

Joint Stakeholders' submission on The situation of the rights of indigenous peoples in India

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¹ The preparation of this joint submission was led by AIPP and ZIF with inputs and endorsements from other organizations through online and in-person consultations.

A. INTRODUCTION

1. In India, 705 ethnic groups are notified as Scheduled Tribes (STs) spread across 30 States or Union Territories. These are considered to be India's indigenous peoples.¹ As per 2011 census, with a population of 104.3 million, they comprise 8.6% of the total population of India – almost 90% of them living in rural areas.² There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized.³ The largest concentrations of indigenous peoples are found in the seven northeastern states India, and the so-called “central tribal belt” stretching from Rajasthan to West Bengal, where the STs are usually referred to as Adivasis, which literally means indigenous peoples.

2. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. The Indian government voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, it does not consider the concept of “indigenous peoples”, and thus the UNDRIP, applicable to India.⁴

B. FOLLOW UP OF THE PRECEDING REVIEWS

3. In the 2nd UPR cycle, India received eight recommendations, specifically referring to indigenous peoples – most of which India noted, except two. Other recommendations that India supported, related to are also relevant to the issues of indigenous peoples.

I. ILO Convention No. 169

4. Among the noted recommendations, two were for India to ratify ILO Convention No. 169 (C169) concerning Indigenous and Tribal Peoples in Independent Countries.⁵ **India has not taken any step for ratification of the Convention 169.** In a special report in May 2012, India's National Commission for Scheduled Tribes informed of perspectives of various government agencies on the Convention. As per the report, the Ministries of External Affairs, Home Affairs and the Tribal Affairs objected to the need for ratification of the Convention, saying that the concept of ‘indigenous peoples’ is not relevant to India and that the Convention violates State ownership of sub-surface resources in existing laws of the country that provides fair compensation for lands and that there was no need for external cooperation or evaluation, including from the UN, for tribal development programmes in India.”⁶

5. India has ratified ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. In its review of India's application of the Convention and Recommendations in 2010, the ILO Committee of Experts noted that a national tribal policy was still under consideration, but not yet finalized and encouraged India to draw on ILO Convention No. 169.⁷ However, the tribal policy is yet to be finalized.⁸

Recommendation

6. As previously recommended, India should ratify ILO Convention No. 169 immediately as recommended by the CERD in 2007⁹ and adopt the national tribal policy in line with the Convention with necessary action plan formulated for implementation of the policy.

II. Welfare and Rights of Scheduled Tribes

7. One of the recommendations specifically referring to indigenous peoples that India supported is to put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including scheduled tribes, are well achieved.¹⁰ This is related to the recommendations noted by India to monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment¹¹ and ensure that laws are fully and consistently enforced to provide adequate protections for members of adivasi groups, among others.¹² **India has partially implemented those recommendations but there have also been actions against them.**

8. In 2013, India's government constituted a high-level committee headed by Virginius Xaxa to examine the socio-economic, health and educational status of STs and suggest policy initiatives as well as effective outcome-oriented measures to improve development indicators and strengthen public service delivery to STs". The committee made several major recommendations in its report in 2014. One of its recommendations was that delivery of social justice to STs must be monitored by the National Commission for Scheduled Tribes, both at the national and state levels. Following a transparent policy with regard to employment opportunities for STs in the public sector, with special attention to particularly vulnerable tribal groups; strict implementation of Free and Compulsory Education Act, 2009 in tribal areas; adoption and implementation of annual "Tribal Health Plans" at all levels; and generation of segregated data on STs such as tribe-specific health indicators at all levels and composite tribal development index were other recommendations for welfare of the STs.¹³

9. However, there have been reports of slow implementation of quota programmes of STs in employment. As of May 2013, there was a backlog of vacancies for the STs with central government of 12,195 posts and as a result, India's Prime Minister approved a Special Recruitment Drive to fill the backlog by end of 2013. Update on the recruitment drive has not been available yet.¹⁴ At the same time, there have been reports that huge amounts of Tribal Sub-Plan (TSP) funds, under India's five year-plans, have either been diverted and misused or remained unspent since 2011. Because of this diversion of TSP funds, tribals have been deprived of the socio-economic development envisaged in the plan. Central ministries and departments have been diverting funds meant for targeted TSP into universal schemes or programmes that have little to do with the welfare of tribals.¹⁵

10. On land rights of the STs, the Xaxa committee recommended recognition of the right of the STs to say "no" to acquisition of their land, and their right to access and manage forests and other resources and limiting exercise of "eminent domain" or "public purpose" projects in tribal areas. It also recommended for an inquiry into the quality of resettlement and rehabilitation in development projects in the last 50 years in scheduled and other tribal dominated areas given the widespread discontent of among displaced tribals.¹⁶

11. Earlier, in September 2013, the Government of India had notified the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement (LARR) Act, 2013. The Act replaces the draconian Land Acquisition Act 1894 from January 2014 and lays down various provisions for acquisition of land in the country and for rehabilitation and resettlement. It has special provisions for the STs and states that acquisition of land shall not be made in the Scheduled Areas as far as possible and where such acquisition takes place only as a demonstrable last resort, the prior consent of the concerned local governments shall be obtained in all cases.¹⁷ Nonetheless, despite the new law, there have been continuing and additional cases of land rights violations of STs (*which are discussed under 'Developments since the last review'*).

