

“Safeguarding the Rights of Indigenous Peoples in India”

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Abstract: While India is a signatory to ILO Convention No. 107 on Indigenous and Tribal Populations (the predecessor to Convention 169) and voted in favour of the UNDRIP, it has adamantly insisted that its own indigenous peoples cannot claim status or protection under these laws. The government rejects the very term ‘indigenous people, insisting that all Indians are indigenous, and is particularly hostile to any reference to the rights of indigenous people to autonomy, self-governance or self-determination. This is despite the fact that India’s own laws provide for varying degrees of such protection - in some cases, far reaching - to certain communities. India is the homeland of a large population of Indigenous peoples and is determined by its environment, geographical attributes, historical legacy, socio-economic circumstances culture, and a staggering diversity of ethnicities as well as regional uniqueness. India has Indigenous peoples that constitute the second largest in the world after Africa. Indigenous and tribal peoples are often known by national terms such as native peoples, aboriginal peoples, first nations, adivasi, janajati, hunter-gatherers, or hill tribes. Given the diversity of peoples it aims at protecting, the Convention uses the inclusive terminology of “indigenous and tribal peoples” and ascribes the same set of rights to both groups. The Constitution of India has enough space to progress and the sufficient Constitutional safeguards for the indigenous people, but in reality, it is actually missing and the right of indigenous peoples is not properly protected and the policies are not acutely implemented in the country. This paper analyse scheduled Tribes in India which is consider them as Indigenous people in India.

Key Words: Indigenous Peoples, Tribes, Human Rights, Protection, laws, Safeguards

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I. INTRODUCTION

India is the seventh largest country in the world with an area of 3.2 million square kilometers, a land boundary of 15000 km, peninsular coastline of 7700 km, 600 island territories. Island territories in the east are 1300 km away from the mainland and virtually adjacent to India’s ASEAN neighbors. India shares its land boundaries with six countries like Bangladesh with 4339 km; it is with China 3439 km; India it has Pakistan 3325 km; and with Myanmar 1380 Km; Nepal and Bhutan and maritime boundaries with seven countries like - Pakistan, Maldives, Sri Lanka, Indonesia, Thailand, Myanmar, and Bangladesh. The world views of indigenous societies, irrespective of their geographical location, are strikingly similar with respect to land and the variety of life system supported by it.

The idea of ‘indigenous people’ is an issue of considerable contention in India today. In India, the description ‘indigenous people’ is usually applied to the ‘Scheduled Tribes’ who constitute nearly eight percent of the population of the country, they have enjoyed a constitutional protection in political representation, they have no got much of the benefits of development in the country. India has the largest concentration of tribal people anywhere in the world except perhaps in Africa. The prominent tribal areas constitute approximately about 15 percent of the total geographical area of the Country. But, the term ‘indigenous’ has prevailed as a generic term for many years in India. In some countries, there may be preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, and janajati. Occupational and geographical terms like hunter-gathers, nomads, peasants, hill people etc., also exist and for all practical purposes can be used interchangeable with indigenous people. India has the largest population of tribal people in the world. The largest tribes are found in central India, although the tribal population accounts for only around 10 percent of the region's total population. Major concentrations of tribal people live in Maharashtra, Orissa, and West Bengal. In the south of the country, about 1 percent of the populations of Kerala and Tamil Nadu are tribal, whereas about 6 percent of the people living in Andhra Pradesh and Karnataka are members of tribes. In the northeastern states

of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland, up to 90 percent of the population is tribal and almost they are living in rural areas. However, in the remaining northeast states of Assam, Manipur, Sikkim, and Tripura, tribal peoples make up between 20 percent and 30 percent of the population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognised. The main concentration of tribal people is the central tribal belt stretching from Rajasthan to West Bengal in the middle part of the India and found in the seven the north-east Indian states. However, they have their presence in all states and union territories, where the STs are usually referred to as Adivasis, which literally means indigenous peoples.

The term "tribe" originated around the time of the Greek city-states and the early formation of the Roman Empire. The Latin term "tribus" has since been transformed to mean, "a group of persons forming a community and claiming descent from a common ancestor". Today, the range of groups referred to as 'tribal' is truly enormous. Not everyone, however, can be deemed to be a member of a 'tribe'. More recent is, those peoples who resisted joining in larger nation-state entities were also labelled by the nation-states themselves to be "tribes." It is with the people described as 'tribes' that the term 'indigenous people' has generally come to be associated in India. It is assumed that they have been the original settlers of what geographically constitutes India today or at least people who inhabited the region before the coming of the more dominant sections of the Indian society. So that the communities of people of today, whom the anthropologists call tribals, happen to be the indigenous, autochthonous (adivasis, adimjuti) people of the land, in the sense that they had long been settled in different parts of the country.

II. REVIEW OF LITERATURE

UN Declaration on the Rights of Indigenous Peoples, On 13 September 2007, the United Nations General Assembly held a historic vote to adopt the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration constitutes a major step towards addressing the widespread and persistent human rights violations against Indigenous peoples worldwide. It is the most comprehensive and universal international human rights instrument explicitly addressing the rights of Indigenous peoples.

Permanent Forum on Indigenous Issues 2000, The UN Permanent Forum on Indigenous Issues was established in July 2000 as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

C.R Bijoy, Shankar Gopalakrishnan and Shomona Khanna (2010), in the text book, namely, **INDIA AND THE RIGHTS OF INDIGENOUS PEOPLES**, examines India is home to the largest population of indigenous peoples of any country in the world. They include not only communities who live under conditions of extreme destitution, but also communities with social indicators well above the national average. But across circumstances and areas, like other indigenous communities around the world, India's indigenous peoples do share one characteristic – social, political and economic marginalisation. Study focused on the extent to which the Indian political and legal situation conforms to the principles of equity, self-governance and justice that underlie the international instruments. India falls far short of international standards on indigenous peoples' rights. The seemingly impressive range of legal and policy instruments that exists in Indian law for indigenous peoples' rights is vitiated by one fundamental flaw – the Indian state's reluctance to respect the political rights of indigenous peoples and the subsequent widespread violations of these.

B. N. Bordoloi (1986), "Alienation of Tribal Land and Indebtedness"- a book containing the proceedings, recommendations and papers presented in the National Seminar on Alienation of Tribal Land and Indebtedness held at Guwahati. Alienation of land and indebtedness are two major causes of poverty among the Scheduled Tribe communities in India. These two are interrelated so much so that we can hardly think of one without the other. Infact it is indebtedness which ultimately leads to alienation of land. The magnitudes of the problem of land alienation and indebtedness among tribal communities differ from state to state, region to region and tribe to tribe. Similarly land system and land management policies throughout the country are not uniform because of the fact land in a state subject. The tribal people themselves have some customary laws in respect of land management. To prevent alienation of tribal land and to curb the money-lending activities in the tribal areas, different states have been adopting legal measures since independence. But in spite of these legal measures alienation of tribal land is going on in different states undated. Similarly the legal and other measures have failed to curb the money-lending business in tribal areas.

B.N. Bordoloi & G.C. Sharma Thakur (1988), "Tribes of Assam, Part-II, Popular Series" –a book containing ethnographic write-ups on six scheduled tribes of Assam covering hills and plains with sufficient number of plates representing their life and culture. They were the four from the hills and two from the plains namely, Barmans of Cachar, Hmars, Kukis, Rengma Nagas, Sonowals and Zeme Gagas of N.C. Hills.

Report on the survey of Alienation of Tribal land in Assam (1999), Alienation of tribal land in the country is one of the major problems and it has been identified as one of the causes of tribal unrest in India.

International Labor Organization (ILO) Convention 169, 1989, The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The Convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples. It determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957.

III. OBJECTIVES OF THE STUDY

The objectives for the research work are planned under-

1. To conceptualized the rights of Indigenous Peoples;
2. To understand the Constitutional Safeguards of rights of Indigenous peoples in India;
3. To examine the situations of rights of Indigenous peoples in India;
4. To examine the status and importance of rights of Tribal Peoples as describe Indigenous in India;

IV. RESEARCH METHODOLOGY

For the purpose of the study of ‘Land rights of Indigenous Peoples in India with reference to the Northeastern States’, an analytical study follows the descriptive method. In this study data have been collected by using secondary sources. Secondary data and information have been collected from different published books, journals, internet sources, published research papers and articles.

