khaplang faction.⁷⁸ On 20 August 2008, another powerful village chief, P.P. Zeliang, village chief of West Yard Colony and member of Dobashis Joint Forum, was shot dead by unidentified assailants, alleged to belong to a NSCN faction, at his residence in Dimapur.⁷⁹

On the night of 30 March 2008, suspected members of the outlawed All Tripura Tiger Force (ATTF) shot dead tribal leader Sunil Debbarma (30) at Sidhai in West Tripura district, Tripura. Debbarma was a virulent critic of the tribal militancy.⁸⁰ Sunil Debbarma, a local leader of Indigenous Nationalist Party of Tripura (INPT), a tribal political party, was dragged out from his house and shot dead.⁸¹

During 13-22 March 2008, alleged cadres of the National Liberation Front of Tripura (NLFT) raided Karnamuni and Tetia villages in Dhalai district of Tripura several times and tortured the tribal villagers for not voting for an NLFT-backed candidate in the State Legislative Assembly elections held on 7

February 2008. The police claimed that the men were hit with rifle butts and cane, women stripped and beaten up and their belongings were looted by the NLFT cadres. At least 67 tribal families were forced to flee their homes and take shelter beside a highway near the camps of the para-military Tripura State Rifles and the Central Reserve Police Force.⁸²

c. Abductions

The AOGs have been responsible for abductions of innocent tribal civilians.

On 7 June 2008, a tribal farmer identified as Soyam Kannaiah was abducted from Pedamidisaleru village in Charla mandal in Khammam district in Andhra Pradesh. He was reportedly abducted on the charges of being a “police informer”.⁸³

On 21 October 2008, 60-year-old Kaniti Narsaiah, a tribal sarpanch (Headman) of Kurnavelli Gram Panchayat in Andhra Pradesh, was abducted for refusing to follow the Maoists’ diktat to quit from his *sarpanch* post. The Maoists stormed into his house and dragged him away at gun point. Earlier he had been abducted by the Maoists on 18 May 2008. He was let off on May 22 following the intervention of tribal organisations.⁸⁴

On 21 October 2008, tribal Tapan Debbarma (17, son of Malendra Debbarma) was abducted at gunpoint by suspected ATTF cadres from his house at Musrai Para village under Champahowar police station in West Tripura district.⁸⁵

Abductions also took place even in “peaceful” state of Arunachal Pradesh in North East India. On 18 March 2008, Minister of State for Home Affairs, V Radhika Selvi stated in a written reply in the Lok Sabha (Lower House of Indian Parliament) that 52 tribal youths were abducted by National Socialist Council of Nagaland (Khaplang) from Arunachal Pradesh’s Tirap district in January 2008. Out of these, 30 youths were released and two others escaped from the captivity.⁸⁶ Most of the abducted youths were schoolchildren. These include 22 schoolchildren who were abducted from their houses at Wakka and Chingkhov villages under Ponchu police station of Tirap district on 9 January 2008 and 17 schoolchildren who were abducted from Khasa, Jagan, Konnu and Konsa villages under Longding police station on 23 January 2008.⁸⁷

6. Violations of the rights of indigenous women

According to the 2001 census, there were 41.69 million Scheduled Tribes women, which represented 49.4% of country's total tribal population and 8.4 % of the country's total women population (about 496.45 million).⁸⁸

Indigenous/tribal women faced violence including killing, torture, rape, and other inhuman and degrading treatment at the hands of the law enforcement personnel, vigilante groups, the armed opposition groups, non-tribals and in many cases from the tribals themselves. According to the NCRB, a total of 627 cases of rape of tribal/indigenous women were reported in 2007. There was a marginal decrease since 2006 in which 699 cases of rape of tribal/indigenous women were reported. Out of these 627 rape cases reported during 2007, 45.9% were reported from Madhya Pradesh.⁸⁹ Non-tribals were involved in these rape cases.

Tribal/indigenous women were targeted both by the armed opposition groups and the security forces.

a. Violence by the security forces

In June 2008, the police detained three Special Police Officers (SPOs) identified as Rakesh, Dhamru and Rakesh for allegedly abducting and raping three tribal women at gunpoint near Kirandul in Dantewada district of Chhattisgarh. The victims in their complaint before the Kirandul police station alleged that they came to Kirandul to work as manual labourers from Pulpad village. But the accused abducted them at gunpoint and took them to the nearby forests and raped them.⁹⁰

b. Violence by the AOGs

The armed opposition groups were also responsible for violence against women.

On the night of 3 February 2008, 38-year-old tribal woman identified as K. Sharada was tortured to death by the Maoists at Muthapur village in Govindraopet mandal of Warangal district, Andhra Pradesh. The Maoists accused her of being a "police informer". As many as eight armed Naxalites came to the residence of the deceased and forcibly dragged her out of the house and beat her up with sticks and stones. She succumbed to her injuries.⁹¹

c. Violence by Caste Panchayats/Village Council

The Village Councils and Village Panchayats have also turned into kangaroo courts delivering anti-women judgments.

On 6 October 2008, a tribal woman identified as Gujriya, wife of Hakma, was subjected to torture by the Village Panchayat on the alleged charge of being a “witch” at Khara village in Sirohi district of Rajasthan. The panchayat ordered the victim to undergo an “*agnipareeksha*” (trial by fire) by dipping her hands twice in a vessel filled with boiling oil to retrieve a silver coin to prove her innocence. Later, the victim was beaten up with hot iron rods. She was accused of killing two persons by her witchcraft.⁹²

Earlier on 27 August 2008, four college students abducted a pregnant tribal woman from Showuba village near Dimapur in Nagaland and gangraped her on a moving Maruti car. After committing the crime, the youths dumped her at the spot from where they had abducted her. The next day, the four rapists identified as Tohovi Ayemi and Akito Zhimomi of Vihokhu village and Mughaka Yephthomi and William Awomi of Kehokhu village were arrested after the victim filed an FIR at the local police station. But the Showuba Village Council let off the four accused after fining them Rs 15 each! Hundreds of women protested in Dimapur seeking appropriate punishment for the rapists.⁹³

d. Violence by civilians

On 28 January 2008, a 25-year-old tribal woman (name withheld) was gang-raped by four persons and acid was thrown on her private parts after the assault at Pithoria in Ranchi of Jharkhand. At the time of assault, the victim was returning home from Delhi and hired a private vehicle to reach her home at Pithoria. But as the vehicle arrived at the destination, a group of local goons assaulted her.⁹⁴

On 28 May 2008, a tribal woman was gang-raped for 10 days after being kidnapped by three persons including one Pramod Waman Tadose from Maldugi village under Kurkheda police station in Gadchiroli district of Maharashtra. She was left at Kurkheda in an unconscious state on 6 June 2008. Later, the police took her to Kurkheda police station kept her in the station entire night without admitting her to a hospital.⁹⁵

On 1 July 2008, a tribal woman, wife of Dilvarsingh Sonawane, was gang-raped by four persons at Dahivat-Shivar in Satgaon district of Maharashtra. The accused tied the victim’s husband and raped her in front of him.⁹⁶

7. Violations of the rights of indigenous children

The indigenous / tribal children were victims of killings, sexual violence, arbitrary arrest and illegal detention at the hands of the security forces and the armed opposition groups. In general India's juvenile justice system is in shatters. But for the children caught in conflict zones the situation is still worse. 21 out of India's 28 States are afflicted by armed conflicts and these armed conflict areas are predominantly inhabited by the tribals. Apart from being direct victims of violence often because of their ethnic, religious or caste origin, the protections available under the Juvenile Justice (Care and Protection of Children) Act of 2000 is not being implemented in districts afflicted by armed conflicts. Rather children are frequently arrested under various national security laws which offer little or no protection and are frequently open to violations including: incommunicado detention, torture, summary execution and disappearance. On 10 July 2008, police arrested two minor tribal children identified as Vetti Pojja (14), son of Vetti Malla and Madkam Bima (16) of Nendra village in Dantewada district when they were returning from the weekly market. The police first shot at Vetti Pojja and then arrested him. On 13 July 2008, Vetti Pojja was located at Jagdalpur hospital where he was undergoing treatment for bullet injury in his thigh. Both Vetti Pojja and Madkam Bima were sent to Dantewada jail and were charged with "attack on police with bows and arrows".⁹⁷

The tribal children were victims of rape by the security personnel. On 24 January 2008, a 10-year old tribal girl (name withheld) was allegedly raped by police constable Arvind Kumar Das at Chandli village in Giridih district of Jharkhand. The accused constable was arrested and suspended following a complaint by the victim's family.⁹⁸

On 3 July 2008, a 14-year-old tribal girl (name withheld) was allegedly raped by Head Constable Zakir Khan posted at Bisthan Police post in Khargone district of Madhya Pradesh. The accused barged into the victim's house near the Bisthan police post when she was alone and raped her. Later, the victim was admitted to the Khargone district hospital in a critical condition.⁹⁹ AITPN filed a complaint with the NHRC (Case no. 734/12/26/08-09-WC). In response to NHRC's order to submit a report, the Superintendent of Police of Khargone stated that "accused Head Constable has been suspended and action in accordance with law is being taken against him", that the victim has been given free medical treatment and compensation of Rs 50,000/-.¹⁰⁰

The tribal children also faced sexual violence from civilians. On 2 February 2008, a 15-year-old tribal girl, student of X standard, was gang raped by 14

persons at in Bharuch district in Gujarat. The accused had raped the victim after tying her boyfriend with a rope. In October 2008, a court sentenced all the 14 accused to life imprisonment.¹⁰¹ Again on the night of 10 September 2008, a 14-year-old tribal girl was gang raped after being abducted by four persons at Dhobi Ghat in Sector IV of the HEC Township under the Jagannathpur police station in Ranchi in Jharkhand.¹⁰²

8. Violations of indigenous people's right to land

a. Extent of the tribal land alienation in India

The 5th Schedule and 6th Schedule to the Constitution of India provides stringent protection to tribal lands. In addition, at the state level, there are numerous laws prohibiting transfer of lands from tribal people to non-tribals. Yet the rate of alienation of tribal land in India is alarming.