12. On legal and administrative framework, the Xaxa committee recommended that India's Parliament and State laws should be applied in the Fifth Schedule Areas (tribal areas in mainland India) only after decision by the Governor with the advice of the Tribes Advisory Council, the mandatory advisory bodies on "tribal welfare and advancement" in states with such areas (as is the case in Sixth Schedule areas). Extending the model of autonomous councils and local bodies at district levels with limited autonomy in Sixth Schedule areas to the Fifth Schedule areas (as provided in the Provisions of Panchayat (Extension to Scheduled Areas) (PESA) Act, 1996) and broadening the mandate of the Council to include protection and development functions are other major recommendations of the committee.¹⁸

13. Meanwhile, there are numerous villages in the ten states where the PESA Act apply or which have the Sixth Schedule areas, which are yet to be notified as scheduled/tribal areas. Some states¹⁹ are yet to notify scheduled areas or have proposed schedule areas awaiting Presidential notification. Further, various Autonomous District Councils created through state laws in northeast Indian states are yet to be included under the Sixth Schedule. On the other hand, scheduled areas are being upgraded to municipal areas despite tribal opposition, taking them out of legal protection of the PESA Act while the law for municipal areas in scheduled areas are yet to be enacted. As a result, number of tribal communities has not been able to effectively participate in public life or exercise autonomy. At the same time, there have been reports that state governments passed laws inconsistent with the constitutional safeguards of scheduled tribes.²⁰

Recommendations

14. The Government of India must continue to formulate and implement specific targeted policies and plans for socio-economic development of STs, with the National Commission for Scheduled Tribes provided the monitoring role at national and state levels and generation of segregated data on STs such as tribe-specific health indicators and composite tribal development index. These plans and policies should be developed in line with the implementation of India's commitments under the Sustainable Development Goals.

15. The Government of India must recognize the right of tribal communities to say "no" to acquisition of their land, and their rights to access and manage forests and other resources in line with ILO Convention No. 107, the right to Free, Prior and Informed Consent as provided in UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and India's own national legislations such as Forest Rights Act (FRA), as per the CERD recommendation²¹.

16. India should consistently and effectively implement the Fifth and Sixth Schedules of the Constitution and the PESA Act, including extension of model of autonomous councils and local bodies with limited autonomy to Fifth Schedule areas and consider broadening the mandate of Tribal Advisory Councils to include protection and development functions. It should also immediately notify scheduled areas and autonomous districts of tribal communities as per the Constitution and upgrade scheduled areas to municipal areas only after free, prior and informed consent of the concerned tribal communities.

III. Crimes against Scheduled Tribes

17. **India has partially implemented two noted recommendations** relating to the effective implementation of the Scheduled Caste and the Scheduled Tribes Act²² and prevention of and justice for violent acts against tribal minorities²³. In 2015, India's Parliament passed the Scheduled Castes

and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill to provide for stringent action against those involved in crimes against STs. The Bill amends certain existing categories and adds new categories of actions to be treated as offences, including wrongfully occupying land belonging to STs and assaulting or sexually exploiting an ST woman, among others, and makes further provisions on role of public servants and courts.²⁴

18. However, as evident in the official reports, crimes against STs in India are only increasing every year. A total of 6,793 cases of crimes committed against STs were reported in the country during 2013 as compared to 5,922 cases in 2012, thus showing an increase of 14.7%. This increase was observed under crimes of rape, kidnapping & abduction, dacoity, arson, protection of civil rights act and the SC/ST Act²⁵. The average conviction rate for crimes against STs stood at 16.4% compared to overall conviction rate of 40.2%.²⁶ Crimes against STs further increased substantially by 68.6% to a total of 11,451 cases during 2014.²⁷ In 2015, the crimes saw a small decrease to 10,914²⁸ while the conviction rate was 27.6%, still way less than national rate²⁹. These are only the reported cases of atrocities committed by non-tribals and do not include cases of human rights violations by the security forces.³⁰

19. At the same time, there has been growing concern over incidents of racial discrimination against people from the northeast in Indian cities. In August 2012, over 5,000 panic-stricken northeasterners fled the southern city of Bangalore after reports that their communities would be attacked to avenge sectarian violence between indigenous communities and Muslim immigrants in Assam, in which 74 lives were lost the earlier month.³¹ In February 2014, in what many described as “hate crimes” against northeasterners, a student died of internal injuries after shopkeepers, who had ridiculed his appearance, had beaten him.³² The incident sparked protests of thousands in Delhi calling for justice against racism.³³ In the most recent incident, in August 2016, a student from Arunachal Pradesh was beaten in Pune while the police delayed to lodge the complaint of the case.³⁴ Indigenous peoples’ organizations point to inadequate government efforts to prevent or address such incidents.³⁵

20. On the other hand, violent acts against tribals at the hands of the State security forces and armed opposition groups have continued. The tribals are trapped in between the armed groups and security forces in areas of armed conflicts such as Maoist insurgency areas in mainland India. Particularly, in northeast India, there has been significant opposition to increasing militarization (*which are discussed under ‘Developments since the last review’*).

Recommendation

21. The Government of India must continue to strengthen the effective implementation of the Scheduled Caste and the Scheduled Tribes Act, including through setting up special courts and other measures and monitor and verify the effectiveness of those measures, in line the relevant recommendations of CERD³⁶.

22. The Government of India should make efforts, including public education and awareness raising campaigns and sensitization of security and media agencies, to promote multiculturalism and tolerance towards groups such as people from the northeast among its dominant populations.

IV. Rights of Indigenous Women

23.. India supported a recommendation to continue to promote the rights of women in their choice of marriage and their equality of treatment independently of tribe and other considerations.³⁷ **India has not implemented this recommendation.**

24. Indigenous women continue to face discrimination and unequal treatment in many forms. In a shadow report to CEDAW, indigenous women's groups from India have detailed out such discrimination in education, health and other social and economic areas. Child marriage practice, as per the report, still exists in rural tribal areas, which can be stopped and prevented through quality education and rigorous mass awareness. Indigenous women have benefitted least despite large funds invested for rural and tribal development. Further, massive land alienation and displacement of tribals due to infrastructure projects in northeast India and mining in adivasi areas, have increased vulnerability of indigenous women and girls by multifold to food security, poverty, violence and abuse, including in forms of trafficking and prostitution, and resulted in systematic discrimination. Around 70 cases of such violence against tribal women were collected from across the country in the report.³⁸

25. In 2014, CEDAW noted India's efforts to enact a legal framework to prevent and respond to violence against women, including Adivasi women, and the establishment of a committee on amendments to criminal law to review existing normative gaps in 2013. However, it also expressed concern about the poor implementation of the Scheduled Castes and the Scheduled Tribes Act and the impunity of perpetrators of serious crimes against women and that women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid.³⁹

Recommendation

26. The Government of India should devise and effectively implement strong temporary special measures for women and girls from scheduled tribes, including for enrolment in education and employment, as per CEDAW's recommendation⁴⁰.

