



P.O.Box 9627, Janakpuri
New Delhi-110058, India
Tel: + 91-11-25503624
Fax:+ 91-11-25620583
E-Mail: aitpn@aitpn.org
Website: www.aitpn.org



Classensgade 11 E, DK 2100
Copenhagen, Denmark
Phone: (+45) 3570500
Fax: (+45) 35 27 05 07
E-mail: iwgia@iwgia.org
Website: www.iwgia.org

Embargoed for: 20 November 2007

India:

No democracy for those living on the margins

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

Table of contents

1. EXECUTIVE SUMMARY	3
I. SITUATION OF INDIGENOUS AND TRIBAL PEOPLES ON THE GROUND.....	3
II. ASSESSMENT OF INDIA'S HUMAN RIGHTS OBLIGATIONS AND COMMITMENTS	5
III. ENHANCEMENT OF STATE'S CAPACITY/TECHNICAL COOPERATION	7
IV. COOPERATION WITH HRC, TREATY BODIES AND OHCHR	8
2. SITUATION OF INDIGENOUS AND TRIBAL PEOPLES ON THE GROUND.....	9
I. LAND ALIENATION.....	9
II. DEVELOPMENT AND VICTIMIZATION OF THE TRIBALS	9
III. FAILURE TO IMPLEMENT FOREST RIGHTS ACT, 2006.....	12
IV. ARMED CONFLICT, HUMAN RIGHTS VIOLATIONS AND DISCRIMINATION AGAINST INDIGENOUS IDPs.....	13
V. STATUS OF PARTICULARLY VULNERABLE TRIBAL GROUPS	15
VI. STATUS OF THE SOCALLED CRIMINAL TRIBES	16
3. ASSESSMENT OF INDIA'S HUMAN RIGHTS OBLIGATIONS AND COMMITMENTS.....	18
I. FAILURE TO IMPLEMENT AFFIRMATIVE ACTION PROGRAMMES	18
a. <i>Non-implementation of the reservations in employment.....</i>	<i>18</i>
b. <i>Tribal Sub Plan and misuse of funds.....</i>	<i>20</i>
II. FAILURE OF THE NATIONAL MECHANISMS	21
a. <i>The National Commission for the Scheduled Tribes.....</i>	<i>21</i>
b. <i>Lack of implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.....</i>	<i>22</i>

III. NON-IMPLEMENTATION OF SUPREME COURT JUDGMENTS	23
<i>a. Citizenship rights to the Chakmas and Hajongs</i>	23
<i>b. Endangered tribes: The Jarawas</i>	24
4. ENHANCEMENT OF STATE’S CAPACITY/TECHNICAL COOPERATION	24
5. COOPERATION WITH HRC, TREATY BODIES AND OHCHR.....	24

1. Executive summary

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 tribals 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 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 predominantly inhabited by indigenous and tribal peoples. They suffer serious human rights

¹. Available at: <http://rural.nic.in/annualrep0405/anualreport0405.htm>

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

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

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.

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

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

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

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

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

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

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.

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.

2. Situation of indigenous and tribal peoples on the ground

I. Land alienation

The 5th Schedule to the Constitution of India protects the land rights of the tribals in mainland India and the 6th Schedule authorizes some of the Autonomous District Councils in the North East India to make appropriate laws against land alienation subject to approval by the Governor of the concerned State. In addition, there are State level laws to protect the land rights of the tribal and indigenous peoples.

The non-tribals have also illegally occupied hundreds of thousands of acres of land belonging to tribals by force, allurement and acquiring tribal lands in the name of tribal wives after marrying them. The State government of Andhra Pradesh informed the State Assembly in March 2006 that non-tribal individuals have adopted dubious methods to illegally occupy tribal lands in the names of tribal women after marrying them. As many as 57,367 acres of land earmarked for the tribals in the Scheduled Areas was under illegal occupation of non-tribal individuals in West Godavari district.¹¹ 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 of Andhra Pradesh, Assam, Bihar (undivided), Gujarat, Karnataka, Madhya Pradesh (undivided), Maharashtra, Orissa, Rajasthan, and Tripura as of March 2004. Out of these, 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 rejected by the Courts on various grounds.¹²

The government of India has recently announced to establish a Land Commission but its details have not been released as yet. There is skepticism because of the past experiences.

II. Development and victimization of the tribals

In one hand, land rights are provided under the 5th and 6th Schedules of the Constitution of India. On the other, is the Land Acquisition Act of 1894 which prevails on the ground. Under the Land Acquisition Act, the government can take away any land in the name of “public purposes”. In India, “public purposes” no longer refer to government taking away lands for the construction of roads, railway lines or government offices etc but has come to mean the government exercising its sovereign power to take away land of the poor and the disadvantaged sections of society for the benefit of the private companies.

