

# UNIVERSAL PERIODIC REVIEW (UPR) 2017 INDIA



Stakeholder's submission

**Zo Indigenous Forum**

*Mizoram, India*

[www.zoindigenous.blogspot.com](http://www.zoindigenous.blogspot.com)

India is the second most populous and the seventh largest (area wise) country in the world. The total geographical area of India is 32,87,263 sq km, of which 6,92,027 sq km is covered by forests, which constitutes 21.1% of its total area<sup>1</sup>. The overall population density of India is 382 per sq km<sup>2</sup>.

According to the 2011 Census there are 24,94,54,252 households, of which 2,14,67,179 households belong to ST population. Total population in the country is 1,21,05,69,573, out of these 10,42,81,034 are classified as ST with 5,24,09,823 males and 5,18,71,211 females<sup>3</sup>. The population pyramid reveals that the sex composition among ST is nearly equal, whereas in non-tribals, it is male preponderance especially in age-groups less than 25 years. However, age structure among tribals is in favour of younger population as compared to non-tribals. The decadal growth rate of the tribal population during 2001-2011 is 23.7% which is higher than India's total decadal growth (17.6%). The tribal population of India constitutes 8.6% of total population of the country and majority of them reside in the rural areas (90%)<sup>4</sup>.

But till today, the government of India has denied the existence of Indigenous Peoples in India and call them as Schedule Tribe or Adivasis in order for their administrative convenience. *The government has taken a stand that the concept of indigenous people is not relevant to India and in spite of any declaration/reservation Government of India might make on interpretation of who constitute "indigenous people"*<sup>5</sup>.

### **Crimes against Scheduled Tribes**

A total of 6,793 cases of crimes committed against Scheduled Tribes were reported in the country during the year 2013 as compared to 5,922 cases in the year 2012, thus showing an increase of 14.7% in 2013 over 2012. This increase was observed under crime heads 'rape', 'kidnapping & abduction', 'dacoity', 'arson', 'hurt', 'protection of civil rights act' and SC/ST (Prevention of Atrocities) Act<sup>6</sup>.

The average conviction rate for crimes against Scheduled Castes and Scheduled Tribes stood at 23.8% and 16.4% respectively as compared to overall conviction rate of 40.2% relating to IPC cases and 90.9% relating to SLL cases<sup>7</sup>.

A total of 11,451 cases of crimes committed on persons belonging to Scheduled Tribes were reported in the country during 2014 against 6,793 cases reported in 2013, indicating a substantial increase of 68.6% during 2014 as compared to 2013. 6,826 cases of

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<sup>1</sup> Forest Survey of India, 2011

<sup>2</sup> Census of India, 2011

<sup>3</sup> Census of India, 2011

<sup>4</sup> Tribal Health Bulletin, Vol. 20(Special Issue), January 2014

<sup>5</sup> National Commission for Schedule Tribes Special Report – Good Governance for tribal development and administration May 2012, Comments of Ministry of External Affairs

<sup>6</sup> Crime in India-2013 page 111

<sup>7</sup> Crime in India-2013 page- 116]

atrocities against Scheduled Tribes were reported in the country during 2014 in which 7,509 tribals became victims of atrocities<sup>8</sup>.

### **Lack of participation of Indigenous Peoples**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which was passed by the UN General Assembly in 2007 has emphasis that the Free, Prior and Informed Consent (FPIC) of Indigenous peoples in every aspect that can affect their economic, social and political life.

There is near complete absence of participation of Scheduled Tribes people or their representatives in shaping policies, making plans or implementing of issues affecting their economic, social and cultural and political life. The high level committee set up by Prime Minister to study Socio-economic, health and educational status of tribal communities in India also highlighted that there is lack of participation in these processes from village level to the national level<sup>9</sup>.

In the central level except the Ministry of tribal affairs who there is no separate body to shape policies or monitoring program like health and family welfare of the indigenous or tribal peoples. This is in complete disregard to the promise of the Constitution<sup>10</sup>.