The Ministry of Rural Development of the Government of India in its 2007-2008 Annual Report states, "The State Governments have accepted the policy of prohibiting the transfer of land from tribals to nontribals and for restoration of alienated tribal lands to them. The States with large tribal population have since enacted laws for this purpose."

The 2007-2008 Annual Report further states, "Reports received from various States, indicate that 5.06 lakh cases of tribal land alienation have been registered, covering 9.02 lakh acres of land, of which 2.25 lakh cases have been disposed off in favour of tribals covering a total area of 5.00 lakh acres. 1.99 lakh cases covering an area of 4.11 lakh acres have been rejected by the Courts on various grounds". The Ministry of Rural Development has reported land alienation in only 12 states - Andhra Pradesh, Asom (formerly Assam), Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura.¹⁰³

Andhra Pradesh

The tribal lands were illegally occupied by the non-tribals as Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970 prohibits sale and transfer of tribal lands to non-tribals in "scheduled areas".

On 2 September 2008, the Andhra Pradesh High Court admitted a writ petition filed by a tribal woman, Karam Devudamma of Chinnabhimpalli of East Godavari district who alleged that the Revenue Divisional Officer (RDO) purchased tribal lands, including the land of the petitioner, from non-tribal residents for the purpose of constructing Polavaram irrigation project.¹⁰⁴

Asom

The state government of Asom (formerly Assam) has failed to prevent tribal land alienation. Tribal lands have been either illegally occupied or transferred

to non-tribals with the help of an unholy nexus between the land grabbers and a section of officials in the Revenue Department. According to the All Assam Tribal Sangha, about 800,000 bighas of land in the 47 tribal blocks and belts in Asom have been under illegal occupation of non-tribals as of 4 May 2008.¹⁰⁵

According to a survey conducted by the Greater Dimoria Bhumi Suraksha Samiti, Sonapur, on the illegal occupation or transfer of lands in Sonapur tribal belts to non-tribals, about 325 bighas of land from Sonapur tribal belt in Kamrup district have been illegally occupied or transferred to non-tribals. The survey report said from Sonapur to Byrnihat in Sonapur tribal belt, a number of non-tribals have either illegally occupied or got transferred tribal lands in their names to start industries. The survey provided the names of the following non-tribals who have illegally occupied tribal lands in Sonapur tribal belts: Abhisekh Agarwal illegally purchased four bighas of tribal land under Patta No. 53, Basant Kumar Agarwal illegally purchased three bighas of tribal land at Byrnigaon under Patta No. 7 and Dag No. 60; Basant Kumar Agarwal illegally occupied seven bighas of tribal land at Sarutarigaon under Patta No. 5 and Dag No. 48/49; Anisuj Jaman illegally purchased four bighas of land at Dimoria under Patta No. 102 and Dag No. 111 under sale deed No. 3795 on June 4, 2002; RK Himmat Sinka (resident of Tokobari in Guwahati) illegally purchased 109 bighas of tribal land under Patta No. 01 and Dag No. 34/38/41; Kakali Saikia illegally purchased six bighas of land at Sarutari village; Santi Dutta illegally purchased 13 bighas of land at Tamulikuchi; and NN Dutta illegally purchased four bighas of land at Nazirakhat under Patta No. 134 and Dag No. 159.¹⁰⁶

Jharkhand

In Jharkhand, tribals have been victims of massive land alienation. This is despite the presence of laws - Chotanagpur Tenancy Act and Santhal Paragan Tenancy Act - preventing land alienation in the State. According to the 2007-08 Annual Report of the Ministry of Rural Development, a total of 5,382 cases of land alienation were filed in the Courts in Jharkhand involving an area of 4,002 acres. 1,362 cases were disposed of by the Courts out of which 1,079 cases were disposed of in favor of tribals.¹⁰⁷

However, the tribals, who are poor and disadvantaged, find it extremely difficult if not impossible to fight legal battles in the Courts for restoration of their lands which have been alienated by non-tribals in Jharkhand. Lack of lawyers to take up land-related cases of the tribals further delayed adjudication. Around 5,500 land-related cases of tribals were pending in various district courts in Jharkhand as of March 2007. The government of Jharkhand had an

annual budget of Rs 50 lakh to provide legal assistance to poor tribals to pursue their land-related cases. However, less than 10 per cent of the total allocated budget was spent over the last six years. Lawyers were unwilling to fight cases on behalf of tribals seeking government assistance. The lawyers were reportedly paid merely Rs 5,000 per case as part of government's legal aid assistance.¹⁰⁸

Karnataka

The state government of Karnataka failed to prevent further alienation of the lands of tribal people. According to the Annual Report 2007-08 of the Ministry of Rural Development, Government of India, a total of 42,582 cases alleging alienation of 130,373 acres of land have been filed in the court in Karnataka. The courts disposed off 38,521 cases out of which 21,834 cases involving 67,862 acres of land have been decided in favor of tribals and 16,687 cases involving 47,159 acre of land have been rejected. About 4,061 cases were pending in the court.¹⁰⁹

Madhya Pradesh

According to Ministry of Rural Development of Government of India, Madhya Pradesh has the distinction of not deciding a single case in favour of the tribals after adjudication of 29,596 cases by 2007. Another 24,210 cases were pending in the court. A total of 53,806 cases involving 158,398 acres of land were filed in the court in the Madhya Pradesh.¹¹⁰

Maharashtra

Maharashtra has a number of laws, such as the Maharashtra Land Revenue Code, 1966, that prohibit the transfer of tribal land without prior permission of the District Collector. As the Maharashtra Land Revenue Code, 1966 failed, the government of Maharashtra enacted Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 which provided that no tribal can transfer his land to a non-tribal, by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise transfer without the previous sanction (a) of the Collector, in the case of mortgage or lease for a period not exceeding five years, and (b) of the Collector, with previous approval of Government, in other cases with effect from 6th July, 1974.¹¹¹

The government of Maharashtra itself admitted that permissions by the District Collectors "appear to have been given as a matter of routine. The tribals were also induced to sell their lands because of indebtedness and poverty."¹¹²

In order to restore the alienated lands of the tribals, the state government enacted the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. This Act provides for restoration to a tribal his/her land transferred to a non-tribal during the period from 1 April 1957 to 6 July 1974 as a result of validly effected transfers (including, exchanges).¹¹³

But both the land protection law - Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 and the land restoration law - Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 have failed to check further alienation of the tribal land or restore alienated lands. According to the Annual Report 2007-08 of the Ministry of Rural Development, Government of India, a total of 45,634 cases have been filed in the court in the state. 44,624 cases have been disposed of by the court, of which 19,943 cases (44.7%) involving 99,486 acres of land have been disposed of in favor of tribals and 24,681 cases (55.3%) against tribals. 1,010 cases were pending in the court.¹¹⁴

Orissa

There has been massive alienation of tribal lands in Orissa. According to the Annual Report 2007-08 of the Ministry of Rural Development, Government of India, a total of 105,491 cases alleging alienation of 104,742 acres of land have been filed in the court in Orissa. An estimated 104,644 cases were disposed of by the court. Out of these 61,431 cases were disposed of in favor of tribals and 56,854 acres of land was restored to tribals.¹¹⁵

Rajasthan

The state government failed to check alienation of tribal lands. According to the Annual Report 2007-08 of the Ministry of Rural Development, Government of India, a total of 2,084 cases of land alienation involving 6,615 acres of land have been filed in the court in Rajasthan. 1,257 cases have been disposed of by the court, of which only 187 cases (involving 587 acres of land) have been disposed of in favor of tribals while 53 cases involving 187 acres were rejected.¹¹⁶

b. Non-restoration of alienated tribal lands

According to the 2007-2008 Annual Report of Ministry of Rural Development, Government of India, out of total 430,450 cases of tribal land alienation (involving 851,372 acres) disposed of by the Court, a total of 198,674 cases (involving 410,587 acres of land) have been rejected i.e. decided against the tribal petitioners. Only 225,343 cases (involving 500,376 acres) have been

decided in favour of tribals out of which it was only in 203,064 cases that the land (involving 418,128 acres) was restored to tribals. A total of 55,702 cases involving 128,360 acres of land have been pending in the Court.¹¹⁷ This statistic clearly suggests that the laws for the prevention of land alienation in India have not been successful.

Once tribal lands have been alienated by non-tribals it becomes quite difficult for the tribals, who are poor and disadvantaged, to fight legal battles in the Courts for restoration of their land. This is despite the fact that there is plethora of stringent laws preventing land alienation of the tribals in the country.

In 1974, a non-tribal Hemlata Chaturvedi allegedly grabbed 1.55 acres of land belonging to a tribal farmer Raghu Munda of Tatisilwai village about 14km from the state capital of Ranchi, Jharkhand. Thirty-four years have passed and the original petitioner and respondent have both died but justice continued to elude the tribal victim. In 1974, Munda had filed a case (case number SAR 931/1974) with the Scheduled Area Regulatory Court in Jharkhand. The Scheduled Area Regulatory Court had given the verdict in favour of Munda on 17 July 1976, and ordered restoration of the land. But Hemlata Chaturvedi, the non-tribal who grabbed the land, appealed before the Court of the Deputy Commissioner and then the Court of the Divisional Commissioner. The appeal was dismissed but Hemlata moved the High Court, which ordered her to file an appeal for hearing in the Scheduled Area Regulatory Court within two months. But Hemlata Chaturvedi did not file any appeal for 25 years. Both the original petitioner Raghu Munda and respondent Hemlata Chaturvedi have died. In 2005, the Scheduled Area Regulatory Court again ordered land restoration but Rajendra Chaturvedi, son of Hemlata Chaturvedi, moved the Court of the Deputy Commissioner (case number 9/2006-07). This time, the Deputy Commissioner's Court set aside the lower court's order. As of January 2008, the case was being heard for the second time by the Court of the Divisional Commissioner. Justice continued to elude the tribal victim despite prevalent of stringent law called the "Chotanagpur Tenancy Act" in Jharkhand which prevent sale of tribal land to non-tribals.¹¹⁸