V. WHO ARE INDIGENOUS PEOPLES?

Indigenous peoples, also known as first peoples, aboriginal peoples or native peoples, are ethnic groups who are the original settlers of a given region, in contrast to groups that have settled, occupied or colonized the area more recently. Groups are usually described as indigenous when they maintain traditions or other aspects of an early culture that is associated with a given region. Indigenous peoples may be settled in a given region (sedentary) or exhibit a nomadic lifestyle across a large territory, but they are generally historically associated with a specific territory on which they depend. Indigenous societies are found in every inhabited climate zone and continent of the world. In other words, Indigenous peoples are the population as comprising the descendants of people who inhabited the present territory of a country at the time when persons of a different culture or ethnic origin arrived there from other parts of the world and overcame them. Indigenous and tribal peoples in many parts of the world do not enjoy their fundamental rights in the states in which they live to the same degree as the rest of the populations. Presently, they are non-dominant sections of the society because of their poverty and illiteracy. United Nations Permanent Forum on Indigenous Issues (UNPFII) affirmed that indigenous people which is, also termed aboriginal people, native people, or autochthonous people are distinctive groups protected in international or national legislation as having a set of specific rights based on their linguistic and historical ties to a particular territory, prior to later settlement, development, and or occupation of a region. The session affirms that since indigenous peoples are vulnerable to exploitation, marginalization, oppression, forced assimilation, and genocide by nation states formed from colonizing populations or by politically dominant, different ethnic groups, special protection of individuals and communities maintaining ways of life indigenous to their regions, are entitled to special protection.

VI. DEFINITION OF INDIGENOUS PEOPLES

No formal definition is given to the term “indigenous people” or “indigenous population” by the United Nation. According to Baogang He, indigenous people are often seen as a minority who suffered injustice and oppression in the past and are still disadvantaged in the present. They are still facing discrimination in every aspect of their lives. Most of the experts in the field are of the view that, internationally, it is not necessary to strictly define who the indigenous populations really are legally. However, we should note that there is also “the need to define who the right holders of the emerging human rights regime for indigenous peoples are”. As Jeremie Gilbert, Anna Meijknecht, Byung Sook de Vries, M. Lundberg, Y. Zhou and others rightly pointed out; there is no globally accepted lawful definition of indigenous populations or tribal peoples.

James Anaya, former Special Rapporteur on the Rights of Indigenous Peoples, has defined indigenous peoples as "living descendants of pre-invasion inhabitants of lands now dominated by others. They are culturally distinct groups that find themselves engulfed by other settler societies born of forces of empire and conquest".

The Merriam Webster Dictionary defines the indigenous peoples as, “a body of persons that are united by a common culture, tradition, or sense of kinship, which typically have common language, institutions, and beliefs, and often constitute a politically organised group.”

In 1982 the United Nations Working Group on Indigenous Populations (WGIP) accepted as a preliminary definition a formulation put forward by Mr. Jose R. Martinez-Cobo, Special Rapporteur on Discrimination against Indigenous Populations. This definition has some limitations, because the definition applies mainly to pre-colonial populations, and would likely exclude other isolated or marginal societies.

“Indigenous communities, peoples, and nations are those that, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

The Imperial Gazetteer of India, 1911, defines a tribe as a ‘collection of families bearing a common name, speaking a common dialect, occupying or professing to occupy a common territory and is not usually endogamous through originally it might have been so’. By D.N. Majumdar is that “a tribe is a collection of families or group of families bearing a common name, members of which occupy the same territory, speak the same language and observe certain taboos regarding marriage, profession or occupation and have developed a well-assessed system of reciprocity and mutuality of obligations. And some eminent scholar defines their own ways like- Gillin and Gillin: any pre-literate local group may be termed as tribe, whose members reside in a common area, speak a common language and have common culture. Dr. W.H.R. Rivers: Tribe is a simple type of social group whose members speak a common dialect and work together at the time of war. R.N. Mukherjee: a tribe is that human group, whose members have common interest, territory, language, social law and economic occupation.

From the above definitions, it is clear that the Indigenous peoples or aboriginal peoples are those who were living on their lands before settlers came from elsewhere. They are the descendants of those who inhabited a country or a geographical region at the time where peoples of different cultures or ethnic origin arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means. Thus, they are the people who belong to pre-invasion and pre-colonial societies and they consider themselves distinct from other sections of the societies prevailing in those territories or part of them. Indigenous peoples are also called “First People,” “Tribal Peoples,” “Aboriginals”, and “Autochthons”. Indigenous people, aboriginal people, or native people, are groups protected in international or national legislation as having a set of specific rights based on their linguistic and historical ties to a particular territory, their cultural and historical distinctiveness from other populations.

VII. CHARACTERISTICS OF INDIGENOUS PEOPLES

The World Bank suggested identifying indigenous peoples on the basis of the following characteristics. But, it may not be possible for any community to meet all these attributes or requirements.

1. Close attachment to ancestral territories and the natural resources in those areas;
2. Self-identification and identification by others as members of a distinct cultural group;
3. An indigenous language, often different from the national language;
4. The presence of customary social and political institutions; and
5. Primarily subsistence-oriented production;

Characteristics of Tribes in India, with understanding of the concept of tribes, it becomes easy or us now to understand and appreciate the characteristics of tribes. T. B. Naik has given the following features of tribes in Indian context.

1. A tribe should have least functional interdependence within the community.
2. It should be economically backward (i.e. primitive means of exploiting natural resources, tribal economy should be at an underdeveloped stage and it should have multifarious economic pursuits).
3. There should be a comparative geographical isolation of its people.
4. They should have a common dialect.
5. Tribes should be politically organized and community Panchayat should be influential.
6. A tribe should have customary laws.

Naik argues that for a community to be a tribe it should possess all the above mentioned characteristics and a very high level of acculturation with outside society debar it from being a tribe. Thus, term usually denotes a social group bound together by kin and duty and associated with a particular territory.

From the above descriptions, one can make out certain attributes or requirements necessary to claim indigenous status. The distinguishing characteristics of indigenous peoples are the following:

1. They are the descendants of the original inhabitants of the land before colonial conquest.
2. They are usually tribal or communitarian in their status and outlook
3. They have a subsistence economy, engaging primarily in hunting, food gathering, and shifting cultivation.
4. They are united on the basis of real or imaginary common blood ties.
5. They are guided by customary laws.
6. They live in close association with nature.

7. They have been marginalised, and made subordinate to communities that migrated and colonised the land.
8. They continue to follow old customs and traditions despite being a part of nation states with different values and ethos.

VIII. UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The UN Declaration on the Rights of Indigenous Peoples constitutes a major step towards addressing the persistent human rights violations against Indigenous peoples worldwide. It is the most comprehensive universal international human rights instrument explicitly addressing the rights of Indigenous peoples. The Declaration provides a principled and normative legal framework for achieving reconciliation between Indigenous and non-Indigenous peoples around the world.

On 13 September 2007, the United Nations General Assembly held a historic vote to adopt the United Nations Declaration on the Rights of Indigenous Peoples declared that “the 13th of September 2007 will be remembered as a day when the United Nations and its Member States, together with Indigenous Peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.” The Declaration does not create any new rights. It responds to the “urgent need to respect and promote the inherent rights of indigenous peoples”. The rights of Indigenous peoples include, inter alia: enjoyment of all human rights under international law; equality with all other peoples; self-determination, including self-government; recognition and enforcement of treaties; identity and membership; maintenance and strengthening of their distinct institutions; live in freedom, peace and security; traditions, customs, cultural heritage and intellectual property; traditional medicines and health practices; subsistence and development; lands, territories and resources; education; conservation and protection of environment; labour and cross-border contacts and co-operation. Throughout the Declaration, harmonious and co-operative relations between Indigenous peoples and States are promoted in diverse ways.

States are required to establish effective mechanisms, in conjunction with Indigenous peoples, to resolve issues relating to lands, territories and resources or other property of which Indigenous peoples have been dispossessed. The United Nations, its bodies and specialized agencies “shall promote respect for and full application of the provisions of this Declaration and follow up its effectiveness”. The Declaration elaborates international human rights standards for the “survival, dignity and well-being of the world’s Indigenous peoples”. In 1985, the Working Group on Indigenous Populations (WGIP) began to formulate articles for inclusion in a Declaration.

Increasing international concern was generated as a result of widespread human rights violations against Indigenous peoples. As a result; over 370 million Indigenous people in over 70 countries now have a universal instrument and framework for addressing ongoing human rights transgressions. Indigenous peoples are affirmed as “members of the human family”, reinforcing the international human rights system and its universality.

IX. INDIGENOUS PEOPLES AT UNITED NATIONS

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and International Human Rights Law. The Declaration goes on to guarantee the rights of Indigenous peoples to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous peoples have the right to be free from discrimination, and the right to a nationality.

