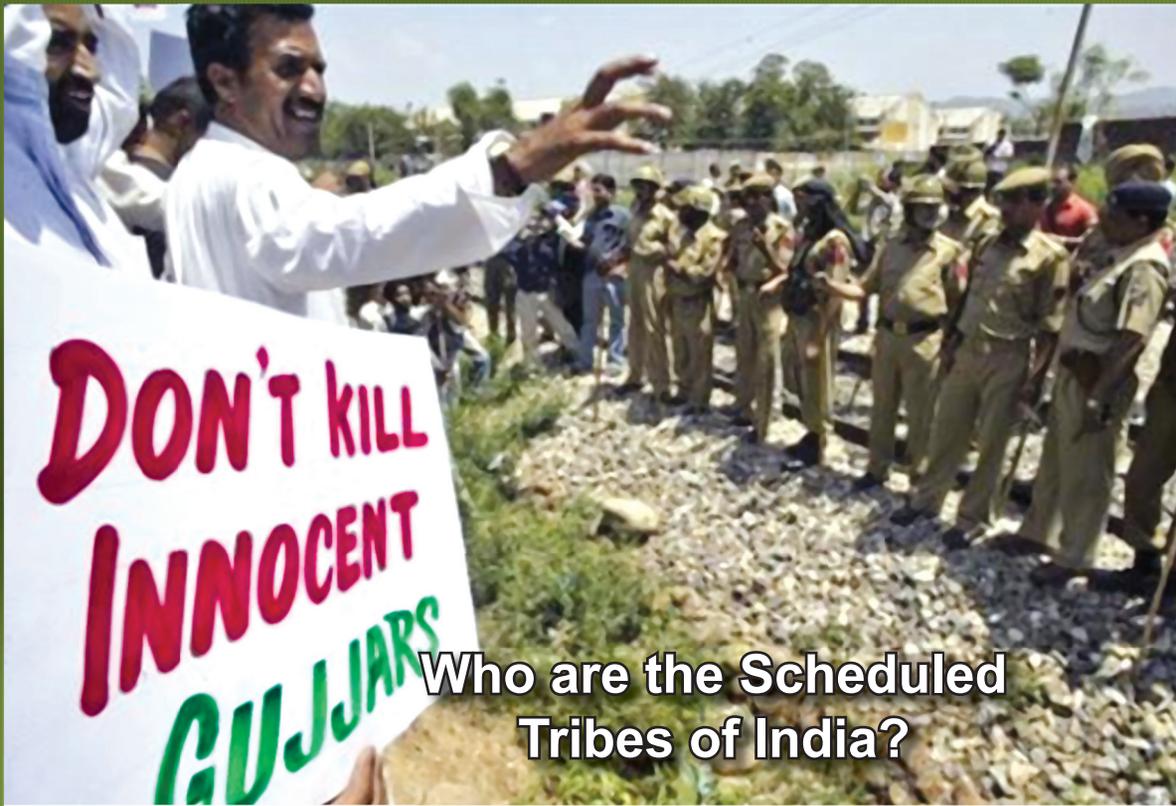


The State of India's

INDIGENOUS AND TRIBAL PEOPLES 2008



Who are the Scheduled Tribes of India?



Asian Indigenous & Tribal Peoples Network

The State of India's

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ASIAN INDIGENOUS & TRIBAL PEOPLES NETWORK

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1. Introduction

The State of India's Indigenous and Tribal Peoples 2008 covering the events of 2007 is the second issue of the series. AITPN does not claim the report to be the authority on the situation of the indigenous/tribal peoples in India. It has not been able to capture many critical issues and regions. Yet, undoubtedly *The State of India's Indigenous and Tribal Peoples 2008* remains the only document that captures the essence of the issues/problems being faced by indigenous/tribal peoples in India.

This report covers wide range of issues like the controversy over the identification of the Scheduled Tribes, indigenous peoples and armed conflicts, violations of the rights of indigenous/tribal peoples, violations of the international humanitarian law by the armed opposition groups, violence against indigenous women, violence against indigenous children, alienation of indigenous peoples' land, displacement of indigenous/tribal peoples, repression under forest laws, failure of affirmative action programmes, status of the Particularly Vulnerable Tribal Groups, denial of voting rights to the Chakmas and Hajongs, state of the National Commission for Scheduled Tribes and a critique on the National Rehabilitation and Resettlement Policy of 2007.

As this report shows, there is no dearth for laws or affirmative action programmes. Yet, the tribals remain at the bottom of economic development due to non-implementation of these programmes. Development is yet to reach majority of indigenous/tribal peoples. Consequently, there is aversion to development as if tribals are anti-development. The crux lies in the inability of the government to share the benefits of development.

This report seeks to highlight the problems of the indigenous/tribal peoples in India.

Editorial Collective

2. 2007 focus: Who are the Scheduled Tribes of India?

The violence in Rajasthan and its neighbouring States in May-June 2007 and in Guwahati, Assam in November 2007 over the demand of Scheduled Tribe (ST) status of the Gujjars and the Adivasis respectively brought into focus the controversies surrounding the identification of the Scheduled Tribes in India.

At least 26 persons, including 21 persons in police firing, were killed and many were injured during the Gujjar agitation in Rajasthan in May and June 2007.¹ Following the Gujjars violence, the Supreme Court appointed two committees concerned over the damage to public property.² The Court was alarmed by large-scale destruction of public and private properties. The Gujjar incident was not an one-off case.

On 24 November 2007, All Assam Adivasi Students Union (AAASA) called a *bandh* (strike) in Guwahati, Assam and the demonstrators turned violent - once again attacking public and private properties. The local residents whose properties were destroyed too turned violent. As the stripping of an Adivasi girl beamed through the media, it rightly raised condemnation across the spectrum.³ On 24 November 2007, about 10,000 tribal people, backed by the AAASA, took out the protest rally demanding Scheduled Tribe status for the community at the Beltola area of Guwahati, Assam. However, when the protestors reportedly damaged vehicles and shops, the Adivasis including women were mercilessly beaten up by the local residents with sticks, iron rods and crude weapons, resulting in killing of at least five Adivasis and injuring 70 others, 30 of them critically, during the clash. Besides, an Adivasi woman was brutally beaten and stripped in full public view while she ran for cover amid horror of the others. The police present there remained mute spectators.⁴

The demands for Scheduled Tribes status, among others, relate to access to affirmative action programmes. But the Constitution failed to identify all the STs. Article 366(25) defines Scheduled Tribes as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution". Article 342 on the other does not define "Scheduled Tribes" but only lays down the procedure for scheduling and de-scheduling of the tribes. Under Article 342(1), "the President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this

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Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be". Under Article 342(2) "Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The Ministry of Tribal Affairs in its 2005-2006 Annual Report states, "The criteria followed for specification of a community as a Scheduled Tribe are (a) indications of primitive traits, (b) distinctive culture (c) geographical isolation, (d) shyness of contact with the community at large, and (e) backwardness". The Ministry of Tribal Affairs further stated, "These criteria are not spelt out in the Constitution but have become well established and accepted. They take into account the definitions in the 1931 Census, the reports of the first Backward Classes Commission (Kalelkar) 1955, the Advisory Committee on Revision of SC/ ST lists (Lokur Committee) 1965 and the Joint Committee of Parliament on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967 (Chanda Committee) 1969."

The Scheduled Areas and Scheduled Tribes Commission appointed by the President of India on 28 April 1960 pursuant to Article 339 of the Constitution of India in its report of 14 October 1961 stated that "As these groups are presumed to form the oldest ethnological sector of the population, the term "Adivasi" ('Adi'= original and 'Vasi'= inhabitant) has become current among certain people. The International Labour Organization has classified such people as "indigenous".

As the identification of Scheduled Tribes is left to the State government - which takes decisions on political considerations rather than the established criteria for identification of the Scheduled Tribes, there are bound to be demands for inclusion in the list of Scheduled Tribes.

On 17 December 2007, Justice Jasraj Chopra Committee, constituted by the State Government of Rajasthan to examine the Gujjar community's demand of Scheduled Tribe (ST) status, submitted its report to the government. The Committee rejected the community's demand for ST status. But it suggested four to six percent reservation for the really backward among the nomadic tribes inhabiting remote areas as a special package outside the existing reservation pattern.⁵

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Asian Indigenous and Tribal Peoples Network (AITPN) supports the report of the Justice Chopra Committee. While determining the benefits of affirmative action it must not dilute the criteria for defining the Scheduled Tribes. Based on the criteria for identification of the Scheduled Tribes, the benefits can be extended to such groups. At the same time, AITPN condemns the destruction of public and private properties as it has direct bearing on the right to life of those affected.

3. Indigenous peoples and armed conflicts

India faced increased armed conflicts as the Naxalites - the ultra left wing armed opposition groups - spread their activities. At present, 21 out of 28 states of India are afflicted by armed conflicts. The seven North-Eastern states of Arunachal Pradesh, Asom, 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, Uttaranchal 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.

In the North East region of India, major groups are the United Liberation Front of Asom (ULFA), National Democratic Front of Bodoland (NDFB) in Asom; People's Liberation Army (PLA), United National Liberation Front (UNLF), People's Revolutionary Party of Kangleipak (PREPAK), Kangleipak Communist Party (KCP), Kanglei Yaol Kanba Lup (KYKL), Manipur People's Liberation Front (MPLF), Revolutionary People's Front (RPF) in Manipur; Achik National Volunteer Council (ANVC), Hynniewtrep National Liberation Council (HNLC) in Meghalaya; All Tripura Tiger Force (ATTF), National Liberation Front of Tripura (NLFT) in Tripura; the National Socialist Council of Nagaland (Isak-Muivah) (NSCN-IM) and the National Socialist Council of Nagaland (Khaplang)- (NSCN-K) in Nagaland.

The Government of India had entered into ceasefire agreements and holding peace talks with some of the groups. The Government of India had entered into formal ceasefire agreement with the National Socialist Council of Nagalim-Isak-Muivah (NSCN-IM) w.e.f. 1 August 1997. The ceasefire agreement between the NSCN-IM and the government of India has been extended for an indefinite period. Both sides held several rounds of peace talks but the talks remained inconclusive. The Government of India has also entered into formal ceasefire with the National Socialist Council of Nagaland (Khaplang) (NSCN-K) w.e.f. 28 April 2004. The ceasefire with NSCN (K) has been extended up to 27 April 2008. The Ceasefire with the pro-talk United People's Democratic Solidarity (UPDS) has also been extended.⁶

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The government of India announced unilateral Suspension of Operations (SoO) by Army against the United Liberation Front of Asom (ULFA) from 13 August to 20 September 2006. Three rounds of peace talks were also held with Peoples' Consultative Group (PCG) set up by the ULFA. However, there was no direct response from ULFA and counter-insurgency operations against the ULFA resumed.⁷

Besides, the government of India is also in Suspension of Operations agreement with National Democratic Front of Bodoland (NDFB) of Asom which was signed on 24 May 2005 at New Delhi for a period of one year w.e.f. 1 June 2005 up to 31 May 2006; SoO with pro-talk United People's Democratic Solidarity (UPDS) faction which was effective from 1 August 2002; SoO with Dima Halim Daoga (DHD) which was effective since 1 January 2003 and was extended up to 31 December 2007; and SoO with the Achik National Volunteer Council (ANVC) which was effective from 23 July 2004 and was extended up to 22 July 2007. ⁸ The existing SoO are regularly reviewed.