In January 2008, a tribal Laxmi Kanta Sabara (son of Damburu Sabara) was able to get back his land illegally occupied by a non-tribal after 12 years of legal battle in Rayagada block in Gajapati district of Orissa. In 1995, a case (No. 164/95) was lodged *suo motto* by the then Welfare Extension Officer of the Rayagada block stating that 0.002 hectare land belong to Laxmi Kanta Sabara was forcibly occupied by a non-tribal, Kacharijit Swalasing. The then *tehsildar* had investigated into the case and found it to be true but no action was taken for restoration of the land. In 1998, Kacharijit Swalasing appealed before the

district administration stating that the land belonged to him, but it had been turned down. Finally, the victim Laxmi Kanta Sabara filed a case in the High Court and the High Court ordered that the land be restored back to the tribal but the order was not implemented forcing the victim to seek help from the court again. In a strongly worded direction the High Court issued a deadline of 4 January 2008 for restoration of land to Laxmi Kanta Sabara.¹¹⁹

9. Displacement of indigenous/ tribal peoples

a. Development-induced displacement

The tribals have been disproportionate victims of displacement due to development projects. The indigenous/ tribal peoples who constituted 8% of the total population of India at 1991 census also constituted 55.1% of the total development project-induced displaced persons up to 1990. The Ministry of Tribal Affairs in its Draft National Policy on the Tribals stated that nearly 85.39 lakh tribals have been displaced until 1990 on account of mega developmental projects like dams, mining, industries and conservation of nature etc.¹²⁰ Tens of thousands of tribals have been displaced from 1990 onwards without proper rehabilitation. Yet, no study has been conducted in regard to displacement and rehabilitation of tribals in the country.

The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes in a report submitted to the Lok Sabha on 23 October 2008 stated, *"The Committee pointed out that notwithstanding Act and regulations to control alienation of tribal land, tribal people are being alienated from their land in the name of development and due to insufficient amount given to them for their land, they migrate to other places in search of livelihood"*. Neither the Ministry of Tribal Affairs nor the National Commission for Scheduled Tribes has undertaken any study in regard to displacement and rehabilitation of tribals in the country.¹²¹

Across India, tribal people have been protesting against various so-called development projects, like dams, steel plant, mining etc but the government fails to heed to their opposition. The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes stated that *"tribals should not suffer in the name of development"* and recommended that *"the Ministry of Tribal Affairs should take immediate su-moto action whenever it is reported that tribal people are agitating against displacement and endangerment to their lives."*¹²²

On 8 August 2008, the Supreme Court allowed POSOCO India Pvt Ltd, a subsidiary of Korea-based POSCO, to build its Rs 51,000-crore steel plant in Paradeep in Jagatsinghpur district of Orissa.¹²³ On the same day, the Supreme Court also allowed Sterlite India Limited, a subsidiary of Britain's Vedanta Resources Plc, to mine bauxite in Niyamgiri hills in Kalahandi district of Orissa considered sacred by Dongria Kondh tribe.¹²⁴ The Supreme Court's order has undermined the tribal protests and encouraged further acquisition of lands of the tribals leading to their displacement without proper rehabilitation, destruction of their culture and posing threats to their survival in the name of development. The tribals under the aegis of POSCO Pratirodh Sangram Samiti

(Committee for the Resistance Against POSCO) have been resisting the proposed steel plant of POSCO which is expected to displace about 4,000 tribal families.¹²⁵ The state government has allegedly been backing the pro-POSCO activists to counter the movement by *POSCO Pratirodh Sangram Samiti*. On 20 June 2008, an anti-POSCO tribal activist identified as Dula Mandal (35) died in attack by pro-POSCO villagers near Gobindpur.¹²⁶

On 29 June 2008, the NHRC deputed its Special Rapporteur Damodar Sarangi to probe allegations that the Orissa government had forcibly evicted over 10,000 villagers from their homes in Bhadrak district to make way for a massive flood-control project - Salandi-Nalia river Sanskar project. The Rs 100-crore project involves widening and deepening of the two rivers - river Salandi and its tributary Nalia - to control annual floods in the area. Earlier on 12 May 2008, the NHRC had asked the state government to reply within four weeks about the allegation of large-scale human rights violations in 50 villages in and around the river Salandi and its tributary Nalia but the state had failed to submit any reply. The NHRC has taken action based on the complaint filed by Advocate Radha Kanta Tripathy in 2007 who has alleged that the state government forcibly evicted thousands of villagers without following any rules and regulations. The state government did not serve any land acquisition notice nor had it taken any step to rehabilitate the displaced villagers. The villagers had been forcibly evicted from their agricultural lands.¹²⁷ According to the affected villagers, anti-social elements had been hired by contractors to attack people who protested against the "illegal" acquisition of land.¹²⁸

Across India the tribals have been up in arms against various so-called development projects because of the displacement, denial of adequate compensation and rehabilitation to the displaced people.

In Jharkhand, the world's largest steel maker, ArcelorMittal has been facing stiff resistance from the tribals who organized themselves under the banner of "Adivasi Moolvasi Astitva Raksha Manch" in the Torpa-Kamdara region. ArcelorMittal needs around 11,000 acres of land, of which 8,800 acres is required to set up a 12-million-tonne steel plant and 2,400 acres for establishing a township.¹²⁹ The tribals claimed that the land identified by ArcelorMittal for the steel project is agricultural land and tribal lands are not transferable to non-tribals.

In Andhra Pradesh, compensation has not been paid to the 27 tribal families from whom 52 acres of land had been acquired for canal works related to Bugga irrigation tank at Gatrappalli village in Kasipet in Adilabad district as of February 2008. The lands were acquired three years ago but compensations

have not been paid to the tribal victims as yet. On 18 February 2008, Y.S. Jagan Yuva Sena and Akhil Bharatiya Adivasi Vikas Parishad threatened to launch an indefinite hunger strike unless compensation was paid to the tribal families within the next 10 days.¹³⁰

In Orissa, hundreds of tribals armed with bows and arrows gathered at Upper Kranti village in Similiguda block in Koraput district in April 2008 to protest against proposed land acquisition for mining project being undertaken by a private firm in the Deomali range. People living in about 40 villages would be affected by the project.¹³¹ On 18 April 2008, hundreds of villagers under the banner of *Bhumihara Krushak Mancha* demonstrated in front of the Office of the Additional District Magistrate, Paradip in Jagatsinghpur district of Orissa, demanding adequate compensation and rehabilitation packages from Deepak Fertilizer Ltd. The company needed more than 80 acres of land and had already acquired 65 acres of private land at the cost of Rs 15 lakh per acre. But the villagers alleged that the company had not yet held any public meeting to discuss about the compensation and rehabilitation package.¹³²

On 23 June 2008, hundreds of displaced villagers from four panchayats of Kujang tehsil in Jagatsinghpur district of Orissa protested in front of the Paradeep Phosphate Ltd demanding jobs and enhanced compensation against land acquired by the company in 1984. The protestors demanded adequate compensation, jobs, health care services and subsidised fertilisers to local farmers. The Paradeep Phosphate Ltd purchased private land in 1984 at a rate of Rs 10,000 per acre. Land losers of Bagadia, Kothi, Siju, Paradipgarh, Jhimani, Mangrajpur, Rahitshai have since been demanding more compensation.¹³³

Nearly 900 families would be displaced by the Essar's proposed steel plant in Jagatsinghpur in Orissa.¹³⁴ The company has identified nearly 1,925 acre land for a proposed steel plant of which 1,663 acre are owned by the villagers and 262 acre by the government.¹³⁵ The state government has already handed over 103 acres to the company. The locals alleged that the 103 acres given to the Essar Steel Company were acquired by the Commerce and Transport department of the government of Orissa to set up the Paradip Port Trust in 1962-1963. The department had acquired the land at a cost of Rs 300 per acre but sold the land to Essar Company at the rate of Rs 3 to 4 lakh per acre.¹³⁶ The Essar Steel Company has already completed dredging and sand filling in 103 acre of acquired land at the Mahanadi river mouth and the dredging has resulted in the inundation of more than 400 acre of paddy land. The district administration has issued a notification to the company but no compensation has been paid to the farmers. In July 2008 the affected families demanded due compensation for the inundation of their agricultural land.¹³⁷

In 1995 the government of Orissa signed a Memorandum of Understanding with the Tata Steel for the establishment of a mega steel plant near Gopalpur in Ganjam district. For this, the Tatas acquired 2,295.95 acres of private land and 792.65 acres of government land near Gopalpur and around 1500 families had been displaced. Highly fertile irrigated land had been acquired by the company. But the proposed steel plant never came up; the company has only set up a technical training centre over 10.2 acres of land. The rest land has been lying vacant since 1997. In 2007, the State Industrial Development Corporation, government of Orissa, handed over yet another 300 acres of land to the company. Since the Tata Steel failed to set up any steel plant at the acquired land, the displaced villagers have been demanding return of their land acquired by the company.¹³⁸ The Tata Steel promised jobs to all eligible youths from the displaced families but so far the company has employed only 47 youths out of around 604 eligible youths.¹³⁹

On 18 June 2008, about 20 villagers from the five villages near Bhusan Steel and Strip's upcoming project in Meramunduli in Dhenkanal district came to Bhubaneswar to meet Orissa's Chief Minister Naveen Patnaik. On 10 June 2008, violence erupted when villagers tried to stop construction demanding settlement of their compensation package. The villagers alleged that they have turned into daily labourers from farmers after giving their land at throw away price and have demanded their land back. Some of the displaced victims alleged that they were harassed by the police for demanding adequate compensation. "I was sent to jail for 16 days in March 2005. I was among four women who was (sic) harassed by the police. Altogether 21 villagers were picked up. Our only fault was that we mustered courage to demand permanent job for our children in lieu of our land," stated Sashi Bhoi, a resident of Sibapur village in Dhenkanal district. Another victim, Ketaki Behera, an old woman from Serpa village, alleged that the police had brutally beaten up villagers including women on 10 June 2008. She showed injury marks in support of her allegations.¹⁴⁰