27. In line with CEDAW's recommendation⁴¹, India should monitor the availability and efficiency of the legal services authorities, implement legal literacy programmes, raise the awareness of women and girls from scheduled tribes of all legal remedies available to them and monitor the results of such efforts.

V. Human rights defenders

28. India noted two recommendations in relation to protection of human rights defenders, including through enacting a law, with particular emphasis on those defenders facing greater risks, such as the rights of scheduled tribes. **India has not implemented this recommendation.** No step has been taken to enact such law. While UN Special Rapporteur on the situation of Human Rights Defenders have reported on particular risks of human rights defenders working on the rights of indigenous peoples in India⁴², indigenous women human rights defenders such as Soni Sori and Dayamani Barla, who are facing criminal charges, are confronted with additional challenges including sexual violence or risks thereof, including in custody, lack of legal support as well as access to justice and effective remedy.⁴³

29. On the other hand, civil society organizations in India have been facing a worsening crackdown, involving an intensification of judicial harassment, arbitrary arrests and intimidation. In April 2015, Ministry of Home Affairs cancelled the registration of 8,975 NGOs working in India, on the basis of violating reporting requirements under the draconian Foreign Contributions (Regulation) Act (FCRA). Many organisations targeted by the FCRA have been deemed as 'anti-national' and the cancelled registrations unfairly target a number of environmental NGOs, particularly those working

on accountability in the context of mining, dams and nuclear projects.⁴⁴ Many of those projects primarily concern number of indigenous groups in India.

Recommendations

30. India must enact a specific law for protection of human rights defenders, with particular attention on defenders working for the rights of scheduled tribes and women. Further, in line with the recommendation of Special Rapporteur on Human Rights Defenders, the Government must implement a comprehensive, independent and adequately resourced protection programme for human rights defenders and witnesses with the National and State Human Rights Commission.⁴⁵

31. India must repeal the FCRA, which is been increasingly used to obstruct civil society's access to foreign funding, and fails to comply with international human rights norms and standards, as called on by UN Special Rapporteurs.⁴⁶

C. DEVELOPMENTS SINCE THE LAST REVIEW

I. Alienation of tribal land and repression under forest laws

32. Despite stringent constitutional provisions and state laws for protection of land belong to tribal peoples, land alienation has continued unabated. While the latest data on alienation of tribal land is not available, in April 2012, the Government informed the Parliament that 437,173 cases of tribal land alienation had been registered, covering 661,806 acres of land in the country, out of which 217,396 cases were disposed of in favor of the tribals, and 190,573 cases were decided against the tribal landowners in the courts. The lack of seriousness of the Government towards the alienation of tribal land is reflected in the delay in implementing the recommendations of the report submitted in May 2014 by a High Level Committee it formed to look into the issue.⁴⁷

33. Meanwhile, touted as a path breaking law for recognition of forest rights of STs and other traditional forest dwellers, the Forest Rights Act 2006 has suffered from poor implementation. As per the Ministry of Tribal Affairs, as of 31 July 2016, off around 4.2 million claims received across India under the Act, a total of around 3.7 million claims (88.1%) had been disposed off, and for which 1.7 million titles were distributed. This means that a majority of the claims have been rejected or are pending.⁴⁸ In 2014, 52.87% of the total claims disposed off were rejected.⁴⁹ A study revealed, in July 2015, that the Act has the potential to recognize the rights of approximately 150 million tribal and forest dwelling communities over at least 40 million hectares of forested land – half of India's forests.⁵⁰

34. On the other hand, the Government in 2016 has introduced a new law called the Compensatory Afforestation, Management and Planning Authority (CAMPA) law to boost reforestation across the country ignoring the FRA, consent of the village councils for afforestation and the importance of indigenous people in conserving forests.⁵¹

35. Furthermore, tribal peoples are facing serious threats of or are being subjected to forced evictions from their forests. A phenomenon of evicting tribals for saving tigers has emerged in India.⁵² In Madhya Pradesh, more than 200 Gond tribals are being forcibly evicted in a village for expansion of Panna Tiger Reserve since August 2015.⁵³ In January 2015, a forest official threatened a tribal leader and allegedly asked his fellow villagers to attack him or drive him out of Similipal Tiger Reserve in Odisha if he did not agree to their relocation.⁵⁴ The tribals who are evicted often receive little if any compensation.⁵⁵ Around 450 Gond and Baiga tribal families in the Kanha Tiger Reserve in Madhya

Pradesh, who were evicted in June 2014, had neither been resettled nor provided with any source of income as of January 2015. Some families received a fraction of the agreed compensation, while others nothing.⁵⁶

Recommendations

36. The Government of India should immediately address the obstacles and gaps in the implementation of the Forest Rights Act so as to increase the effectiveness of the Act to provide recognition of community forest rights claims by tribal communities adequately. India should also amend the CAMPA law vis-à-vis the Forest Rights Act so as to guarantee the consent of tribal and forest dwelling communities in implementation of the CAMPA law.

37. The Government of India must, without any delay, take steps to stop forced evictions of tribal and other forest dwelling communities occurring in course of conservation projects and redefine and implement those projects with the free, prior and informed consent of and in conjunction with the affected communities.

II. Increasing development induced land dispossession

38. Dispossession or displacement of indigenous peoples from their lands has continued in India the name of energy, infrastructure development and mining projects. Many of these projects are opposed for their human rights and environmental impacts as well as other ramifications.

Mega-dams and other infrastructure

39. India is aggressively pursuing construction of over 100 large hydroelectric dams in its northeast in a bid to establish first-use rights on the waters of the rivers originating in China.⁵⁷ India's National Action Plan on Climate Change includes construction of dams as so-called clean energy, especially in the northeast, with several dams already cleared to receive carbon credits under Clean Development Mechanism of the UNFCCC.⁵⁸ All the while, anti-dam protests in the northeast have only intensified.