Though the Central government continued dialogue with a number of armed opposition groups, the unrest continued to prevail over. Innocent tribal peoples who live in the armed conflict areas have been victims of atrocities of both the security forces and the armed opposition groups. Many were killed in the Naxalite violence in mainland India. According to the Union Ministry of Home Affairs (MHA), 418 civilians and 214 police personnel were killed in Naxal violence as of November in 2007.⁹ The 2006-2007 Annual Report of the MHA stated a total of 950 persons were killed in 2006 including 521 civilians, 157 police personnel and 272 Naxalites; 902 persons were killed in 2005, 653 persons in 2004 and 731 persons in 2003 in the Naxalite conflict.¹⁰

The majority of the civilian victims have been the Adivasis, indigenous peoples of mainland India. Chhattisgarh continued to remain the epicenter of the Naxalite conflict as a direct consequence of the counter-insurgency *Salwa Judum* campaign which involved the Adivasi civilians to counter the Maoists.¹¹

4. Violations of the rights of indigenous/ tribal peoples

According to the 2006 Annual Report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,791 cases of crimes against Scheduled Tribes were reported in the country as compared to 5,713 cases in 2005 showing an increase of 1.4% in 2006 over 2005. Out of a total of 5,791 cases reported in 2006, 1,232 cases were registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, 49 cases were registered under the Protection of Civil Rights Act, 699 were rape cases and 195 murder cases, among others. Yet, of the 10,495 accused persons who stood trial after being charged with crimes committed against Scheduled Tribes, only 2,186 persons or 20.8% were convicted.¹² In addition, the NCRB figures do not reflect the actual intensity of violence against the tribal and indigenous peoples of India. These figures only reflect that the atrocities perpetrated mainly by non-tribals. Majority of the atrocities are not reported and when brought to the record of the police authorities, they are not registered.

a. Violations of the right to life

Arbitrary deprivation of the right to life has been an integral part of maintenance of law and order especially in respect of any unrest involving indigenous/tribal peoples across India. Dozens of tribals are killed by law enforcement personnel each year. On 15 January 2007, the National Human Rights Commission of India asked the state governments of Karnataka and Tamil Nadu to pay interim relief of Rs 2.8 crore to the 89 tribal victims who had suffered atrocities including extrajudicial killing, rape, torture, prolonged detention and disappearance at the hands of the Joint Special Task Force personnel during their operations against the forest brigand Veerappan.¹³

On 2 July 2007, a tribal identified as Ramesh was killed by the police near Antarvelia outpost in Jhabua district of Madhya Pradesh. Ramesh was stopped by two police constables when he was returning to Jhayada village along with his wife on a motor cycle. The police allegedly conducted Ramesh's post-mortem hurriedly at night and then cremated him the same night. The policemen also forcibly collected thumb impression of the deceased's wife on a blank paper.¹⁴

On 10 July 2007, five tribal villagers including Gautam of Sindhanoor in Raichur district, Rame Gowda, his wife and their relative Sundaresh were allegedly killed by the police during an anti-naxal operation at

Menasinahadya village under Narasimharajapura police station in Chikmagalur district of Karnataka. The police claimed they were naxalites but the Civil Liberties Forum, an NGO which investigated the incident, stated that the deceased were innocent tribals who had nothing to do with the naxal activities and that they were killed in a fake encounter.¹⁵

On 19 August 2007, a Karbi tribal youth identified as Singh Timung (21), a higher secondary student of Diphu Government College was allegedly killed in the custody of a team of the Assam Police and the Central Reserve Police Force (CRPF) during an anti-insurgency operation at Ingleng Kiri village under Karbi Anglong district in Asom. The deceased was also the President of Borlangfar unit of the Karbi Students' Association (KSA) but the security forces claimed that he was a member of the Karbi Longri North Cachar Liberation Front.¹⁶

On 28 November 2007, the police arrested 11 tribals who were demanding their rights on their lands forcibly alienated by the non-tribals at Lankalapalli in Jeelugumilli mandal in West Godavari district of Andhra Pradesh. The tribal landowners accused the police of protecting the non-tribals for harvesting paddy in 90 acres of disputed land.¹⁷

b. Impunity

Impunity provided to the security forces further contributes to violation of civil and political rights of the tribals. With regard to the extrajudicial killing of 14 Adivasis by the police in Orissa on 2 January 2006, the state government of Orissa had set up a judicial commission headed by sitting Orissa High Court judge Justice A.S. Naidu. But on 9 April 2007, the Supreme Court annulled the Justice AS Naidu Commission of Inquiry on the ground that a sitting High Court judge cannot head any Inquiry Commission. On 10 April 2007, Orissa Chief Minister Naveen Patnaik promised to set up a new commission headed by a retired judge but the new commission was not established by the end of 2007.

Similarly, two judicial inquiry commissions were set up to inquire into the extrajudicial killings of at least nine tribal students at Williamnagar in East Garo Hills district and at Tura in West Garo Hills district of Meghalaya on 30 September 2005. The final reports were tabled in the State Assembly of Meghalaya on 19 April 2007. The Justice DN Chowdhury Commission which probed the Tura firings rightly held the security forces guilty and stated, among others that "The security personnel fired from close range. When the people were moving away from the field, the security personnel started firing

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again on them".¹⁸ But Justice (Retd) DN Baruah Commission defended the police action at Williamnagar as "just and proper" and added that "the question of fixing responsibility does not arise at all".¹⁹ Hence, Justice (Retd) DN Baruah Commission denied justice to the victims and their families, and further contributed to providing impunity to the guilty security forces.

5. Violations of the international humanitarian law by the armed opposition groups

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

Among the armed opposition groups, the Naxalites were responsible for more violations of international humanitarian laws. In 2007, the Naxalites continued to kill innocent tribal peoples accusing them of being “police informers”, members of anti-Maoist civilian militias such as Salwa Judum and for not obeying their diktats. In Chhattisgarh, innocent tribal civilians were killed for participating in the anti-Naxalite Salwa Judum campaign, irrespective of whether they had participated voluntarily or by force. In July 2007, the Maoists banned farming in the Maoist-infested Bastar region of Chhattisgarh “to protest against the exploitation of the state’s natural resources by the Government”.²⁰ Whoever defied the ban was given the death sentence. According to the police, at least 11 tribal farmers were murdered by the Maoists for working in their fields in July 2007 in Bijapur police district alone.²¹ Most of the victims were killed after torture. For examples, on the night of 8 July 2007, two farmers identified as Kalmu Dulla (50) and Marwi Mura (40) were abducted from Chintagufa village in Bijapur police district of Chhattisgarh, beaten up and then hacked to death by the Maoist cadres.²² On 17 July 2007, armed Maoist cadres caught four farmers identified as Sukdas, Hemla Lachhu, Hemla Somu and Hemla Somlu while farming their fields at Mallapara village near Gangalur in Bijapur police district and tortured them to death.²³ Again on 25 July 2007, the Maoist cadres tortured to death two tribal farmers identified as Kudhi Mangru of Chareli village and Potai Mangu of Bedka village in Bijapur district for the same reason.²⁴

The Naxalites also executed many Adivasis as alleged “police informers”. Those killed on the accusation of being “police informers” included Gorle Ramesh (28) of Pathakota village under Y Rayavaram mandal in East Godavari district in Andhra Pradesh who was killed at Kothapalem village in Guntur district of Andhra Pradesh on 20 January 2007;²⁵ T Appa Rao (40) who was killed near Qotagedda village in GK Veedhi Agency mandal in

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Visakhapatnam district of Andhra Pradesh on 23 February 2007;²⁶ Nimmaka Musuru (30) who was tortured to death after tying to a tree near his house at Achchida village under Elwinpeta police station in Vizianagaram district of Andhra Pradesh on 13 July 2007;²⁷ Santosh Navdi (19) of Jambia village and Ranjit Holi (18) of Kunjmarka village who were abducted and killed in a forest near Jambia-Gatta near Etapalli tehsil town of Gadchiroli district in Maharashtra on 14 October 2007;²⁸ and Tambeli Beturu Siddhu (25) of Kotagunnala in Chintapalli mandal whose throat was slit at Peddagedda junction in Visakhapatnam district of Andhra Pradesh on 27 December 2007.²⁹

On 2 July 2007, suspected cadres of All Tripura Tiger Force (ATTF) abducted three tribal members of Village Committee identified as Ranjan Debbarma, Falendra Debbarma and Amalya Debbarma from a work-site near Dinakobra School in Khowai sub division of West Tripura district. They were released in the evening of the same day after being brutally beaten up in captivity.³⁰

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).³¹

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. Many indigenous women were also targeted as "witches" especially in Asom, Chhattisgarh, Jharkhand, Tripura and West Bengal.

In its 2006 Annual Report, the National Crime Records Bureau recorded a total of 699 cases of rape of tribal women in India in 2006 as against 640 cases in 2005 showing an increase of 9.2 per cent in 2006. Out of these 640 rape cases occurred in 2005, 284 or 40.6% were reported from Madhya Pradesh alone.³² Non-tribals were involved in these rape cases.

The security forces were responsible for violence against indigenous/ tribal women.

As majority of indigenous/ tribal peoples live in armed conflict situations, indigenous/ tribal women have often become victims of arbitrary arrest, illegal detention and sexual violence by the law enforcement personnel.