The government of Arunachal Pradesh has reportedly signed 42 Memorandum of Associations with various power developers in the past three years for executing hydro power projects of 23,591 MW in the state. Of the total projects, 14 are located at West Kameng district (total installed capacity of 2,370 MW), eight in West Siang (3,504 MW), six in East Kameng (927 MW), five in Tawang (1,790 MW), two each in Dibang Valley (4,500 MW), Anjaw (2,700 MW) and Papum Pare (200 MW), while one each in Lower Dibang Valley (3,000 MW), East Siang (1,600 MW) and Lohit (3,000 MW).¹⁴¹ Some of these projects have met with protests from the local indigenous populations as they would lead to

mass displacement and cause environmental hazards. For example, the local indigenous peoples demanded scrapping of the 1,000-MW Siyom hydel project at Reying under the Payum circle of West Siang district on the ground that it would have adverse impacts on the livelihood of the indigenous Bori peoples.¹⁴² In March 2008, Lok Sabha Members of Parliament (MPs) from Arunachal Pradesh - Kiren Rijiju and Tapir Gao opposed the proposed shifting of dam site of the 1600 MW Lower Siang Project by J P Associate Limited (JPAL) on the ground that such shifting of the dam site would submerge agricultural lands in many villages of East Siang district. The National Hydro Power Corporation (NHPC) had carried out a survey and handed over the Detailed Project Report (DPR) to JPAL according to which the original location of the dam had to be shifted downstream at the confluence of Yamne River to increase the power potential from 2000 MW instead of the site identified by the Central Electricity Authority. Opposing the shifting of the dam site the Members of Parliament pointed out that "The fixation of dam site upstream of the Yamne River was to avert submergence of Pongging, Jera and Silile villages and their cultivable fields in low lying areas along the bank of Yamne and Siang rivers."¹⁴³

b. Conflict-induced displacement

As stated above all the conflict areas except Jammu and Kashmir are predominately inhabited by the tribals. As a result, whether the armed conflicts are being led by the tribals or not, they have been disproportionately affected by the internal armed conflicts.

According to the estimate of AITPN, a total of 4,01,425 tribals have been displaced due to the armed conflicts and ethnic conflicts across India. On 3 March 2008, Chhattisgarh Home Minister Ramvihar Netam stated in the State Assembly that there were 36,991 Adivasis from 201 villages in Dantewada district and 10,949 Adivasis from 275 villages in Bijapur district living in 23 government-run makeshift relief camps.¹⁴⁴ In Assam, about 2,03,485 tribals (Bodos, Santhals and Garos) have remained displaced after ethnic clashes. About 1,20,000 Gutti Koya tribals from Bastar and Bijapur districts of Chhattisgarh have reportedly taken shelter in Andhra Pradesh during January-June 2008 to escape violence by the Maoists and the *Salwa Judum* activists.¹⁴⁵ In Tripura, 30,000 Brus evicted from Mizoram still continued to languish in six relief camps.

The displaced persons have been living miserable lives without basic amenities including food, water, shelter, medical services, sanitation, and livelihood opportunities.

From 17-19 December 2007, the National Commission for Protection of Child Rights (NCPCR) sent a fact finding team to Dantewada district in Chattisgarh and Khammam district in Andhra Pradesh to study the conditions of the displaced tribal children. The NCPCR team expressed serious concern about health, nutrition and education conditions of the displaced children. The children from Chhattisgarh were denied admission to schools in Andhra Pradesh because they did not have school-leaving certificates and they cannot comprehend Telugu, the language of instruction in Andhra Pradesh. In addition to Khammam district, the displaced tribals from Chhattisgarh also took shelter in Adilabad, Warangal and East Godavari districts of Andhra Pradesh. The NCPCR recommended that public distribution system ration cards should be given to all the displaced people living in Andhra Pradesh, adults should be given job cards under the National Rural Employment Guarantee Act, and all displaced children living in Andhra Pradesh must be given admission in schools, among others. The NCPCR has also recommended the establishment of Child Rights Cells in the offices of the Dantewada and Khammam District Collectors with members from the community, officials and non-officials.¹⁴⁶

Initially, the state government of Andhra Pradesh had provided benefits of various schemes including ration cards, jobs under the National Rural Employment Guarantee Scheme etc to these displaced tribals. But following the killing of more than 30 Greyhound police commandos by the Maoists in an ambush at Chitrakonda reservoir in Orissa, close to the Andhra Pradesh border on 29 June 2008¹⁴⁷, the state government of Andhra Pradesh stopped shelter, jobs under the NREGS and declared that Gutti Koya tribals would not be eligible for land and forest rights in Andhra Pradesh as the police accused them of being “Maoist supporters”.¹⁴⁸

India's North East region is home to hundreds of tribal communities. The region has been described as “an anthropologist's delight and an administrator's nightmare” because of its cultural diversities. Hundreds of people have been displaced due to communal clashes. In August 2008, communal clashes broke out between Asom's largest tribal group Bodos and non-tribal Muslims. The riots began on 14 August 2008 following the killing of a Bodo tribal youth by supporters of a *bandh* (strike) called by the Muslim Students Association, Asom at Routa under Udalguri district. The clashes soon spread to Darrang and Sonitpur districts, claiming 17 lives and resulting in displacement of some 14,279 persons who have been sheltered in nine relief camps. Again, from 3-7 October 2008, Bodo tribals bitterly fought with Muslims (non-tribals) in Udalguri and Darrang districts. Before troops and paramilitaries sent by the Central government quelled the violence, 55 persons had died, 2505 houses

had been either completely burnt or partially destroyed and thousands had fled their homes out of fear. The casualties were from both sides – Bodos and Muslims.¹⁴⁹ The actual cause of the conflict was believed to be the resentment among the Bodo tribals against encroachment of their lands by the Muslims, many of who are believed to be illegal immigrants from Bangladesh. According to latest available information, over 96,000 tribals, mainly Bodos, have still remained in the relief camps after the October 2008 communal clashes. According to the Memorandum submitted by the Citizens of Udalguri district to the government of Indian and state government of Asom through the Deputy Commissioner of Udalguri in October 2008, the displaced people have been living in miserable lives without adequate food, clothes, health care facilities and sanitation, drinking water and other essential services.¹⁵⁰

Following a complaint filed by Asian Indigenous and Tribal Peoples Network (AITPN) against the non-inclusion of 7,204 Bru internally displaced children in Tripura, the National Commission for Protection of Child Rights (NCPCR) on 8-9 September 2008 visited the relief camps in Tripura housing the Bru indigenous IDPs since they fled Mizoram state following ethnic conflict in 1997. The members of the NCPCR *“were appalled by the sub human conditions under which the families had to survive.... There was none or little, if any, registration of births and deaths, marginal immunisation, no health facilities or primary health centres, no functional schools, no safe drinking water, poor sanitation and inadequate rations”*. At least 30 Bru children died in the relief camps due to malnutrition and disease in August 2008 alone. The NCPCR has made appropriate recommendations to improve the conditions of the internally displaced children including the Brus sheltered in Tripura state.¹⁵¹

Discrimination among the IDPs

The state authorities discriminate between the IDPs. In May-June 2008, the National Human Rights Commission (NHRC) conducted an on-the-spot inquiry following an order from the Supreme Court of 16 April 2008 to investigate the allegations of human rights violations by the *Salwa Judum* members and the Naxalites. The NHRC concluded that overall conditions in camps were “satisfactory” but at the same time noted that the relief camps lacked in several aspects including employment, sanitation, health, education, rations. The NHRC noted, “The health sector is neglected in the entire area. Barring in a few camps, the medical facilities exist only on papers. The health workers do not visit the camps regularly and the supply of medicines is also scarce.” The camp inmates across Bijapur district were discriminated in distribution of Below Poverty Line ration cards. The NHRC findings noted that *“Whereas in district Dantewada the camp inmates are getting free rations from*

*the Government, the inmates of the camps in Bijapur District are not. Here the inmates having 'BPL cards' can get rice @ Rs. 3/ kg and each family can get 35 kg rice in a month, irrespective of the number of family members."*¹⁵²

c. Displacement due to security reasons

In Mizoram, a total of 35,438 Chakma tribals from 5,790 families in 49 villages would be displaced due to the ongoing India-Bangladesh fencing project. Many of the victims have not been paid any compensation and they have been struggling for rehabilitation. Although 107.75 km out of total 318.0 km to be fenced has been completed as of 31 December 2007¹⁵³, neither the Central government nor the state government of Mizoram has made public any resettlement and rehabilitation package by the end of 2008. On 10 March 2008, AITPN filed a complaint with the National Human Rights Commission against denial of timely compensation to the Chakma tribal families, violations by the four construction companies while drawing the fencing alignment and alleged corruption by the government officials in Lunglei district while awarding compensation to the fencing victims.¹⁵⁴

As expected, the state government of Mizoram in its reply to AITPN's complaint denied that there was any corruption on the part of the government officials.¹⁵⁵

Surprisingly, the government of Mizoram even refused to recognize the victims as "displaced" because of their irrational logic that "the Fencing Line is not the boundary of Indo-Bangladesh Border". The state of Mizoram further stated - "It may be mentioned that those families placed on the other side of the Fencing Line may not be called 'displaced' since the Fencing Line is not the boundary of Indo-Bangia Border. In the case like the village of Bindasora that the fencing was constructed for National Security reason and not to mean for the boundary of the Indo-Bangia Border and that there was no objection of dwelling outside the Fencing Line. It is also informed to the villagers that their shifting from outside to the inner side of the fencing will depends upon the will of the villagers. There is no compulsion to have their residence shifted to the inner side of the Fencing Line." The contention of government of Mizoram that there is "no objection of dwelling outside the Fencing Line (by the displaced persons)" is misplaced. The state government of Mizoram has forgotten that it is precisely because of security reasons that the India-Bangladesh fencing is being erected by the government of India. Even the then Mizoram Chief Secretary Haukhum Hauzel stated in April 2008 that the Mizoram villagers who have fallen outside the fencing line feared for their security. He further stated that in Bindiasora village, about 80 families fell outside the border and the villagers were prevented by the Bangladesh Rifles

(BDR) from getting sand from the river which used to be their main source of income.¹⁵⁶

The government of Mizoram also claimed that “the damage if any as a result of fencing works are compensated appropriately” which is absolutely wrong. AITPN has learnt that several villages have not been paid any compensation as yet although their villages have fallen on the other side of the fencing.