40. For more than 15 years, indigenous communities in northeastern Manipur state have resisted the proposed 1500 MW Tipaimukh Dam on the Barak river over India's failure to undertake public consultations and information sharing.⁵⁹ In July 2013, the Forest Advisory Committee of India's Ministry of Environment and Forest rejected forest clearance for the dam after concluding the dam will submerge large area of forestland disproportionate to its power generation and also cause very high environmental and social impacts.⁶⁰

41. In 2014, India's Central Water Commission recommended scrapping 14 of the 44 dams planned across the Siang river in Arunachal Pradesh for the environmental impacts of the dams meant to generate 18,293 MW electricity. Indigenous communities have demanded scrapping all mega dams over the river while the issue was pending in the State Court.⁶¹ The communities had obstructed the government's efforts to conduct three public hearings, citing that the hearings fall short to the right to free, prior and informed consent (FPIC) that the indigenous Adi and Galo peoples demand. The Assam government has also rejected the dams due to community opposition in the state, where there will be downstream impacts.⁶²

42. In similar case, indigenous Khasi people of Meghalaya, who will be affected by the 240 MW Umngot Dam, also objected the dam and the public hearings conducted for the project.⁶³ Earlier,

indigenous communities had boycotted public hearings of Tipaimukh hydel project, the 3,000 MW Dibang multipurpose project in Arunachal Pradesh, which was also rejected forest clearance in 2013 with the Tipaimukh project⁶⁴, and Teesta dams in Sikkim, where the 520 Teesta IV hydropower is being considered for environmental clearance after community efforts have resulted in the state government cancelling a total 10 dams⁶⁵. Other controversial projects include are Lower Subansiri hydroelectric project in Arunachal Pradesh, whereby number of activists were arrested after agitations in 2015⁶⁶, Mapithel dam⁶⁷ of the Thoubal multipurpose project in Manipur, reannounced in July 2016 despite much community opposition⁶⁸. The blocking of the Thoubal river since January 2015 has already caused negative impacts to the livelihoods and lives of the indigenous communities⁶⁹ similar to the earlier projects in the region⁷⁰ while the Government of Manipur plans to build at least four new hydropower dam projects in the state⁷¹.

43. Other infrastructure development such as trade and transportation projects have also caused concerns for the rights of indigenous peoples. For example, Mizo people in India and communities in Arakan and Chin states Myanmar have continued their movement demanding community consultations and respect of human rights for implementation of Kaladan Multimodal Transit Transport project between the two countries since the project was founded in 2008.⁷² In another case, six tribal chiefs have petitioned in the court against government agencies and Asian Development Bank for implementing and financing the North Eastern State Roads Investment Program without providing necessary information. The court has notified the agencies and bank to provide assessment of the Program.⁷³

Mining

44. Mining has remained as one of the most serious challenges for the rights of indigenous peoples across India. Particularly, across central Indian tribal belt, number of mining operations have displaced tribals or are being opposed by the tribals for such threats, however with only rare success. In a report in 2016, Amnesty International said that adivasi has suffered disproportionately from India's push for coal, with one in 6 of the 87,000 Indians who have been displaced over the past 40 years by state-owned Coal India Ltd being an adivasi.⁷⁴ Many of India's coal reserves are located in the central and eastern states of Chhattisgarh, Jharkhand and Odisha where more than a quarter of the country's Adivasi population lives. In one representative case in Chattisgarh state, about 400 adivasi Kawar families have been forced out from their ancestral lands due to blasting and water contamination from the Chhal coal mine of India's largest coal producer, South Eastern Coalfields Limited. The mine began in 2003 and is being expanded with growing steel and other plants in Chattisgarh.⁷⁵

45. In a rare victory, in 2015, tribal communities of Mahan forest in Madhya Pradesh blocked attempts to mine coal in their forest after internal wrangling among government ministries and two years of campaign.⁷⁶ Earlier, in 2014, Indian authorities also rejected British mining company Vedanta Resources' plans to mine the Dongria Kondh tribe's sacred Niyamgiri hills after almost a decade of campaigning by the 8,000 strong community.⁷⁷ However, the tribe does not feel safe yet as the company's refinery still sits at the foot of their hills⁷⁸, while the community leaders have been criminalized under various charges.

46. Indigenous peoples in northeast India face similar challenges with mining operations. In Meghalaya, limestone mining project of a subsidiary of the French firm Lafarge to feed its cement plant in Bangladesh has pitted indigenous communities against the tribal advisory council. In 2010, the council supported the mining project in a case filed at India's Supreme court while indigenous communities claim the legal provisions do not allow for transfer of lands that belong to the tribals,

not the government. Earlier, in 2007, the Court had stayed the mining project on the basis of the report of the Ministry of Environment and Forest, which said the company was mining forestland.⁷⁹ As a result, in 2015, India's government has announced initiating forest mapping in the northeast.⁸⁰

47. Also, in Meghalaya, the state government in 2016 revoked its earlier decision that granted permission to the Uranium Corporation of India Limited to conduct pre-mining activities in southwest Khasi hills in the state.⁸¹ The indigenous communities, concerned with the impacts of radiation and toxic waste of the mining, have demanded for a complete cancellation of the project. On the other hand, there are many cases where indigenous peoples continue to face the impacts of past mining operations, such as the oil spills from the Oil and Natural Gas Corporation well sites in Nagaland.⁸² On the other hand, the Government has awarded new contracts for oil exploration and drilling in Manipur⁸³ while North East India Hydrocarbon Vision 2030 has been introduced in 2016 to drill oil and gas all over the region.⁸⁴

Recommendations

48. The Government of India must effectively implement its national laws such as the Forest Rights Act, the LARR Act and acquire prior consent of the concerned tribal communities in line with international human rights standards before undertaking any infrastructure development and mining plans and projects in tribal areas.