On 9 January 2007, the police arrested three Paharia tribal women along with several tribal men on the charge of killing of one Deba Paharia and detained them at Sundarpahari police station in Godda in Jharkhand. While the men were detained in the police lock up, the women were illegally detained in the residential quarter of the Officer-In-Charge (OC) of Sundarpahari police station, Dipnarayan Mandal. They were allegedly tortured and raped by OC Dipnarayan Mandal and the Assistant Sub Inspector Mahadev Oraon.³³

On 13 February 2007, a tribal woman filed a complaint alleging gang rape by some personnel of the Mizoram 2nd India Reserve Battalion in Dantewada district of Chhattisgarh. The Mizo Battalion, composed of mostly tribals, was deployed to fight the Naxalites in Chhattisgarh.³⁴

On the morning of 20 August 2007, 11 tribal women were allegedly gang raped by the Greyhound policemen during anti-Naxalite operations at Vakapalli village under Nurmati panchayat in Visakhapatnam district of

Andhra Pradesh. According to the victims, 21 Greyhound policemen entered the village around 6 a.m, and raided their houses on the charges that their family members were associated with the Naxalites. While some of the women were raped in their homes, some others were raped in the fields.³⁵ Ten of the victims were between 20-30 years and one was 45 years old. The police allegedly tried to hush up the incident. They even failed to conduct an identification parade of the suspects, although the victims have claimed that they could identify the rapists. On 30 August 2007, the National Human Rights Commission took suo motu cognizance of the incident and sent notice to the Senior Superintendent of Police, Vishakhapatnam district and the Director General of Police, Andhra Pradesh to submit a factual report within four weeks. But till date, no action has been taken to identify and prosecute the rapists.

On the night of 27 August 2007, a 42-year-old Karbi tribal woman was raped by a soldier belonging to Bihar regiment at Mansingh Bey village under Hauraghat Police Station under Karbi Anglong district of Asom. A group of the Bihar regiment personnel went to the Mansingh Bey village in an anti-insurgency operation at the midnight of 27 August 2007 and two jawans entered into the house of Longsing Bey. They tied the hands of Longsing Bey, blindfolded him and made him sit in his veranda at gunpoint. Later, one of the jawans allegedly raped Longsing Bey's sister.³⁶

The armed opposition groups were also accused of perpetrating rape of indigenous/ tribal women. On 9 July 2007, a 20-year-old tribal woman was raped by two alleged members of an unidentified militant group at her Jhum hut at T-Phaijol village in Churachandpur district of Manipur.³⁷

The indigenous/ tribal women were also victims of violence by the non-tribals. On 24 November 2007, an Adivasi woman was stripped naked and beaten up in full public view by the non-tribal residents at Beltola area in Guwahati, the capital of Asom. The Adivasis were holding a procession demanding Scheduled Tribe status in Asom when it turned violent.³⁸

On 22 October 2007, a 20-year-old tribal woman was allegedly raped by two upper caste men identified as Badka alias Nandkumar Paswan, a bus conductor, and Fakla alias Ramgopal Verma in Birgaon area under the Urla police station in Raipur, Chhattisgarh.³⁹

Earlier on 9 April 2007, a tribal woman was raped by Ramsevak Das, a priest of a Hanuman temple in Mohna town in Gwalior district of Madhya Pradesh.⁴⁰

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Tribal women also faced sexual attack from the fellow tribals. On the night of 12 May 2007, seven Reang tribal women were allegedly gang raped allegedly by a group of Jamatiya tribal youths at remote Dalakcherra in Amarpur subdivision of South Tripura district. The victims along with some boys were returning from a village fair.⁴¹

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.

Apart from sexual violence by the non-tribal civilians, the law enforcement officials have been responsible for sexual violence against the indigenous/ tribal children. On 13 March 2007, a soldier identified as Nungthui Gangmei of the 38th Assam Rifles posted at Kotlien in Senapati district of Manipur allegedly sexually assaulted and then tried to kill a minor tribal girl identified as Nengneikim Haokip while the girl was washing clothes at a waterfall near the Assam Rifles camp.⁴² The accused soldier, Nungthui Gangmei was reportedly arrested following strong protests from civil society groups.⁴³

On the night of 24 May 2007, a 16-year-old tribal girl was raped by two upper caste Home Guards in the Harda district Collector's office premises in Madhya Pradesh. The victim was working as a labourer at the District Collector's office. The accused identified as Jitendra and Pankaj have been arrested.⁴⁴

On 27 June 2007, a 15-year-old minor tribal girl, daughter of Mihilal, resident of Jarwatola village was allegedly gang raped by three police personnel of Nawadih Police Station including Officer-In-Charge Pramod Kumar during a so-called anti-Naxal operation at Jarwatola village in Bokaro district of Jharkhand on 27 June 2007. Prior to raping the minor tribal girl, the police personnel had stripped naked and beat up her father Mihilal when he denied having any knowledge about the Maoists.⁴⁵

On the night of 11 December 2007, a minor tribal girl, daughter of Rajaram Debbarma of Gopal Nagar village in West Tripura was allegedly raped by Sub-Inspector Nandan Baidya (30) in the custody of the Bishramganj police station in West Tripura. After public hue and cry, the State government suspended and arrested the accused police officer.⁴⁶

The tribal children were also subjected to arbitrary arrest and detention. On 6 August 2007, two tribal children identified as Bhutan Khalko (6) and Bhuto Khalko (4), residents of tribal colony near the Barasat Municipality, were picked up by the police on the charges of stealing and illegally detained at Barasat police station in North 24 Parganas district in West Bengal for three

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days from 6-8 August 2007. Finally, they were released without any charge being registered against them.⁴⁷

Poverty has forced hundreds of tribal children to leave schools and work for a living. Many of them have turned into bonded labourers. For example, a survey conducted by the Tribal Research and Cultural Foundation found that 74 per cent of Gujjar tribal children aged between 7 and 15 years were engaged in physical labour in the state of Jammu and Kashmir. Of them, at least 17 per cent were working as bonded labourers which they inherited from their forefathers who were also working as bonded labourers. The survey further found that 83 per cent of Gujjar children never went to schools.⁴⁸

In the state of Chhattisgarh, thousands of tribals have been displaced due to the naxalite conflict. The state government has provided them shelter in relief camps. In the name of providing employment, the state government has employed tribal boys and girls as Special Police Officers (SPOs) to fight the naxalites. An investigation by an NGO Committee Against Violence On Women found that there were 4,048 SPOs, of whom 299 were women/ girls. According to the NGO, many of the young girls who have been recruited as SPOs did not appear to be 18 years of age.⁴⁹

The armed opposition groups also targeted the children. On the night of 7 January 2007, suspected National Liberation Front of Tripura (NLFT) cadres shot dead a 13-year-old schoolgoing tribal boy identified as Ramdhan after they did not find his father Mangaldhan Tripura at home at Dinarampara village under Raisyabari police station in Dhalai district of Tripura.⁵⁰

8. Violations of the indigenous peoples' right to land

a. Legal and constitutional guarantees

The Constitution of India under the 5th Schedule protects the land rights of the tribals in mainland India. Clause 5(2) of the 5th Schedule of the Constitution specifically provides that the Governor of the states having areas under the 5th Schedule may make regulations to: - (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; (b) regulate the allotment of land to members of the Scheduled Tribes in such area; and (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

In the North East India, the 6th Schedule of the Constitution authorizes the Autonomous District Councils to make appropriate laws against land alienation subject to approval by the Governor.

In addition, at the state level, there are numerous laws prohibiting transfer of lands from indigenous/ tribal peoples to "non-tribals" such as Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Kerala Act 31 of 1975); Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation of 1 of 1959); Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (Andhra Pradesh Regulation 2 of 1963); Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970 (Andhra Pradesh Regulation 1 of 1970); Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1971 (Andhra Pradesh Regulation of 1 of 1971); Chotanagpur Tenancy Act, 1908 (Bengal Act of 1908); Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949) except section 53; Maharashtra Land Revenue Code and the Maharashtra Restorations of Land to Scheduled Tribes (Second Amendment) Act, 1976 (Maharashtra Act 30 of 1977); Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 (Orissa Regulation 2 of 1956); Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 (Karnataka Act 3 of 1984) and Madhya Pradesh Land Revenue Code, 1959 etc.

Some of these laws were adopted during British rule. Yet such guarantees have proved ineffective in preventing widespread alienation of tribal lands.

Apart from fraudulent means of land alienation by the non-tribals, the government can also take away any private land under the Land Acquisition Act of 1894 for so-called "public purposes". In India, "public purposes" have come to mean to government exercising its sovereign power to appropriate the lands of the poor for development projects of companies/corporations which are either owned privately or by the shareholders.

"Public purposes" no longer refer to government taking away lands for the construction of roads, railway lines or government offices etc but the government exercising its sovereign power for the benefit of the private companies.

b. The extent, process and practices of land alienation

False cases have been filed against the tribals by the non-tribals who try to forcibly grab the tribal lands and by the police who accuse the tribals of being "Naxalite sympathizers" for offering food or shelter to the Naxalites.⁵¹

The rate of alienation of tribal land is alarming in India. In the state of Andhra Pradesh, non-tribals presently hold as much as 48 per cent of the land in Scheduled Areas of the state. Since the Andhra Pradesh Scheduled Areas Land Transfer Regulation came into effect in 1959, 72,001 cases of land alienation have been detected involving 3,21,685 acres of land in the state. The tribals have been losing their legal fight in the courts to recover their lands. Of the 72,001 cases registered under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 70,183 cases were disposed off and 33,319 cases (47.47 per cent) were decided against tribals involving 1,62,989 acres of land. As of January 2007, about 300 cases were pending in Andhra Pradesh High Court involving about 2,500 acres of land under the Andhra Pradesh Scheduled Areas Land Transfer Regulation.⁵²

Similarly, the All Assam Tribal Sangha has accused the state government of Assam of illegally transferring lands to non-tribals in the tribal belts of the state in violation of Assam Land Revenue Regulation Act 1886. The non-tribals had bought plots of land individually or in the name of private school, societies, trust etc and they later used the plots for commercial purpose.⁵³

For the poor and disadvantaged tribal peoples, the legal battles involving their land are too difficult to be won. In February 2007, the Supreme Court allowed a tribal petitioner to file a fresh petition before the Jharkhand High Court for recovery of his land from a mining company. In its order, the Supreme Court held that the Jharkhand High Court was wrong to dismiss the petition of

Surendra Dehri, a tribal who alleged that over 10,000 acres of “notified tribal land” had been usurped by mining contractors in connivance with the government officials. The High Court had dismissed his petition saying that it involved only “private interest”. But a bench of Supreme Court comprising Justices B.N. Agarwal and P.P. Naolekar stated that blatant violation of constitutional guarantees given to the tribals could not be held to be related to “private interest”.⁵⁴

In Jharkhand, the cases of alienation of tribal land have been on the rise despite having two laws - Chotanagpur Tenancy Act and Santhal Parganas Tenancy Act to prevent sale of tribal land to non-tribals in the state. A total of 2,608 cases have been filed by the tribals with the Special Area Regulation Court in 2003-2004, which increased to 2,657 cases in 2004-2005 and further increased to 3,230 cases in 2005-2006. During 2006-2007 upto January 2007, a total of 3,789 cases of land alienation have been filed by tribals with the Special Area Regulation Court.⁵⁵

In some states, the state governments have been directly responsible for use of violence against the tribals who try to fight for their rights on lands.