1. World Conference

The General Assembly, in its resolution 65/198 of 21 December 2010, decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

2. System-Wide Action Plan

At the 2014 World Conference on Indigenous Peoples, the General Assembly requested the development of a system-wide action plan for a coherent approach to achieving the ends of the UNDRIP. The system-wide action plan covers six elements: Raise awareness of the UN Declaration on the Rights of Indigenous Peoples; Support the implementation of the UN Declaration on the Rights of Indigenous Peoples, particularly at the country level; Support the realization of indigenous peoples’ rights in the implementation and review of the 2030 Agenda for Sustainable Development; Map existing standards and guidelines, capacities, training materials and resources within the United Nations system, international financial institutions and the

members of the Inter-Agency Support Group on Indigenous Peoples’ Issues for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples; Develop the capacities of States, indigenous peoples, civil society and United Nations personnel; and Advance the participation of indigenous peoples in United Nations processes.

3. 2030 Agenda

The United Nations General Assembly adopted the 2030 Agenda for Sustainable Development titled “Transforming Our World: the 2030 Agenda for Sustainable Development” on 25 September 2015. As a result of indigenous peoples’ strong engagement in the process towards the 2030 Agenda, refers to indigenous peoples and one in the section on follow up and review that calls for indigenous peoples’ participation. The 2030 Agenda contains numerous elements that can go towards articulating the development concerns of indigenous peoples, and overall focus on reducing inequalities is of particular relevance to indigenous peoples, who are almost universally in situations of disadvantage vis-à-vis other segments of the population.

4. Indigenous Peoples and the MDGs

The key recommendations to better integrate indigenous peoples’ issues into MDG programmes and policies: recognition of indigenous peoples as distinct peoples and the respect for their individual and collective human rights is crucial for achieving a just and sustainable solution to the widespread poverty that affects them; to ensure that indigenous peoples have universal access to quality, culturally-sensitive social services- in education, culture, and child healthcare; include the active participation and free, prior and informed consent of indigenous peoples so as to avoid loss of land and natural resources for indigenous peoples and the accelerated assimilation and erosion of their cultures.

5. International Year of Indigenous Languages 2019

Languages play a crucial role in our daily lives. The ongoing loss of indigenous languages is particularly devastating, as the complex knowledge and cultures they foster are increasingly being recognized as strategic resources for good governance, peace building, reconciliation, and sustainable development. In 2016, the United Nations General Assembly adopted a resolution proclaiming 2019 as the International Year of Indigenous Languages, based on a recommendation by the Permanent Forum on Indigenous Issues. The IYIL2019 will mobilize stakeholders to act in five key areas: Increasing understanding, reconciliation and international cooperation; creating favourable conditions for knowledge-sharing and dissemination of good practices; Integrating indigenous languages into a standard setting; Empowering through capacity building; Elaborating new knowledge to foster growth and development.

6. Participation at the UN/UNGA Process

On 8 September 2017 the General Assembly adopted resolution A/RES/71/321 entitled Enhancing the Participation of Indigenous Peoples’ Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting them.

7. Inter-Agency Support Group

The Inter-Agency Support Group (IASG) on Indigenous Issues was established to support and promote the mandate of the UN Permanent Forum on Indigenous Issues within the United Nations system. The main objectives of the UN Inter-agency support group are: To provide an opportunity for the exchange of information in regards to their work on indigenous issues; Strengthen inter-agency cooperation to promote the human rights and well-being of indigenous peoples including the dissemination and implementation of the UN Declaration on the Rights of Indigenous Peoples; Analyze, disseminate and contribute to the implementation of the recommendations of the Forum; Interact with the Forum and its members to provide and seek information, advice and substantive inputs; and Advise in the mainstreaming of indigenous peoples issues within the UN system, and strengthen mutual collaboration.

8. UN Country Teams

The basis for UN Country Teams’ support to Member States on indigenous issues is the United Nations Declaration on the Rights of Indigenous Peoples (2007), which establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world’s indigenous peoples. All over the world, indigenous peoples face exclusion, discrimination and multiple challenges in terms of threats to their cultures, languages and identity. Indigenous peoples should therefore be part of the United Nations’ core work. Recognition of indigenous peoples: The recognition of indigenous peoples varies from country to country, and region to region.

9. International Day

The UN General Assembly had proclaimed 1993 the International Year of the World's Indigenous People, and the same year, the Assembly proclaimed the International Decade of the World's Indigenous People, starting on 10 December 1994. The goal of the First International Decade was to strengthen international cooperation for solving problems faced by indigenous people in such areas as human rights, the environment, development, education and health. The World's Indigenous People shall be observed on 9 August every year and the date marks the day of the first meeting, in 1982. On this day, people from around the world are encouraged to spread the UN's message on the protection and promotion of the rights of indigenous peoples.

10. International Decade

In 1994, the United Nations General Assembly adopted and launched the International Decade of the World's Indigenous Peoples in 1995-2004 to increase the United Nations' commitment to promoting and protecting the rights of indigenous peoples worldwide.

11. Capacity Development and Training

Through a grant from the International Fund for Agricultural Development (IFAD), the Secretariat of the UN Permanent Forum has been able to initiate training programmes on indigenous peoples' issues to government agencies, indigenous peoples' organizations, and UN System staff at country level. The aims of the training programmes are to improve the situation of indigenous peoples at country level through capacity building and awareness rising on indigenous peoples' issues.

12. Internships/Fellowships

The United Nations System offers a wide array of opportunities for indigenous peoples to actively and effectively participate in UN meetings that concern them, and get involved with the different UN mechanisms that specifically address indigenous people's issues. The Internship, Young Professionals Programme (YPP) and OHCHR Indigenous Fellowship Programme are of resources and funding opportunities for the Indigenous peoples of the world.

13. Funding Opportunities

Funding Opportunities for Indigenous Peoples are; (1) The Voluntary Fund for Indigenous Peoples awards grants to representatives of indigenous peoples' organizations to travel and participate in the sessions of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the Human Rights Council, including its Universal Periodic Review mechanism, and the treaty bodies. The Fund is administered by the Office of the High Commissioner for Human Rights. The website provides all of the relevant information, including application forms. (2) The Convention on Biological Diversity has a voluntary fund to assist indigenous and local community representatives to participate in meetings of interest to them held under the Convention. (3) The World Intellectual Property Organization also has a voluntary fund for indigenous and local communities to participate in relevant WIPO meetings. (4) The Global Environment Facility's Small Grants Programme aims to deliver global environmental benefits in the GEF Focal Areas of biodiversity conservation, climate change mitigation, protection of international waters, prevention of land degradation (primarily desertification and deforestation), and elimination of persistent organic pollutants through community-based approaches. (5) The objective of the IFAD Indigenous Peoples Assistance Facility (IPAF) is to strengthen indigenous peoples' communities and their organizations by financing small-projects which foster their self-driven development in the framework of the UN Declaration on the Rights of Indigenous Peoples, and to generate lessons learned and approaches for replication and up-scaling. (6) The United Nations Democracy Fund invites civil society organizations to apply for funding for projects to advance and support democracy.

X. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS PEOPLES' HUMAN RIGHTS

Indigenous Peoples' rights overlap with many other human rights. Many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

1. Draft Declaration on the Rights of Indigenous Peoples

This is the most comprehensive statement of the rights of Indigenous Peoples to date, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of Indigenous Peoples to the protection of their cultural property and identity as well as the rights to education, employment, health, religion, language and more. It also protects the right of Indigenous Peoples to own land collectively. The draft Declaration is divided into nine parts: Part I: Fundamental Rights; Part II: Life and Security; Part III: Culture, Religion, and Language Laws; Part IV: Education, Media, and Employment; Part V: Participation and Development; Part VI: Land and Resources; Part VII: Self Government and Indigenous; Part VIII: Implementation; and Part IX: Minimum Standards.

2. Universal Declaration of Human Rights 1948

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Universal Declaration of Human Rights is the first international document that states that all human beings are - **Article 1:** “Equal in dignity and rights”, **Article 2:** Everybody is entitled to the rights in the Declaration, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, **Article 3:** “Everyone has the right to life, liberty and security of person.”

3. Convention on the Prevention and Punishment of the Crime of Genocide 1951

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required. Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: **Article 2:** “killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group”.

4. International Covenant on Civil and Political Rights 1966

The Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It is recognizing that these rights derive from the inherent dignity of the human persons. Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. **Article 27:** “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

5. International Covenant on Economic, Social and Cultural Rights 1966

It is considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms. Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant. **Article 9:** “The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” **Article 14:** “Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”

6. Convention on the Elimination of All Forms of Racial Discrimination 1966

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. The United Nations Declaration on the Elimination of All Forms of Racial

Discrimination of 20 November 1963 solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person. To adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination. Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State.