However, the government of Mizoram was candid enough to admit that “*It may be stated that the construction company did not follow the surveyed alignment rather they made diversion according to their convenience without knowledge of the District Administration. This practice always caused mis-understanding between the villagers, the District administration and the construction companies. These diversions caused existences of two alignments and the companies are expected to pay compensation against the two alignments but out of which one is still left to be paid compensation by the companies.*” This is in sharp contrast to its claim that “There had never been unnecessary delay in the disbursement of compensation.”

10. Repression under forest laws

On 1 January 2008, the government of India notified the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007. Hence, Forest Rights Act 2006, notified on 31 December 2007, has been enforced giving tribals and forest dwellers rights over land and forest produce.¹⁵⁷ Petitions have been filed by environmentalists/conservationists before the High Court and the Supreme Court challenging the constitutional validity of the Forest Rights Act, 2006. On 28 March 2008, the Supreme Court, while hearing one such petition, issued notice to the Central government and the State governments to submit responses.¹⁵⁸

The Forest Rights Act 2006 provided tribals and other “traditional forest dwellers” rights over land and forest produce. In August 2008, the Ministry of Tribal Affairs stated more than 8,00,000 claims from different states have been received requesting for allocation of land to the tribals under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006. The highest number of such claims has been received from Andhra Pradesh (about 2.28 lakh claims for allotment of 6.6 lakh acres) followed by Chhattisgarh (about 2.5 lakh claims), Madhya Pradesh (over 1.30 lakh claims), Maharashtra (75,000 claims), Orissa (77,894 claims) and Gujarat (33,185 individual and 425 community claims).¹⁵⁹

Yet, the Forest Rights Act 2006 has seen little implementation during 2008 and tribals continued to be arrested for accessing minor forest produce, evicted from their lands, their huts gutted and even killed by the forest officials. On 8 February 2008, forest guards shot dead a 16-year-old tribal boy Shyamal Rabha at the Buxa Tiger Reserve in Jalpaiguri district of West Bengal. The forest officials accused him of being a “timber smuggler” but the locals and family members said he and three others had gone to the forest to collect firewood for domestic use.¹⁶⁰

On 13 February 2008, two tribals were killed when police opened fire on the tribals protesting forcible evictions from forest land by the Forest Department officials in Antarsumba under Vijaynagar taluka of Sabarkantha district in north Gujarat.¹⁶¹ One of the tribals who was killed by the police on 13 February 2008 was identified as Sajabhai Bodat. According to his family members, early on the morning of February 13, the police stormed into Sajabhai's house and arrested him. Later, his body was found in hospital with a bullet in his chest. The police claimed that they did not arrest Sajabhai. M.J. Parmar, the District Forest Officer (DFO) stated that he was part of a huge armed crowd of Adivasis who stormed into Dholwani Range Forest Office at Antarsumba Ashram soon

after the arrest of six people for trying to occupy the land illegally. But Sajabhai's relatives alleged that he was killed in police custody.¹⁶²

Hundreds of tribals were forcibly evicted from "forest land" by the forest officials in violation of the Forest Rights Act 2006. On 19 March 2008, Andhra Pradesh's Minister for Forest and Environment, S. Vijayarama Raju announced while replying to a debate in the State Assembly that the state government had decided to evict tribals from all the 32 existing habitations in the Rajiv Gandhi Tiger Reserve that lies between Nagarjunasagar and Srisailem to save the dwindling tiger population. He stated that the displaced tribals would be allotted houses and provided compensation of Rs 10 lakh to each of the displaced families.¹⁶³ Similarly, in early November 2008, Tripura Wildlife Advisory Board approved setting up of a wildlife reserve at Kalajhari-Laxmipur-Dhalagari in Dhalai district in Tripura. Thereafter more than 400 indigenous families residing inside the earmarked wildlife reserve were served eviction notices by the local administration. An estimate indicated that around 50,000 indigenous people would be affected by this proposed Wildlife Reserve project.¹⁶⁴

Tribals' houses have been set on fire and their standing crops destroyed by the forest officials if they did not vacate their houses or land. In January 2008, at least 125 houses were reportedly burned in the villages of Peepal Khotha and Juniwadi in Burhanpur district of Madhya Pradesh by forest officials. The forest officials had hired over 100 labourers to attack the villages and looted more than 25 (100 kg each) sacks of grain, about 150 chickens, 60-70 goats, money, silver, utensils and clothes. All those attacked had been cultivating their lands since 1979.¹⁶⁵

On 2 July 2008, Jalgaon Khandesh Forest Department officials and personnel of State Reserve Police Force burnt down 125 huts and forcibly evicted over 400 Pardhi tribals from forest land near Wadoda village under Jalgaon Jamod taluka in Buldhana district of Maharashtra.¹⁶⁶

On 14 October 2008, forest guards allegedly completely destroyed the standing crops of sixteen tribal families in Dabhas village under Ahwa sub-division in Dang district of Gujarat. The forest guards also allegedly destroyed the standing crops of seven tribal villagers at Bhapkal village and set fire to the hut belonging to one Mangalbai Amirbai at Mokhamal village in Dang district. Mangalbai Amirbai was the president of the local Forest Rights Committee and about 80 files containing claims of the tribals for land under the Forest Rights Act of 2006 were reportedly burnt in the fire in addition to other properties of the family.¹⁶⁷

On 4 December 2008, forest officials allegedly set ablaze 17 huts belonging to tribals near Malbazar in Jalpaiguri district of West Bengal. A team of forest guards entered Bir Birsa Munda Colony, located close to Meenglass Tea Estate to monitor the movement of elephants. Around 70 tribal families lived in the locality. The forest guards asked the tribals to produce the land documents and when they refused, the forest guards ransacked their huts and set 17 huts on fire.¹⁶⁸

11. Failure of the affirmative action programmes

The Constitution of India provides an array of affirmative action programmes for the Scheduled Tribes (tribals) and the Scheduled Castes (dalits) including reservation in the Parliament, education, employment etc. These affirmative action programmes have been instrumental in bridging the social, political and economic disparities between the tribals and the general populations.

The affirmative action programmes however have failed to achieve their desired results in India because of lack of proper implementation. Even after 61 years of India's independence, the tribals continue to live on the lowest rung of the social ladder.

The government of India has also failed to release the final National Tribal Policy which was drafted by the Ministry of Tribal Affairs way back in June 2006 to address issues such as low Human Development Index, poor infrastructure, diminishing control over the natural resource base, persistent threats of eviction from their natural habitat, and exclusion from mainstream society besides inequality in opportunities. On 17 March 2008, Tribal Affairs Minister P R Kyndiah told Rajya Sabha that the draft tribal policy was placed before the Union Cabinet for approval on 31 May 2007 and the Union Cabinet has referred it to a Group of Ministers for harmonization with the National Rehabilitation Policy.¹⁶⁹ The Parliamentary Standing Committee on Social Justice and Empowerment in its 34th Report laid before the Lok Sabha on 21 April 2008 expressed regret over the delay in approving the national tribal policy¹⁷⁰ but the draft tribal policy was still under consideration by the GOM by the end of 2008.

a. Non-implementation of the reservations in employment

The Scheduled Tribes (STs) and the Scheduled Castes (SCs) have been ensured mandatory reservation of 7.5% and 15% respectively in government jobs. But AITPN is of the view that almost all the departments of the government has failed to ensure this prescribed minimum representations of the SCs and STs.

In 2008, the Central government tabled the Scheduled Castes and Scheduled Tribes (Reservation in Posts and Services) Bill 2008 in the Rajya Sabha on 23 December 2008.¹⁷¹ The Bill seeks to end de-reservation of posts meant for SCs and STs in central government jobs and stipulated penal action against offices which did not implement the reservation policy.¹⁷²

The failure of the government to ensure 7.5% and 15% reservations in government jobs for the Scheduled Tribes (STs) and the Scheduled Castes

(SCs) respectively is evident from the findings of the Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes. The Committee found that as of 1 January 2005, the overall representation in Groups A, B, C and D posts in the government of India services among SCs was 11.9%, 13.7%, 16.4% and 18.3% respectively and the representation of STs was 4.3%, 4.5%, 6.5% and 6.9% respectively. The Committee opined that the actual representation of SCs and STs could be lesser given the fact that many people got employed on the basis of fake caste or tribal certificates. The Committee stated that the argument of the Ministry of Personnel, Public Grievances and Pensions that posts reserved for SCs/STs remain vacant due to “non availability of suitable candidates” was “not at all convincing”.¹⁷³ The Committee further stated:

“The Committee are of the firm view that there is no dearth of qualified SC/ST candidates who are still jobless for want of opportunities. The main hindrance the Committee feel is the lack of zeal on the part of implementing authorities who are not able to give adequate publicity to such posts in SC/ST inhabited areas. The Committee further observe that although the Government have launched Special Recruitment Drives yet they have not been able to achieve the desired results to the optimum satisfaction of these communities. The Committee, therefore, strongly recommend that concerted efforts should be made by the Government to work towards fulfilling the prescribed percentage of reservation for Scheduled Castes and Scheduled Tribes in all categories of posts in Central Ministries/Departments/ PSUs within a time frame.”¹⁷⁴

According to a report of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (“The Committee”) submitted to the Lok Sabha on 18 March 2008, as of 1 January 2005, the percentage of Scheduled Castes (SCs) employees in the Southern Railways under Ministry of Railways was found to be more than the prescribed limit of 15% but the percentage of Scheduled Tribes (STs) employees was less than the prescribed limit of 7.5% in all categories of posts. The ST employees in Group ‘A’, ‘B’, ‘C’ and ‘D’ (excluding safaiwala) and Group ‘D’ (Safaiwala) posts are 5.57%, 6.86%, 4.52%, 2.57% and 1.80% respectively of total employees in each category. There was huge shortfall of 2279 in ST category in Group ‘C’ and in Group ‘D’ (excluding safaiwala) and Group ‘D’ (safaiwala) posts, there were 1340 and 126 shortfalls of STs respectively. One of the reasons for shortfalls in the Group ‘C’ and ‘D’ posts as provided by the Ministry of Railways was that in the direct recruitment to these posts, reservation for STs was limited to 4% only till August 1997. Interestingly, although the representation of STs in Group ‘A’ post was only 5.57% (as against mandatory 7.5% reservation for STs) the Ministry of Railways stated that there was no shortfall in this category of post in Southern Railway. The Committee said it “would, therefore, like to know the reason as to how shortfall has been calculated”.¹⁷⁵