### **Militarisation**

Since the so called draconian Law (Armed Forces (Special Powers) Act 1935) is still active in the region there were different violation of rights by the security forces despite some signs of progress, almost absolute impunity for violations by Indian security forces continued. Legislation providing virtual immunity from prosecution such as the Armed Forces Special Powers Act and Disturbed Areas Act were still in force in Jammu and Kashmir and parts of north-east India, despite ongoing protests. Perpetrators of past violations in Jammu and Kashmir, Nagaland, Manipur, Punjab and Assam continued to evade justice<sup>11</sup>.

In the name of the defence and security many indigenous peoples land has been taken away without getting the consent of the indigenous peoples, which is totally against the Article 30 of UNDRIP stating that *“Military activities shall not take place in the land or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by indigenous peoples concerned. Government must undertake effective consultation with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities”*.

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<sup>8</sup> Crime in India-2014 page- 112

<sup>9</sup> Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Page 243

<sup>10</sup> Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Page 243

<sup>11</sup> State of the world's human rights by Amnesty International report 2014/2015

## Arbitrary arrest and detention

Arbitrary arrests and detentions of protesters, journalists and human rights defenders persisted. National Human Rights Commission data indicated that 123 illegal arrests and 203 cases of unlawful detention were reported from April to July 2014. The authorities used laws authorizing administrative detention to detain journalists and human rights defenders in custody under executive orders without charge or trial. Adivasi villagers in Maoist-affected areas in central India also remained at risk of being arbitrarily arrested and detained.

“Anti-terror” laws such as the Unlawful Activities (Prevention) Act, which did not meet international human rights standards, were also used<sup>12</sup>. Torture and other ill-treatment continued to be used in state detention, particularly against women, Dalits and Adivasi/Indigenous peoples. A deeply flawed anti-torture bill lapsed with the end of the central government's term in May 2014. In August, the Bombay High Court directed the installation of closed-circuit television cameras in all police stations in Maharashtra to curb the use of torture<sup>13</sup>.

## Children Rights

India has made progress in improving access to health services, but inequalities remain, arising from geographical, social, cultural and economic factors.

The under-five mortality rate in India has been more than halved since 1990 – from 126 per 1,000 live births to 56.104 While the child mortality rate has come down across all population groups, it is three times higher among the poorest households compared with the richest.<sup>105</sup> There was a reduction in the new-born mortality rate over the same period from 51 to 31 per 1,000 live births; Coverage of some critical health services is also very low, with huge inequalities across the country. For example, less than 60% of women have a skilled health worker present when giving birth, with coverage among the poorest households less than a quarter what it is in the richest households – 19% and 90% respectively<sup>14</sup>.

Laws requiring private schools to reserve 25% of places at the entry level for children from disadvantaged families were poorly implemented. Dalit and Adivasi children continued to face discrimination in school.

In June, 2014 the UN Committee on the Rights of the Child expressed concern about the disparity in access to education, health care, safe water and sanitation and had failed to ensure protection of children from discrimination, harmful practices, sexual abuse, and child labor among different groups of children. Child labour and child trafficking remained serious issues<sup>15</sup>.

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<sup>12</sup> *State of the world's human rights by Amnesty International report 2014/2015*

<sup>13</sup> *State of the world's human rights by Amnesty International report 2014/2015*

<sup>14</sup> *Ending newborn deaths - Ensuring every baby survives published by Save the children 2014*

<sup>15</sup> *State of the world's human rights by Amnesty International report 2014/2015*

## Undernutrition

Indian undernutrition data play a large role in shaping global statistics. India contains about 40 percent of the world's stunted children under the age of 5 and nearly 50 percent of the wasted children<sup>16</sup>.

A new national survey—the Rapid Survey on Children (RSOC), conducted in 2013–2014 by the government and UNICEF—found that stunting had fallen from 48 percent in 2005–2006 to 39 percent in 2014.<sup>9</sup> As the Global Nutrition Report 2014 noted, this reflects almost a doubling of the rate of decline compared with the period 1999–2006<sup>17</sup>.

## Women rights

Reports of crimes against women rose, but under-reporting was still considered to be widespread. Dalit women and girls continued to face multiple levels of caste-based discrimination and violence. Self-appointed village councils issued illegal decrees ordering punishments against women for perceived social transgressions.