7. International Labor Organization (ILO) Convention 169, 1989

The ILO Indigenous and Tribal Peoples Convention was the first international convention to address the specific needs for Indigenous Peoples' human rights. The Convention outlines the responsibilities of governments in promoting and protecting the human rights of Indigenous Peoples. It determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957. The general policy of Indigenous and Tribal Peoples Convention, 1989 (No. 169) adopted tribal related issues: **Article 1:** (1) This Convention applies to: (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. (2) Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. (3) The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. **Article 2:** (1) Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. (2) Such action shall include measures for: (a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; (b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; (c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life. **Article 3:** (1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. (2) No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention. **Article 4:** (1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. (2) Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned. (3) Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures. **Article 5:** In applying the provisions of this Convention: (a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; (b) The integrity of the values, practices and institutions of these peoples shall be respected; (c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected. **Article 6:** (1) In applying the provisions of this Convention, governments shall: (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. (2) The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. **Article 7:** (1) The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent

possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. (2) The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement. (3) Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. (4) Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. **Article 8:** (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws. (2) These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. (3) The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties. **Article 9:** (1) To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. (2) The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases. **Article 10:** (1) In imposing penalties lay down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics. (2) Preference shall be given to methods of punishment other than confinement in prison. **Article 11:** The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens. **Article 12:** The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

8. Convention on the Rights of the Child 1990

Recognizing that the child for the full and harmonious development of his or her personality; should grow up in a family environment, in an atmosphere of happiness, love, and understanding. Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity. The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children **Article 2**, the broadcasting of information by the mass media in minority languages **Article 17**, the right to education, including education on human rights, its own cultural identity, language and values **Article 29**, Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language.

9. Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities 1992

The General Assembly, Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion, Inspired by the provisions of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities. This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people- **Article 1:** Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities; **Article 2:** The free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority; **Article 3:** The exercise of minority rights, both individual and in groups; **Article 4:** Education of about minorities.

10. Rio Declaration of Environment and Development and Agenda 21, 1992

These two i.e., Rio Declaration of Environment and Development and Agenda 21 documents are connected to the Earth Summit in Rio de Janeiro. In them, the special relationship between Indigenous Peoples and their lands is acknowledged. Indigenous Peoples have a vital role in environmental management and

development because of their traditional knowledge and practices. **Principle 22:** “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”. **Principle 23:** “The environment and natural resources of people under oppression, domination and occupation shall be protected”. In order to fully make use of that knowledge included in - **Chapter 26.1 of Agenda 21:** “Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term “lands” is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.” **Chapter 26.4 of Agenda 21:** Some Indigenous Peoples might need greater control over their land, self-management of their resources and participation in development decisions affecting them.

11. Convention on Biological Diversity 1992

The General Assembly: Recalling the Convention on Biological Diversity, See United Nations Environment Programme, Convention on Biological Diversity, on the conservation of biological diversity, and related chapters, Deeply concerned by the continuing loss of the world's biological diversity, and, on the basis of the provisions of the Convention, reiterating the commitment to the conservation of biological diversity and the sustainable use of its components, as well as the fair and equitable sharing of benefits arising from the use of genetic resources. **Article 8(j):** The Convention calls upon its signatories to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;”

12. Vienna Declaration and Programme of Action 1993

the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations. The Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. It “recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being.” Furthermore, the declaration called for the completion of the draft Declaration on the Rights of Indigenous Peoples, the renewal and updating of the mandate of the Working Group on Indigenous Populations and the proclamation of the International Decade of Indigenous Peoples. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

13. Report of the International Conference on Population and Development 1994

The 1994 International Conference on Population and Development occurs at a defining moment in the history of international cooperation. At the Conference it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population- and development-related services that are socially, culturally and ecologically appropriate. **Paragraph 6.24:** report of the International Conference on Population and Development objectives are: (a) To incorporate the perspectives and needs of indigenous communities into the design, implementation, monitoring and evaluation of the population, development and environment programmes that affect them; (b) To ensure that indigenous people receive population- and development-related services that they deem socially, culturally and ecologically appropriate; (c) To address social and

economic factors that act to disadvantage indigenous people. **Paragraph 6.25:** Governments and other important institutions in society should recognize the distinct perspective of indigenous people on aspects of population and development and, in consultation with indigenous people and in collaboration with concerned non-governmental and intergovernmental organizations, should address their specific needs, including needs for primary health care and reproductive health services. All human rights violations and discrimination, especially all forms of coercion, must be eliminated. **Paragraph 6.26:** Within the context of the activities of the International Decade of the World's Indigenous People, the United Nations should, in full cooperation and collaboration with indigenous people and their relevant organizations, develop an enhanced understanding of indigenous people and compile data on their demographic characteristics, both current and historical, as a means of improving the understanding of the population status of indigenous people. Special efforts are necessary to integrate statistics pertaining to indigenous populations into the national data-collection system. Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend. **Paragraph 6.27:** Governments should respect the cultures of indigenous people and enable them to have tenure and manage their lands, protect and restore the natural resources and ecosystems on which indigenous communities depend for their survival and well-being and, in consultation with indigenous people, take this into account in the formulation of national population and development policies.

14. Durban Declaration and Programme of Action 2001

The Durban Declaration and Programme of Action have a specific section dealing with Indigenous Peoples issues. Perhaps more important than all the recommendations is the fact that the Declaration is the first United Nations document that uses the phrase “Indigenous Peoples” rather than “Indigenous People. For the Indigenous peoples: **15 Urges States:** (a) To adopt or continue to apply, in concert with them, constitutional, administrative, legislative, judicial and all necessary measures to promote, protect and ensure the enjoyment by indigenous peoples of their rights, as well as to guarantee them the exercise of their human rights and fundamental freedoms on the basis of equality, non-discrimination and full and free participation in all areas of society, in particular in matters affecting or concerning their interests; (b) To promote better knowledge of and respect for indigenous cultures and heritage; and welcomes measures already taken by States in these respects; **16 Urges States:** To work with indigenous peoples to stimulate their access to economic activities and increase their level of employment, where appropriate, through the establishment, acquisition or expansion by indigenous peoples of enterprises, and the implementation of measures such as training, the provision of technical assistance and credit facilities; **17 Urges States:** To work with indigenous peoples to establish and implement programmes that provide access to training and services that could benefit the development of their communities; **18 Requests States:** To adopt public policies and give impetus to programmes on behalf of and in concert with indigenous women and girls, with a view to promoting their civil, political, economic, social and cultural rights; to putting an end to their situation of disadvantage for reasons of gender and ethnicity; to dealing with urgent problems affecting them in regard to education, their physical and mental health, economic life and in the matter of violence against them, including domestic violence; and to eliminating the situation of aggravated discrimination suffered by indigenous women and girls on multiple grounds of racism and gender discrimination; **19 Recommends:** That States examine, in conformity with relevant international human rights instruments, norms and standards, their Constitutions, laws, legal systems and policies in order to identify and eradicate racism, racial discrimination, xenophobia and related intolerance towards indigenous peoples and individuals, whether implicit, explicit or inherent; **20 Calls upon:** Concerned States to honour and respect their treaties and agreements with indigenous peoples and to accord them due recognition and observance. **21 Calls upon:** States to give full and appropriate consideration to the recommendations produced by indigenous peoples in their own forums on the World Conference; **22 Requests States:** (a) To develop and, where they already exist, support institutional mechanisms to promote the accomplishment of the objectives and measures relating to indigenous peoples agreed in this Plan of Action; (b) To promote in concert with indigenous organizations, local authorities and non-governmental organizations, actions aimed at overcoming racism, racial discrimination, xenophobia and related intolerance against indigenous peoples and to make regular assessments of the progress achieved in this regard; (c) To promote understanding among society at large of the importance of special measures to overcome disadvantages faced by indigenous peoples; (d) To consult indigenous representatives in the process of decision-making concerning policies and measures that directly affect them; **23 Calls upon:** States to recognize the particular challenges faced by indigenous peoples and individuals living in urban environments and urges States to implement effective strategies to combat the racism, racial discrimination, xenophobia and related intolerance they encounter, paying particular attention to opportunities for their continued practice of their traditional, cultural, linguistic and spiritual ways of life.

