

# Universal Period Review (UPR) India 2017

## Joint submission - Situation of the rights of indigenous peoples in Northeast India

Joint Submission by

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India's human rights situation and standard will be reviewed in the United Nations Treaty Body - Universal Periodic Review (UPR) for the third time and India has made

commitment in the previous UPR. But the issues of Indigenous Peoples draw little attention in the process as well as on the recommendation.

## **Introduction:**

1. Northeast India is the eastern-most region of India. It is connected to East India via a narrow corridor squeezed between independent nations of Bhutan and Bangladesh. It comprises the contiguous Seven Sister States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura), and the Himalayan state of Sikkim. Except for the Goalpara region of Assam, the rest did not become part of political India until the 19th century and later. The Brahmaputra valley area of Assam became a part of British India in 1824, with the hill regions annexed later. Sikkim was annexed to the Indian union through a referendum in 1975; it was recognized as part of Northeast India in the 1990s.

2. In these 8 states, there are about 250 'recognized' tribes but these number has an incremental factor as the category of Schedule Tribe is an Indian Constitution category where a particular community is identified as a Tribe based on certain anthropological criteria and the social status. According to some researcher Northeast India is a home to more than 500 indigenous peoples (tribes, speaking different languages and cultures). Out of the total constitutionally recognized tribes in India majority of them are found in NE. In India, the term Indigenous Peoples is not recognized despite the fact that India supports the United Nation Declaration on Rights of Indigenous Peoples (UNDRIP). However, there is also a confusing stance where India considers all Peoples in India as Indigenous Peoples.

### **1. Crimes against Scheduled Tribes**

There is an increasing crime against indigenous peoples in India, this has been clearly highlighted in the Crime in India published every year by the government. Large-scale violation of human rights like atrocities by police in custody, cases of encounters and similar such cases are increasing in the Northeastern states as recorded by the National Human Rights Commission (NHRC). A total of 3,579 human rights violation cases all over the Northeast have been registered with NHRC from 2013 to 2016 (up to June 30), and of the total cases registered, 751 cases are still pending with the Commission<sup>1</sup>.

In case of Assam, a total 1,494 human rights violation cases have been registered with NHRC during this period and of the total cases registered, 378 cases are still pending with the Commission.

During the same period, 245 (59 pending) cases from Arunachal Pradesh, 220 cases (107 pending) from Meghalaya, 64 cases (25 pending) from Mizoram, 1,185 cases (49 pending) from Tripura, 61 cases (33 pending) from Nagaland have been registered with the Commission.

In case of Assam, 407 cases (97 pending) of human rights violation cases were registered with NHRC during 2013-14, 644 cases (149 pending) during 2014-15, 366

cases (107 pending) during 2015-16 and 77 cases (25 pending) during 2016 (June)-2017.

The NHRC, during the same period, has also recommended monetary relief to persons or their families living in these NE states, whose human rights were violated. According to NHRC records, Rs 236.2 lakh as relief was provided by the respective authorities to the persons/families concerned in 467 registered cases from Assam as per the direction of the Commission. Rs 37 lakh as relief in 4 cases from Arunachal Pradesh, Rs 212.5 lakh as relief in 37 cases from Manipur, Rs 45.25 lakh as relief in 6 cases from Meghalaya, Rs 2.5 lakh as relief in 3 cases from Mizoram and Rs 14.6 lakh as relief in 8 cases from Tripura were also awarded. Disciplinary action was asked to be taken by the NHRC in one case each registered from Meghalaya and Mizoram<sup>2</sup>.

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>3</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 Indian Penal Code cases and 90.9% relating to Special and Local Laws cases.<sup>4</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 atrocities against Scheduled Tribes were reported in the country during 2014 in which 7,509 tribals became victims of atrocities<sup>5</sup>.

## **2. Militarization**

The instance of human rights violations by state forces including by the Indian Army continues to be of major issue in some states as in the past decades but there has been 'newer' elements of indigenous rights violations by neo liberal forces that destabilizes indigenous systems more than anything else.

Human rights violation in the recent past comprise of arrest, torture, killings in fake encounters by government forces under the regime of Armed Forces Special Powers Act, 1958 (AFSPA). Though rights are indivisible, for this report we will segment this rights violations into two, where in the first part, we will look at civil and political rights and in the second part we will look into the economic, social and cultural rights.

AFSPA continues to be applied exposing the whole population of the region to the abuse of power of the state to arrest, torture and kill. Indigenous Peoples who have been struggling for political self-determination are at higher risk of getting killed if they are overtly defending their rights.

An Inquiry by a Supreme Court appointed Commission headed by Justice N. Santosh Hegde (retired Supreme Court Judge) constituted on 4 January 2013 on 6 cases out of

the 1528 documented fake encounters and its eventual recommendations have restrained the police in Manipur. Along with such preventive measures, the most concerning issue that is being awaited is the deliverance of justice to those thousands of family members of the victims.