I. State sponsored violence against tribals protesting against land acquisition for POSCO steel plant in Orissa

Whenever the tribal peoples protested against forcible acquisition of their lands by the private companies or the State, the State responded with violence.

On 22 June 2005, the government of Orissa signed a Memorandum of Understanding with the Korean Pohang Steel Company (POSCO) to set up a steel plant at Paradeep in Jagatsinghpur district. The project is estimated to displace around 4,000 indigenous/tribal families.⁵⁶ The local tribal peoples have formed the POSCO Pratirodh Sangram Samiti (Committee for Resistance Against POSCO) to oppose the POSCO steel plant. The state has responded with violence against those opposing the plant. On 29 November 2007, POSCO Pratirodh Sangram Samiti activists were attacked by supporters of the steel project in Balitutha in Jagatsinghpur district.⁵⁷ The attackers hurled crude bombs at the protesters, 15 members of POSCO Pratirodh Sangram Samiti were injured and their tents burnt down.⁵⁸ Instead of taking action against the attackers, the State government deployed large number of armed policemen around Dinkia village, the headquarters of the POSCO Pratirodh Sangram Samiti.⁵⁹ In December 2007, the villagers of Dinkia were effectively being detained in their homes. All three exits were being manned by pro- POSCO activists along with the state armed police.⁶⁰

II. Forcible eviction of tribals by ruling party cadres in Kerala

In the state of Kerala, the ruling Communist Party of India (Marxists) cadres forcibly took over lands earmarked for distribution to Adivasis, indigenous peoples in Munnar of Kerala in November 2007. In 2003, following the killings of the Adivasi protestors at Muthanga, the State government allotted an acre of land each in Chinnakanal to more than 700 tribal families. However, even after four years, only 540 families have received land. Some 200 tribal families have built makeshift huts on the government land in Munnar in protest.⁶¹ But on 26 November 2007, they were attacked by the CPI-M cadres. Over 2,000 CPI-M cadres captured a 1,500-acre stretch of prime government land in Munnar's Chinnakkanal area and forced the 200 Adivasi families to flee. The CPI-M cadres destroyed the huts of the Adivasis and put up party flags to symbolize their victory. They fenced off the area and began constructing their own huts there. In the evening of 27 November 2007, an all-party meeting was called by the Munnar Additional District Magistrate. The meeting decided that both the CPI-M and Adivasis would move out of the area within 48 hours.⁶² But Adivasi leader C P Shaji was attacked by alleged CPI-M cadres after leaving the meeting.⁶³

9. Displacement of indigenous/ tribal peoples

Indigenous peoples have disproportionately been the victims of development and conflicts. While by 2001 they constituted 8.2% of the total population, they comprised 55.1% of the 8.54 million persons displaced in India by development projects and conflicts between 1950 and 1990.

On 31 October 2007, the government of India notified the National Rehabilitation and Resettlement Policy of 2007 but it failed to address the key issues relating to the booming of conflicts: forcible acquisition of lands. The 2007 Policy was supposed to be an improvement of the Draft National Rehabilitation Policy of 2006 which was drafted to address the admitted failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. But the 2007 National Rehabilitation and Resettlement Policy upholds the sovereign power of the State to apply the concept of “eminent domain” to forcibly acquire any private property in any part of the country in the name of “public purpose” under the Land Acquisition Act, 1894.

a. Development-induced displacement

The government of India has taken up so-called development activities such as setting up of industries, mining and dams without taking proper care of the people affected by these projects. The tribals formed the majority of the development-induced displaced persons. According to a recent survey conducted by ActionAid and Indian Social Institute, over 1.4 million people have been displaced from their homes in the four states of Andhra Pradesh, Chhattisgarh, Orissa and Jharkhand where a total of 10.2 million acres have been acquired for setting up of development projects such as mines, industrial plants and dams in the last decade. Out of the 1.4 million displaced persons in these four states, 79 per cent were tribals.⁶⁴

Although the Narmada Control Authority claimed that all the 32,600 families affected by the Sardar Sarovar dam at the height of 121.92 metres in Maharashtra, Madhya Pradesh and Gujarat had been resettled, thousands of oustees including tribals have not been rehabilitated by the end of 2007. The Narmada Bachao Andolan claimed in November 2007 that more than 1,100 affected families remain to be resettled in Maharashtra alone.⁶⁵

The tribals have been protesting against forcible acquisition of their land for the setting up of a steel plant by the Tata group in Lohandiguda of Bastar

district of Chhattisgarh. In June 2005 the state government of Chhattisgarh had signed an MoU with Tata Steel which requires 1784.22 hectares of private land besides 278.84 hectares government land spread over 10 villages in the Lohanigunda area.⁶⁶ On 10 December 2007, over 100 tribals were detained by the police in Bastar for protesting against the Tata steel plant. Several other tribal activists were allegedly booked on false charges.⁶⁷

Apart from displacement, the development projects also destroyed the culture and tradition of the tribals. On 23 November 2007, the Supreme Court of India barred the UK company Vedanta Resources Plc from mining bauxite in the sacred Niyamgiri hills in Orissa. The hills are considered sacred by the Dongria Kond tribe and 10,000 members of this tribe reportedly live by farming in the forests of the Niyamgiri hills.⁶⁸

In Jharkhand, the tribals have been protesting against the implementation of Koel Karo hydroelectric project by National Hydroelectric Corporation over the Koel and Karo rivers. The project, if implemented, would submerge as many as 256 villages involving 50,000 acres of forest area, 40,000 acres of agricultural land and 300 forest groves (considered sacred by the tribals), 175 churches and 120 Hindu temples.⁶⁹

The proposed Tipaimukh Hydro Electric Project, implemented by the North Eastern Electric Power Corporation (NEEPCO), has been protested by the tribals of Manipur and Mizoram and other civil society organizations. The project would totally submerge 12 villages and would affect another 60 villages in Manipur, and another 15 to 20 villages inhabited by tribals would be affected in Mizoram.⁷⁰ The affected peoples have complained that the public hearing on the project which was held in 2006 was not fair. In December 2007, the state government of Manipur was forced to announce a fresh public hearing to be conducted at the project site.⁷¹

b. Conflict-induced displacement

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

Mizoram who took refuge in Tripura in October 1997; and 43,740 displaced Adivasis living in the anti-Naxalite *Salwa Judum* camps in Dantewada district of Chhattisgarh.

The tribals were squeezed between the security forces and the armed opposition groups. As of October 2007, about 137 Chenchu tribal families comprising 468 persons had to flee their homes at Palutla, Nekkanti, Pannalabailu, Guttalachenu and Alatom villages to Venkatadripalem village under Prakasam district in Andhra Pradesh. They were forced to flee to escape from the atrocities unleashed by the police on the charges that they were providing food and water to the Maoists. On the other hand, the Maoists harassed them if they did not provide them food and help them in other ways.⁷²

c. Displacement due to security related activities

Hundreds of tribals/ indigenous peoples living along the India-Bangladesh border have been displaced or facing displacement due to the acquisition of their lands by the government to erect fencing along the border to prevent illegal immigration and any anti-India activities from the other side of the porous borders. In Mizoram, the India-Bangladesh border fencing project will effectively uproot not less than 5,790 Chakma tribal families consisting of 35,438 persons from 49 villages.

Hundreds of Chakma tribals whose lands have been acquired have not been provided any compensation. Out of the 318 kms international border in Mizoram which is being fenced, National Building Construction Corporation Ltd. (NBCC) has been given the major share of 147 kms while Border Roads Organization (BRO) is fencing 70 kms, Engineering Projects India Limited (EPIL) 55 kms and National Projects Construction Corporation Ltd (NPCC) 46 kms.

In 2006, India-Bangladesh Border Fencing Affected Families Resettlement Demand Committee (IBBFARDCOM) of Mizoram alleged that the four implementing agencies i.e. NBCC, BRO, EPIL, NPCC began to acquire the lands of the villagers by breaking all rules. They even did not think it necessary to follow the guidelines issued by the Ministry of Home Affairs while acquiring the lands. In its various communications to the four implementing agencies, the Ministry of Home Affairs clearly stated that the four construction companies "shall be responsible for liaisoning with the State Government/ local authorities for acquisition of land and getting forest/ environment clearance for carrying out the fencing & related works", and that

they “shall finalize the alignment of the fencing in consultation with BSF (Border Security Forces) & DM (District Magistrate) of the area where the fencing is proposed”. But the four construction companies had started acquiring lands and erecting the fencing in their respective portions without any consultation with the tribal inhabitants or the local authorities, including the DM and the BSF.

After acquisition of lands, the tribal victims have been asked to fend for themselves. In Lunglei district where fencing was being carried out by the NBCC, the affected peoples did not get any compensation by the end of 2007 although the verification of the affected families was completed in early 2007. On the other hand, fencing works continued to take place.

d. Discrimination against conflict induced indigenous IDPs

Once displaced, the government usually refused to rehabilitate the tribal/indigenous IDPs.

The conditions of the displaced persons in the relief camps have been miserable. On 15 November 2007, a delegation of the National Human Rights Commission (NHRC) stated that it was unhappy over the provisions being provided to the victims of ethnic violence sheltered in relief camps in Kokrajhar district of Asom. NHRC members KHC Rao and Kuldeep Lohani stated that during their visit to different relief camps in Kokrajhar district they had found that the ration supplies provided to 7,504 families in 15 relief camps for ten days was highly inadequate and medical facilities for the camp inmates was poor.⁷³

The state government of Chhattisgarh also failed to resettle over 44,000 conflict-induced displaced Adivasis in the state.

The state government of Mizoram refused to take back and resettle about 35,000 Bru indigenous peoples who had fled their homes in Mizoram and took shelter in neighbouring Tripura.

Indigenous IDPs faced discrimination in terms of access to basic humanitarian services. About 35,000 Brus/Reangs have been displaced from Mizoram and have been languishing in six relief camps in Kanchanpur sub-division of Tripura since 1997. Presently, Kashmiri pandits are provided cash assistance of Rs 1,000/- per head per month subject to a maximum of Rs 4,000/- per family per month both at Jammu and Delhi relief camps besides basic dry rations. On the other hand, a Bru tribal adult gets cash dole of only Rs 2.90 per

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day (i.e. Rs 87 per month) and a minor gets Rs 1.45 per day (i.e. Rs 43.5 per month) and meager 450 gram of rice is being provided to per adult Bru per day while 225 gram of rice is being provided to per minor per day, which is highly inadequate. While the Central government has provided crores of rupees to construct concrete houses for the Kashmiri Pandits in Jammu, the Brus did not get funds even to repair their bamboo huts. In education, the benefits enjoyed by the Kashmiri migrant students include reservation of seats in technical/professional institutions and other benefits while the Bru children are getting nothing more than primary education under Sarva Shiksha Abhiyan. In 2007, AITPN conducted a survey in the six relief camps and found that over 94% of the Bru IDPs in the relief camps possessed documents issued by the state government of Mizoram such as ration cards, land documents, animal tax, etc and enrolment in the electoral rolls to prove that they are genuine residents of Mizoram. Yet, the government of Mizoram refused to take them back in the last one decade.