15. European Union (EU)

The European Union believes that building partnerships with indigenous peoples is essential to fulfil the objectives of poverty elimination, sustainable development, and the strengthening of respect for human rights and democracy. In June 1997 the Development Council invited the Commission to present a policy paper on cooperation with, and support for, indigenous peoples, and a Working Document was produced by the Commission in May 1998, setting out general orientations for the support of indigenous peoples in the framework of the development cooperation of the Community and Member States. The Resolution also requests that the Commission report back to the Council with a review of progress in working with indigenous peoples. This resolution provides the main European Union guidelines for support of Indigenous Peoples. It calls for the integration of Indigenous Peoples' interests in all levels of development cooperation and the full and free participation of Indigenous Peoples in the development process. The resolution states: “Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource for the entire planet.” Recommendations of the Council Resolution and Commission Working Document; The Resolution acknowledges the importance attached by indigenous peoples to the shaping of their own social, economic and cultural development and cultural identities: their 'self-development'. It underlines the positive contribution of indigenous peoples to the development process.

16. OSCE High Commissioner on National Minorities

The Office of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The High Commissioner has no specific Indigenous Peoples mandate, but treats Indigenous Peoples like any other national minority.

17. Organization of American States (OAS)

The indigenous peoples of the Americas are culturally distinct groups who maintain an ancestral bond to the lands where they live or wish to live. Indigenous topics have been the subject of numerous the OAS General Assembly resolutions, which in recent years have called for the adoption of the Draft American Declaration on the Rights of Indigenous Peoples. Different areas of the Organization carry out specific projects aimed at promoting the protection, well-being, and development of indigenous peoples and communities in our hemisphere. According to the Article 9 of the Inter-American Democratic Charter, Promoting the Rights of the Indigenous Peoples of the Americas: “The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.”

18. World Bank

Indigenous Peoples are culturally distinct societies and communities. The land on which they live and the natural resources on which they depend are inextricably linked to their identities, cultures, livelihoods, as well as their physical and spiritual well-being. The World Bank's policy towards indigenous peoples dates back to 1982 and was designed initially to consider the needs of relatively isolated and unacculturated tribal groups affected by development projects. It focussed mainly on the protection of land rights and the provision of health services, particularly in relation to forest-dwelling indigenous peoples in lowland South America. Operational Directive outlines the World Bank's definition of an interest in Indigenous Peoples. It also addresses economic issues (technical assistance and investment project mechanisms) concerning Indigenous Peoples. In 1991, the World Bank approved a new Indigenous Peoples Policy. Indigenous Peoples specialists developed this policy in close collaboration with specialists from the International Labor Organization (ILO) that used the ILO Convention 169 as a framework. Under OD 4.20, the World Bank-financed projects that affected Indigenous Peoples required special Indigenous Peoples Development Plans (IPDPs). These plans ensured that Indigenous Peoples would participate in and benefit from World Bank financed operations.

XI. UNITED NATIONS ORGANS FOR INDIGENOUS PEOPLES' HUMAN RIGHTS

Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite their cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples. Indigenous peoples have sought recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years, yet throughout history; their rights have always been violated. Indigenous peoples today, are arguably among the most disadvantaged and vulnerable groups of people in the world. The international community now recognizes that special measures are required to protect their rights

and maintain their distinct cultures and way of life. Find below a short history of the indigenous struggle in the international stage.

1. First International Involvement 1923-25

In 1923, Haudenosaunee Chief Deskaheh travelled to Geneva to speak to the League of Nations and defend the right of his people to live under their own laws, on their own land and under their own faith. Even though he was not allowed to speak and returned home in 1925, his vision nourished the generations that followed. A similar journey was made by Maori religious leader T.W. Ratana. To protest the breaking of the Treaty of Waitangi concluded with the Maori in New Zealand in 1840 that gave Maori ownership of their lands, Ratana first traveled to London with a large delegation first to petition King George, but he was denied access. He then sent part of his delegation to Geneva to the League of Nations and arrived there later himself, in 1925, but was also denied access.

2. Martinez Cobo Study 1981

In the history of indigenous issues at the United Nations, there is considerable thinking and debate on the definition of “indigenous peoples”, but no such definition has ever been adopted by any UN system body. One of the most cited descriptions of the concept of the indigenous peoples was given by Jose R. Martinez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his famous Study on the Problem of Discrimination against Indigenous Populations.

3. International Year of the World's Indigenous People 1993

In 1993, the UN General Assembly proclaimed the International Year of the World's Indigenous People with the aim to encourage a new relationship between States and indigenous peoples, and between the international community and indigenous peoples- a new partnership based on mutual respect and understanding. The year was requested by indigenous organizations and is the result of their efforts to secure their cultural integrity and rights into the twenty-first century.

4. Permanent Forum on Indigenous Issues 2000

The UN Permanent Forum on Indigenous Issues was established in July 2000 as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum has a mandate to: (1) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council. (2) Raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system. (3) Prepare and disseminate information on indigenous issues. (4) The Permanent Forum holds two-week sessions once a year, usually in May, in which indigenous peoples organizations, States, UN bodies and organs, inter-governmental organizations and NGOs – that have consultative status with the ECOSOC -participate as observers.

5. Special Rapporteur on the Rights of Indigenous Peoples 2001

The international community has given special attention to the human rights situations of indigenous peoples. In this context, the Commission on Human Rights decided to appoint in 2001 a Special Rapporteur on the rights of indigenous peoples, as part of the system of thematic Special Procedures. The Special Rapporteur's mandate was renewed by the Commission on Human Rights in 2004, and by the Human Rights Council in 2007. In the fulfillment of the Special Rapporteur: (1) Promotes good practices, including new laws, government programs, and constructive agreements between indigenous peoples and states, to implement international standards concerning the rights of indigenous peoples; (2) Reports on the overall human rights situations of indigenous peoples in selected countries; (3) Addresses specific cases of alleged violations of the rights of indigenous peoples through communications with Governments and others; (4) Conducts or contributes to thematic studies on topics of special importance regarding the promotion and protection of the rights of indigenous peoples.

6. Second International Decade of the World's Indigenous Peoples 2005

On 22 December 2004, the General Assembly adopted for a Second International Decade, which commenced on 1 January, 2005 and concluded in December 2014. The objectives of the Second International Decade were to: (1) Promote non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects; (2) Promote full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle

of free, prior and informed consent; (3) Redefine development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples; (4) Adopt targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth; (5) Develop strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

7. Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) 2007

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by the UN Human Rights Council, in 2007, as a subsidiary body of the Council. The Expert Mechanism provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism is made up of five independent experts on the rights of indigenous peoples which are appointed by the Human Rights Council. The Expert Mechanism holds an annual session, usually in July, in which representatives from States, indigenous peoples, indigenous peoples' organisations, civil society, inter-governmental organisations and academia take part. The Special Rapporteur on the rights of indigenous peoples and a member of the Permanent Forum on Indigenous Issues are invited to attend the annual session of the Expert Mechanism to enhance coordination and cooperation between these indigenous mechanisms.

8. World Conference on Indigenous Peoples (WCIP) 2014

The General Assembly, in its resolution 65/198 of 21 December 2010, decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, The first World Conference on Indigenous Peoples was held on 22-23 September 2014, The meeting was an opportunity in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

9. UN Working Group on Indigenous Populations

The Working Group on Indigenous Populations, which was established pursuant to Economic and Social Council resolution 1982/34 is a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights and meets annually in Geneva, usually during the last week of July. The Working Group has a two-fold mandate: (1) To review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples. (2) To give attention to the evolution of international standards concerning indigenous rights. The Working Group is open to all representatives of indigenous peoples and their communities and organizations. The openness of the Working Groups' sessions, which also includes the participation of representatives of Governments, non-governmental organizations and United Nations agencies, has strengthened its position as a focal point of international action on indigenous issues. The United Nations Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights, is the first and only UN body involved exclusively with matters concerning the human rights of Indigenous Peoples. It reviews national developments concerning the promotion and protection of Indigenous Peoples' human rights and develops international standards for Indigenous Peoples' human rights and freedoms. At its 1996 session, the Working Group decided to consider specific themes. In past sessions the Working Group on Indigenous Populations has examined the themes of: health and indigenous people; indigenous peoples: environment, land and sustainable development; education and language; indigenous peoples and their relationship to land; and indigenous children and youth. From 23-27 July 2001 the Working Group examined the theme “Indigenous peoples and their right to development, including their right to participate in development affecting them.”

10. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP or DOTROIP)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP or DOTROIP) delineates and defines the individual and collective rights of Indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education and other issues. It "emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development". The goal of the Declaration is to encourage countries to work alongside indigenous peoples to solve global issues, like development, multicultural democracy and decentralization.