Further, the Committee stated that the “carry forward reserved vacancies” for SCs were 157 and 210 in Group C and D respectively and for STs were 161 and 500 in Group C and D respectively in Southern Railway as of 1 January 2005. The Southern Railway failed to provide information for the subsequent years. The Southern Railway stated the reasons for carrying forward the reserved vacancies as “poor response from SC/ST candidates” and “non-availability of suitable candidates” from these categories. But the Committee viewed that “Southern Railway has not made adequate serious efforts to fill SC/ST posts in the past”. As of 30 September 2006, there was a shortfall in the promotion of 29 in Group ‘B’ and 80 in Group ‘C’ of SCs and 4 in Group ‘B’ categories of STs in the Southern Railways. The reason for the shortfall has been stated to be the “non-availability of eligible SC/ST candidates in the feeder grade”.¹⁷⁶

In Asom alone, there were about 29,000 backlog posts in various Government departments as of 23 September 2008, according to the All Assam Tribal Unemployed Association.¹⁷⁷

As of 12 February 2007, 268 employees had secured employment on the basis of false ST certificate but the Committee “are of the view that this is only the tip of the iceberg” as the cases detected pertained to the period 1995 to 2000. *“The Committee, however, are not satisfied with the present arrangement as some unscrupulous people have been effortlessly taking advantage of some lacunae in the existing system of issuance and verification of caste certificates. These people, though not belong to SC/ST category, have been able to get into reserved seats in jobs, educational institutions and to have access to different schemes meant for SCs and STs on the basis of false certificates. This makes a mockery of the existing system as genuine SC/ST people are deprived of their rightful claim in employment, educational institutions, schemes, etc. This act is nothing short of a criminal offence. The Committee are distressed to observe that the Central and the State Governments have not been able to stop the malpractice either due to their limited resources or because of a casual approach towards the problem.”*¹⁷⁸

b. Non-use and mis-use of tribal funds

In a report tabled in the Lok Sabha (Lower House of Indian Parliament) on 21 April 2008, the Standing Committee on Social Justice and Empowerment recommended that *“The funds should be allocated in proportion to the population of the Scheduled Tribes to the total population in the country. As such, at least 8.5 per cent of the Budget of the entire country should be provided for the development of tribals.”*¹⁷⁹

During 2008-2009, the Ministry of Tribal Affairs was allocated Rs. 2121.00 crores against its demand of Rs. 2921.38 crores. The Ministry of Tribal Affairs stated that the implementation of ongoing schemes/programmes would be “affected adversely with lesser allocations”.¹⁸⁰

Various state governments do not fully utilize or misutilized the funds allocated to them for tribal development. A report by the Comptroller & Auditor General of India, tabled in the Jharkhand State Assembly in March 2008, found that the Jharkhand government used only Rs 85.55 crore out of Rs 183.84 crore it had received from the Centre during 2003-2007 under the Integrated Tribal Development Project. The unused funds were kept in banks and the interest it earned was used to repair official buildings.¹⁸¹

Funds could not be released for the development of Tribals due to inaction on the part of State Governments. During 2007-08, the Ministry of Tribal Affairs had to withhold grants under Special Central Assistance to the Tribal Sub Plan to the states of Asom, Bihar, Chhattisgarh, Jharkhand, Jammu & Kashmir, Madhya Pradesh, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand due to their inability to furnish Utilization Certificates and unspent balances. No funds could be released under the scheme of Post-Matric Scholarship to the States/UTs of Arunachal Pradesh, Bihar and Daman and Diu during 2004-05 to 2007-08 as the Ministry of Tribal Affairs did not receive complete proposals from these state governments, thereby depriving the poor tribal students of the much needed financial assistance for pursuing higher education. Out of 100 Eklavya Model Residential Schools (EMRS) sanctioned by the Ministry of Tribal Affairs under Article 275 (1) of the Constitution, only 79 of them were operational due to “lack of commitment on the part of States in taking proper and timely steps for the educational development of the tribal children”. 4 Eklavya Model Residential Schools (EMRS) originally sanctioned for Asom and Meghalaya had to be shifted from these states to other states as the governments of Asom and Meghalaya did not take any action for establishment of EMRS for a long time. During 2007-08, no student was assisted in Arunachal Pradesh, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Kerala and Uttar Pradesh under the “Upgradation of Merit of ST Students” scheme.¹⁸²

The following States/Union Territories (UTs) failed to submit Utilization Certificates to the Ministry of Tribal Affairs¹⁸³:

Sl. No.	Name of the Scheme	State/UTs	Amount (Rs. in lakhs)	Year
1.	Upgradation of Merit	Rajasthan	2.1	2005-06

2.	Vocational Training Centre	Maharashtra	11.06	2003-04
		Kerala	40.50	2004-05
		West Bengal	63.60	2005-06
3.	Construction of Boys/Girls hostels for ST students	West Bengal	6.71	2005-06
4.	Post-Matric Scholarships	Arunanchal Pradesh	65.19	2003-04
		Meghalaya	62.3848	2003-04
		Himachal Pradesh	6.68	2004-05
		Andman & Nicobar Islands	2.74	2004-05
		Jammu & Kashmir	505.971	2005-06
		Jharkhand	541.26	2005-06
		Utter Pradesh	2.29	2005-06
		Maharashtra	750	2005-06

The Ministry of Tribal Affairs stated that three states – Maharashtra, Kerala and West Bengal failed to submit Utilization Certificates in respect of the Vocational Training scheme despite of reminders issued to these states on 4-10-2007, 12-2-2008 and 21-2-2008 respectively. In all such cases where UCs have been outstanding, States/UTs are informed that no further grants would be released for those schemes.¹⁸⁴

During the years 2004-05, 2005-06 and 2006-07, the number of beneficares under the “Upgradation of Merit of ST Students” scheme was NIL in many States and during 2007-08 no student was assisted in Arunachal Pradesh, Himachal Pradesh, J&K , Jharkhand, Kerala and Uttar Pradesh as shown below¹⁸⁵:-

S.No.	Name of the State	2004-05 Beneficiaries	2005-06 Beneficiaries	2006-07 Beneficiaries	2007-08 Beneficiaries
1.	Andhra Pradesh	0	0	24	84
2.	Asom (Assam)	60	0	0	60
3.	Himachal Pradesh	0	0	0	0
4.	Jharkhand	0	0	78	0
5.	Kerala	0	23	26	0
6.	Orissa	0	0	136	136

7.	Rajasthan	0	50	0	54
8.	Tripura	16	16	16	16
9.	West Bengal	72	0	72	72
10.	Sikkim	15	19	16	16
11.	Madhya Pradesh	0	516	172	172
12.	Jammu & Kashmir	0	0	0	0
13.	Arunachal Pradesh	0	0	0	0
14.	Chhattisgarh	140	0	140	140
15.	Gujarat	0	34	35	70
16.	Karnataka	0	0	44	41
17.	Uttar Pradesh	0	0	12	0
18.	Maharashtra	0	0	46	162
19.	Dadar and Nagar Haveli	0	0	0	16
	Total	303	658	817	1039

c. Lack of awareness of the schemes

There is also little awareness about the various affirmative action programmes for the uplift of the tribals. The Standing Committee on Social Justice and Empowerment stated as follows:

*“The Committee note that sufficient steps have not been taken by the Ministry (of Tribal Affairs) to generate awareness among tribal people about the various schemes being implemented for their upliftment. According to the Ministry awareness is generated through the actions taken by States/UTs. Besides all schemes are placed on the website of the Ministry. The Committee are not satisfied with this routine reply of the Ministry. They desire that in order to generate awareness among tribals, the various schemes of the Ministry should be given wide publicity through print and electronic media, including vernacular print media, by using traditional Media like folk music/dance/drama and also by distributing pamphlets in tribal areas etc. The Committee, also recommend that the Ministry should organize camps regularly and send their officers to States/UTs for the purpose. The Committee hope that these steps would certainly help the tribal people in availing the benefits of the schemes.”*¹⁸⁶

12. The status of National Commission for Scheduled Tribes

"The Committee are distressed that even the status of statutory entity does not entitle NCST to have a separate entity. The Committee are of the firm opinion that when it was decided to create NCST, it was never envisaged that it would function as a part of the Ministry of Tribal Affairs. If it was so, there was no need to constitute the Commission as a statutory body and it could have continued to function as a non-statutory body as earlier. The NCST would not be able to work fearlessly and independently unless it is given independence in its day to day working by allowing it to decide on its own administrative, financial and legal matters" - The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes, in its Thirty-Third Report titled "National Commission for the Scheduled Tribes - It's Mandate and Achievements - A Review of its Organisation and Working"¹⁸⁷

The National Commission for Scheduled Tribes (NCST), in spite of being a statutory independent body, has limited administrative and financial powers as it continues to be under the administrative control of the Ministry of Tribal Affairs. Due to limited administrative and financial powers, the NCST has not been very effective to protect the rights of over 84.3 million Scheduled Tribes in India.

I. Independence

Independence of a national institution is the core issue in the establishment of any effective National Human Rights Institution. As the United Nations states, "An effective national institution will be one which is capable of acting independently of government, of party politics and of all other entities and situation which may be in a position to affect its work." However, it does not mean "a total lack of connection to the State".¹⁸⁸

a. Legal and operational autonomy

The NCST is a constitutional autonomous body. It has been vested with the powers of a civil court for investigation and inquiry. The power of the Commission to "summoning and enforcing the attendance of any person from any part of India and examining him on oath" as provided under Clause 8 of Article 338A of Constitution of India is enforceable even to investigate the violations committed by the members of the armed forces over whom the

National Human Rights Commission (NHRC) does not have jurisdiction. Hence, in a way, NCST is more powerful than the NHRC of India.