The tribal and indigenous peoples have been the disproportionate victims of displacement due to so-called development projects such as setting up of industrial projects, construction of dams, mining, etc. Indigenous/tribal peoples who constituted 8% of the total population of India at 1991 census also constituted 55.1% of the total development

¹¹. Tribal land occupied, The Deccan Chronicle, 22 March 2006

¹². Available at: <http://rural.nic.in/annualrep0405/annualreport0405.htm>

project-induced displaced persons up to 1990. The Ministry of Tribal Affairs in its Draft National Policy on the Tribals stated that nearly 85.39 lakh¹³ tribals had been displaced until 1990 on account of some mega developmental projects like dams, mining, industries and conservation of nature etc.¹⁴

As India's booming economy requires more resources, indigenous/tribal peoples face more displacement. The practice of forcible acquisition of tribal lands has led to frequent conflict and indiscriminate use of fire-arms as shown in the case of killing of 14 Adivasis by the police when they were protesting against the setting up of a plant by the TATA at Kalinganagar in Orissa on 2 January 2006.

The state governments have been on the spree of signing Memorandum of Understanding (MoUs) to attract investment from national and multi-national companies. The Jharkhand Government signed over 42 MoUs with investors including Mittal Steel, Tata Steel, Jindal Steel and Power Company Limited worth about Rs 1,69,198.26 crores since Jharkhand became a state in 2000. Approximately 47,445 acres of land would be required for the projects in mineral-rich Kolhan Region, which is likely to displace about 10,000 families and cause enormous deforestation.¹⁵ A study by People's Union for Civil Liberties showed that over 7.4 million tribals were displaced in Jharkhand by different projects between 1950 and 1990. Out of them, only 1.85 million displaced tribals were rehabilitated.¹⁶

During 2002-2005, the Orissa government also signed 42 MoUs with companies for proposed steel and other plants in the state and thousands of tribals would be displaced.¹⁷ The MoU with Korean steel major Pohang Steel Company (Posco) signed on 22 June 2005 for setting up a steel plant at Paradeep in Jagatsinghpur district with a total investment of \$12 billion would displace around 4,000 tribal families.¹⁸ About 1.4 million people, most of them tribals, were reportedly displaced in Orissa between 1951 and 1995 due to dams, canals, mines and other industries. Majority of the displaced persons had not received compensation and rehabilitation. Another 80,000 to 1,00,000 tribals from 50 villages in Subdega and Balisankra blocks in Jharsuguda district of Orissa faced imminent displacement due to the proposed dam on the Ib river.¹⁹

More than 2,000 families displaced by the multi purpose Hirakund dam project in Sambalpur district of Orissa had still not been compensated as of 1 February 2007;²⁰ over

¹³. 1lakh is equivalent of one hundred thousands

¹⁴. Right over forest land for tribals in the offing, The Indian Express, 6 February 2006

¹⁵. Jharkhand tribals up in arms against projects, The Hitavada, 16 November 2005

¹⁶. Homeless in rush for progress – Alarm over displacement, The Telegraph, 25 April 2005

¹⁷. http://orissagov.nic.in/e-magazine/orissaannualreference/ORA-2005/pdf/mou_signed_with_companies.pdf

¹⁸. All about India's biggest FDI project, 23 August 2005, <http://www.rediff.com/money/2005/aug/23posco.htm>

¹⁹. "Development not for tribes" by Joseph Marianus Kujur, Open-Ed, The Pioneer, 18 June 2005

²⁰. 50 years, dam oustees await aid, The Deccan Herald, 2 February 2007

200 tribal families had been displaced from the Nagarhole National Park in Kodagu district in Karnataka during the last three years;²¹ 1,95,357 persons from 48,211 families, mostly tribals, will be displaced by the proposed Polavaram (also known as Indira Sagar) multi-purpose dam in Andhra Pradesh;²² about 80,000 tribals would be displaced due to the proposed bauxite mining by Jindal Group of Companies in the Scheduled Areas of Visakhapatnam district of Andhra Pradesh²³

The tribal IDPs have not been provided proper rehabilitation. The case of the Narmada Dam exemplifies displacement of tribals without proper rehabilitation. Following the Narmada Control Authority's (NCA) permission on 8 March 2006 to raise the height of the Sardar Sarovar Dam from 110.64 metres to 121.92 metres, Narmada Bachao Andolan (NBA) activists started a hunger strike in April 2006 to demand rehabilitation of over 35,000 Project Affected Families (PAFs) who would be affected if the height of the dam was raised up to 121.92 metres. But the NCA claimed that all the 32,600 families from 228 villages affected by the Sardar Sarovar dam in Madhya Pradesh, Gujarat and Maharashtra had already been fully resettled.²⁴ This claim was exposed to be untrue by a Group of Ministers comprising of Union Minister of Water Resources, Saifuddin Soz, Union Minister of Social Justice and Empowerment, Meira Kumar, and Minister of State in the Prime Minister's Office, Prithviraj Chauhan who in their report submitted to the Prime Minister of India on 9 April 2006 stated that the rehabilitation and resettlement of the project affected families had not taken place in consonance with the orders of the Supreme Court. In order to re-write the reports of the Group of Ministers, the Prime Minister constituted an Over Sight Group which found the rehabilitation of the project affected families to be satisfactory. On the basis of the report of the Over Sight Group, the Supreme Court on 10 July 2006 allowed the construction of the dam up to 119 meters in all blocks.

The government announced its National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. It failed miserably. In 2006, the government of India issued "Draft National Rehabilitation Policy, 2006". But the Draft National Rehabilitation Policy 2006 only sought to create more displacement in the name of rehabilitation of displaced people and it re-affirmed Section 17 of the Land Acquisition Act of 1894 under which the State can forcibly acquire any land.