49. The Government of India, through meaningful consultations with tribal communities, must formulate its National Action Plan for implementation of the UN Guiding Principles on Business and Human Rights and effectively implement such Plan to provide effective remedy to communities affected by business operations.

III. Continued militarization and human rights abuses

50. Large areas of central and northeast India have remained affected by armed conflicts. State security forces including the Indian Army and armed opposition groups have continued to violate human rights of indigenous peoples in those areas. The security forces allege tribals of having links with armed groups such as Maoists in central India and ethnic militants in the northeast while opposition groups also charge innocent tribals of being “police informers” or not obeying their diktats. Or, they are caught in alleged crossfires.

51. As a result, there are numerous cases of killings, including of children, sexual violence against women, torture and injuries of tribals every year – more at the hands of security forces than armed groups, and many are not even reported.⁸⁵ Most recently, in July 2016, six tribal and Dalit villagers, including a two-year old boy, were shot dead and at least five injured in Odisha in an alleged crossfire between police and the Maoists⁸⁶ while human rights activists allege the police of deliberate killings.⁸⁷ Two months later, the government is yet to initiate the judicial inquiry in the case despite its promise.⁸⁸

52. In northeast India, the government continues to apply Armed Forces Special Powers Act (AFSPA), 1958, despite recommendation from 2nd UPR cycle to repeal the Act. The Act gives special powers to the Indian armed forces in “disturbed areas” and blanket protection for their abuses. It has exposed the whole population of the northeast to abuses, including extrajudicial killings (‘fake encounters’), disappearances, etc. in the name of counter-insurgencies. Arbitrary detentions, in particular, have been a common practice, which is accompanied by torture and other degrading treatment and even disappearance.⁸⁹ In July 2016, the Court held that armed forces could not use

excessive force even in areas that come under the AFSPA and ruled that over 1,500 cases of alleged fake encounters in Manipur, over the last 20 years, “must be investigated”.⁹⁰ Earlier, in 2013, a Commission, set up by the Court, had probed six “sample cases of alleged fake encounters” in that year and found that every one of them “had not been an encounter” ‘and had not been carried out by the security forces in self-defense.’⁹¹

53. All the while, concerns that India relies on armed forces to control many of its own people and capture mineral rich lands of the tribals and the poor for its geo-political aspirations gained strength with reports that the Government manipulated figures to prove increase in militants in Manipur to persuade the Supreme court to dismiss pleas that sought probes into the alleged fake encounters in the state in a case in 2013.⁹² This is further evident in the Government’s decision to continue Nagaland as “disturbed area” for six months in July 2016 despite falling insurgency-related incidents and opposition from Nagaland government and people so as to keep the state under AFSPA.⁹³ The AFSPA has also been extended in Manipur⁹⁴ and Arunachal Pradesh⁹⁵.

54. Continued militarization has also been opposed in other northeastern states. For example, in Mizoram, a governmental committee asked the state government to stop the plan to set up an Indian Army headquarters citing impacts on forests and livelihoods.⁹⁶ The Tripura government also rejected Indian Army’s request for land for a firing range that would have displaced 32 villages.⁹⁷

Recommendations

55. The Government of India must protect its civilians in all instances of violence, particularly at the hands of its own security forces. All sides involved in armed activities should immediately cease attacking civilians.

56. The Government of India must repeal Armed Forces Special Powers Act (AFSPA), 1958 and immediately conduct free and fair investigation into the abuses of the Indian armed forces and hold responsible perpetrators accountable. Further, the Government should stop militarization in tribal areas without the free, prior and informed consent of the concerned tribals.

¹ For the purpose of this submission, the terms ‘Scheduled Tribes (STs)’, ‘tribals’ and ‘Adivasi’ have been interchangeably used to refer to ‘indigenous peoples’.

² Statistical Profile of Scheduled Tribes in India, 2013, Ministry of Tribal Affairs, Government of India, <http://tribal.nic.in/WriteReadData/userfiles/file/Statistics/StatisticalProfileofSTs2013.pdf>

³ See, for example, “6 Assam tribes may soon get Scheduled Tribes status” <http://timesofindia.indiatimes.com/india/6-Assam-tribes-may-soon-get-Scheduled-Tribes-status/articleshow/47335391.cms>. However, classification of Scheduled Tribes

⁴ IWGIA 2016 yearbook

⁵ A/HRC/21/10, Para. 138.5 (Iraq), and Para. 138.26 (Ghana)

⁶ As per the report, the Ministries of External Affairs, states, “[the] government has taken a stand that the concept of indigenous people is not relevant to India.” It further contends, “the ratification of the Convention 169 would, therefore, immediately open the gates to [such] offers of cooperation from other State parties to the Convention, in spite of any declaration/reservation Government of India might make on interpretation of who constitute ‘indigenous people’”. At the same time, the Ministry of Home Affairs asserts, “Article 7 of C-169... would create administrative problems in the formulation of development plans and may distort the planning process in the country. It also comments, “Article 15 (of C-169) envisages fair compensation for the indigenous and tribal peoples when the State retains the ownership of mineral of sub-surface resources. The existing laws in the country safeguard the surface resources rights and the owner of the land for the tribals as well as non-tribals. However, the existing laws do not recognize the right of the landholders, whether tribal or non-tribal, over sub-surface resources.” Further, the Ministry for Tribal Affairs asserts, “there is [also] no need for another UN body to evaluate our tribal development programmes.” See National Commission for Scheduled Tribes, Special Report on Good Governance for Tribal Development and Administration, May 2012, Pages 9-13

<http://www.tribal.nic.in/WriteReadData/CMS/Documents/201409181141029304179SplReportInnerCoverPage.pdf>

⁷ ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Indigenous and Tribal Populations Convention, 1957 (No. 107), 2010, Geneva, doc. No. (ILOLEX) 062010IND107, third para.

