

Tribals

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the 2nd Universal Periodic Review (UPR), India received 11 recommendations. These recommendations were made by a cross-regional group of states: the Czech Republic, Germany, Ghana, the Holy See, Japan, Norway, Thailand and the United States of America. The Government of India, however, accepted only two recommendations. The Holy See called for a focus on promoting the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe. Ghana called for the formation of 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 sections such as Schedules Tribes are well achieved.

India supported the UN Declaration on the Rights of Indigenous Peoples (Declaration). The Declaration forbids forcibly displacing indigenous peoples and upholds their right to possess and use their land. It further recognizes indigenous peoples' spiritual relationship with land, plants, and animals, as well as communities' dependence on the environs for food, medicinal purposes, and other daily needs. However, at the ground level, tribals in India are still deprived of land and land-based resources and face systematic discrimination and exclusion from political and economic power. The indigenous people believe that the implementation of a human rights-based approach to development should take into account issues of equality and sustainability, and endorse the fundamental concept of development to take place with full respect to the community's culture and identity.

NATIONAL LEGAL FRAMEWORK

The tribal people in India are often called Adivasis and the government recognizes them as Scheduled Tribes (STs). According to the 2011 census, the Scheduled Tribe population in India was 104.5 million, accounting for 8.63 percent of the total population. In the fifth and sixth Schedule of Indian constitution, there are provisions for protecting the Scheduled Areas and especially Tribal communities against all sorts of exploitative elements including the state itself. The Fifth Schedule provides for special laws to be made for the administration of the

Scheduled Areas by the Governor of the State concerned and for exercise of executive power of the Union in giving direction to the States for the said purpose. Besides, the Article 275(1) of the Constitution in its proviso provides for flow of grants-in-aid out of the Consolidated Fund of India to the States having the Scheduled Areas for promoting the welfare of STs. The Constitution also provides for constitution of the National Commission for STs.

CHALLENGES

ISSUES AND IMPACTS

Forcible acquisition of Tribal Land

The cases of massive alienation of tribals from the natural resources such as land, forests, minerals and water from 5th and 6th Scheduled Areas are ongoing in the name of national development in violation of the protective legislations like Panchayat Extension to Schedule Areas Act (PESA) 1996, and FRA 2006 and The SC and The ST (Prevention of Atrocities) Act 1989. In India's North East alone, more than 200 mega dams are still being pursued without recognizing the human rights, including free, prior and informed consent of indigenous peoples. Similarly, 30 major, 135 medium, and 3000 small dams, were granted approval for construction, including the raising of the height of the Sardar Sarovar Dam in Madhya Pradesh. Dams have already submerged vast tract of indigenous peoples' agriculture land, wetlands and forest. The government data of 1947 - 1990 shows that tribal constituted 55 per cent (8.5 million) of the total displaced population in the country. They have been displaced by various projects such as dams, mines, sanctuaries and industries, all of which have failed to meet the needs of the tribals themselves.

Non-Implementation of Forest Rights Act 2006

Numerous reports and studies point out that over the past ten years, the implementation of the Forest Rights Act has been poor with just 3 percent of community forest resource rights recognized. The empowering provisions of the FRA that call for livelihood security and strengthen forest conservation and governance have been ignored. Policies and programs implemented by the Ministry of Environment, Forests and Climate Change potentially dilute protective legislation (FRA, PESA) and violate the rights of tribals. Notable among these are the Compensatory Afforestation Act (2016), the proposal for leasing of forests to private companies, notification of Village Forest Rules under Indian Forest Act in the states of Maharashtra and Madhya Pradesh, promotion and strengthening of the Joint Forest Management, plantation in land occupied and used by tribals for livelihoods. The most affected communities through these actions are the Particularly Vulnerable Tribal Groups (PVTGs). The diversion of forest lands without the knowledge or consent of Gram Sabhas has been an issue of concern. There are also extreme cases of cancellation of legal titles issued under FRA to allow mining in Chhattisgarh.