10. Repression under forest laws

Although the tribal peoples have been living in the forests from time immemorial, they have been dumped as illegal encroachers and evicted under various forest and wildlife protection laws. They have been denied access to traditional means of survival.

In December 2006, the government of India passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act to recognize the rights of the tribals over their forest lands. The Ministry of Law & Justice published the "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" in the Gazette of India on 2 January 2007 but it failed to notify the Rules of the Act by the end of 2007. In addition, many writ petitions have been filed challenging the constitutional validity of the Forest Rights Act.

Due to delay in the implementation of the Forest Rights Act, the tribals have been deprived of their forest and land rights throughout 2007. In Jharkhand alone, about 12,000 cases have been filed by the state's Forest Department against the tribals as of 12 August 2007. Most of these cases related to the claims of land rights by the tribals guaranteed under the Scheduled Tribes (Recognition of Forest Rights) Act.⁷⁴

The tribal peoples have to pay a heavy price for accessing minor forest produce. For example, on 17 June 2007, 35-year-old Jeevan Munda was allegedly beaten to death by forest officials on the charge of cutting a tree to make a bed in the Hazaribagh National Park in Jharkhand. Mr Munda's body was found from a field with injury marks all over his body.⁷⁵

The tribals have been arrested under false charges when they tried to access minor forest produce. In April 2007, the government of Chhattisgarh decided to drop criminal charges against 2,20,613 persons including 1,08,890 Scheduled Tribes and 36,298 Scheduled Castes registered under various forest and wildlife protection laws.⁷⁶ Similarly, on 12 August 2007, the government of Jharkhand ordered the release of all tribals who had been lodged in various jails in the state in connection with cases registered by the Forest Department and to pay compensation to all the villagers who had lost their paddy fields and vegetable farms due to forcible plantation undertaken by the state's Forest Department.⁷⁷

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In August 2007, the Adivasi Mulabhuta Hakkugala Horata Samiti alleged that the Forest Department officials were making the lives of the tribals living in the "hadis" (tribal settlements) inside the Nagarahole National Park in Karnataka miserable by restricting their movement and lodging of false cases against them.⁷⁸ The tribals were booked for exercising their rights like growing paddy, ginger, vegetables and coffee in and around their habitations in the forests and transporting them outside the forests to sell them to earn their livelihood. On 19 July 2007, the Nagarahole Range Forest Officer at Kutta gate allegedly seized bags of ginger from a tribal while he was taking them to the market for sale and a case was registered against him and the driver of the jeep in which the bags of ginger were being transported. The tribals were also often booked for collecting firewood in the forests.⁷⁹

The indigenous peoples continued to face eviction from their traditional habitat under the Forest Conservation Act of 1980. On 13 March 2007, as many as 118 Adivasi families were evicted by the Forest Department from a reserve forest land at Saralpara under Haltugaon Forest Division in Kokrajhar district of Asom. The state government of Asom failed to provide them any alternative resettlement.⁸⁰ On 19 April 2007, the state government of Madhya Pradesh tried to evict tribal families from forest land at Ghateha village in Rewa district of Madhya Pradesh. The state government had served notice to about 3,000 tribals who were allegedly encroaching on the forestland.⁸¹ When the tribals tried to resist the eviction drive, the police opened fire on them, injuring many including women and children.⁸²

11. Failure of the affirmative action programmes

The constitution of India provided an array of affirmative action programmes for the Scheduled Tribes and the Scheduled Castes, including reservation in the legislature, education, employment etc. These affirmative action programmes have been instrumental in bridging the social, political and economic disparities. Yet these programmes could have shown better results had the government of India and various state governments been serious about their implementation. Many State governments do not issue the Scheduled Tribes certificates even to those recognised by the State government.

a. Denial of ST certificates to tribals/ indigenous peoples in Madhya Pradesh

The Madhya Pradesh government has refused to issue Scheduled Tribe (ST) certificates to the tribal children of Barela, Bhil, Bhillala, Patelia and Nagwanshi tribal communities living in 13 villages in Buxwaha block in Chhattarpur district and three villages under Batiagarh block in Damoh district although they are recognized as Scheduled Tribes in the state of Madhya Pradesh.

In 2007, AITPN conducted a survey of the tribals in these villages and found that majority of them possessed legal documents such as ration cards, voter identity cards, land patta issued by the Madhya Pradesh government, educational certificates, and some even possess court documents to prove their lands to establish beyond doubt that they are genuine residents of Madhya Pradesh. Yet, the state government of Madhya Pradesh had turned down several pleas made by these tribal communities for issuing them ST certificates. Due to non-issuance of ST certificates, the tribals have been denied all rights and welfare schemes such as education, scholarships, employment, land rights, etc to which they are otherwise entitled to under the Constitution as well as other relevant laws. In addition, when human rights violations are committed against these tribals, the police do not register cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. Hence, justice has been blatantly denied to them.

Many villages in Andhra Pradesh have not been recognized as tribal areas for the inclusion in the Fifth Schedule to the Constitution despite being tribal-majority villages. Due to the non-inclusion of tribal dominated villages under

the Fifth Schedule, nearly 200,000 Adivasis spread over 805 villages in nine districts of Andhra Pradesh do not enjoy the Constitutional protection.⁸³

b. Non-implementation of the reservations in employment

The government of India failed to implement job reservations of 7.5% for the Scheduled Tribes as provided under the Constitution of India.

On 8 November 2007, the All Assam Tribal Sangha stated that there were at least 29,375 backlog vacancies for Scheduled Castes and Scheduled Tribes in Assam. The All Assam Tribal Sangha further accused the state government of Assam of not following the 100-point Roster Programme as provided in the Reservation of Vacancies in Services and Posts (RVSP) Act, 1978 and the Rules 1983.⁸⁴

In its Ninth report (Fourteenth Lok Sabha) on the Ministry of Finance (Department of Revenue) regarding - Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Central Board of Direct Taxes (CBDT), the Committee on the Welfare of Scheduled Castes and Scheduled Tribes had stated that the backlog vacancies of the ST in Group 'B', 'C' and 'D' posts for the year 2002-03 was 234, 180 and 172 which rose to 300, 345 and 240 in 2004-05. Similarly, the number of backlog vacancies of SC for recruitment in Group 'B' and Group 'C' was 49 and 290 respectively in 2002-03 which increased to 124 and 545 in Group 'B' and Group 'C' respectively in 2004-05. The Committee had recommended that all these backlog vacancies in recruitment should be filled up through Special Recruitment Drive. But the government of India failed to implement the recommendations and it replied to the Committee that only 97 vacancies (43 ST and 54 SC) in Group 'C' and 69 vacancies (62 ST and 7 SC) in Group 'D' were identified and that these vacancies have either been filled up or recruitment was in final stage. The Committee in its Twenty-Third Report on Ministry of Finance (Department of Revenue) stated that it was "not satisfied with the reply of the Government because the number of reserved vacancies identified as backlog in direct recruitment for filling up through the Special Recruitment Drive 2004, has been much less than what was previously furnished to the Committee by the Ministry (of Finance)." The Committee further noted that no officer belonging to SC/ST category has ever been appointed as Chairman or Member of the Board of CBDT.⁸⁵

The Syndicate Bank, which is a public sector bank, had a backlog in promotion of 27 ST from sub-staff to clerical cadre in 2000, 3 ST from sub-staff to clerical cadre and 62 ST from clerical cadre to officers' cadre in 2001, 6 ST from sub-

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staff to clerical cadre and 63 ST from clerical cadre to officers' cadre in 2002, 5 ST from sub-staff to clerical cadre and 77 ST from clerical to officers' cadre in 2003, 2 ST from sub-staff to clerical cadre and 74 ST from clerical to officers' cadre in 2004, and 5 ST from sub-staff to clerical cadre and 15 ST from clerical to officers' cadre.⁸⁶

In state-owned Oil and Natural Gas Corporation Limited (ONGC), the percentage of Executives belonging to SC in Group 'A' during 1995 was 9.6% and for ST category it was 2.9%. The percentage of SC and ST increased to 12.4% and 3.8% respectively as on 1st April 2001, yet remained far below the prescribed percentage of reservation i.e. 15% for SC and 7.5 % for ST.⁸⁷

As of 31 December 2005, there were shortfall of 23 and 7 vacancies for ST in the grade of Executive Engineer (Civil) and Executive Engineer (Electrical) respectively and 65 and 25 vacancies for ST in the grade of Assistant Engineer (Civil) and Assistant Engineer (Electrical) respectively in the Central Public Works Department (CPWD). The government replied by saying that these vacancies could not be filled up "for want of eligible ST candidates". Even in the grade of Architect, 2 ST vacancies could not be filled up due to non-availability of ST officers in the feeder grade. Expressing deep concern, the Committee stated, among others, that "The Committee are of the view that if no ST candidate is available in the feeder grade for promotion, it implies that the prescribed percentage of reservation for ST had not been maintained in the feeder grade."⁸⁸

The Committee found that there was continuous shortfall of SC/ST employees in almost all categories of posts in the Kendriya Vidyalaya Sangathan (KVS) during the years 2003-04, 2004-05, 2005-06 and 2006-07. Yet, not a single ST candidate was appointed in Group A category in the years 2003-04, 2005-06 and 2006-07. Not a single SC candidate was appointed in Group A category in the years 2005-06 and 2006-07. In case of Group D posts, no SC/ST recruitment was made in the years 2005-06 and 2006-07. The reasons for shortfall were provided as non-availability of qualified SC/ST candidates and unwillingness of selected SC/ST candidates to join or remain in service. However, the authorities failed to provide any details of the selected candidates belonging to SC/ST category who did not join the service during 2003-2006. The KVS also reported to the Committee that no eligible principal belonging to SC/ST category was available for promotion to the post of Education Officer in 1998, 1999 and 2000.⁸⁹

The Committee also expressed "serious concern" over not filling up of the vacancies reserved for SC/ST in Navodaya Vidyalayas. During the years from

1998 till 2006-07, SC and ST posts of Principal, Vice Principal, Teaching Staff and Secretarial Staff have not been fully filled up during each recruitment year and these posts are shown as carried forward vacancies every subsequent year. As in 2006-07, the carried forward SC and ST vacancies in the posts of Principal, Vice Principal, Teaching (PGTs, TGTs, Misc. categories) and Non-Teaching categories are 10 and 30, 15 and 22, 26 and 170, and 177 and 146 respectively in Navodaya Vidyalayas. The reasons for such backlog were stated to be lack of “qualified SC/ST candidates”. This is despite serious problem of unemployment among the educated SCs and STs in the country. The Committee expressed surprise that even in the case of Sweeper category where no higher qualification is required, there was shortfall of ST category every year from 2003-04 to 2006-07 in Navodaya Vidyalayas.⁹⁰ This explains the lackadaisical attitude of the authorities towards the tribals in the country.

c. Failure of the Central government's grant in-aid programmes

Article 275 of the Constitution of India provides for special grants “for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State”. The government of India launched various schemes with 50% Central share for some schemes and 100% grant-in-aid for some other schemes.