⁸ http://articles.economictimes.indiatimes.com/2014-08-01/news/52327716_1_national-tribal-policy-rural-development-lwe

⁹ CERD/C/IND/CO/19, Para. 28, Page 8

¹⁰ A/HRC/21/10, Para. 138.75 (Ghana) & A/HRC/21/10/Add.1, Page 4

¹¹ A/HRC/21/10, Para. 138.73 (Japan)

¹² A/HRC/21/10, Para. 138.72 (USA)

¹³ IWGIA 2015 yearbook, Page 328-332, Also see <https://paperwallah.wordpress.com/2015/01/03/kind-attention-ias-aspirants-summary-of-the-high-level-virginus-xaxa-committee-on-socio-economic-health-and-educational-status-of-tribal-communities-of-india/>

¹⁴ Further, there is no reservation policy in the private sector for weaker sections of the community, including the STs but only a commitment of affirmative action, which the Prime Minister had instructed must not remain simply a paper exercise, but a living reality. See, IWGIA 2014 yearbook, Page 343-344

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ IWGIA 2014 yearbook, Page 336-339

¹⁸ Ibid.

¹⁹ These include Kerala, Tamil Nadu, Karnataka, Uttar Pradesh, Goa, West Bengal and Jammu and Kashmir.

²⁰ The Government of Manipur, for example, passed three controversial bills (the Protection of Manipur People Bill, the Manipur Land Revenue and Land Reforms Bill (Seventh Amendment) and Manipur Shops and Establishments Bill (Second Amendment)). The three bills would directly undermine the existing constitutional safeguards for scheduled tribes in the hill districts of Manipur regarding their identity and rights over their land and natural resources. These bills were passed without prior consultation and consent of the tribal people. In the aftermath of the passing of these three bills by the Government of Manipur, the tribal people launched an agitation where 9 civilians, including an eleven-year-old boy were killed by the security forces in Churachandpur district, Manipur. There has been no probe into the killing conducted so far except for a magisterial inquiry that was commissioned which was stopped by the scheduled tribes. Ever since, the scheduled tribes in Manipur under the aegis of Joint Action Committee against Anti-Tribal Bills in the five hill districts of Manipur and in the national capital of Delhi, have been demanding for justice while the dead bodies lie in the district hospital morgue in Churachandpur. In response to the continued protest and demand for withdrawal of

the bills by the scheduled tribes of Manipur, the Central Govt conceded that experts will examine the first two bills for a 'reasonable conclusion' and as to the third bill, legal and constitutional experts shall re-examine the bill for new legislation taking into consideration all aspects of the hill and valley people of Manipur. However, nothing concrete has happened until date.

²¹ CERD/C/IND/CO/19, Para. 20, Page 5-6

²² A/HRC/21/10, Para. 138.73 (Japan)

²³ A/HRC/21/10, Para. 138.118 (USA)

²⁴ IWGiA 2016 yearbook, Page 329-331

²⁵ Crime in India-2013, Page- 111

²⁶ Crime in India-2013, Page- 116

²⁷ Crime in India-2014, Page - 112

²⁸ <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Table%207.7.pdf>

²⁹ <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Table%207.10.pdf>

³⁰ IWGiA 2016 yearbook, Page 331

³¹ <http://www.dw.com/en/thousands-flee-bangalore-for-fear-of-persecution/a-16170977>

³² The same month, two northeastern students were allegedly beaten in Delhi in another 'hate crime' incident.

<http://www.bbc.com/news/world-asia-india-26131423>

³³ <http://www.aljazeera.com/news/asia/2014/02/outcry-india-after-hate-crime-incident-20142195232434750.html>

³⁴ <http://indianexpress.com/article/india/india-news-india/arunachal-teen-beaten-up-takam-todo-north-eastern-beaten-hit-with-a-stone-on-campus-in-pune2983888/>

³⁵ <http://indianexpress.com/article/pune/a-plea-from-n-e-people-in-pune-call-us-indians-treat-us-equal/>

³⁶ CERD/C/IND/CO/19, Para. 14, 20 and 26

³⁷ A/HRC/21/10, Para. 138.118 (Holy See)

³⁸ See "NGO Shadow Report on Status of Adivasi/Tribal Women in India" for the 58th session of CEDAW, submitted by Inter-State Adivasi Women's Network (ISAWN) of Mainland India, Indigenous Women's Forum of North East India (IWFNEI) and Asia Indigenous Peoples Pact (AIPP), June 2014 <http://aippnet.org/india-ngo-cedaw-shadow-report-and-status-of-ativasi-tribal-women-in-india-for-the-58th-session-of-cedaw/>

³⁹ CEDAW/C/IND/CO/4-5, Para. 10

⁴⁰ CEDAW/C/IND/CO/4-5, Para. 19, 29

⁴¹ CEDAW/C/IND/CO/4-5, Para. 35

⁴² A/HRC/19/55/Add.1

⁴³ See "NGO Shadow Report on Status of Adivasi/Tribal Women in India" for the 58th session of CEDAW, submitted by Inter-State Adivasi Women's Network (ISAWN) of Mainland India, Indigenous Women's Forum of North East India (IWFNEI) and Asia Indigenous Peoples Pact (AIPP), June 2014 <http://aippnet.org/india-ngo-cedaw-shadow-report-and-status-of-ativasi-tribal-women-in-india-for-the-58th-session-of-cedaw/>

⁴⁴ This is despite the Delhi High Court on 21 January 2015 striking down a government order to block overseas funds to the organisation, citing a lack of proof to justify the restrictions. In a confidential leaked report prepared for the Prime Minister's Office in 2014, India's Intelligence Bureau accused 109 NGOs and individuals of 'subversive links', 'retarding development' and of 'serving the strategic foreign policy interests of Western Governments'. See India: End legal restrictions against civil society, International Service for Human Rights (ISHR), 26 April 2015,

<http://www.ishr.ch/news/india-end-legal-restrictions-against-civil-society>

⁴⁵ A/HRC/19/55/Add.1, Para. 138

⁴⁶ UN rights experts urge India to repeal law restricting NGO's access to crucial foreign funding, OHCHR, 16 June 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E#sthash.gX7Fx9Nu.dpuf>