In October 2007, the government unveiled the 2007 version of the Relief and Rehabilitation Policy.

But, the repeal of the Land Acquisition Act of 1894 does not figure in the scheme of things. Therefore, this 2007 policy too will fail.

²¹. 'Jungle lodges displacing tribals', The Deccan Herald, 7 June 2006

²². Tribals move apex court on Polavaram, The Deccan Chronicle, 10 April 2006

²³. Bauxite mines will spell doom for tribals: Citu, The Deccan Chronicle, 24 January 2006

²⁴. Available at http://nca.gov.in/rnr_pafs.htm

III. Failure to implement Forest Rights Act, 2006

The National Forest Policy of 1988 recognises the symbiotic relationship between the tribals and forest. Yet, they have been victimized under the forest laws such as the Forest Act of 1927 and the Forest Conservation Act of 1980.

When the government of India passed the Forest Conservation Act on the mid-night of 25 October 1980, hundreds of thousands of indigenous/tribal peoples became illegal residents on land over which they have been living for generations.

In order to do away with the “historical injustice” committed against the tribal and indigenous peoples by recognizing their traditional forest and land rights and to provide protection to them from further evictions, the government of India on 13 December 2005 tabled the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in the Parliament. But the bill could be passed after one year of acrimonious debates in the Parliament only after it was rechristened as “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006”. The present law has only diluted the interests of the forest dwelling Scheduled Tribes by adding the “Other Traditional Forest Dwellers”, who are non-tribals. The extension of the cut off date basically benefited the other traditional forest dwellers who are required to prove that they have been occupying the forest land for three generations under clause (o) of Section 2 of the Act. By extending the date from 25 October 1980 to 13 December 2005, one generation has already been covered!

The government of India also failed to implement the Forest Rights Act. Even after more than 10 months of signing it into a law by the President of India on 29 December 2006, the government has failed to even notify the Rules of Procedures of the Forest Rights Act.

There were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 to 30 June 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts in Chhattisgarh as on 8 November 2005,²⁵ and 2,531 such cases were pending against tribals in Orissa as on 10 March 2005.²⁶ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 does not address these cases as the Act does not apply retrospectively.

The number of tribal families affected by the Forest Act is mind-boggling.

²⁵. Over two lakh forest cases against Chhattisgarh tribals to be withdrawn, The Hitavada, 11 November 2005

²⁶. Naxalite bodies demand probe into police firing, The Statesman, 14 March 2005

IV. Armed conflict, 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 inhabited by indigenous and tribal peoples, and they have been the worst victims of human rights violations at the hands of the State and non-State actors.

As a result of increasing armed conflicts, indigenous/tribal peoples have been facing serious violations of their civil and political rights including arbitrary arrest, detention, torture, extrajudicial executions, rape etc at the hands of the security forces. On 16 May 2007, the Indigenous Nationalist Party of Twipra (INPT), a tribal political party, alleged that at least 103 innocent tribals have been killed by the police in “fake encounters” in Tripura since 1993. But so far no police/ military officer has been convicted for the killings.²⁷ State-sponsored vigilante group like the Salwa Judum cadres in Chhattisgarh and the Nagarik Suraksha Samiti in Jharkhand were also responsible for extortion and extrajudicial executions.

The armed opposition groups have also been responsible for gross violations of international humanitarian laws including by killing, torture, extortion, trial in Jana Adalats, Peoples' Court and destruction of economic infrastructure and public properties.

Impunity has been provided to the armed forces under the Armed Forces Special Powers Act of 1958, which is in force in some of the Northeastern states and Jammu and Kashmir. The AFSPA gives the armed forces the license to arrest and kill any body. Under Section 6 of the AFSPA, the members of the armed forces cannot be prosecuted except by the permission from the Central government. The guidelines of the Supreme Court in the DK Basu Vs State of West Bengal (popularly known as DK Basu judgement) of 1996, relating to the procedures to be followed by the police at the time of arrest and detention, are not applicable to the armed forces.

The government of India failed to implement the recommendations of the Justice B P Jeevan Reddy Committee set up by the Central government to repeal the AFSPA.

Apart from the lack of security generally associated with any armed conflict situations, indigenous/tribal peoples have also become disproportionate victims of arbitrary use of fire-arms while exercising the right to freedom of association and assembly. On 30 September 2005, nine Garo tribal students were killed – five at Williamnagar in East Garo Hills district and four at Tura in West Garo Hills district of Meghalaya in indiscriminate firing by the Central Reserve Police Force (CRPF) and Meghalaya Police personnel during a protest. Video clippings show that the CRPF personnel were firing by keeping the weapons over their shoulders to cause maximum loss of life. Similarly, in the

²⁷. 103 tribals killed in fake encounters: INPT, The Assam Tribune, 17 May 2007

killing of 14 Adivasis at Kalinga Nagar, Orissa on 2 January 2006, the police not only fired indiscriminately in retaliation against the killing of one of their colleagues but the palms of six deceased were also chopped off from their wrists and genital organs were mutilated during post mortem.²⁸ In both these cases of killings, judicial inquiries were ordered but accountability has not been established.