In April 2013, the UN Special Rapporteur on violence against women drew attention to the inability of the authorities to ensure accountability and redress for survivors of violence. In July 2014, the CEDAW Committee recommended the government allocate resources to set up special courts, complaints procedures and support services to better enforce laws<sup>18</sup>.

The trafficking of women and girls from, and to, India was reported as widespread. Disadvantaged women from minority groups, scheduled castes and tribes and the “backward castes” are usually the main victims. Young unskilled women are allegedly given false work promises, resulting in forced domestic servitude in foreign countries. Women who are trafficked and forced into prostitution are left unable to defend their rights, and lack access to rehabilitation and compensation for such crimes. This lack of protection and prioritization of the problem by the State has intensified the violence perpetrated against them by criminals or those involved in trafficking practices. The complicity of State officials in human trafficking was also reported as a concern. The Immoral Traffic (Prevention) Act, 1956 and its amendments are reportedly more directed at safeguarding public moral than combating trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>19</sup>.

## Access to health care service

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<sup>16</sup> UNICEF 2013

<sup>17</sup> 2015 Global Nutrition Report produced by an Independent Expert Group (IEG) empowered by the Global Nutrition Report Stakeholder Group

<sup>18</sup> State of the world's human rights by Amnesty International report 2014/2015

<sup>19</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (Mission to India) A/HRC/26/38/Add.1

India has made progress in improving access to health services, but inequalities remain, arising from geographical, social, cultural and economic factors. The under-five mortality rate in India has been more than halved since 1990 – from 126 per 1,000 live births to 56. While the child mortality rate has come down across all population groups, it is three times higher among the poorest households compared with the richest. There was a reduction in the new-born mortality rate over the same period from 51 to 31 per 1,000 live births; this figure still remains high compared to other Countdown countries. Coverage of some critical health services is also very low, with huge inequalities across the country. For example, less than 60% of women have a skilled health worker present when giving birth, with coverage among the poorest households less than a quarter what it is in the richest households – 19% and 90% respectively<sup>20</sup>.

### **Development induced displacement**

Infrastructure Development projects are one of the main causes of tribal land alienation especial in North East India<sup>21</sup> leaves the Indigenous peoples eviction and sufferings in different places.

### **Land Alienation:**

Tribal communities of India reside in hill areas that are rich in minerals and forest cover. Land is the basis of their socio-cultural and religious identity, livelihood and their very existence. Their lives are closely interlinked with forests for food, fuel, medicine, fodder and livelihood. Their God and guardian spirits reside in hills, forests, groves etc. Traditionally, ownership of land was by the community and economic activity mainly agrarian, including shifting cultivation, which fostered egalitarian values which influenced their power relations and organizational system. Forest and hills are the main source of tribal identity. It is in this context that the devastation of lives of tribal people caused by loss of access to forest and involuntary displacement from their land has to be understood. Dispossession takes place both directly by depriving tribal communities of their land, habitat, livelihood, political system, culture, values and identity and indirectly through denials of benefits of development and of their rights. With their control over resources diminishing, tribal communities remain the most vulnerable and marginalized community in the country<sup>22</sup>.

In most cases Community land of tribal communities is recorded as Government land in survey and settlement operations and most State tenancy laws recognize only individually owned registered land. Such lands have not been fully surveyed and there is no record of user practices, which would be shown as Government land<sup>23</sup>.

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<sup>20</sup> WHO Global Health Observatory data repository

<sup>21</sup> Shimray, U.A. 2006. 'Tribal land alienation in North- East India: Laws and land relations'. Guwahati: Indigenous Women's Forum of North East India and North Eastern & North Eastern Social Research Centre, 2006

<sup>22</sup> Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Pg 141

<sup>23</sup> Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Pg 141

## Corporate accountability

In September, the Supreme Court cancelled over 200 coal mining licences which it said were granted arbitrarily. The Environment Ministry weakened existing mechanisms for consultation with communities affected by industrial projects, particularly coal mining. The Ministry also lifted moratoriums on new industries in critically polluted areas. The authorities and businesses failed to meaningfully consult local communities in several instances. In August, a subsidiary of UK-based Vedanta Resources conducted a public hearing towards expanding its alumina refinery in Lanjigarh, Odisha state, without addressing existing impacts or adequately informing and consulting affected communities.