⁴⁷ The Prime Minister's Office had called for comments on the report in December. However, the Committee report has not been made public yet. See IWGiA 2016 yearbook, Page 332-333

⁴⁸ See "Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31 October 2015]" of the Ministry of Tribal Affairs, <http://www.tribal.nic.in/WriteReadData/CMS/Documents/201609090359457165839MPRJuly2016.pdf>

⁴⁹ Further, state governments' recognition and vesting of community rights and community forest resources under the Act was very low, with only 37,000 off 111,000 community rights claims recognized, as reported in May 2015. See IWGiA 2015 yearbook, Page 335-336

⁵⁰ <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2015/07/rri-study-reveals-india-s-tribal-and-forest-commun>

- ⁵¹ The law would give state governments more than USD 895 million a year to conserve and protect forests and wildlife. See <http://www.reuters.com/article/us-india-law-forest-idUSKCN10919X>
- ⁵² <http://www.survivalinternational.org/about/tigers>
- ⁵³ In August 2015, the authorities disconnected electricity lines and shut other social services to the village and let elephants loose to force the tribals to flee after they did not accept compensation <http://iphndefenders.net/india-communication-to-un-special-procedures-for-immediate-intervention-to-stop-forced-evictions-of-gond-tribals-in-panna-tiger-reserve/>
- ⁵⁴ See “Tribal leader targeted for resisting eviction from Similipal”, Odisha Channel, 27 March 2015, <http://odishachannel.com/index.php/3778/tribal-leader-targeted-for-resisting- eviction-from-similipal/>
- ⁵⁵ See “Survival International”, “India: Tiger Reserve tribe faces eviction”, 14 October 2014, <http://www.survivalinternational.org/news/10488>
- ⁵⁶ See “Tribals evicted from Kanha Tiger Reserve must be allowed to return to their forest homes: Right group”, The Economic Times, 15 January 2015, <http://economictimes.indiatimes.com/news/politics-and-nation/tribals-evicted-from-kanha-tiger-reserve-must-be-allowed-to-return-to-their-forest-homes-rights-group/articleshow/45897969.cms>
- ⁵⁷ Indian NGOs Urge China and India to Protect Himalayan Rivers, 13 September 2010, <https://www.internationalrivers.org/resources/indian-ngos-urge-china-and-india-to-protect-himalayan-rivers-3748>
- ⁵⁸ Asia Report on Climate Change and Indigenous Peoples, Asia Indigenous Peoples Pact, 2015, <http://www.cmin.aippnet.org/attachments/article/1338/Asia%20Report.pdf>
- ⁵⁹ The dam has also sparked controversy in Bangladesh where there will be downstream impacts. The dam will submerge more than 275 sq.km. of forests and displace 60,000 people in Manipur, including the indigenous Zeliangrong and Hmar communities, and negatively impact 40,000 people in Bangladesh. <https://www.internationalrivers.org/resources/tipaimukh-high-dam-3499>
- ⁶⁰ http://www.telegraphindia.com/1130726/jsp/frontpage/story_17158266.jsp#.V96jC5N95E5
- ⁶¹ <http://indiatoday.intoday.in/story/ngo-appeals-centre-against-mega-dam-on-siang-river/1/490830.html>
- ⁶² <http://www.thehindu.com/news/national/other-states/assam-opposes-mega-dam-on-siang-river/article7287798.ece>
- ⁶³ <http://meghalayetimes.info/index.php/26-archive/front-page/july-2012/1997-villagers-oppose-240-mw-umngot-hydro-power-project>
- ⁶⁴ http://www.telegraphindia.com/1130726/jsp/frontpage/story_17158266.jsp#.V96qjJN95E5
- ⁶⁵ <https://www.internationalrivers.org/campaigns/teesta-river>
- ⁶⁶ <http://timesofindia.indiatimes.com/city/guwahati/Lower-Subansiri-project-in-trouble-yet-again/articleshow/49330817.cms>
- ⁶⁷ The Forest Clearance for Mapithel dam was accorded under Forest Conservation act, 1980 without the consultation and consent of affected communities.
- ⁶⁸ “Mapithel Dam: Stop violating international standards”, Imphal Times, 11 April 2015 <http://www.imphaltimes.com/it-articles/item/2502-mapithel-dam-stop-violating-international-development-standards>; Also <https://www.change.org/p/prime-minister-of-india-stop-the-commissioning-of-mapithel-dam-in-manipur>
- ⁶⁹ <https://www.internationalrivers.org/blogs/328-22>
- ⁷⁰ See Loktak hydro project turns agricultural land into swamps, 20 October 2011, The Hindu <http://www.thehindu.com/news/national/other-states/loktak-hydro-project-turns-agricultural-land-into-swamps/article2554768.ece>
- ⁷¹ The Government of Manipur signed four new Memorandum of Agreement on 28 August 2014 with the North Eastern Electric Power Corporation (NEEPCO) for construction of 60 MW Irang HEP, 51 MW Tuivai HEP, the 67 MW Khongnem Chakha and 190 MW Pabram HEP projects without recognizing Indigenous peoples rights and consent.
- ⁷² <http://www.kaladanmovement.org/>
- ⁷³ <http://timesofindia.indiatimes.com/city/guwahati/HC-notice-to-ADB-on-Manipur-road-project/articleshow/40385618.cms>
- ⁷⁴ <http://in.reuters.com/article/india-coal-displacement-tribals-mining-idINKCN0ZTOYP>
- ⁷⁵ <http://www.aljazeera.com/blogs/asia/2016/07/displaced-india-indigenous-people-160707062855721.html>
- ⁷⁶ <http://www.climatechangenews.com/2015/03/24/coal-mining-banned-in-indias-mahan-forest/>
- ⁷⁷ <https://www.theguardian.com/global-development/poverty-matters/2014/jan/14/india-rejection-vedanta-mine-victory-tribal-rights>
- ⁷⁸ <http://www.survivalinternational.org/tribes/dongria>
- ⁷⁹ http://www.business-standard.com/article/companies/meghalaya-tribal-council-moves-sc-for-lafarge-project-110100800099_1.html