Discrimination against indigenous IDPs:

Indigenous/tribal peoples also constitute over 40.6% (1,86,225) of 4,58,225 conflict-induced internally displaced persons (IDPs) in India. The indigenous peoples have been displaced because of the inter-tribal conflicts, conflicts between different armed opposition groups as well as due to the counter-insurgency operations and security measures like India-Bangladesh Border fencing project.

In 2006, conflict induced indigenous IDPs included 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 shelter in Tripura in October 1997; and 43,740 displaced Adivasis living in the anti-Naxalite Salwa Judum camps in Dantewada district of Chhattisgarh.

In Chhattisgarh, the State government forcibly moved 43,740 tribal civilians from 644 villages in 6 blocks out of total 1,354 villages in 11 Development Blocks in Dantewada district to government-run relief camps as of 31st December 2006 to disconnect the Naxalites from the civilians through the Salwa Judum campaign. There were consistent allegations that the Adivasi villagers have been forced to abandon their ancestral villages leaving behind everything. These internally displaced persons have been housed in 20 temporary relief camps under sub-human conditions.²⁹ Hundreds of Adivasis, including women and children from neighbouring villages under Dantewada district also fled to Malkangiri district of Orissa.³⁰

In Mizoram, a total of 5,790 Chakma tribal families consisting of 35,438 persons from 49 villages are presently facing displacement due to the India-Bangladesh border fencing.³¹

The government of India does not have any policy on the conflict induced IDPs. In absence of any policy on the IDPs, different groups of IDPs received different treatment depending on their proximity to the authorities in New Delhi. While a displaced Kashmiri Pandit received Rs 750 per month, an adult Bru received only Rs. 2.67 paise a day i.e. Rs 80 per month. Even though the conditions of the Kashmiri Pandits have been equally deplorable, discrimination by the government is clear.³²

²⁸. Slashed genitals in glare – Rights body allegations in Orissa tribal killings, The Telegraph, 14 January 2006

²⁹. Asian Centre for Human Rights, "Naxal Conflict in 2006", available at:

<http://www.achrweb.org/reports/india/naxal0107.pdf>

³⁰. Fear of maoist attacks drives Chhattisgarh tribals to Orissa, The Pioneer, 22 July 2006

³¹. India Human Rights Report 2007, Asian Centre for Human Rights

³². India Human Rights Report 2006, Asian Centre for Human Rights

Many IDPs have been living in camps for decades without any prospects for return. It has taken toll on the mental health of the IDPs. Majority of the IDPs could not return simply because of the failure of the State. While the Kashmiri Pandits fear attacks by the armed opposition groups, the State government of Asom took no visible steps to rehabilitate the IDPs in Bodoland areas. The state government of Mizoram simply refuses to take back the Brus on frivolous grounds to pursue its policy of establishing monolithic Mizoram consisting of only the majority ethnic Mizos.

V. Status of Particularly vulnerable tribal groups

The government of India has recognized 75 so-called Primitive Tribal Groups in 17 States/Union Territories. As per 1991 census, their total population was about 24.12 lakh. Following protest from Asian Indigenous and Tribal Peoples Network and other NGOs during the drafting of the National Tribal Policy, the Tribal Affairs Ministry has been using the term Particularly Vulnerable Tribal Groups (PVTGs) instead of Primitive Tribal Groups in its revised Draft National Tribal Policy.

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. The population of Great Andamanese has come down from 42 in 1981 to 32 in 1991, Shom Pen of Andaman & Nicobar Islands from 223 in 1981 to 131 in 1991 and Jenu Kuruba of Karnataka from 34,747 in 1981 to 29,371 in 1991. Most other PVTGs have shown marginal decadal growth in their population. For examples, Koraga of Karnataka marginally increased from 15,146 in 1981 to 16,322 in 1991, Birhor of Orissa from 142 in 1981 to 825 in 1991, Mankirdia of Orissa from 1,005 in 1981 to 1,491 in 1991 and Kota of Tamil Nadu from 604 in 1981 to 752 in 1991.³³ However, many PVTGs have been excluded. There were only 23 families comprising about 100 members of Karbong tribe reportedly surviving in Tripura³⁴ but the government of India has not recognized the Karbong tribe as “Particularly Vulnerable Tribal Group”.

There are a few specific programmes meant for the development of the most vulnerable tribal groups. In 1998-99, the government of India launched a separate 100% centrally funded scheme for the exclusive development of PVTGs especially to support activities such as agricultural development, cattle development, income generation programmes, health facilities, infrastructure development, etc.

Though the Central government allocates funds, implementation remains absolutely poor. Parliamentary Standing Committee on Labour and Welfare (2002) in its 28th Report to Thirteenth Lok Sabha on “Development Of Primitive Tribal Groups” pertaining to the Ministry of Tribal Affairs stated, “The Committee note that although the Tribal Sub Plan concept and Special Central Assistance to State Governments for the socio-economic

³³. Annual Report 2005–2006, Ministry of Tribal Affairs, Government of India

³⁴. Only 23 families still surviving, The Sentinel, 25 June 2005

development of the Scheduled Tribes have been in operation since the Fifth Five Year Plan, the benefits of these schemes are not percolating to the Primitive Tribal Groups to the desired extent.”