In December 2014, the government passed a temporary law which removed requirements related to seeking the consent of affected communities and assessing social impact when state authorities acquired land for certain projects.

Thousands of people remained at risk of being forcibly evicted from their homes and lands for large infrastructure projects. Particularly vulnerable were Adivasi/Indigenous peoples communities living near new and expanding mines and dams<sup>24</sup>.

## Dams:

Dams have been the biggest causes of displacement for tribes since Independence, although actual figures regarding the number of people displaced range from 20 to 50 million among them about 40 per cent of those displaced belong to the Scheduled Tribes. Given that the Scheduled Tribes constitute about eight per cent of the country's population, they are clearly disproportionately represented in the number of displaced persons<sup>25</sup>.

Mineral and hydro-electric resource - rich States of India tend to be the very places, which are home to vast majority of tribal people. Baxi Upendra<sup>26</sup> has highlighted that people are not partners in the process of decision making regarding construction of dams, areas of submergence, environment impact, allocation of resources and allocation of benefits and adverse impacts of development. Displacement is a process in which marginalized sections, the majority being tribal people, are pushed out of their own habitat and dispossessed of their resources and indeed their universe around them

## Protected Areas and National Park

There are about 690 Protected Areas (PAs), i.e., National Parks and Sanctuaries in India<sup>27</sup>. These areas are established under the Wildlife Protection Act, 1972 (as amended in 2006), and recognized under the Forest Rights Act (FRA).

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<sup>24</sup> *State of the world's human rights by Amnesty International report 2014/2015*

<sup>25</sup> *Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Pg 49*

<sup>26</sup> *Development, displacement and resettlement: A human rights perspective' in 'India social development report 2008'. 'Development and displacement'. New Delhi: Center for Social Development, Oxford University Press*

<sup>27</sup> [http://wiienviis.nic.in/Database/Protected\\_Area\\_854.aspx](http://wiienviis.nic.in/Database/Protected_Area_854.aspx)

Approximately, three million people in India, most of whom are tribals, live inside PAs and are dependent on them for forest resources. Creation of National Parks have resulted in alienation of rights and consequent displacement and forced migration of tribal people<sup>28</sup>.

The FRA recognizes not only the right that the tribals and the Other Traditional Forest Dwellers(OTFDs) have in relation to the forest, but it also empowers the holders of any forest right to Protect the wild life, forest and biodiversity; ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.”

Most states exclude PAs from the application of the FRA due to a lack of understanding and awareness of the law, and that the tribal population is a menace to wildlife in those areas<sup>29</sup>. Moreover, forced eviction, relocation and harassment by forest officials is commonplace<sup>30</sup>. Reports suggest that between 100,000 and 300,000 people have been evicted from protected areas at different times. This is despite the law stating that eviction before verification and settlement of claims under the FRA is complete, is unlawful. Yet widespread displacement of tribals continues to occur. This has caused a decline in their economic status, as well as erosion of their customary forest practices<sup>31</sup>.

National Human Rights Commission (NHRC) observed that where displacement and ‘involuntary settlement’ had received public attention due to efforts of NGOs or media the State had responded, but in other cases displacement had resulted in loss of livelihood and shelter<sup>32</sup>.

### **Freedom of Association**

Authorities used the Foreign Contribution (Regulation) Act to harass NGOs and civil society organizations that received funding from abroad. In particular, groups critical of large infrastructure, mining and nuclear power projects faced repeated queries, threats of investigations and blocking of foreign funding by the government. In June 2014, media organizations reported on a classified document prepared by India’s internal intelligence agency, which described a number of foreign-funded NGOs as “negatively impacting economic development”<sup>33</sup>.