According to **Article 31**, there is a major emphasis that the indigenous peoples will be able to protect their cultural heritage and other aspects of their culture and tradition in order to preserve their heritage from overcontrolling nation-states. According to a UN press release it does "represent the dynamic development of international legal norms and it reflects the commitment of the UN's member states to move in certain directions"; the UN describes it as setting "an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool toward eliminating human rights violations against the planet's 370 million indigenous people, and assisting them in combating discrimination and marginalisation." United Nations Declaration on the Rights of Indigenous Peoples UNDRIP codifies "Indigenous historical grievances, contemporary challenges and socio-economic, political and cultural aspirations" and is the "culmination of generations-long efforts by Indigenous organizations to get international attention, to secure recognition for their aspirations, and to generate support for their political agendas."

11. UN Permanent Forum on Indigenous Issues

In 2000, the Economic and Social Council (ECOSOC), one of the six main organs of the United Nations, established the Permanent Forum on Indigenous Issues to consider a wide range of issues affecting Indigenous Peoples. The Forum, which includes eight Indigenous experts, is the first and only international body in the United Nations that has Indigenous Persons as members. The Permanent Forum serves as an advisory board to the Economic and Social Council, discussing Indigenous issues relating to economic and social development, culture, the environment, education, health, and human rights. The Forum provides expert advice and recommendations to the Council, raises awareness of Indigenous issues within the UN system, and prepares and disseminates information on Indigenous issues.

12. UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples

This Working Group of the Commission on Human Rights meets once a year and is responsible for reviewing and debating the draft Declaration. The Declaration will be non-binding for States, however, it will serve as a powerful statement of universally accepted norms as it will be adopted by consensus of all member states of the UN and will provide a strong basis for arguing for greater legal protection for indigenous rights in many countries.

13. UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples

Rodolfo Stavenhagen was appointed as the first Special Rapporteur on Indigenous Peoples on 24 April 2001. His mandate is as follows: to gather information on violations of human rights and fundamental freedoms of Indigenous Peoples, to formulate recommendations to prevent and remedy such violations and to work together with other experts of the UN Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights. The Rapporteur cooperates closely with the Permanent Forum on Indigenous Issues and the Working Group on Indigenous Populations.

XII. INDIA AND SAFEGUARDING THE RIGHTS OF INDIGENOUS PEOPLES

Though the 'Scheduled Tribes' is an administrative term used for the purpose of administering certain specific constitutional privileges, protection and benefits for specific section of people, historically it was considered as the disadvantaged and the backward. **Article 366(25)** of the Constitution of India defines scheduled tribes as such tribes or tribal communities or part of it, or group within such tribes, or tribal communities as are deemed under **Article 342** to be scheduled tribes for the purpose of this constitution. The scheduled tribe status confers on the tribe, or a part of it, a constitutional status invoking the safeguards provided for in the constitution in their respective States/UTs. The schedule tribe status is conferred on the basis of birth of a person into a scheduled tribe.

It is known those as many as 209 Articles and 2 special schedules of the Constitution of India which are directly significant social, economic and political relevant to the Scheduled and Tribes Areas peoples. These are given below:

12.1 Constitutional Provisions relating to Scheduled and Tribal Areas in India

(i) Social Importance:

- | | |
|----------------|--|
| Article 14 | : Equality before Law |
| Article 15 | : Prohibits discrimination on grounds of religion, race, caste, sex or place of birth |
| Article 15 (4) | : The State is to make special provisions for the advancement of any socially and educationally backward classes of citizens or for (the Scheduled Castes) and the STs |
| Article 16 | : Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the |

- Article 16 (4) : The State to make provisions for reservation in appointment, posts in favour of any backward class citizens, which in the opinion of the State is not adequately represented in the services under the State
- Article 16 (4A) : The State to make provisions in matters of promotion to any class or classes of posts in the services in favour of (the Scheduled Castes and) the STs
- Articles 25-28 : Freedom of religion
- Articles 29-30 : Freedom to culture and education
- Article 338 A : A National Commission for Scheduled Tribes to investigate, monitor and evaluate all matters relating to the Constitutional safeguards provided for the STs
- Article 339 (1) : Appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the STs in the states
- Article 340 : Appointment of a Commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions
- Article 342 : To specify the tribes or tribal communities to be Scheduled Tribes
- (ii) Economic importance:**
- Article 46 : The State, to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of (the Scheduled Castes and) the STs, and protect them from social injustice and all forms of exploitation
- Article 275(1) : Grants-in-Aid to be made available from the Consolidated Fund of India each year for promoting the welfare of the STs and administration of Scheduled Areas
- Article 335 : The claims of the members of (the Scheduled Castes and) the STs in the appointments to services and posts in connection with the affairs of the Union or of a State to be taken into consideration consistent with the maintenance of efficiency of administration
- (iii) Political importance:**
- Article 330 : Reservation of seats for (the Scheduled Castes and) the STs in the House of the People
- Article 332 : Reservation of seats for (the Scheduled Castes and) the STs in the Legislative Assemblies of the States
- Article 243D : Reservation of seats for (the Scheduled Castes and) the STs in every Panchayat
- Article 243T : Reservation of seats for (the Scheduled Castes and) the STs in every Municipality
- Article 243M (4) (b): Extension of the Part IX- the Panchayats- to the Scheduled Areas through a law enacted by Parliament. This has been done by the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- Article 243ZC (3) : Extension of the Part IX-A- the Municipalities- to the Scheduled Areas through a law enacted by Parliament. No such law has been enacted to date.
- Article 244 : The administration of Scheduled Areas and STs to be governed by the Fifth Schedule, and that of tribal areas in Assam, Meghalaya, Tripura and Mizoram to be governed by the Sixth Schedule (for further detail see section on Self Management in Part II)
- Article 339 : Control of the Union over the administration of scheduled areas and the welfare of scheduled tribes
- Article 371 A : Special status to the State of Nagaland
- Article 371 B : Special provisions for the State of Assam
- Article 371 C : Special provisions for the State of Manipur
- Article 371 F : Special provisions for the State of Sikkim
- Article 371 G : Special provisions for the State of Mizoram
- Article 371 H : Special provisions for the State of Arunachal Pradesh
- Fifth Schedule : Provisions as to the Administration and Control of Scheduled Areas and STs
- Sixth Schedule : Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

12.2 Central Government and the key institutional Structure relating to STs

The central government in India, it has variety of government departments and agencies intended to address the issues relating to the Scheduled Tribes.

12.2.1 Ministry of Tribal Affairs

The Ministry of Tribal Affairs constituted in 1999, is a relatively new Ministry in India. It has the objective of providing more focused attention on the integrated socio-economic development of the most under-privileged sections of the Indian society namely, the STs, in a coordinated and planned manner.

12.2.2 National Commission for Scheduled Tribes

The National Commission for Scheduled Tribes was created by a Constitutional amendment in 2004, which bifurcated the then existing National Commission for Scheduled Castes and STs created in 1978, which had been preceded by the Office of the Commissioner for Scheduled Castes and Scheduled Tribes set up in 1950. Article 338A of the Constitution defines the Commission's functions and powers as essentially those of an ombudsman, with the role of monitoring measures for ST welfare, investigating atrocities and violations of rights against STs and suggesting measures to safeguard ST resource rights, livelihoods and so on. It can summon witnesses require production of documents and so on. The central and State Governments are to consult the Commission on all policy matters relating to STs.

12.2.3 National Scheduled Tribes Finance and Development Corporation (NSTFDC)

The National Scheduled Tribes Finance and Development Corporation was set up in 2001 and it is a Central government financial body with the mandate of channeling Central funds towards schemes for income generation, training, skill up-gradation and procurement of minor forest produce. It operates through State Tribal Finance and Development Corporations.

12.2.4 Commission for Scheduled Areas and Scheduled Tribes

A Commission for Scheduled Areas and Scheduled Tribes was constituted under Article 339 (1) of the Constitution. The first Scheduled Areas and Scheduled Tribes Commission was set up in 1960, headed by U.N Dhebar and the second Commission was set up in 2002, headed by Dileep Singh Bhuria.

12.2.5 Committee on Welfare of Scheduled Castes and Scheduled Tribes

The Committee on Welfare of Scheduled Castes and Scheduled Tribes is a joint committee consisting of twenty members from the Lok Sabha and ten from the Rajya. The Committee has the power to summon government officials and require reports on any matter relating to the welfare and rights of Dalits and Adivasis, either on its own motion or after the matter is referred to it by the Speaker of the Lok Sabha.