In Chhattisgarh, although the Central government had sanctioned Rs 100 crores in 2003 for the development of the Particularly Vulnerable Tribal Groups - Baigas, Pahari Korbas, Abuj Madias and Birhors, it failed to uplift the condition of the tribals staying in the jungles and hills of the state. The central government aided mid-day meal scheme and Antodaya scheme were also absent in the areas dominated by the PVTGs. According to a report of the National Commission for the Scheduled Tribes, the administration did not provide Antodaya cards to Pahari Korbas as per directions of the Supreme Court. The Integrated Child Development Scheme among the PVTGs was dysfunctional in Koriya district.³⁵

The government has obviously failed to establish mechanism for implementation of the programmes even for the Particularly Vulnerable Tribal Groups.

VI. Status of the so-called Criminal Tribes

In 1871, the colonial British government identified certain tribal groups as “born criminals” under the Criminal Tribes Act. After independence, the government of India rechristened the Criminal Tribes Act as the Habitual Offenders Act of 1952 but the main thrust of the law to identify certain tribal groups as “habitual offenders” or born criminals remained intact.

There are reportedly about 191 “denotified tribes” (DNT) with an estimated population of about 60 million.³⁶ However, all the Denotified Tribes are not listed as Scheduled Tribes under the Constitution of India. The DNTs have been listed as the Scheduled Tribes, Scheduled Castes and Other Backward Classes. This prevented a uniform policy on the DNTs.

In August 1998, the Advisory Group constituted by the NHRC to study the problems of the denotified tribes recommended the “repeal of the Habitual Offenders Act”. But the government failed to repeal the Habitual Offenders Act of 1952. On the other hand, many state governments also continue to apply State laws such as the Karnataka Habitual Offenders Act, 1961, Andhra Pradesh Habitual Offenders Act etc which make it mandatory for the so-called habitual offenders to register with the administration and restricted their free movement.

The DNTs continue to suffer the stigma of being “born criminals” or “habitual offenders”, social isolation and acute poverty. Majority of them are landless and

³⁵. State Pulse – Chhattisgarh: Tribes on verge of extinction, The Central Chronicle, 6 February 2006

³⁶. Bhasha Annual Report 2005–2006,

<http://www.bhasharesearch.org.in/Bhasha%20Annual%20Report%202005-06.pdf>

illiterate.³⁷ They do not have access to equal treatment before the tribunals and all other organs administering justice because of the discriminatory application of the Criminal Procedure Code against them, and due to persecution under the Habitual Offenders Act. The National Human Rights Commission of India in its various Annual Reports expressed concerns about the violation of the human rights of the DNTs by the police as well as members of the public. The NHRC in its Annual Report 2002-2003 stated, “There is, evidently, a de-facto situation still prevailing in which persons belonging to these groups are singled out for arbitrary and discriminatory treatment.”

The DNTs have been facing utter economic neglect. The Planning Commission made some allocations under the Five-Year Plans (FYPs) for the rehabilitation of development of the “Denotified Tribes” but the programmes have proved to be ineffective. A sum of Rs.35 millions was allotted in the First Five Year Plan (FYP), Rs.29.4 millions in the Second FYP, Rs.40 millions in the Third FYP, and Rs.45 millions in the Fourth FYP to resettle the DNTs and train them in the ways of settled community life. In the Third Plan, the Planning Commission stated, “In view of the small results achieved thus far in rehabilitating denotified tribes, it is considered that their needs should be studied in each area at close range and suitable programmes should be formulated, keeping in view the long-term and complex nature of the problems.”³⁸ But no further steps have been taken.

In its 2005-2006 Annual Report, the Ministry of Social Justice and Empowerment of the government of India stated that Rs 11.5 million and Rs 3 million was allocated to the National Commission for Denotified, Nomadic and Semi Nomadic Tribes during 2004-2005 and 2005-2006 respectively under Non Plan expenditure. Even these meager funds have not been fully utilised. Out of the Rs 11.5 million for 2004-2005, the Commission utilized only Rs 6.2 million and not a single penny out of Rs 3 million was utilized for 2005-2006 as of 31 December 2006.³⁹

The draft National Tribal Policy of the Ministry of Tribal Affairs in fact made no reference to so-called “denotified tribes”.

On 14 March 2005, the Government of India constituted the National Commission for De-notified, Nomadic and Semi Nomadic Tribes under the Ministry of Social Justice and Empowerment to study various developmental aspects of these tribes but the terms of reference failed to mention application of the Habitual Offenders Act that stigmatises the DNTs. The Commission has been failed to make any recommendation so far.

³⁷. Bhasha Annual Report 2005-2006,

<http://www.bhasharesearch.org.in/Bhasha%20Annual%20Report%202005-06.pdf>

³⁸. A ‘primitive’ perspective by ASHA KRISHNAKUMAR, Frontline, Volume 21 – Issue 22, Oct. 23 – Nov. 05, 2004, <http://www.hinduonnet.com/fline/fl2122/stories/20041105002309100.htm>

³⁹. 2005-2006 Annual Report of Ministry of Social Justice and Empowerment, <http://socialjustice.nic.in/annualreport/ar06eng.pdf>

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

The government of India's human rights record must not be evaluated based on the constitutional guarantees or commitments made but implementation of these obligations and commitments.

