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India:

No democracy for those living on the margins

[Contribution under the Universal Periodic Review of the Human Rights Council]

I. Situation of indigenous and tribal peoples on the ground

Human rights situation of the indigenous and tribal peoples in India remain grim, its future bleak. Since independence indigenous peoples were rightly seen as victims of development and encroachments by non-tribals. The pauperisation of the tribals continued unabated and unchecked. The affirmative action programmes could not simply keep the pace with the marginalization of the indigenous and tribal peoples.

Presently, the situation of the tribals fits into a classical left wing extremism. According to the figures of the Ministry of Home Affairs 21 out of 28 States are afflicted by armed conflict and majority of these States are afflicted by the Naxalite conflicts, the extreme left wing armed opposition groups. The Naxals (Maoists) are active mainly in the tribal belts in mainland India. Neither the Naxal movement is led by the tribals, nor do the demands of the Naxalites relate to the tribals. The tribal simply fit into their class-war of the Naxalites. They are victims as well as perpetrators, and the pawns of the conflict.

The government continues with its knee-jerk reactions. The Forest Rights Act, 2006 was adopted in December 2006 but it is yet to be implemented. The Relief and Rehabilitation Policy has been revised twice since 2003, the latest one was made public in November 2007. A National Tribal Policy has been in the pipeline since 2004. Now, the government has proposed to set up a Land Commission.

All the measures are up in the air. As the conflict intensifies, the tribals will get further brutalized.

a. Land alienation

The constitutional safeguards as provided in the 5th Schedule and 6th Schedule to the Constitution of India and various other State level laws which among others prohibit transfer of the lands of the

tribal people have failed to prevent widespread land alienation of the tribals. The root cause of the land alienation has been the Land Acquisition Act of 1894 under which the government can exercise its sovereign power to take away any land in the name of “public purposes”.

The non-tribals have also illegally occupied hundreds of thousands of acres of land belonging to tribals by force, allurements and acquiring tribal lands in the name of tribal wives after marrying them. According to the 2004-2005 Annual Report of Ministry of Rural Development of the government of India, 3,75,164 cases of tribal land alienation have been registered covering 85,52,82 acres of land in 10 States. Out of these, only 1,62,650 cases had been disposed in favour of tribals covering a total area of 4,47,314 acres while 1,54,993 cases covering an area of 3,63,493 acres of land had been decided against the tribals by the Courts on various grounds.¹

b. Development and victimization of the tribals

Indigenous/tribal peoples who constituted 8% of the total population of India as per 1991 census also constituted 55.1% of the total development project-induced displaced persons up to 1990 on account of mega developmental projects like dams, mining, industries and conservation of nature etc.² And they were seldom rehabilitated. As India’s booming economy requires more resources, indigenous/tribal peoples face more displacement.

In the last three years, the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004 has to be amended twice – in 2006 and 2007. But the National Policy on Resettlement and Rehabilitation of 2007 also failed to address the problems arising out of the State exercising its sovereign power to forcibly acquire lands of anybody under the Land Acquisition Act of 1894.

c. Failure to ensure forest rights

The National Forest Policy of 1988 recognises symbiotic relationship between forest and tribal people. Yet, the tribals have been systematically victimized under the Forest Act of 1927. When the Forest Conservation Act of 1980 came into force, hundreds of thousands of tribal people became encroachers overnight on the lands they had been living for generations. On 23 November 2001, the Supreme Court altogether stayed the regularisation of tribal villages in forest areas in the case of *Godavarman Thirumalpad vs Union of India* in Interlocutory Application No.703 in Writ Petition No. 202/95.