But the powers of the NCST have been crippled as it has been placed under the administrative control of the Ministry of Tribal Affairs.

The NCST has power to frame its own procedures but it has framed such Rules of Procedures which have it the NCST subservient to the State authorities. Rule 83 of Rules of Procedure of the NCST states - *"All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission"* which has undoubtedly reduced the National Commission for Scheduled Tribes into another department of the Government of India.

b. Financial autonomy

The NCST has no financial autonomy. It has to depend upon the Ministry of Tribal Affairs for its day to day functioning. It has also to route its proposals on financial, administrative and legal matters through the Ministry of Tribal Affairs. The Planning Commission had suggested that budget provisions for NCST should be shown under a separate Demand for Grants instead of being a part of the Demand for Grants of the Ministry of Tribal Affairs but the suggestion has not been agreed to by the Ministry of Finance. The Committee on the Welfare of SCs and STs recommended that *"full administrative and financial powers should be given to NCST so that it is not dependent on the administrative Ministry for every piece of proposal having financial implications."*¹⁸⁹

c. Appointment and dismissal procedures

The method by which members of a national institution are appointed is critical to the independence of the institution. The Paris Principles stressed on the need for "pluralistic representation" in a national institution.

i. Flawed methods of appointment

The National Commission for Scheduled Tribes consists of a Chairperson, a Vice-Chairperson and three other members.¹⁹⁰ There is no independence and transparency in the appointment of members of the NCST. The Chairperson, Vice Chairperson and three other members of the NCST are appointed by the President of India.¹⁹¹ While on paper, the appointment of members by the President may appear independent, under Article 74 of the Constitution of India the President acts and exercises his/her functions on the advice of the Council of minister headed by the Prime minister. In effect it is the Minister of

Tribal Affairs who appoints the members of the National Commission for Scheduled Tribes including the Chairperson.

Because of these loopholes, the NCST has been used for political rehabilitation of the ruling party workers. Political nominees are less likely to be independent.

Analysis of the composition of the Second (Present) Commission

That appointment of the members of the NCST is political in nature can be understood by perusing the profiles of members of the Second (present) Commission.

The members of the Second Commission were appointed from June 2007 onwards. The present Commission (second since establishment of NCST) consists of Mrs Urmila Singh (Chairperson), Mr Maurice Kujur (Vice Chairperson), Mr Tsering Samphel (member) and Mr Oris Syiem Myriaw (member). One post of member is presently vacant. It is surprising to note that all the members of this Commission including the Chairperson were Congress legislators or active workers of the Congress party. The Congress is a national political party which is leading the incumbent United Progressive Alliance (UPA) government at the Centre since 2004.

The present Chairperson of the National Commission for Scheduled Tribes, Mrs Urmila Singh (who assumed office on 18 June 2007) has been a “dedicated and active Congress worker who has been instrumental to keep the party workers active by organizing training camps and workshop for Seva Dal, Youth Congress and Mahila Congress.”¹⁹² The Chairperson who was a “dedicated and active” worker of the Congress, the party which is leading the United Progressive Alliance government at the Centre, cannot be said to be independent.

Mr Murice Kujur, present Vice Chairperson (appointed on 25 April 2008) had political affiliations with the Congress party. He had been a Congress Member of Parliament (both Lok Sabha and Rajya Sabha). The Manavadhikar Samajik Manch (MASM) to whom Mr Murice Kujur is also an Advisor, hailed his appointment as a member of the NCST stating, “With his [Murice Kujur’s] appointment in this Constitutional body [National Commission for Scheduled Tribes], MASM takes this opportunity to thank the Prime Minister Dr. Manmohan Singh along with the UPA [United Progressive Alliance] Chairperson Mrs. Sonia Gandhi. Shri Kujur, a dynamic tribal leader was hand picked by Rajiv Gandhi and he represented Sundargarh in the Lok Sabha from

1984 to 1989. Again from 1996 to 2002 he was the member of Rajya Sabha. As a member of Parliament Shri Kujur was member of several Parliamentary committees and delegations.”¹⁹³

Similarly, Mr Tsering Samphel, present member of NCST (who assumed office on 14 June 2007) was a Congress party leader. He was elected member of Legislative Party of Jammu and Kashmir from Leh-Ladakh constituency as Congress Party candidate from 1987 to 1990. He has been the president of district Congress Committee, Leh since 2004 and during 1990 to 1996.¹⁹⁴

Mr Oris Syiem Myriaw (appointed on 16 April 2008) is a former Congress MLA from Myllem constituency, Meghalaya. After his appointment to the NCST, Mr Syiem reportedly thanked Union Minister for Tribal Affairs PR Kyndiah for being instrumental in his induction as member of the Commission.¹⁹⁵

ii. No clearly defined criteria for appointment

There are no clearly defined criteria for appointment of the members of the NCST.

The NCST Chairperson, Vice-Chairperson and members (Conditions of Service and Tenure) Rules, 2004 provides that the Chairperson, the Vice-Chairperson and the members “shall be appointed from amongst persons of ability, integrity and standing who have had a record of selfless service to the cause of justice for the Scheduled Tribes”.¹⁹⁶ The Rules 2004 also states that “the Chairperson shall be appointed from amongst eminent socio-political workers belonging to the Scheduled Tribes, who inspire confidence amongst the Scheduled Tribes by their very personality and record of selfless service”.¹⁹⁷ These eligibility conditions are too vague and the *loopholes can be misused by the ruling parties to appoint members based on their political affiliations or political ideology which has been clearly exemplified by AITPN through its analysis of the present composition of the NCST.*

iii. Dismissal or removal procedures

The procedures for dismissal or removal of the members of a national institution are as important as the appointment procedures for the independence of the national institution. But the NCST Chairperson, Vice-Chairperson and members (Conditions of Service and Tenure) Rules, 2004 provides two different procedures for removal of the Chairperson and the other members including the Vice Chairperson, by the President. The Chairperson can be

removed by the President only on a reference from the Supreme Court after a detailed inquiry of allegations against him or her. However, there are serious flaws in the procedures for removal of Vice-Chairperson and other Members. First, having two different sets of dismissal procedures - one for the Chairperson and another for the other members (including the Vice Chairperson) is not justified. In case of the NHRC, the dismissal or removal procedures are the same for all the members including the Chairperson. Second, the provisions contained in the sub-clauses c, d, and f of Clause 8 (3) are disturbing. Provisions such as “in the opinion of the President” (in sub-clauses c and f) are deeply flawed as means of removal of any member of a national institution. This is more so considering the fact that the President acts on the advice of the Council of Ministers headed by the Prime minister under Article 74 of the Constitution of India. The conditions for removal by the President if a member “refuses to act or becomes incapable of acting” as contained in sub clause d of Clause 8(3) are unacceptable. It implies that if the members or Chairperson of the NCST do not follow the orders of the President, it can be a reason for his/her removal from office?

iv. Absence of privileges and immunities

The members of any national institution, particularly if it has the mandate and powers to investigate and act upon human rights violations by the State agencies, must have certain privileges and immunities, such as immunity from civil and criminal proceedings in respect of acts performed in an official capacity. Such privileges and immunities are crucial for independence of the national institution. But no such privileges and immunities have been provided to the members of the National Commission for Scheduled Tribes.

II. Adequate Powers, Restrictive Rules

Article 2 of the United Nations Paris Principles on National Human Rights Institutions provides that “A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence”.

The National Commission for Scheduled Tribes (NCST) has been given a broad mandate and enormous powers by the Constitution to, inter alia, investigate the violations of the rights of the tribals as provided under the Constitution of India or under any order of the government. But the NCST has framed such Rules of Procedure which not only limited its powers but also made it compromise its independence by being subservient to the State authorities during investigation of complaints of human rights violations.

a. Flawed investigation process

As per Rule No. 34 of Rules of Procedure, the investigation team of the NCST has to obtain prior permission from the concerned state government and required to inform the local authorities about the “*matter, purpose, scope and procedure of the investigation or inquiry*” and that “*The Investigating Team may visit the area concerned after observing due formalities for obtaining approval of tours and other administrative requirements*”. Rule No. 18 goes a step further: “*The Members shall communicate their tour Programme well in advance to the State Offices indicating in detail the purpose of the visit and to the State Government Department and other concerned for discussions/inquiry, etc., during the tour/ visit. The Members will observe the norms laid down by the State Governments regarding security/travel/accommodation etc, during such tours.*” These have, more than anything else, completely eroded the independence of the NCST. Obviously, the state government officials will ensure a “guided tour” to NCST investigating team.

b. Lack of power to implement its recommendations

The NCST does not have any power to implement its recommendations. Absence of this power has virtually reduced the mandate of the NCST of being an advisory nature. Under Rule No. 76, the NCST may decide to “*send out communications to the concerned authority describing the shortcomings that have been noticed in the implementation of the safeguards and suggesting corrective steps*”. Under Rule No. 77, “*the Commission may ask for the comments of the concerned authority on the action taken in pursuance of the communications sent under the Rule 76*”.