The Union home ministry has declared whole of Nagaland as a "disturbed area" for a further period of one year from June 30, 2015<sup>6</sup>. Even there is strong opposition from the community and from the state government. On July 2016 the "disturbed area" notification for the entire state of Nagaland has been renewed for six months by the Centre, giving the armed forces the power to search, raid and arrest without a warrant under AFSPA<sup>7</sup>.

In Mizoram Kolabari Ram Committee has asked Mizoram government to stop the plan to set up an Indian Army Headquarters at Sairang Dinthar. More than half of the proposed for army headquarters is uncultivated forest where the villagers depend on for their daily forest needs and earn their living from. Establishing army headquarters here will cut off access to this forest and impact the livelihood of many families. Therefore, on humanitarian grounds and for the sake of environment protection, the committee appealed the authority to cancel the project<sup>8</sup>.

While deals and strategic alliances are geared towards India's aspirations of being a global power competing with neighbouring China, India also relies on armed forces to control many of its own people. The insurgency in the North-East and the war against the poor in the regions to capture their mineral-rich land for corporate interests has resulted in increased use of the Armed Forces in Internal Security.

The Centre'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<sup>9</sup>.

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<sup>10</sup>.

According to media report the Indian Army had requested for land (for a firing range) and a joint survey was to be taken up in Tripura, and had the proposal got through it would have displaced about 32 villages. Manik Sarkar, Chief Minister, Tripura says that "We took a decision about a week ago not to go ahead with it"<sup>11</sup>.

India's defence forces operate around 81 field and air-to-ground firing ranges in the country, at least three large field firing ranges are currently located in the Northeast: Darranga in Assam's Baksa district, Leimakhong area in Manipur, and Nara Tiding in Arunachal Pradesh<sup>12</sup>.

### **3. Arbitrary Detention and Torture:**

Arbitrary Detention is a common human rights violation in NE. It is mainly due to the existence and movement of the armed opposition groups (AOG) in NE. According to the data provided by the South Asian Terrorist Portal about 3500 members AOGs or so called militants were arrested by security forces during 2011, 2012 and 2013 in the region. The state wise data reads; Assam about 1500, Manipur about 1500, Nagaland about 200, Meghalaya about 200 and about 100 from Tripura and Arunachal Pradesh were arrested.

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.*

And also the principles and standards of the international human rights namely

Article 9 of the Universal Declaration of Human Rights and the International Covenant Civil and Political Rights that mentioned *No one shall be subjected to arbitrary arrest, detention or exile.*

The arbitrary detention is always associated with degrading treatment. The torture of both physical and mental kind is a regular infliction on the detainees. Though its voluminous incidents it is also one of the inadequately documented by local rights groups owing to a very limited flow of information and communication from the victim-families. The victims of the torture hardly come out to go to law courts. The number of cases of torture like beaten up black and blue, broken bones, electric shock, forced urine drink, burning soft skin, insert foreign objects to the body, rubbing chilly on the private parts, etc. are the most common case.

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. Indian obligation passing a related domestic torture legislation in the parliament is also pending.

The key recommendations of the first Universal Periodic Review of India in April 2008 have not been implemented. India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) as well as the International Convention for the Protection of All Persons from Enforced Disappearance (CED).

**4. Land alienation** - Alienation of Indigenous Peoples community from their land in the region comes through the exploration and exploitation of natural resources, infrastructure and development related projects like dams, mining, oil exploration - like

Kaladan Multi Modal Transport Project in Mizoram and for Border Trade centre in Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura and Meghalaya

**Dams:** Making Dams without the proper FPIC of indigenous peoples in Sikkim, Meghalaya, Arunachal Pradesh, Nagaland, Assam, Manipur and Mizoram affecting the social, economic and cultural indigenous peoples.

As many as 100 large dams are being planned in the region with most of them in the state of Arunachal. Some very controversial ones include, Tipaimukh Dam, Lower Subansiri hydro electric project, Teesta dam series, Loktak Hydro Electric Project, Mapithel dam, Siang dam series etc.

The Tipaimukh Multipurpose project dam in Manipur and Mizoram envisages construction of a high rockfill dam downstream of the influence of the Barak with Tuvei rivers to produce 1500 MW hydropower and flood control. 557 households consisting of 2027 persons likely to be affected due to this project in Manipur in addition to 77 villages affected due to land acquisition. The people of Manipur and Mizoram, southwest to Manipur (also to be affected by submergence) are struggling against the construction of the dam.