In 2006, the government of India brought the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. The government of India till today has failed to notify the Rules of Procedures of the Forest Rights Act of 2006. In the meanwhile, tribals continue to be prosecuted for accessing minor forest produce. There were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 and 30 June 2004 under different Sections of the Forest Act of 1927

¹. Available at: <http://rural.nic.in/annualrep0405/annualreport0405.htm>

². Right over forest land for tribals in the offing, *The Indian Express*, 6 February 2006

in Chhattisgarh as on 8 November 2005,³ and 2,531 such cases were pending against tribals in Orissa as on 10 March 2005.⁴

d. Conflicts, human rights violations and discrimination against indigenous IDPs

Presently, 21 out of 28 States of India are afflicted by internal armed conflicts. All the areas afflicted by internal armed conflicts, except Jammu and Kashmir are pre-dominantly inhabited by indigenous and tribal peoples. They suffer serious human rights violations from both the security forces and the armed opposition groups and impunity under sections 6 of the Armed Forces Special Powers Act of 1958 and 197 of the Criminal Procedure Code has further perpetuated the human rights violations.

Indigenous/tribal peoples also constitute over 40.6% (1,86,225) of 4,58,225 conflict-induced internally displaced persons (IDPs) in India.⁵ They face discrimination in terms of basic services provided by the State. While a displaced Kashmiri Pandit received Rs 750 per month, an adult Bru indigenous person received only Rs. 2.67 paise a day i.e. Rs 80 per month.⁶

e. Status of Particularly Vulnerable Tribal Groups (PVTGs)

Many of the PVTGs have been on the verge of extinction. As per statistics of 1991, there were only 24 Sentinelese, 32 Great Andamense, 89 Jarawa, 101 Onge and 131 Shom Pen. There were only 23 families comprising about 100 members of Karbong tribe reportedly surviving in Tripura⁷ but the government of India has not recognized the Karbong tribe as “Particularly Vulnerable Tribal Group”. There are specific programmes meant for the development of the PVTGs but their implementation has been poor and the government has failed to establish independent monitoring mechanism.

f. Status of the Socalled Denotified Tribal Groups

The British identified some tribal groups as “criminal tribes under the Criminal Tribes Act of 1871. The government of India identifies them as “habitual offenders” under the Habitual Offenders Act of 1952. The stigma continues including in the administration of justice. The government has established a National Commission on the Denotified Tribes but it does not have the same power and functions like the National Commission for Scheduled Tribes.

II. Assessment of India's human rights obligations and commitments

The government of India has failed to implement its obligations and commitment as provided under the Constitution and international human rights law.

³. Over two lakh forest cases against Chhattisgarh tribals to be withdrawn, The Hitavada, 11 November 2005

⁴. Naxalite bodies demand probe into police firing, The Statesman, 14 March 2005

⁵. The State of India's Indigenous and Tribal Peoples 2007, Asian Indigenous and Tribal Peoples Network

⁶. India Human Rights Report 2006, Asian Centre for Human Rights

⁷. Only 23 families still surviving, The Sentinel, 25 June 2005

Affirmative Actions

a. Non-implementation of the reservations in employment

The government failed to implement 7.5% job reservations in government sectors for the Scheduled Tribes (both in terms of recruitment and promotion) as provided under the Constitution of India. There were thousands of backlog vacancies for the Scheduled Tribes across the country. For example, according to figures available with the Ministry of Social Justice & Empowerment in September 2006, the share of Scheduled Tribes in the government services such as Group 'A' was 4.1 per cent, Group 'B' at 4.6 per cent, Group 'C' at 6.7 per cent and Group 'D' at 6.7 per cent against the reserved quota of 7.5 per cent in each group.⁸

b. Failure to implement Tribal Sub Plan

Under Article 271, the government of India is required to launch various schemes for the development of the tribals. But these schemes and programmes have remained largely poorly implemented. Funds allocated for the Scheduled Tribes have been either diverted or not utilized. Since the Fiscal Responsibility and Budget Management Act came into force in July 2004, which requires submission of utilization reports by the State governments, a total of Rs 1,522.90 crores (Rs 15,229 millions) could not be released by the Ministry of Tribal Affairs to various state governments as of December 2005 because these state governments did not submit utilization reports for the funds earlier disbursed to them.⁹ The government of India has failed to develop independent monitoring mechanism for proper utilization of the funds meant for the tribal people.