Some of the Central schemes are given below:

Central Sector Schemes:

1. Special Central Assistance to Tribal Sub-Plan (State Govts.)
2. Grants under First Proviso to Article 275(1) of the Constitution (State Govts.)
3. Grant to NGOs for ST including Coaching & Allied Schemes and award for exemplary service (NGOs)
4. Vocational Training Centre in Tribal Areas (States and NGOs)
5. Grant-in-aid to STDCs for MFPs (State Corporations)
6. Development of Primitive Tribal Groups (States and NGOs)
7. State Tribal Development Corporation (State Corporations)

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Centrally Sponsored Schemes:

1. Scheme of PMS, Book Bank and Upgradation of Merit of ST Students (State Govts./UTs.)
2. Scheme for Hostels for ST Girls and Boys (State Govts./UTs)
3. Ashram Schools in TSP Areas (State Govts./UTs)
4. Post Matric Scholarship

i. Allocation of funds not proportionate to tribal populations

The Ministry of Tribal Affairs has been advocating the need for an effective Tribal Sub-Plan (TSP) component (8% of Budget Estimates in case of the Central Ministries/ Departments and in proportion of the Scheduled Tribe population in the respective States) to be put in a separate budget head and that such funds be made non-divertible and non-lapsable on the pattern of the funds earmarked for the North East. This has been accepted by the Planning Commission. The guidelines of the Planning Commission also provide that the Tribal Welfare Departments will be the nodal Departments for the formulation and implementation of the Tribal Sub Plan in the States.

The Tribal Sub Plan was first adopted in the 5th Five Year Plan (1974-79). It is presently in operation in 21 States namely, Andhra Pradesh, Asom, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal and West Bengal; and two Union Territories namely, Andaman & Nicobar Islands, and Daman & Diu. The TSP concept is not applicable to the tribal majority States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland and in the Union Territories of Lakshadweep and Dadra & Nagar Haveli since the Annual Plan in these States/UTs is itself a Tribal Plan.⁹¹

However, the TSP allocations were not seriously followed by the Central Ministries/ Department and the State governments. There are no supervisory mechanisms for implementation of the programmes.

At minimum 8% of budget allocation of Central Ministries/ Departments for TSP, the total budget allocation of Central Ministries/ Departments for TSP should have been Rs. 11505.27 crores for the year 2006-07. And with Rs 145483.39 crores Budget Estimate of the Ministry of Tribal Affairs, the total allocation for the TSP during 2006-2007 was 13172.73 crores. But the actual allocation for

Tribal Sub-Plan out of the total outlay of the Ministries/ Departments of the Government of India could not be provided by the Ministry of Tribal Affairs “because of inadequate information”. In its Annual Report 2006-07, the Ministry of Tribal Affairs further stated, “Many Ministries have reported difficulty in segregation of their TSP component citing indivisibility of projects, because their projects are applicable to all communities, including SCs/ STs.”⁹²

Although the Tribal Sub Plan was first adopted in the 5th Five Year Plan in 1974-79, it is still the sad reality that several states have not been following the TSP strategy while preparing their Annual Plans. The Ministry of Tribal Affairs stated that Andhra Pradesh, Assam, Goa, Karnataka, Rajasthan, Sikkim, Tamil Nadu, Andaman and Nicobar Islands and Daman & Diu had not made the requisite provision under TSP in their 2006-07 Annual Plans.⁹³

ii. Non-utilization of funds

Non-utilization and mis-utilization of funds meant for the welfare of the tribals have been common in India. As various state governments do not use the funds meant for the tribals, the tribals across the country remain without basic needs. The state government of Assam failed to utilize Rs 7,058.61 lakh out of a total of Rs 33,663.26 lakh released by the Ministry of Tribal Affairs from 1999-2000 to 2006-2007 as on 31 August 2006.⁹⁴

Similarly, the state government of Delhi reportedly siphoned off Rs 965.5 crore meant for the welfare of the Scheduled Castes and Scheduled Tribes of Delhi during 2006-2007. This was revealed to the public through the Right to Information Act.⁹⁵ During January-July 2007, the Social Welfare Department of Delhi failed to provide scholarship to any disabled person out of sanctioned scholarship for 800 disabled persons per year and siphoned off funds meant for providing employment to 2,380 disabled persons. The Social Welfare Department of Delhi also failed to provide financial assistance to any widow from socially backward communities including tribals although funds had been sanctioned for 3,750 widows; and funds of Rs 4.5 crore sanctioned for establishment of Old Age homes remained unutilized during January-July 2007.⁹⁶

According to the Rural Development Ministry, Government of India, a total of Rs 10,278 crores were left unspent by various state governments as of 29 March 2007. Rs 6,388 crore, Rs 1,333 crore and Rs 2,556 crore were unspent on schemes for employment generation, housing for poor, and construction of rural roads respectively. The major states which failed to spend the funds are

Bihar (Rs 1,529.54 crore), Uttar Pradesh (Rs 927.53 crore), Orissa (Rs 919 crore), Madhya Pradesh (Rs 916.37 crore) and Andhra Pradesh (Rs 852.07 crore).⁹⁷ The failure to spend the funds by the state governments has direct negative impacts on large number of the tribals and Dalits as majority of them also live in the rural areas.

For the 11th Five Year Plan (2007-2012), the Planning Commission has prepared detailed guidelines to ensure that the state governments spend at least 22.5 per cent of resources for the welfare of scheduled castes and scheduled tribes during the Plan period.⁹⁸

d. Discrimination against the tribal/ indigenous peoples in educational institutions

The tribals have been lagging behind in education. The literacy rate of tribals in India was only 47.10% against the national average of 65.38 %, according to 2001 Census of India. The literacy of scheduled tribe women (34.80%) is lower by approximately 20% as compared to the overall female literacy of the general population (53.70%).⁹⁹

In September 2007, a report released by National Council for Educational Research and Training (NCERT) found “institutionalised discrimination” against the students belonging to SCs and STs in schools which resulted in their alienation from schools and their high level of engagement in child labour. The NCERT report provides examples of how tribal students face discrimination. Teachers in Madhya Pradesh felt that teaching the “Korku” tribal children was equivalent to “teaching cows” and in Bihar, teachers felt “Mushar” (Dalit) children were not interested in education.¹⁰⁰ Earlier, the Thorat Committee headed by University Grants Commission (UGC) Chairperson S. K. Thorat appointed by the government of India, also found gross discrimination against the SC/ST students and doctors at premier medical institute, All India Institute of Medical Sciences (AIIMS) in New Delhi.

12. Status of the Particularly Vulnerable Tribal Groups

Seventy five tribal communities have been identified as so-called "Primitive Tribal Groups" by the government of India in 17 states and one Union Territory. Their total population was 2,412,664 in 1991.¹⁰¹ The Central government has been providing assistance to these vulnerable tribal communities through Tribal Sub-Plan and the Special Central Assistance to the states. But these vulnerable tribal communities have not been benefited so much.

Today, many tribal communities such as the Singphos of Asom¹⁰², Birhore, Chero, Paharia and Malpahari in Jharkhand; Abuj Madias and Baigas of Chhattisgarh; Karbongs of Tripura, and the Great Andamanese, Onges, Shompens, Jarawas, and Sentinelese of the Andaman and Nicobar islands are on the verge of extinction due to the government's apathy.

By the end of 2007, the government failed to implement the directive of the Supreme Court of 2002 to close down the Andaman Trunk Road that runs along and through the Jarawa Tribal Reserve as it threatens the survival of vulnerable Jarawa tribals.

In 2004, the Ministry of Tribal Affairs launched an insurance scheme namely Janshree Bima Yojana of the Life Insurance Corporation of India with the objective to provide insurance cover to the earning member of each Primitive Tribal Group (PTG) family throughout the country. The benefits provided under the Janshree Bima Yojana are- (i) Payment of Rs.50,000/- to nearest kith and kin of the person whose life is insured in case of accidental death or permanent disability caused; (ii) Payment of Rs.20,000/- to the nearest kith and kin in case of natural death; (iii) Payment of Rs.20,000 in case of partial disability and (iv) Educational grant of Rs.300/- per quarter for 2 children of the life insured studying in class IX and above.¹⁰³

According to the Ministry, it was planned to cover all PTG families within the remaining 3 years of the Tenth Five Year Plan. The Ministry reportedly released an amount of Rs.5.00 crore during the financial year 2004-05 to 16 States to cover 1 lakh earning members of PTG families; Rs.10.00 crore during the financial year 2005-06 to 15 States/UTs to cover 2 lakh earning members of PTG families; and Rs.5.48 crore during the financial year 2006-07 to 9 States to cover 1.095 lakh earning members of PTG families.¹⁰⁴

13. Denial of voting rights to the Chakmas and Hajongs

Between 1964 and 1969 about 35,000 Chakma and Hajong tribals were migrated from East Pakistan and settled in the then North Eastern Frontier Agency (NEFA), the present day Arunachal Pradesh. Until 1980, the Chakmas and Hajongs enjoyed all the rights accorded to citizens under the law. In 1980s, as anti-foreigner movement swept the North East, the Arunachal Pradesh government withdrew these rights from the Chakmas and Hajongs.

In 1991, the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh was formed to demand citizenship and other constitutional rights. The State government took further repressive measures.

On 9 January 1996, the Supreme Court of India in its judgment in the case of National Human Rights Commission versus State of Arunachal Pradesh & Another directed the government of India and the State government of Arunachal Pradesh to process the citizenship applications of the Chakma and Hajong tribals. A total of 4,627 Chakmas and Hajongs, who migrated from the Chittagong Hill Tracts of then East Pakistan, submitted citizenship applications in 1997 and 1998. By the end of 2006, the government of India failed to determine even a single application.

In addition, about 14,000 Chakmas and Hajongs, who are citizens by birth, also continued to be denied enrollment in the electoral rolls in Arunachal Pradesh. On 23 March 2005, the Election Commission of India issued specific guidelines for enrollment of the eligible Chakma and Hajong voters during Intensive Revision. Instead of complying with those guidelines, the Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers who are also employees of the State Government summarily rejected the applications of the Chakma and Hajong citizens for inclusion of their names. The Election Commission of India suspended publication of electoral rolls of all four Chakma and Hajong inhabited State Assembly constituencies and sent a team for investigation in February 2006.