12.2.6 Tribal Sub Plan / Integrated Tribal Development Projects

From the Fifth Five Year Plan onwards, development funds have been routed through a scheme known as the 'Tribal Sub Plan'. Given that STs are usually found within specific geographic areas, this approach created a special plan for spending money in blocks where STs formed more than 50% of the population. The funds are to be spent through Integrated Tribal Development Agencies at the block level, which has the mandate of coordinating all development spending and activity in order to benefit STs. These are known as Integrated Tribal Development Projects. The state and central governments are to allocate funds for the Tribal Sub Plan in the same proportion as that of STs in the population. As per the guidelines of the Planning Commission, funds under the TSP are to be spent on projects that benefit STs directly, and line departments' individual projects should be coordinated by the Tribal Welfare.

12.2.7 Tribal Cooperative Marketing Development Federation (TRIFED)

State Governments in many of the states have created cooperatives of Adivasis for marketing of products made by them, particularly those based on non-timber forest produce. The Tribal Cooperative Marketing Development Federation of India Limited is a national federation of these cooperative bodies, engaged in 'marketing development activities for tribal products'.

12.3 State Governments and relating to STs Peoples

The States government departments and agencies intended to address the issues relating to the Scheduled Tribes.

12.3.1 Departments of Tribal Welfare

Most states with significant ST populations have separate departments and/or Ministries for tribal welfare. The states with low ST populations, such as Tamil Nadu, Kerala or West Bengal, are under the control of departments for the 'backward classes'- Dalits, Adivasis and 'other backward castes'. In practice these departments tend to have few autonomous powers or functions, being mostly charged with looking after the administration of development schemes and channeling of funds. As with the Central Ministry of Tribal Affairs,

the mandate of these departments has recently been expanded by the passage of the STs and Other Traditional Forest Dwellers Act.

12.3.2 Tribes Advisory Councils

Paragraph 4 of the Fifth Schedule to the Constitution requires that every state with areas under that Schedule, or any other state whose Governor should so direct, must have a Tribes Advisory Council. The members of the Council are appointed by the Governor and these Councils are to advise the Governor on the use of his / her powers under the Fifth Schedule, and to be consulted on policy matters relating to STs. In practice, these councils are rarely functional, since they are to advise the Governors, who themselves rarely exercise their powers.

12.3.3 Cooperatives, Marketing Federations and Finance and Development Corporations

Depending on livelihood activities followed by ST communities in a particular state, many states have set up government-organised cooperatives and marketing federations. Thus, in Madhya Pradesh, Chhattisgarh, Odisha and other States, purchase of certain kinds of non timber forest produce – such as tendu leaves, used in beedi making – has been nationalised and brought under a single government agency which acts as a monopoly purchaser. Purchases are in turn made from state-created cooperatives composed of collectors of minor forest produce. Following the recommendations of a Central government committee in 1971, many states also created what are known as Large Area Multipurpose Societies (LAMPS), which function as credit and procurement cooperatives. Funds to these various societies and cooperatives are in turn channeled through the ST Finance and Development Corporations.

12.4 Legislative Safeguards of indigenous people in India

It is very clear to say that from the Constitutional mandate, there are a number of legislative safeguards in the form of special laws, rules and notifications, both at the central and at the state levels.

12.4.1 Protection of Civil Rights Act 1976

This central statute prohibits the practice of untouchability and cites instances of such practice liable for prosecution as criminal offences.

12.4.2 The Scheduled Castes and the STs (Prevention of Atrocities) Act, 1989

This Central statute is aimed at checking and deterring atrocities against STs (and Scheduled Castes)

12.4.3 The STs and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006

This is a recently enacted Central law concerning the rights of STs and other forest dwellers over forests and forest resources.

12.4.4 Odisha Scheduled Areas Transfer of Immovable Property (by STs) Regulation, 1956

Enacted by the Odisha State legislature, this Regulation prohibits the transfer of immovable property from tribals to non-tribals in the State of Odisha, and provides mechanisms for restoration of land so alienated. Similar legislations are in place in other states as well.

12.4.5 Odisha Land Reforms Act, 1960

This state level statute applies to land rights across Odisha's entire population; it is important because it also contains provisions regulating the transfer of land from tribals to non-tribals in non-Scheduled Areas. Most states have similar provisions in their revenue laws.

12.4.6 Odisha (Scheduled Areas) Debt Relief Regulation, 1967 and Odisha Scheduled Areas Moneylenders Regulation, 1967

Enacted by the Odisha State legislature, these regulations provide relief to STs from indebtedness, the control of money lending, and for the setting up of Debt Relief Courts.

12.4.7 Odisha Government Land Settlement Act, 1962:

Although this state level statute contains a specific provision which overrides 'custom, practice or usage is having the force of law', it has been an important tool for regularisation and settlement of lands among tribals in Odisha.

12.4.8 Odisha Gram Panchayats (Minor Forest Produce Administration) Rules, 2002

These Rules give primacy to the Gram Panchayat in the procurement and trading of 67 items of minor forest produce, whether produced in government lands and forest areas within the limits of the village or collected from the reserved forests and brought into the village.

12.4.9 Odisha Protection of Scheduled Castes and Scheduled Tribes (Interest in Trees) Act, 1981

This State level legislation forbids any person from entering into contracts with persons who are SC/STs for the sale of timber of specified trees unless previous written permission of the Range Officer has been obtained.

12.4.10. Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948

This rather outdated and little used state legislation claims to prevent the alienation of communal lands and private lands over which village communities have usufructuary rights. Its significance lies in the fact that it covers not only land which is actually owned by communities, but also land which may be privately owned but over which communities have rights of user. Government forest land, however, is not covered.

12.4.11 Panchayati Raj legislations

In pursuance of the enactment of PESA, State Governments across the country have amended the state level Panchayati Raj legislations to make special provisions for Panchayats in Scheduled Areas. A complete list of these provisions is beyond the scope of this report.

12.4.12 Nagaland Village and Area Council Act, 1978

This is a state level legislation which gives statutory recognition to traditional Village Councils in the governance system.

12.4.13 Nagaland Communitisation of Public Institutions and Services Act, 2002

This is a State level legislation which enables the community to participate in the management and development of public institutions as their own. Rules have been framed under this law for bringing under its purview elementary education, grassroots health services and electricity management.

12.4.14. Nagaland Jhum land Act, 1970

A state level legislation enacted to safeguard and regulate the rights to *jhum* land, or lands on which shifting cultivation is traditionally practiced.

12.4.15 Chotanagpur Tenancy Act, 1908

This legislation was enacted subsequent to the tribal rebellion led by Birsa Munda in the Chotta Nagpur area, in order to prevent transfer of Adivasi land to the non-Adivasis. It is currently applicable in the state of Jharkhand.

12.4.16 Santhal Parganas Tenancy Act, 1949:

A powerful legislation giving legal recognition and supremacy to the customary laws of the Adivasis in the Santhal Parganas region of Jharkhand, the applicability of this law has been considerably weakened by recent adverse judgments of the Jharkhand High Court.

12.5 Constitutional Arrangements for Scheduled Areas in the constitution of India

The Government of India officially does not consider any specific section of its population as 'indigenous people' as generally understood and implied in its usage in UN. Rather the government claims its entire people as indigenous. However, operationally in many of its dealings, those section of people declared as falling within the administrative category 01' Scheduled Tribes' (STs) are considered as indigenous peoples. Though, the STs are not synonymous with either the socially and historically accepted term 'Adivasis' or 'tribal', by and large, it is accepted that the STs, include mostly 'indigenous people' in the Indian context.

Two important Schedules the Fifth and Sixth Schedules - to the Constitution of India provide special arrangements for areas inhabited by STs. A large number of areas predominantly inhabited by Adivasis had been declared to be Excluded or Partially Excluded Areas during the British period. These areas came under the purview of the Scheduled Districts Act of 1874 and the Government of India Order 1936. Following Independence of India in 1947, these areas were brought under the Fifth and Sixth Schedules under the Constitution of India, respectively. They are now referred to as Scheduled Areas. Subsequently, some other predominantly Adivasi areas were declared to be Scheduled Areas by the President.

12.5.1 The Fifth Schedule

Under the provisions of this Schedule to the Constitution, special powers and responsibilities are conferred upon the Governors of States. The Governor is the constitutional head of state in a State Government and is appointed by the Central government. Under Article 163 of the Constitution, the Governor is bound to exercise his or her powers with the ‘aid and advice’ of the Council of Ministers, i.e. the Cabinet of the elected State Government. In practice he or she is bound by Cabinet decisions and the policy of the elected government. There has been considerable debate as well as litigation on whether or not the powers conferred upon the Governor by the Fifth and Sixth Schedules can be exercised without explicit sanction from the State Government. The Fifth Schedule defines ‘Scheduled Areas’ to be such areas as the President, by order, may declare to be Scheduled Areas after consultation with the Governor of that state and in consultation with the State Government. The President can alter, increase, decrease, incorporate new areas, or rescind any Orders relating to ‘Scheduled Areas’. The criteria for declaring any area as a ‘Scheduled Area’ under the Fifth Schedule are: (1) Preponderance of tribal population, (2) Compactness and reasonable size of the area, (3) A viable administrative entity such as a district, block or taluk, and (4) Economic backwardness of the area as compared to the neighboring areas.