National mechanisms:

a. The National Commission for the Scheduled Tribes

In 2004, the National Commission for Scheduled Tribes (NCST) was established to address violations and ensure the rights of the tribals. But it has miserably failed to live up to its mandate because of inherent flaws including in appointment procedures, lack of powers to enforce its rulings or recommendation, and lack of resources. Most surprisingly, the NCST has also adopted such rules of procedures which made the Commission subservient to the State authorities. The NCST's head office has 12 officers to look after the rights of 84 million indigenous/tribal peoples.

In fact, none of the Annual Reports of the National Commission for the Scheduled Tribes have so far been made public.

b. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁸. Quota as affirmative tool has failed: Report, The Pioneer, 4 September 2006

⁹. 17th Report of the Standing Committee on Social Justice and Empowerment (2005-2006) May, 2006

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 has not been implemented properly. In 2005, the overall conviction rate for the crimes against the Scheduled Tribes was only 24.2%. Conviction rates under SC/ST (Prevention of Atrocities) Act) and Protection of Civil Rights Act were only 20.4% and 25% respectively.¹⁰ Many States governments have also failed to set up special courts to try the offences against the Scheduled Castes and Scheduled Tribes as provided under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Lack of respect for the Supreme Court:

The government of India shows scant regard for the Supreme Court and a number of judgements have not been implemented.

a. Citizenship rights to the Chakmas and Hajongs

On 9 January 1996, the Supreme Court in its judgement in the case of *NHRC Vs State of Arunachal Pradesh* [WP 9C) No. 720 of 1995], among others, directed the government of India to process the citizenship applications of the Chakmas and Hajongs. More than a decade has passed, the government of India failed to process a single citizenship application. A fresh writ petition [W.P[C] No. 510 of 2007] for implementation of the 1996 judgement is being considered by the Supreme Court again!

b. Failure to shut down Andaman Trunk Road

In 2002, the Supreme Court directed the government to close down the Andaman Trunk Road that runs along and through the Jarawa Tribal Reserve in Andaman and Nicobar Island and threatens the survival of the Jarawas, whose population as per 1991 statistics was only 89 persons. But the government failed to shut down the Andaman Trunk Road until today.

If the government does not implement Supreme Court judgements, it is unlikely to implement the recommendations of the Committees established by it. Therefore, the recommendations of the Justice B P Jeevan Reddy Committee on the Review of the Armed Forces Special Powers Act of 1958 (2006) and Administrative Reforms Commission (2007) on the repeal of the AFSPA remain unimplemented.

III. Enhancement of State's capacity/technical cooperation

The Human Rights Council should recommend technical cooperation programmes for the National Commission for Scheduled Tribes, National Commission for Scheduled Castes, National Commission for Women, National Commission for Protection of Child Rights, National Commission for Minorities, National Commission for Denotified Tribes etc.

There should be technical cooperation programmes for collection of disaggregated data.

¹⁰. 2005 Annual Report of National Crime Records Bureau, Government of India

There should be a technical cooperation programmes for implementation of the ILO Convention No. 107 relating to indigenous and tribal peoples including increasing sensitivity of the judiciary on the rights of indigenous and tribal peoples.

IV. Cooperation with HRC, Treaty Bodies and OHCHR

The government failed to ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance, and the ILO Convention No 169 on Indigenous and Tribal Peoples in Independent Countries.

The government of India has so far failed to extend open invitation and specific invitations to many Special Procedures including Special Rapporteur on the situation of human rights and fundamental freedoms on indigenous peoples.

The periodic report to the Human Rights Committee has been pending since December 2001. The government has also failed to implement the recommendations of the Treaty Bodies.