⁸⁰ <http://www.theshillongtimes.com/2015/11/18/panel-to-study-forest-land-in-ne/>

⁸¹ The controversial plans for uranium mining project at Kylleng-Pyndeng-Sohiong in South West Khasi Hills of Meghalaya, a mountainous and ecologically fragile province in northeast India, has strongly been opposed by the Khasi indigenous peoples now for many decades. The India's Forest and Environment Ministry external link gave clearance to the Uranium Corporation of India Limited (UCIL) in the year 2012 to start uranium mining in Meghalaya with an investment of \$229 million to develop the uranium reserves despite indigenous peoples' opposition, who are concerned about resulting radiation and toxic waste. India's Department of Atomic Energy (DAE), the central governing body for all mining, processing and enrichment of atomic minerals, has estimated a uranium reserve of some 9,500 t in Meghalaya. However, plans for an opencast mine to extract the mineral from the have been hanging fire since 1992 on fears of radiation and environmental hazards. The Government of Meghalaya recently in 2016 decided to revoke its 2009 cabinet decision, which agreed to lease a land measuring 422 hectares for the uranium mine project at Kylleng-Pyndeng-Sohiong in Meghalaya to the UCIL for pre-mining activities. Indigenous peoples demand cancellation of the project and respect for their right to free, prior and informed consent. See <http://indiatoday.intoday.in/story/mukul-sangma-government-revokes-permit-to-ucil-for-exploring-uranium-mines-in-meghalaya/1/730005.html>

⁸² In Nagaland, the oil spills from the Oil and Natural Gas Corporation well sites, which it operated from 1973-94, have continued to destroy villages. Farmlands, forests and water sources, which more than two thousand people rely on for their survival, have been contaminated. Protesters, mainly students, have been demanding the state government to frame modalities for oil fields as the spillage has caused extensive environmental hazard in the area. A court case filed in 2011 seeking compensation has not yielded any result. The Nagaland government constituted a cabinet sub-committee on petroleum and natural gas to frame modalities but it is yet to complete the process. See <https://ejatlas.org/conflict/oil-spillage-in-nagaland-india>

⁸³ The Government of India awarded contract to Jubilant Energy in 2010 for oil exploration and drilling in Tamenglong and Churachandpur District of Manipur without informing and consent of indigenous peoples.

⁸⁴ See "Petroleum Minister releases Hydrocarbon Vision 2030 for North-East", Press Information Bureau, Ministry of Petroleum & Natural Gas, Government of India, 9 February 2016 <http://pib.nic.in/newsite/printrelease.aspx?relid=136255>; Union Government releases Hydrocarbon Vision 2030 for North-East, February 10, 2016 <http://currentaffairs.gktoday.in/union-government-releases-hydrocarbon-vision-2030-north-east-02201630359.html>

⁸⁵ See IWGIA yearbook

⁸⁶ <http://indianexpress.com/article/india/india-news-india/two-year-old-among-6-killed-in-odisha-anti-maoist-ops/>

⁸⁷ <http://www.countercurrents.org/2016/07/20/kandhamal-killings-special-operations-group-should-be-prosecuted/>

⁸⁸ <http://timesofindia.indiatimes.com/city/bhubaneswar/Kandhamal-killings-Promised-judicial-panel-not-in-sight/articleshow/53609664.cms>

⁸⁹ The continuous practice of arbitrary detention is a direct contravene to Article 22 of the Indian Constitution that codified (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

India signed the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, CAT on 14 October 1997 but yet to ratify it despite number of recommendations from the 2nd UPR. Indian obligation passing a related domestic torture legislation in the parliament is also pending. It is the same case for the International Convention for the Protection of All Persons from Enforced Disappearance (CED).

⁹⁰ <http://indianexpress.com/article/explained/manipur-indian-army-afspa-supreme-court-fake-encounter-2905690/>

⁹¹ The commission further found that in all six cases, the perpetrators (security forces) were also the investigators and that police officials involved in an encounter would lodge an FIR against the victim.

<http://indianexpress.com/article/explained/manipur-indian-army-afspa-supreme-court-fake-encounter-2905690/>

⁹² The Government's estimate of militants in Manipur shot up from 1,500 to 5,000 in a span of 10 days during the Supreme Court's hearing into the fake encounters in the north-eastern state but the spike may have just been on paper. The government had reported the two figures in affidavits filed on December 5, 2012, and December 15, 2012, to persuade the court to dismiss pleas that sought probes into the alleged fake encounters in the state. "It is emphasised that only around 1,500 militants are holding a population of about 23 lakhs in Manipur to ransom and keeping the people in constant fear," the government said in the case decided last week.

<http://www.hindustantimes.com/india-news/number-of-manipur-militants-shot-to-5000-from-1500-in-10-days/story-NX4qr7D0XYKWXIDaPiN1J.html>

⁹³ <http://indianexpress.com/article/india/india-news-india/govt-entire-nagaland-will-remain-disturbed-area-2888801/>;

Also see <http://timesofindia.indiatimes.com/india/Home-ministry-declares-whole-of-Nagaland-as-disturbed-area/articleshow/47992195.cms>

⁹⁴ AFSPA extended for a year in Manipur, The Hindu, November 30, 2013,

<http://www.thehindu.com/news/national/other-states/afspa-extended-for-a-year-in-manipur/article5408094.ece>

⁹⁵ See Home Ministry extends AFSPA in Arunachal Pradesh, Assam-Meghalaya border, Economic Times, 10 November, 2015

http://articles.economictimes.indiatimes.com/2015-11-10/news/68165368_1_assam-meghalaya-border-national-socialist-council-afspa

⁹⁶ <http://iphndefenders.net/zo-indigenous-forum-statement-on-propose-army-hq-in-siarang-of-aizawl-district-mizoram/>

⁹⁷ <http://www.thequint.com/opinion/2015/10/02/people-want-fewer-jackboots-in-north-east-india>