I. Failure to implement affirmative action programmes

The constitution of India provides an array of affirmative action programmes for the Scheduled Tribes and the Scheduled Castes including reservation in the parliament, education, employment etc. In government jobs, there are reservations for both recruitment and promotion. But the affirmative action programmes could not achieve the desired results because of the lack of proper implementation.

a. Non-implementation of the reservations in employment

The government failed to implement 7.5% job reservations in the government sectors for the Scheduled Tribes (both in terms of recruitment and promotion) as provided under the Constitution of India. On 29 January 2005, the president of the Puthiya Tamizhagam, K. Krishnasamy, stated that there were more than 10 lakh vacancies for the Scheduled Castes (SCs) and the Scheduled Tribes (STs) in various Central and State Government departments.⁴⁰ As of October 2004, there were backlog of 12,352 vacancies for SCs and STs in 38 government departments in Assam.⁴¹ As of March 2006, there were about 1.21 lakh vacancies in the police force for SCs/STs across the country. Haryana had more than 8,000 vacancies.⁴²

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.⁴³

The All India Institute of Medical Sciences (AIIMS), New Delhi, followed the reservation norms of the Government of India (7.5% for STs and 15% for SCs) but representation of STs in all categories of posts was much below the prescribed quota. According to the Parliamentary Committee for the Welfare of the Scheduled Castes and Scheduled Tribes, AIIMS failed to fill up several reserved posts. As on 31 March 2005, there were carried forward vacancies of 7, 1, 1, 35 and 14 of ST in Group A (Faculty), Group A (Non-Faculty), B, C and D categories of posts respectively. Instead of conducting special recruitment to fill up all the SC/ST vacancies, AIIMS recruited on ad hoc basis in different categories of posts like Assistant Professor, Assistant

⁴⁰. 'Fill up SC/ST job vacancies', The Hindu, 30 January 2005

⁴¹. SC, ST bodies move Sonia to fill 12,000 backlog jobs, The Sentinel, 18 October 2004

⁴². SC quashes PIL for SC/ST vacancies in police, Deccan Herald, 28 March 2006

⁴³. Quota as affirmative tool has failed: Report, The Pioneer, 4 September 2006

Administration Officer, L.D.C. Stenographer etc. Seven posts of Assistant Professors reserved for STs were lying vacant because the Selection Committee could not find any ST candidate “suitable for these posts”.⁴⁴ The Ministry of Health and Family Welfare tried to justify by stating that the shortfall of Scheduled Tribes in recruitment in AIIMS was due to non-availability of suitable ST candidates.

In its 19th report presented to the Lok Sabha on 19 December 2006, the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes stated that the latest figures showed a backlog of 34 SCs and 61 STs in recruitment in Development Officer category, and a backlog of 4 SC and 7 ST in promotion in Development Officer category in United India Insurance Company Limited.⁴⁵

In the North Eastern Railways, a large number of reserved posts were not filled up. According to the 17th Report (Fourteenth Lok Sabha) on the Ministry of Railways (Railway Board) - “Reservation for and Employment of Scheduled Castes and Scheduled Tribes in North Eastern Railway”, presented to Lok Sabha on 29 November 2006, the Parliamentary Committee on the Welfare of SCs and STs stated that there were carried forward vacancies of 238 and 191 for SCs and STs respectively in Group C posts and 171 and 923 for SCs and STs respectively in Group D posts for the recruitment year 2004-2005 in the North Eastern Railway. The Committee also found that as on 1 January 2005, there was a huge shortfall of SC/ST employees in North Eastern Railway. In Group ‘A’ there was a shortfall of 17 SCs and 18 STs, in Group ‘B’ there was a shortfall of 12 STs, in Group ‘C’ there was a shortfall of 330 SCs and 1403 STs and in Group ‘D’ there was a shortfall of 743 STs.

The Airports Authority of India is no better. The Parliamentary Committee on the Welfare of SCs and STs in its Fifteenth Report (Fourteenth Lok Sabha) on “Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Airports Authority of India (AAI)”, presented to Lok Sabha on 29 November 2006, stated that in 2004, there were backlog vacancies of 30 SCs (Group B and C posts) and 59 STs (Group A, C and D posts) for recruitment in Airports Authority of India (International Airports Division), and backlog vacancies of 16 SCs (Group A and B posts) and 3 STs (Group D posts) in Airports Authority of India (National Airports Division).⁴⁶

For the year 2004-2005, the backlog vacancies of SCs and STs for recruitment were 399 and 308 in Group ‘C’ and 102 and 101 in Group ‘D’ posts respectively in the Central

⁴⁴. Twentieth Report (Fourteenth Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes, submitted to Lok Sabha on 7 March 2007, available at <http://164.100.24.208/ls/committeeR/SCTC/20rep.pdf>

⁴⁵. Nineteenth Report (Fourteenth Lok Sabha) of Committee on the Welfare of Scheduled Castes and Scheduled Tribes, submitted to Lok Sabha on 19 December 2006, available at <http://164.100.24.208/ls/committeeR/SCTC/19rep.pdf>