On the Siang Dams where the government of India has been making effort to build about 15 dams on the river Siang the affected communities have put a stiff front in stopping public hearings as the dam and the process of implementation does not respect the rights of them. Also known as Yarlung Tsangpo in Tibet, both China and India are planning to build several large dams that will forever rob the ancestral domains of the Indigenous Adi and Galo people. The government recently tried to conduct three **public hearings**<sup>13</sup> in three different locations situated on this river. People came out in hundreds to stop officials from reaching the site of the hearings and there were reports of violence by both parties. The Adi and Galo people who will be affected are fighting for no dam on their river. They are also seeking that the Free, Prior and Informed Consent as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) be in place before the government tries to build the dam. Yet in another similar case of Umngot Dam in Meghalaya, the Khasi people who will be affected by this dam clearly refused to acknowledge the dam and the PH. In the past indigenous people have boycotted PHs in the case of Tipaimukh Dam in Manipur, Teesta dams in Sikkim, Dibang dams in Arunachal Pradesh.

The French Mining Company ,Lafarge, operation in Meghalaya, falling under Shella Confederacy, continues to be a concern and the case against this Paris based company which the Indigenous Khasi people have asked for the return of their land used for mining. A Compliance Advisory Ombudsman (CAO) case is also currently being prepared. While the tribal lands for the mining purpose fall under Shella Confederacy and such lands are privately owned lands. According to the local indigenous prevailing traditions and practices, these lands are not transferable. The Sixth Schedule of the Constitution also recognises the special status given to these tribal lands and that the Meghalaya Transfer of Land (Regulation) Act, 1971 has also clearly mentioned that the land in the state belongs to the local indigenous tribals of the state and not of the government. Therefore all mining operations and activities carried out by the company since its inception are totally illegal. The Supreme Court on February 5, 2010 has also passed a ruling questioning the mining operations of Lafarge and a Special Forest Bench

headed by the Chief Justice had stayed the mining activities of the company on the basis of the Ministry of Environment and Forest (MoEF) report which said the company was extracting minerals from the land in the forest area.

The controversial plans for uranium mine project at Kylleng-Pyndeng-Sohiong in Meghalaya a mountainous and ecologically fragile province in north-east India. The India's Forest and Environment Ministry external link has given 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. The clearance comes despite decades of opposition to uranium exploration and mining in the province by local indigenous peoples claiming to be victims of radiation and toxic waste resulting from exploratory drillings by UCIL. India's Department of Atomic Energy external link(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.

Though the Government of Meghalaya has recently decided to revoke the August 24, 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, the local indigenous peoples have demanded for a complete abandoned to the said project negating the very concept of the internationally accepted Free, Prior and Informed Consent.

The oil spill in Nagaland<sup>14</sup> as a result of the crude oil exploration by the Oil and Natural Gas Corporation (ONGC) exploration has been destroying farms, forest and water bodies. Till date no action has been taken however, a court case has been filed asking for compensation for the damage done.

Like summary killings, these 'developmental' projects are seen as foreclosure of future(s) of the communities. In most cases, decisions are made elsewhere and then the projects are brought for implementation negating the very concept of the internationally accepted Free, Prior and Informed Consent.

## **5. Racial Discrimination**

There is a growing situation of intolerance the North Eastern peoples in Major Indian cities Increasing racial discrimination in India especially indigenous women [Take effective measures to prevent all forms of violence and discrimination against articles: 22. 1 &2 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)]. Tens of thousands of panic-stricken people of the northeast living in major cities boarded trains, flights headed to Guwahati or their respective states following rumors of violence targeting them during August 2012. The government don't do enough to prevent this.

**Endnote:**

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1 <http://www.sentinelassam.com/mainnews/story.php?sec=1&subsec=0&id=280147&dtP=2016-09-05&ppr=1#.V81RbjU9asA>

2 <http://www.sentinelassam.com/mainnews/story.php?sec=1&subsec=0&id=280147&dtP=2016-09-05&ppr=1#.V81RbjU9asA>

3 - Crime in India-2013, page- 111

4 - Crime in India-2013, page- 116

5 - Crime in India-2014 page - 112

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

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

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

9 - <http://www.hindustantimes.com/india-news/number-of-manipur-militants-shot-to-5000-from-1500-in-10-days/story-NX4qr7D0XYKWXIDAxPiN1J.html>

10 - <http://thenortheasttoday.com/manipur-shocking-jump-from-1500-to-5000-militants-in-10-days/>

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

12 - Ibid

*<sup>13</sup> The Government of India's Public Hearing (PH) before construction of large projects including dams are short of FPIC. PH in the current environmental clearance process is the only 'democratic' process available to any affected people in India. PH comes at a late stage in a project cycle and the space for meaningful participation by project affected is not even ensured. FPIC on the other hand is about self determining the future of a project. This is the reason why most PHs in North East have been boycotted/stopped by indigenous peoples to be affected by large projects. In Siang dam issue alone 4 PHs have been stopped in the past.*

*<sup>14</sup><http://www.change.org/petitions/india-save-changpang-and-tsorri-villages-from-ongc-oil-spills-in-nagaland>*