III. Accessibility

Any effective National Institution must be easily accessible to the people it intends to serve.

a. Awareness of NCST

The NCST has failed to ensure its visibility among the tribals. Unlike the National human Rights Commission (NHRC) which is only a statutory body, the existence of the NCST is hardly known to the common man. Except for a few civil society groups working on the rights of the Scheduled Tribes, the NCST practically does not exist. It can therefore be concluded that the NCST is an “invisible Commission”.

b. Physical accessibility

The NCST is not easily accessible to the common tribals living in remote areas. In addition to its Headquarters in Delhi, the NCST has six Regional Offices set

up at (1) Bhopal, Madhya Pradesh (jurisdiction: Madhya Pradesh, Maharashtra, Karnataka, Kerala, Goa, Dadra & Nagar Haveli and Lakshadweep), (2) Bhubaneswar, Orissa (jurisdiction: Andhra Pradesh, Orissa, Tamil Nadu, West Bengal and Andaman & Nicobar Islands, and Pondicherry), (3) Jaipur, Rajasthan (jurisdiction: Chandigarh, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttarakhand and Daman & Diu), (4) Raipur, Chhattisgarh (jurisdiction: Chhattisgarh), (5) Ranchi, Jharkhand (jurisdiction: Bihar, Jharkhand, and Uttar Pradesh), and (6) Shillong, Meghalaya (jurisdiction: Arunachal Pradesh, Asom, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura).¹⁹⁸

These six regional offices are not adequate for a vast country like India. The NCST had in its First Report (2004-05 and 2005-06) recommended for upgradation of four regional offices, increase of the existing strength of supporting staff in six regional offices and creation of four more regional offices. But the Ministry of Tribal Affairs has not taken any step on the ground that no formal proposal has been received from the NCST.¹⁹⁹

IV. Inadequate resources in the regional offices

The NCST suffers from acute shortage of human and financial resources as discussed below.

a. Personnel

The NCST suffer from acute shortage of staff. As per the information obtained by AITPN by filing a RTI application, the sanctioned strength of staff is 124 in its Headquarters in Delhi as well as the six Regional Offices. But the actual strength of staff never reached the sanctioned strength during the last five years of its functioning. There were only 89 staff in position as on 1 December 2004; only 85 staff in position as on 31 December 2005; only 83 staff in position as on 31 December 2006; and only 83 staff in position as on 31 December 2007.²⁰⁰

Except the Bhopal Regional Office, all the five Regional Offices face acute shortage of staff. In the Regional Office in Raipur, there is only 1 staff against sanctioned strength of 8 as on 1 February 2008 while there was a shortage of 6 staff against sanctioned strength of 12 in Shillong Regional Office; shortage of 5 staff against sanctioned strength of 15 in Jaipur Regional Office; shortage of 4 staff against sanctioned strength of 12 in Bhubaneswar Regional Office; shortage of 5 staff against sanctioned strength of 8 in Ranchi Regional Office and shortage of 1 staff against sanctioned strength of 13 in Bhopal Regional Office.²⁰¹

From the data provided by NCST it is seen that the strength of staff in position during the last four years shows a sharp decline. Lack of adequate staff seriously affects the effectiveness of the NCST as national institution mandated with the onerous responsibility of protection and promotion of rights of the Scheduled Tribes. The lack of staff remains a serious obstacle to its effectiveness. By any yardstick, the staff strength of the NCST is abysmally disproportionate to its volume of functions. It is simply not possible for less than 90 persons across the country to effectively carryout the mandate of the NCST and safeguard the rights of 84.3 million Scheduled Tribes in India. In a reply to one of AITPN's applications under RTI Act seeking certain information from NCST, the NCST candidly acknowledged "*acute shortage of manpower*" while refusing release of information. The NCST in its reply stated- "*Information sought by you covers a period of three years and relates to all the Units and Officials of the Commission and therefore, it will take huge time to compile the same. Moreover, this Commission has acute shortage of manpower to deal with the normal duties of the Commission viz. investigation into specific complaints relating to violation of safeguards for Scheduled Tribes and in case it concentrates on compiling the voluminous information sought by you, the entire work of the Commission will virtually come to halt and it will totally hamper the functioning of the Commission as per the constitutional mandate*".²⁰² (emphasis ours)

The NCST also does not have power to recruit its own support staff. The Central government provides the staff to the NCST. Employees of the Commission from the Secretary level are the Central Government employees.

b. Financial resources

The NCST also does not have financial independence. Rule No. 84 of Rules of Procedure states that "The provisions relating to the delegation of financial powers in the Government of India shall apply to the corresponding officers in the Commission." As stated above, NCST's financial strings are controlled by the Ministry of Tribal Affairs.

Non-utilisation of the total allocated funds

It is a fact that the National Commission for Scheduled Tribes does not get adequate amount of funds enough to meet the desired targets. But there are problems within the NCST itself. It does not have the ability or willingness to utilize the whole of the sanctioned grant received annually.

For example, the NCST received Rs.4,50,50, 000/- during the financial year 2004-2005; Rs.4,56,00,000/- during financial year 2005-2006; Rs.4,39,00,000/-

during financial year 2006-2007 and Rs.4,32,00,000/- during financial year 2007-2008. The NCST has not been able to fully utilized all these funds and a total of Rs.59,99,000/- during the financial year 2004-2005; Rs.1,27,94,000/- during financial year 2005-2006 and Rs.1,14,54,473/- during financial year 2006-2007 remained unutilized²⁰³ thereby adversely affecting the exercise of its mandates for protection and promotion of rights of the Scheduled Tribes.

The Regional Offices of NCST also did not fully utilize the funds allocated to them by the NCST headquarters. The Regional Offices utilized only Rs 59,73,915 against Rs 78,90,000 allocated during 2004-05, utilized only Rs 91,53,942 against Rs 1,13,49,000 allocated during 2005-06, and utilized only Rs 96,03,846 against allocation of Rs 1,12,10,000 during 2006-07.²⁰⁴

V. Transparency and accountability

The NCST also suffers from lack of accountability and transparency. Rule 41 of the Rules of Procedure of NCST states, *"The Commission may, through a decision at a meeting or otherwise, direct that the contents of any report made on any matter shall be kept confidential and shall not be revealed to any person other than those who have been authorized access to such report."* Thus, this rule gives NCST the absolute right to deny access to any report or a part of a report to the victim or anyone. The rule has not laid down any procedure as to what and which contents of a report constitute "confidential" and cannot be disclosed.

NCST's Annual Reports which must crucially reflect the works of the NCST in defending the rights of the tribal peoples have not been made public. Despite of filing an application under the Right to Information Act by a member of AITPN, NCST refused to provide the First Annual Report of NCST for the year of 2004-05 and 2005-06 on the ground that these reports have been submitted to the President of India for laying in the Parliament but since the President has not yet laid these reports of the NCST before the Parliament, they cannot be disclosed to any member of the public. AITPN's member appealed to the appellate authorities of the Rashtrapati Bhavan and the NCST but the appeal was dismissed in both cases. Finally, the applicant had to approach to the Central Information Commission (CIC) for disclosure of the First Annual Report of the NCST for the benefit of the public. The decision of CIC is pending.

Expressing concern over the failure to submit the NCST's report in the Parliament by the government, the Committee on Welfare of SCs and STs recommended fixing a time limit for submission of report to Parliament by making necessary amendment in clause (6) and (7) of Article 338A of the Constitution.²⁰⁵

In response to another RTI application of AITPN, the NCST refused to provide information about the functioning of the Commission. It has stated - *moreover, this Commission has acute shortage of manpower to deal with the normal duties of the Commission, viz. investigation into specific complaints relating to violation of safeguards for Scheduled Tribes and in case it concentrate on compiling the voluminous information sought by you, the entire work of the Commission will virtually come to halt and it will totally hamper the functioning of the Commission as per the constitutional mandate.*

13. Denial of voting rights to Chakmas and Hajongs

In February 2008, the High Power Committee on Chakmas and Hajongs headed by Speaker of the Arunachal Pradesh Legislative Assembly, Setong Sena submitted its report to the Government of Arunachal Pradesh. The report has, however not been made public so far.

In the absence of a permanent political settlement of the Chakma and Hajong imbroglio, the members of the Chakma and Hajong community continue to be deprived from rights, including the right to vote. There are about 15,000 Chakma and Hajong eligible voters who are continued to be denied enrolment in the electoral rolls.

During 2005-2008, the Election Commission of India has held four summary revisions and one Intensive Revision of electoral rolls in Arunachal Pradesh but for the Chakmas and Hajongs, there was practically no revision of electoral rolls during these past 4 years. There is no change in the situation as the State Government continues to violate the guidelines/directions of the Election Commission. Through the Electoral Registration Officers (EROs) and Assistant Electoral Registration Officers (AEROs), who are its own officials, the State Government continues to interfere with the powers and functions of the Election Commission.

Rather than increasing, the number of Chakma and Hajong voters has consistently decreased during the last 5 years. For example, in 46-Chowkham Assembly Constituency the total of 323 voters in 2004 came down to 291 in 2008, in 49-Bordumsa-Diyun Assembly Constituency, the total of 1164 voters in 2004 came down to 1134 in 2008. In 50-Miao Assembly Constituency names of only 4 new Chakma voters out of about 3500 claimants have been included during the last 5 years. Numerous complaints filed by the Committee for the Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh stating specific willful violations/non-compliance of the Election Commission's guidelines/ directions by the local electoral officials and series of meetings with the concerned officials of the Election Commission including the Chief Election Commissioner did not yield any result. The Election Commission failed to fix accountability even for serious/willful non-compliance of its directions/guidelines. The only action it took was to send four teams of its officials from New Delhi to Arunachal Pradesh during the last five years. But, the Election Commission also failed to act on the findings by its official teams with regard to willful violation of its guidelines/directions. For instance, commenting on such instances willful violations committed by the local

electoral officials, a two-member team led by Mr. K. R. Prasad (Secretary) which visited the three Chakma and Hajong inhabited constituencies during 8-10 February 2008 stated as under-

*“The position regarding the method of disposal of claims and objections in all the above three assembly constituencies is the same. The grounds taken for rejection of claims of Chakmas are also the same. **None of the three EROs has accepted the birth certificates submitted by the Chakmas though the said certificates have been issued by a competent Government officer under the DCs office and barring some cases these were issued under due signature and seal of the issuing authority. It is also worth noting that on the basis of the same document a number of Chakmas were included in the last electoral roll.** The present EROs have taken care to obtain certificates from the present Registrars/Sub-Registrars to the effect that due procedure was not followed by the Registrar/Sub-Registrar at the time.*

Though the EROs have informed that all the Commission's directions have been scrupulously followed but it is more than clear that they have not only decided not to enroll any new Chakma but they also intend to delete names of those Chakmas who were included in the last roll. We asked as to how they can ignore a certificate issued by a government department under the same district administration and why should a person be penalized for the mistake somebody else has done, the EROs stated that they were functioning their duties strictly within their statutory jurisdiction. Some of them even suggested that the Commission might consider taking action against the officials who were responsible for the lapse”.

Unfortunately the Election Commission did not take any action to fix accountability for the willful non-compliance of its guidelines/directions by the local EROs/AEROs.

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The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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