In June 2007, the State government of Arunachal Pradesh headed by Chief Minister Dorjee Khandu formed a high powered committee to find out a permanent solution to the vexed Chakma-Hajong issue. The high powered committee is reportedly headed by Speaker of the Arunachal Pradesh Legislative Assembly, Setong Sena and includes, among others, all four

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Members of Legislative Assembly of the Chakma-Hajong inhabited Assembly Constituencies as members.

Both the All Arunachal Pradesh Students' Union (AAPSU) and the Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP) have welcomed the constitution of the high powered committee.

The Chakmas and Hajongs however continued to be denied enrollment into electoral rolls. Electoral activities in the four Chakma-Hajong inhabited Assembly Constituencies of 14-Doimukh, 46-Chowkham, 49-Bordumsa-Diyun and 50-Miao continued to remain suspended for complaints of bias on the part of the local electoral officials. On 6 September 2007, the Election Commission of India revoked the suspension and ordered the conduct of Special Summary Revision of electoral rolls. The Election Commission issued specific guidelines as to how to conduct the revision of electoral rolls in the Chakma and Hajong areas. As earlier, the local electoral officials who are also employees of the State Government of Arunachal Pradesh did not comply with the guidelines and instead they imposed their own whimsical directions to ensure that even the 1,497 previously enrolled voters are deleted. As many as 36 out of 326 of them were deleted in 14-Chowkham Assembly Constituency even before beginning of the Special Summary Revision 2007.

In 49-Bordumsa-Diyun and 50-Miao Assembly Constituencies, several Chakma villages were not even officially informed about the revision process and the same were covered only after the Election Commission of India issued specific instructions following complaints from the Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP). The Chakma and Hajong claimants were subjected to harassments, humiliation and were openly discriminated by electoral officers led by none other than the Deputy Commissioner of Changlang district Hage Batt, who has been designated as Electoral Registration Officer of 49-Bordumsa-Diyun and 50-Miao Assembly Constituencies. Mr. Batt wanted to harass the Chakma and Hajong claimants and therefore instead of conducting the hearing of claims and objections at Diyun, sat at Bordumsa, which is 60 kilometers away from Diyun. As there is no means of transportation between Bordumsa and Diyun, none out of 7,311 Chakma and Hajong claimants from Diyun Circle could appear for hearing. The hearings were re-held at Diyun only after the Election Commission intervened on complaints from the CCRCHAP.

Taking cognizance of the blatant violations of its guidelines by the local electoral officials, the Election Commission of India deputed two teams to the four Chakma-Hajong inhabited Assembly Constituencies. But justice

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continues to elude the Chakma and Hajong citizens as the Election Commission has again failed them. In February 2008, the Election Commission ordered the publishing of final rolls in three of the four Assembly Constituencies namely 14-Doimukh, 46-Chowkham, and 50-Miao while keeping the 49-Bordumsa-Diyun in abeyance till further orders. Out of about one thousand eligible voters, names of only 201 claimants were included in the electoral rolls in 14-Doimukh while in 46-Chowkham, out of more than 1,400 new claimants names of only 14 were enrolled and names of 44 previously enrolled voters were deleted. Similarly, in 50-Miao, only 1 out of about 4,500 new claimants was included in the electoral roll.

The Election Commission of India has assured the CCRCHAP of sending 2 more teams to Itanagar for perusal of documents of claimants from 49-Bordumsa-Diyun but it does not evoke any hope given the repeated failures of the Election Commission during the past a few years.

14. State of the National Commission for Scheduled Tribes

In 2003, the Government of India through an amendment to Article 338 of the Constitution (89th Amendment) of India established the National Commission for Scheduled Tribes (NCST). The NCST is a constitutional body mandated to safeguard the rights of the Scheduled Tribes across India.

Despite being a constitutional body, the NCST has not been able to emerge as an effective and independent mechanism to safeguard the rights of the Scheduled Tribes. It is primarily because of the inherent flaws in Article 338A which set up the NCST. Some of the inherent flaws are - appointment of Chairperson and other members is not based on defined criteria, lack of powers to enforce its rulings or recommendation, and lack of resources-finance as well as manpower. Even after more than three years of its coming into existence, the NCST does not have an adequate and well furnished office.

Its mandate, though broad, remain fully unused. More often, it seems that the NCST is another agency of the Government instead of it being a constitutional body to safeguard the rights of the Scheduled Tribes.

The National Commission for Scheduled Tribes (NCST) has, inter alia, the mandate "to investigate and monitor all matters relation to the safeguards provided for the Scheduled Tribes under this Constitution or under any order of the Government and to evaluate the working of such safeguards", "to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes", "to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State" and to "present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards".¹⁰⁵

There is no "restrictive clause" in the Constitution (Eighty-Ninth Amendment) Act, 2003. The NCST has been given unlimited powers, including the power to "summoning and enforcing the attendance of any person from any part of India and examining him on oath".¹⁰⁶ This means that the NCST has powers even to investigate violations by the members of the armed forces over whom the National Human Rights Constitution (NHRC) does not have any jurisdiction.

Non-utilisation of the total allocated funds

Often, lack of funds is commonly cited by constitutional as well as statutory bodies/commissions as one of the major problems for non-implementation of a proposed welfare scheme. It is a fact that unlike the National Human Rights Commission and the Election Commission of India, the National Commission for Scheduled Tribes do 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 was not 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 unutilized¹⁰⁷ thereby adversely affecting the exercise of its mandates for protection and promotion of rights of the Scheduled Tribes.

Inadequate staffing

Shortage of adequate number of staff is also often cited by the NCST as one the reasons for its failure in fulfilling its mandates. That the NCST face acute shortage of staff is a fact. As per official documents/information received from NCST on 1 February 2008, its sanctioned strength of staff is only 124 in its Headquarter in Delhi as well as the 6 Regional Offices in Shillong, Jaipur, Bhubaneswar, Ranchi, Bhopal and Raipur. 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.

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.

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.

Non-appointment of Chairperson, Vice-Chairperson and members on time

Clause (2) of Article 338A of the Constitution (Eighty-Ninth Amendment) Act, 2003 the NCST shall consist of a Chairperson, a Vice-Chairperson and three Members.

Rule 46 of the Rules of Procedures of the NCST provides, "Presence of at least three members including the Chairperson and/or Vice-Chairperson shall constitute the quorum for holding meeting of the Commission."

Further, Rule 47 of the Rules of Procedures provides, "The following matters shall be brought up before the Commission at a meeting for consideration and decision:

- (i) Any amendment to these Rules of Procedure;
- (ii) Matters to be investigated by the Commission directly;
- (iii) All the reports that are required to be considered by the Commission as provided in these rules;
- (iv) Any matters that a Member may like to bring to the meeting, with the approval of the Chairperson;
- (v) Important matters relating to planning and development for the welfare and advancement of the Scheduled Tribes and specially references received under Article 338A (9) of the Constitution; and
- (vi) Any matter that the Chairperson may direct to be placed at a meeting of the Commission."

Upon a con-joint reading of Clause (2) of Article 338A of the Constitution (Eighty-Ninth Amendment) Act, 2003 and Rules 46 and 47 of the Rules of Procedures of the NCST it is mandatory that any resolution/decision of the NCST with regard to the all matters provided under Rule 47 to be legally binding and effective has to be passed/taken by at least three members including the Chairperson and/or Vice-Chairperson.

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However, since the constitution of the first Commission in February 2004, there were a number of occasions when the NCST did not have the number of Members required to constitute the quorum. During 4 -10 March 2007, after the resignation of Smt. Prem Bai Mandavi, Member on 03 March 2007, the NCST had only two Members namely Shri Gajendra Singh Rajukheri, Vice-Chairperson and Shri Buduru Srinivasalu, Member and during 11 March-31 May 2007, Shri Gajendra Singh Rajukheri, Vice-Chairperson was the only Member in the NCST after the resignation of Shri Buduru Srinivasalu, Member on 10 March 2007. At present, there are only two Members namely Smt. Urmila Singh, Chairperson and Shri Tsering Samphel, Member while the post of Vice-Chairperson and two Members are vacant as on date.¹⁰⁸

As stated above, most of the time, the NCST remain without quorum because of non-appointment of either the Chairperson or the Vice-Chairperson or the Members on time. The non-appointment of the Members on time has been seriously affecting the constitutional obligations of the NCST for protection of rights of the members of the Scheduled Tribes across India. As a result, the NCST has become a vehicle without a driver.

15. A critique on the National Rehabilitation and Resettlement Policy of 2007

On 31 October 2007, the government of India published the National Rehabilitation and Resettlement Policy of 2007 (NRRP of 2007) in the Official Gazette of India.

The NRRP of 2007 was supposed to be an improvement of the Draft National Rehabilitation Policy of 2006 which was drafted to address the admitted failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. But it once again failed to address the problems of the displaced peoples.

a. Upholds the sovereign power of the State to acquire lands

The Land Acquisition Act of 1894 has been the root cause of all displacement and conflicts arising out of forcible land acquisition. The NRRP of 2007 upholds the sovereign power of the State to apply the concept of “eminent domain” to forcibly acquire any private property in any part of the country in the name of “public purpose” under the Land Acquisition Act of 1894. The NRRP of 2007 defines “land acquisition” or “acquisition of land” as “acquisition of land under the Land Acquisition Act, 1894 (1 of 1894), as amended from time to time, or any other law of the Union or a State for the time being in force”.

The NRRP of 2007 deletes previous provisions of the 2006 Draft Policy which provided that emergency provisions under Section 17 of the Land Acquisition Act of 1894 should be “used rarely” and should be applied only after considering “full justification” of the proposed project (Clause 6.23 of the 2006 Draft Policy). Clause 7.18 of the NRRP of 2007 implies that land can be acquired in case of emergency under Section 17 of the Land Acquisition Act, 1894 or similar provision of any other Act of the Union or a State for the time being in force by keeping the affected families in “transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan”. The duration for which the displaced families would be kept in transit or temporary relief camps has not been specified.

b. Exclusion of the land owners, vulnerable groups and the poorest from the decision making process

i. No benefits in case of small intensity displacement

The Preamble of the NRRP of 2007 states that: "A national policy must apply to all projects where involuntary displacement takes place". But under Clause 6.1, the appropriate Government shall declare area of villages or localities as an "affected area" only if there is likely to be "involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Schedule V or Schedule VI to the Constitution due to acquisition of land for any project or due to any other reason". In short, the NRRP of 2007 applies only to large scale displacements. In case of tribal villages in hilly areas, the number of project affected families may not be 200 or more families, but a large area can be potentially affected by a project.