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*28 Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Page 141*

*29 Regional Consultations on Implementation of the Forest Rights Act: Amendments in the Rules and the Way Forward organized by Ministry of Tribal Affairs in collaboration with UNDP*

*30 Standing Committee on Social Justice and Empowerment (2011 - 2012) (Fifteenth Lok Sabha) by Ministry of Tribal Affairs*

*31 Report of the high level committee on Socio-economic, health and educational status of tribal communities in India, Published by Ministry of Tribal Affairs, Government of India, May, 2014 Page 141 Page 322*

*32 NHRC’s ‘Recommendations on Relief and Rehabilitation of Displaced Persons’ 2008. Pg. 34-35*

*33 State of the world’s human rights by Amnesty International report 2014/2015*



Authorities have tightened restrictions on civil society organizations. Officials use the Foreign Contribution Regulation Act (FCRA), which tracks grants from foreign donors, to harass organizations that question or criticize government policies, to stymie their activities, and to cut off funds from abroad. The impact on Indian civil society has been severe. When the Indian Home Ministry conducts an investigation pursuant to the FCRA, it often freezes the accounts of the NGO being investigated, cutting its source of funding, and forcing it to stop its activities<sup>34</sup>

### **Denial of freedom to change or leave one's religion or belief**

Freedom of religion is constitutionally guaranteed and generally respected in practice. However, legislation in several Hindu-majority states criminalizes religious conversions that take place as a result of "force" or "allurement," which can be broadly interpreted to prosecute proselytizers<sup>35</sup>.

CSW reports cases of the criminalisation of converts ("apostasy") in several states in India<sup>36</sup>. Gujarat state law requires prior permission for conversion, and the law in Himachal Pradesh requires a person to notify the district magistrate of intention to convert and the magistrate to enquire into the matter. Converts are often subjected to violence and intimidation, especially those who leave the Hindu faith for Islam, Buddhism or Christianity. Release International states that many suffer physical assaults, are forced to pay fines or have their property attacked. Often, accusations are invoked of the persons concerned having tried to convert others by force<sup>37</sup>. One pastor, John Lazarus, who is a Hindu convert to the Christian faith, saw his daughter kidnapped, never to be seen again; his son was stabbed to death by Hindu radicals. This is a clear violation of ICCPR to abolish these laws.

### **Recommendations:**

We would like to recommend the followings points to the government of India

- i) India has the largest number of indigenous people in a country, it does not recognise them as indigenous, they call them as Adivasi or tribal people, it must have to recognised them as indigenous people.
- ii) Invites the pending request of Special Rapporteur on the Rights of the Indigenous Peoples to assess the situation of Indigenous Peoples In India and other clear the backlog and invite all waiting Special Procedures to India
- iii) The draconian Law (Armed Forces (Special Powers) Act 1935 has still been enforced in NE India and J & K, taking advantage of this security forces has violated human rights always like arrest, detention and encounter etc. This must be repealed.
- iv) The Government states that it did not recognize any separate category of its citizens as "indigenous peoples" and that there is no internationally accepted definition of the term.(E/CN.4/2005/88/Add.1, para. 52) to promote and protect the rights of millions of thousands of Indigenous people in India, we strongly recommends to ratify the ILO Convention 169 regarding indigenous and tribal people.

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<sup>34</sup> Human Rights Watch (HRW) World Report 2015: India

<sup>35</sup> Freedom House published Freedom in the World 2015

<sup>36</sup> <http://dynamic.csw.org.uk/country.asp?s=gi&urn=India>

<sup>37</sup> <http://www.releaseinternational.org/2013-campaign-india/>

- v) Women in India especially the indigenous people and religious minorities continue to face physical, sexual, emotional and economic violence also the North East people have faced physical and emotional discrimination in order to prevent this it has to make a mechanism.
- vi) To implement the so called development programme in the indigenous land, as they are the owner and keeper of the land they must be consulted, not only the state government, but also the concerned people and without their consent, no development programme should be implemented in their land.
- vii) Ensure that federal legislation to protect marginalized communities, such as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, is effectively implemented at state level, empower the indigenous peoples and indigenous peoples organisation for the proper implementation of Forest Rights Act.
- viii) Ensure the participation of Indigenous Peoples in the Issues affecting their social, economic, and political situation including the process of Universal Periodic review.
- ix) Consider to withdraw its reservation to Article 32 of the Convention on the Rights of the Child, in line with its commitment to protect children from exploitation;
- x) Ratify the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child;
- xi) Implement existing legal provisions to prevent the advocacy of religious hatred, incitement to religious violence and political exploitation of communal distinctions. The Special Rapporteur on Freedom of Religion and Belief made such a recommendation.