⁴⁶. Fifteenth Report (Fourteenth Lok Sabha) of Committee on the Welfare of Scheduled Castes and Scheduled Tribes presented to Lok Sabha on 29 November 2006, available at <http://164.100.24.208/ls/committeeR/SCTC/15rep.pdf>

Excise Department. There were 2 SC backlog vacancies for promotion in Group 'A', 133 SC and 154 ST backlog vacancies in Group 'B', 338 SC and 238 ST backlog vacancies in Group 'C' and 102 SC and 85 ST backlog vacancies in Group 'D' posts in the year 2004-05. There was shortfall of SC and ST employees in Group 'B', 'C' and 'D' categories of posts. As on 31 December 2004, the number of shortfall in SC and ST employees in Group 'B', 'C' and 'D' were 137 and 236 in Group 'B', 419 and 773 in Group 'C' and 87 and 252 in Group 'D' posts respectively.⁴⁷

Despite such failure to fill up existing vacancies, on 19 October 2006, a five-judge Constitution Bench of the Supreme Court of India extended the concept of "creamy layer" to the Scheduled Tribes and Scheduled Castes for exclusion from the affirmative actions programmes for those Scheduled Castes and Scheduled Tribes who do no longer require affirmative action programmes because of their income or employment at certain position. Earlier, the Supreme Court identified "creamy layer" only for the Other Backward Classes.⁴⁸ The judgement, if implemented, will have serious negative consequences considering that the government consistently failed to fill up the vacancies reserved, among others, for the tribals.

b. Tribal Sub Plan and misuse of funds

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. But the ground situation of the tribals has improved little which indicate the failure of the schemes/programmes meant for the development of the tribals.

Funds allocated for the Scheduled Tribes have been perennially plagued by diversion for other purposes and under-utilisation. 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.⁴⁹

In view of the rampant diversion of tribal welfare funds to other purposes and under-use of tribal welfare funds by the respective State governments, on 12 January 2006 the Planning Commission of India issued guidelines⁵⁰ directing the States to earmark funds

⁴⁷. Twelfth Report (Fourteenth Lok Sabha) of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes presented to the Lok Sabha on 22 August 2006, available at <http://164.100.24.208/ls/committeeR/SCTC/12rep.pdf>

⁴⁸. First time, talk of a 'well-off' cut-off in SC/ST quotas, The Indian Express, 20 October 2006

⁴⁹. 17th Report of the Standing Committee on Social Justice and Empowerment (2005-2006) May, 2006

⁵⁰. <http://planningcommission.nic.in/plans/stateplan/scp&tsp/guidlinesStates.doc>

for Tribal Sub-Plan (to be placed under a separate Budget Head – Code 796) from the total State Plan outlay at least in the proportion of the Scheduled Tribe population to the total population of the State/ Union Territory and made the Tribal Sub Plan funds non-divertible and non-lapsable. However, by the end of December 2006, the State governments/Union Territories failed to open separate Budget Head for Tribal Sub Plan.⁵¹

II. Failure of the national mechanisms

The government of India has also created many national mechanisms to protect the rights of the tribals but they have been a failure.

a. The National Commission for the Scheduled Tribes

The National Commission for Scheduled Tribes (NCST) was established in February 2004 through an amendment in the Constitution of India to protect and promote the rights of the tribals. But the NCST 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 rules of procedures to make itself subservient to the State authorities. The investigating team of the NCST has to take prior permission from the State government concerned while visiting any area in that State for the purpose of investigation and the NCST representatives have to follow the norms laid down by the State Government regarding security/travel/accommodation etc, during such tours.

The NCST presently has only 12 officers and it does not have special provision of finance to be made by the parliament. Further, under Rule 83 of Rules of Procedure of the NCST “All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission.” Hence, the NCST is often construed as another agency of the Government of India.

The Rules of Procedure of the NCST is strictly inconsistent with the Right to Information Act, 2005. Under Rule 41, the NCST has the power to make any report or part of it “confidential” without giving any reason and hence deny information to the public.

In fact, none of the Annual Reports of the National Commission for the Scheduled Tribes have so far been made public or presented before the public. A representative of AITPN sought copies of the annual reports but the NCST denied the same on the ground that they have not been placed before the parliament as yet!

⁵¹. 22nd Report of the Parliamentary Standing Committee on Social Justice and Empowerment (2006–2007), 18 December 2006

b. Lack of implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

According to the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a crime against the tribal peoples was committed in every 29 minutes in India during 2005. The NCRB recorded a total of 5,713 cases of atrocities against the tribal peoples in 2005 as compared to 5,535 cases in 2004, showing an increase of 3.2%.⁵² Yet, NCRB figures are only a tip of the iceberg of violence against the tribal peoples.