The provision that the benefits of the NRRP of 2007 shall be provided only to the affected persons if their number is 400 families in plain areas or 200 families in hilly or tribal areas is discriminatory to other affected families in case a project displaces less than 400/200 families.

Hence, the benefits of the NRRP of 2007 should be provided to all the affected persons irrespective of the number of families affected.

ii. No right to say "no" to a project

The call for "the active participation of affected persons" (Clause 1.2) in the process of resettlement and rehabilitation is not reflected in the processes of development of the project. The affected persons are denied the rights to take any kind of informed decision regarding the usage of their lands with regard to development projects.

Only in the case of acquisition of lands in the Scheduled Areas (under Schedule V and Schedule VI to the Constitution of India) does the 2007 Policy provide that the concerned Gram Sabha/ Panchayats/ Village Councils shall be "consulted" (Clause 7.21.2). However it is important to note that "consultation" in no sense denotes "consent". The affected persons do not have the right to say "no" at the time of determination of the project site.

iii. Non-inclusion of the affected groups in Social or Environmental Studies: Concerns over the independence of the studies

There are no provisions in the NRRP of 2007 for the inclusion of the affected persons or their representatives in the preparation of the Social Impact Assessment (SIA) report and/or the Environmental Impact Assessment (EIA) report of the project.

The 2007 Policy fails to define who conducts the SIA or EIA. It only states that “the appropriate Government shall ensure that a Social Impact Assessment (SIA) study is carried out in the proposed affected areas in such manner as may be prescribed” (Clause 4.1). This lack of clarity opens the possibility for concerns over the independence and or capacity of those designated to carry out SIA and EIA studies.

The 2007 Policy provides for the constitution of an “independent multi-disciplinary expert group” to examine the SIA report. Members are nominated by the appropriate Government.

There is also no provision for consultation with the affected families during the final preparation of the SIA and EIA reports so that their views are reflected in the report to be examined by the independent expert group.

Obviously, government nomination raises concerns about the independence of the expert group. And the fact that the people affected by the changes are not represented is yet another concern.

Clause 4.7 of the NRRP of 2007 further exempts the Ministry of Defence from conducting any Social Impact Assessment or Environmental Impact Assessment while acquiring any land in connection with national security. So, for example, if a nuclear plant were set up for national interest or defence purposes or in the case of border fencing, no one can oppose the project.

iv. Non-inclusion of affected persons in the survey/census

After the declaration of an area as “affected area”, the Administrator for Rehabilitation and Resettlement undertakes a baseline survey and census for identification of the persons and families likely to be affected by the proposed project. Although the Administrator is required to publish a draft of the details of the findings to invite comment and objections from the affected persons, there is no provision for the compulsory inclusion of any affected persons or their representatives in the survey.

c. Lack of independence for Administrator or Commissioner

Wherever there is large-scale displacement, the 2007 Policy provides that the appropriate Government may appoint an Administrator for Rehabilitation and Resettlement (hereafter called "Administrator"), who is an officer not below the rank of District Collector, to oversee the resettlement and rehabilitation plan. But the Administrator can delegate his/her powers and duties to any officer not below the rank of Tehsildar or equivalent (Clause 5.6).

A Tehsildar is the lowest ranking officer in the State administration. That the Administrator can delegate his/her power to a Tehsildar shows that there is no seriousness to properly rehabilitate the affected families.

In one hand, the Administrator is vested with the power of "overall control and superintendence of the formulation, execution and monitoring of the rehabilitation and resettlement plan" (Clause 5.4). But on the other hand, the Administrator can only exercise his powers and functions "subject to the superintendence, directions and control of the appropriate Government and Commissioner for Rehabilitation and Resettlement" (Clause 5.3) and "subject to any general or special order of the appropriate Government" (Clause 5.5).

The Commissioner for Rehabilitation and Resettlement is appointed by the State Government and therefore, cannot be considered independent.

d. Causing further displacement in the name of resettlement

The first and the foremost objective of the 2007 Policy is to "minimise displacement and to promote, as far as possible, non-displacing or least-displacing alternatives". But the 2007 Policy allows further displacement in the name of resettlement and rehabilitation of the project affected families. Under Clause 6.9, "The appropriate Government shall, by notification, declare any area (or areas) as a resettlement area (or areas) for rehabilitation and resettlement of the affected families". This may cause further displacement of non-project affected persons. Although it has been mentioned that "the Administrator for Rehabilitation and Resettlement should ensure that such acquisition of land does not lead to another set of physically displaced families", displacement of non-project affected families is bound to occur under the provisions of Clause 6.9 of the 2007 Policy.

e. Inadequate safeguards to displaced persons

The NRRP of 2007 provides that the Scheduled Tribe families who are or were having possession of forest lands in the affected area prior to the 13th

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December 2005 (Sub Clause (vii) of Clause 6.4 of the 2007 Policy) be included in the survey of the Administrator for the Resettlement and Rehabilitation. However, it does not guarantee land-for-land compensation to the displaced families.

Clause 7.4.1 states that each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, agricultural land or cultivable wasteland “may be allotted” only “if Government land is available in the resettlement area”. In other cases, the 2007 Policy only makes weak guarantees such as “may be allotted”, “may be provided”, “may be offered”, etc.

Clause 7.4.2 provides that: “In case a family cannot be given land in the command area of the project or the family opts not to take land there, such a family may be given monetary compensation on replacement cost basis for their lands lost, for purchase of suitable land elsewhere”. Under Clause 7.14, the affected families could be coerced to accept money in lieu of land. It provides that “In case of a project involving land acquisition on behalf of a requiring body, the affected families who have not been provided agricultural land or employment shall be entitled to a rehabilitation grant equivalent to seven hundred fifty days minimum agricultural wages or such other higher amount as may be prescribed by the appropriate Government”.

There is little guarantee for employment for the displaced persons in the projects. Clause 7.13.1 states that in case of a project involving land acquisition on behalf of a requiring body, at least one person per nuclear family should get preference in getting employment in the project but this is subject to “the availability of vacancies and suitability of the affected person for the employment”.

Moreover, rehabilitation and resettlement for affected families displaced by linear acquisitions in projects relating to railway lines, highways, transmission lines, laying of pipelines etc is absolutely inadequate. According to Clause 7.19, the victims of linear acquisitions would be provided only ex-gratia payment of such amount as the appropriate Government may decide but not less than Rs 20,000. However, the benefits of rehabilitation and resettlement under the 2007 Policy will be provided to any land-owner if he/she becomes “landless or is reduced to the status of a ‘small’ or ‘marginal’ farmer” as a result of land acquisition.

f. No adequate safeguards for STs/SCs

For the first time, the NRRP of 2007 has proposed to collect disaggregated data about the number of Scheduled Tribe (ST) and the Scheduled Caste (SC) families affected by the project in the survey to be conducted by the Administrator of Resettlement and Rehabilitation. It also provides that in case of displacement of 200 or more Scheduled Tribes families, a Tribal Development Plan shall be prepared.

But the NRRP of 2007 fails to provide adequate safeguards. According to the definition of "affected family" as provided in Sub Clause (b) of Clause 3.1, the affected family, among others, must have been "residing or engaged in any trade, business, occupation or vocation continuously for a period of not less than three years preceding the date of declaration of the affected area". Tribals who practice traditional mode of agriculture, such as shifting cultivation, which requires temporary shifting from one place to another place every year for cultivation of crops, and other nomadic forms of life, may not be residing continuously for a period of three years at a particular place and hence may not come under the strict definition of "affected family" to get the benefits under this Policy.

There has been a positive improvement in the NRRP of 2007 as it provides prior consultations with the concerned Village Councils in the 6th Scheduled Areas as well as with concerned Gram Sabhas (Village Council) in the 5th Scheduled Areas in all cases of land acquisitions including land acquisition in cases of urgency under Land Acquisition Act of 1894. Earlier, the 2006 Draft Policy had such provision only for the land acquisitions in the 5th Scheduled Areas. Yet, as stated above, "consultation" is not consent. Nor the 2007 Policy provides guarantees for land-for-land compensation which is mandatory under the Constitution for the Scheduled Tribes living in the 5th and 6th Scheduled Areas.

g. Authority for rehabilitation and resettlement

The NRRP of 2007 proposes to create (1) the post of an Administrator for Rehabilitation and Resettlement with the responsibilities, among others, for formulation, execution and monitoring of resettlement and rehabilitation, (2) a Commissioner for Rehabilitation and Resettlement with the supervisory role, (3) Rehabilitation and Resettlement Committee at project level, (4) Rehabilitation and Resettlement Committee at district level, (5) an ombudsman for the time bound disposal of the grievances, (6) a National Monitoring Committee for reviewing and monitoring the implementation of

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rehabilitation and resettlement schemes, (7) a National Monitoring Cell for reviewing and monitoring the progress of implementation of rehabilitation and resettlement schemes or plans (7) an Oversight Committee in the concerned Ministry whose composition, functions and procedures have not been defined, and finally (8) a National Rehabilitation Commission “with the power to exercise external oversight over the rehabilitation and resettlement of affected families covered by this policy”. In case of projects covering more than one State, the Central government can in consultation with the concerned States and Union territories, appoint the Administrator for Rehabilitation and Resettlement, the Commissioner for Rehabilitation and Resettlement, a common Rehabilitation and Resettlement Committee, and the Ombudsman.

Apart from conflicting mandates, there is no proper chain of command and responsibilities for each of the authorities. These bodies can over-rule each others’ recommendations and further deprive and confuse the victims.

The requirement of 400 displaced families in plain areas or 200 displaced families in hilly/tribal areas for appointment of an Administrator for Rehabilitation and Resettlement is illogical. Irrespective of the number of the families displaced, an officer not below the rank of District Collector or District Commissioner should be appointed as Administrator for Rehabilitation and Resettlement. The aim of the NRRP of 2007 should be inclusion of the displaced families as the beneficiaries of the project activities undertaken. Their life must improve if the State is to resort to involuntarily displacement.

Hence, the provision for the delegation of responsibility to the Tehsildar, the lowest ranking officer in the State administration by the District Collector to perform the task of the Administrator for Rehabilitation and Resettlement is not welcome. This does not show seriousness of the State. The State must appoint an Administrator for Rehabilitation and Resettlement, who is not below the rank of District Collector or District Commissioner to ensure that the rights of the displaced persons are protected.

The drafter of the NRRP of 2007 had the audacity to make an Honourable Member of Parliament as a mere member of the project level Committee chaired by the District Collector! As if that is not enough, clause 8.1.2 provides unspecified number of “officers of the appropriate government” to be members of the project level Committee to have majority.

Moreover, there is no representation from the affected persons if the affected persons are not either tribals or dalits.

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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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