State's Control over Forest based Livelihood.

More than 50 million tribal people in India depend on Minor Forest Produce (MFPs) for food, shelter, medicine, cash income and so forth. These resources sustain millions by providing an alternate source of food and income when agriculture ceases to be reliable. The policy environment relating to MFP in India is characterised by the underlying belief that forests are state property and thus all forest products are owned by the state. The state's control even extends to designated forest products growing on private lands and non-forest common lands. In the Indian state of Odisha, the three most economically important NTFP items (i.e. kendu leaf, sal seeds and bamboo) are nationalised and brought by law under the direct control of the state. This is despite legislations like PESA and FRA which clearly defines what is MFP and vest ownership rights as well as powers to the Gram Sabha (Village Assembly) to use and dispose MFPs.

CHALLENGES

Lack of Governor's Accountability in fifth Schedule Areas for ensuring the implementation of constitutional provisions protecting tribal rights

Diversion of earmarked fund of Tribal Sub-Plan (TSP), a strategic policy initiative to secure overall development of the STs.

ISSUES AND IMPACTS

As required by Paragraph 3 of 5th Schedule, Governors are required to submit a statutory annual report and occasional reports as and when required by the President, on their independent assessment of the state of governance in 5th Schedule areas. However, the above constitutional provision has never been complied with. An analysis of annual reports submitted by the Governors to the Centre in the past years shows that these Reports rarely reflect the necessary objective assessment. None of the reports, for example, had analysed or even touched upon the themes of displacement, land alienation, poor governance, communal discord and insurgency, which are the dominant facts of life in many Scheduled areas. The Governors of schedule areas rarely respond to petitions in cases of land conflicts, acquisition for mineral extraction and police atrocities against tribal communities.

The TSP implementation has not made any reasonable impact in poverty reduction of tribals. The TSP money has been illegally diverted and spent on construction of over-bridge, jail, park, bungalows, etc in non-TSP areas. There are multiple agencies involved in Scheduled Areas managing the TSP funds which lacks accountability and transparency. TSP is in the form of guidelines and norms. They are not justiciable, and hence their rampant violation. However, Maharashtra became the first state in India to decide to directly transfer the tribal sub-plan (TSP) fund (which is 5% of the total tribal budget) to the gram panchayats in the scheduled areas due to intervention from the Maharashtra Governor's office.

RECOMMENDATIONS

India should ensure effective implementation of protective legislation, the Panchayat Raj Extension to Schedule Areas Act (PESA) 1996 and Forest Rights Act 2006. India must establish a dedicated institutional mechanism in the nodal ministries with adequate budget and personnel to facilitate implementation of the protective legislations.

India should restore all tribal lands alienated from them by fraudulent means and help them to restore their life of dignity.

Acquisition of land/diversion of forest land must be with the consent of people and Gram Sabha as prescribed in the PESA 1996, Forest Right Act (FRA) 2006, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) 2013, the Samata Judgment 1997 and the Supreme Court directions on 18th April, 2013 on the Niyamagiri Hills of Odisha.

The Mines and Minerals (Development and Regulation) Act, 1957, Coal Bearing Areas (Acquisition and Development) Act 1957, Manipur Hydro Power Policy 2012, North East India Hydrocarbon Vision 2030 should be suitably amended to include consent of the gram sabha to be made mandatory for acquisition of land.

To ensure effective implementation of Tribal Sub-Plan (TSP), a strong legislation at the Union and State level needs to be introduced and implemented in Tribal areas focusing on the development rights of Tribals.

Actions taken by the Governor for safeguarding the interests of tribal communities should be clearly mentioned in the annual Governor's Reports submitted to the President. The Governors must be mandated to ensure the timely submission of these reports.

The Government of India should invite public opinion / suggestions on the Draft National Tribal Policy prepared by the Ministry of Tribal Affairs, Government of India in the year 2006 and thereon finalize the policy before its adoption.

The Government of India must ratify ILO Convention No. 169 on Indigenous Peoples.

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