In 1989, the government of India brought the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to provide justice to the tribal victims of violence. But the SC/ST Act has not been implemented properly. While the rate of filing charge-sheet for the crimes perpetrated against tribals is quite satisfactory, the rate of conviction remains extremely low. In 2005, the average charge-sheeting rate for the crimes against Scheduled Tribes was 91.6 per cent as against 75.8% under Indian Penal Code (IPC) and 91.9% under Special Local Laws (SLL). But when it comes to conviction rate, the overall conviction rate for the crimes against the Scheduled Tribes was only 24.2% as compared to 42.4% under IPC and 84.5% under SLL. Conviction rates under SC/ST (Prevention of Atrocities Act) and Protection of Civil Rights Act were only 20.4% and 25% respectively.⁵³

According to the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (hereinafter referred to as the Parliamentary Committee), the fact that SC/ST Act and Civil Rights Protection Act “are under the Ministry of Social Justice and Empowerment led to low conviction rates and high acquittal rates”. The Parliamentary Committee observed that mere issuance of advisory notice/ recommendations to the States and Union Territories by the Ministry of Home Affairs would not be effective unless these Acts are handled by the Ministry of Home Affairs for practical solution.⁵⁴ But, no action has been taken on this recommendation.

In August 2006, the Parliamentary Committee in its 14th Report (14th Lok Sabha) also reiterated for suitable constitutional amendment to ensure effective implementation of Protection of Civil Rights Act, 1955 and SC/ST Act, 1989 to provide “timely justice” to the Scheduled Castes and Scheduled Tribes.

The Parliamentary Committee also recommended that the National Commission for the Scheduled Castes (NCSC) constituted under Article 338 and the National Commission for the Scheduled Tribes (NCST) constituted under Article 338A of the Constitution be

⁵². 2005 Annual Report of National Crime Records Bureau, Government of India

⁵³. 2005 Annual Report of National Crime Records Bureau, Government of India

⁵⁴. 14th Report (Fourteenth Lok Sabha) of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes on the Action Taken Report of the Government on its 4th report (14th Lok Sabha) presented to Lok Sabha on 22-8-2006 and Rajya Sabha on 21-8-2006

given statutory responsibility of overseeing the implementation of the Protection of Civil Rights Act, 1955 and SC/ST Act, 1989, and the NCSC and NCST be empowered by making their recommendations mandatory instead of being advisory in nature. But the Ministry of Social Justice and Empowerment rejected the recommendations of the Parliamentary Committee by stating that “the final decision rested with the Government”, and not with the National Commission for Scheduled Tribes and the National Commission for Scheduled Castes.⁵⁵

Inadequate number of Special Courts

Many states have failed to set up special courts to try the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as provided under the Act. On 18 August 2005, Minister of State in the Ministry of Social Justice and Empowerment, Smt. Subbulakshmi Jagadeesan stated that special courts have been set up in the States of Andhra Pradesh (08 courts), Bihar (11 courts), Chhatisgarh (07 courts), Gujarat (10 courts), Karnataka (07 courts), Madhya Pradesh (29 courts), Rajasthan (17 courts), Tamil Nadu (04 courts) and Uttar Pradesh (40 courts).⁵⁶ The other States notified the existing courts as special courts. With the lower courts inundated with backlog cases, coupled with the lack of adequate number of judges, notification of the existing courts as the Special Courts under the SC/ST Act does not help.

III. Non-implementation of Supreme Court judgments

The government of India shows scant regard for the Supreme Court by not implementing its judgements. Two specific judgements are given below:

a. Citizenship rights to the Chakmas and Hajongs

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 (W.P. (c) No. 720 of 1995) directed the government of India to process the citizenship applications. Out of 4,627 Chakmas and Hajongs who had submitted citizenship applications in 1997-1998, not a single application has been processed till today.

A separate writ petition (W.P [C] No. 510 of 2007) seeking implementation of the 1996 Supreme Court judgement is presently being considered by the Supreme Court.

⁵⁵. 14th Report (Fourteenth Lok Sabha) of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes on the Action Taken Report of the Government on its 4th report (14th Lok Sabha) presented to Lok Sabha on 22-8-2006 and Rajya Sabha on 21-8-2006

⁵⁶. <http://164.100.24.208/lsq14/quest.asp?qref=19142>

b. Endangered tribes: The Jarawas

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 threatening the survival of the Jarawas, whose population as per 1991 statistics was only 89 persons. The construction of Andaman Trunk Road and rapid encroachment of tribal land by settlers have been pushing the Jarawa tribe to extinction. According to a report presented to the Planning Commission of India in August 2006, the Jarawas faced the dual challenges of losing their habitat and saving themselves from sexual exploitation from the “outsiders”.⁵⁷ Unless the Andaman Trunk Road is closed down, the Jarawas will certainly face extinction.

The government of India launched a policy to address extinction of the Jarawas. The Ministry of Tribal Affairs in its 2005-2006 Annual Report outlined the aims of the policy on the Jarawas which included to protect the Jarawas from harmful effects of exposure and contact with the outside world, preserve the social organization, mode of subsistence and cultural identity of the Jarawa community, provide medical help, conserve the ecology and environment of the Jarawa reserve Territory and strengthen support systems in order to enable the Jarawas pursue their traditional modes of subsistence and way of life; and to sensitize settler communities around the Jarawas habitat. **However, the policy does not refer to the implementation of the direction of the Supreme Court of 2002.**

4. 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.

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.

5. 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.

⁵⁷. Experts to Plan panel: Habitat loss, sexual exploitation threaten Jarawas, The Indian Express, 30 August 2006

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.