According to the Ministry of Tribal Affairs, ‘These criteria are not spelt out in the Constitution of India but have become well established. They embody the principles followed in declaring the ‘Excluded’ and ‘Partially-Excluded Areas’, as well as those contained in Schedule ‘B’ of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and those outlined by the Scheduled Areas and STs Commission 1961. When the Tribal Sub Plan was adopted during the Fifth Five Year Plan, certain areas besides Scheduled Areas also had a preponderance of tribal population. At present, the Tribal Sub-Plan areas are coterminous with Scheduled Areas in the states of Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.

12.5.2 The Sixth Schedule

Article 244(2), The Sixth Schedule to the Constitution applies to the administration of certain ‘tribal areas’ in the states of Assam, Meghalaya, Tripura and Mizoram. These areas are governed by Autonomous Districts and Autonomous Regions and also have District Councils, Autonomous Councils and Regional Councils. These councils have wide ranging legislative, judicial and executive powers. They are empowered to make rules, with the approval of the Governor, with regard to matters like primary schools, dispensaries, markets, cattle ponds, ferries, fisheries, roads, road transport and water-ways etc. The Autonomous Councils of the north Cachar Hills and Karbi Anglong in Assam have been granted additional powers to make laws with respect to other matters like secondary education, agriculture, social security and social insurance, public health and sanitation, minor irrigation etc. The Councils except in Bodoland and Tripura have also been conferred powers under the Civil Procedure Code and Criminal Procedure Code to try certain suits and offences, the powers of a revenue authority to collect revenue and taxes in their area, as well as other powers to regulate and manage the natural resources. However, the Sixth Schedule specifically excludes certain issues from the jurisdiction of the District Councils, such as reserved forests (a particular kind of government forest) and acquisition of land by the State Government. The Supreme Court has also held that these Councils do not have ‘plenary’ legislative powers; i.e. their powers are strictly limited to the subjects specified in the Sixth Schedule, and do not, for instance, include powers over transfer of lands or levying of royalty on non-timber forest produce. The following table shows the administrative structure of the Northeastern States of India:

Constitutional Provisions	State	Administrative Structure
Article 371H	Arunachal Pradesh	No Autonomous Councils, the State has adopted the Panchayati Raj
VI Schedule Read with Article 371B, for schedule area only	Assam	Three Autonomous Councils: (i) Karbi-Anglong (ii) North Cachar Hills (iii). Bodo Territorial Council
Article 371C	Manipur	The Manipur (V Hill Village Authority Act 1956, and Manipur Hill areas District Council Act 1971
Sixth Schedule	Meghalaya	Three Autonomous Councils: (i) Khasi Hills (ii) Jaintia Hills (iii) Garo Hills
Sixth Schedule Read with Article 371G	Mizoram	Three Autonomous Councils of Pawi, Lakher, Chakma, and other areas without the Autonomous Council
Article 371AA Article 371A	Nagaland	No Autonomous District Councils
Sixth Schedule	Tripura	Tripura Tribal Area Autonomous District Council, Khumulwang

However, at present, Scheduled Areas cover only 30 percent of the tribal population. No tribal habitations in the states of Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh and Jammu & Kashmir have been brought under the Fifth or Sixth Schedule. Recommendations of various government-appointed Committees to include in the Schedule the remaining Tribal Sub-Plan and MADA areas, as well as similar pockets under the Scheduled Areas notification have been ignored to date. In large part, the Governors have failed to use their powers. As an official committee found, ‘The Governors, on their part, remained oblivious about the state of the tribal people. Even the mandatory annual Reports by the Governors to the President regarding the administration of Scheduled Areas under Para 3 of the Fifth Schedule are irregular. They comprise largely of a stale narrative of departmental programmes without even an allusion to the crucial issues in administration, the main thrust of the Fifth Schedule.’

The recognition and identification of STs are area specific. Articles 342 and 366 (25) read with the special provisions for STs in Clauses 1 and 2 of Article 244 for Scheduled Areas and Tribal Areas respectively as also the Panchayat Raj (Extension to the Scheduled Areas) Act 1996, enabling extension of the Constitution, for Scheduled Area indicate that these categories are essentially administrative and area specific ‘envisaged to reflect the level of socio-economic and development rather than ethnic status’ though ethnicity is a primary criterion attempted to be used. Further, by definition, the President has the powers to alter by way of deletion and addition the list of STs as well as the area in which they are notified, and the Scheduled Area, while the Governors of the concerned state can alter the area designated as Tribal Areas. The result of such ambiguity has been the allegations that communities notified in one state have not been notified as ST in another state or that non-Adivasis or non-tribals have been notified as STs or have made false claims to enjoy the corresponding benefits. There have also been strident demands by some communities for inclusion in the ST list from those who are notified in one state and not in another, as the recent demand of the Gujjar of Rajasthan who are notified in Himachal Pradesh and Jammu & Kashmir. Similarly, there are demands to notify new areas as Scheduled Area, such as in Andhra Pradesh where no Scheduled Area was previously notified. In other states, such as Jharkhand, there are demands to de-notify areas from the list of Scheduled Areas.

XIII. INDIA AND LEGAL PROTECTION OF INDIGENOUS PEOPLES

The Preamble to the Constitution of India makes a commitment to ‘Justice Social, economic, and political’. The Right to life under Article 21 of the Constitution has been interpreted in a catena of judgment to include the right to a life of dignity, which includes therefore a host of other rights which are necessary and important to ensure that this life is holistic and complete. Therefore the right to livelihood, the right to shelter, the right to a clean environment, the right to water, and numerous other rights which are of a socio-economic nature, have been held by judicial precedent to be part of the fundamental right under Article 21. The Directive Principles of State Policy include numerous commitments to a polity and an economic structure which respects equality and distributive justice. Therefore, Article 38 places an obligation on the state to promote the welfare of the people by ‘securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life’. The Article places a duty on the state to reduce inequalities in income as well as in status, facilities and opportunities. Article 39 requires the state to ensure that its policies provide adequate means of livelihood, and also that the ownership and control of material resources of the community are so distributed as best to serve the common good. It is obliged to ensure that its economic policies do not result in the concentration of wealth and means of production.

XIV. CONCLUSION

Indigenous Peoples are a significant and important portion of humanity. Their heritage, their ways of life, their stewardship of this planet, and their cosmological insights are an invaluable treasure house for us all. The word Indigenous has many meanings. In every region of the world, many different cultural groups live together and interact, but not all of these groups are considered indigenous or inherent to their particular geographic area. The tribal population or indigenous peoples in India covers approximately 15 percent of the country and it stretches from the villages tucked in the Indian Himalayan region to Southern-most tip of India and from the Far East corner of the seven North-East India to the dunes of Rajasthan. The indigenous peoples are still one of the most excluded and deprived groups in the country. The unique lifestyle of indigenous peoples is completely different from the rest of the world. The livelihood of Indian indigenous peoples is mainly dependent on agriculture and the handicrafts. It is true that India has the administrative authorities the government wings of Department of Tribal Welfare both the Central and the State levels and inter-state council, India has several independent bodies such as National Commission for Women, Minorities Commission, National Human Right Commission, State Human Right Commission, National Commission for SCs, National Commission for STs, etc. to safeguards the rights of people who claim to be treated as Indigenous peoples in the Country. Unlike many other countries in Asia, India has a highly developed legal and policy frameworks in place for its indigenous and tribal communities, known as ‘Scheduled Tribes’. The experience of

colonial rule in the north-east was quite different from what Native Indians or other natives experienced in the Americas and Oceania. Unlike in the US or Australia, the north-east, or for that matter India as a whole, did not witness large-scale migration and settlement of white people. To the British, India was a colony, not a second home. Although white people did not flood the region, the colonial rule did contribute to the voluntary or forced migration of different communities from the rest of India to the north-east. It was not that all migrant communities were economically and culturally superior to the locals. The Adivasis who were forcibly brought to work in tea and other plantations and Bengali Muslim peasants who were forced to migrate because of poverty were no exploiters in any sense. Further, the negative effects of large-scale immigration of people from other parts of British India to the north-eastern region were confined mostly to the plain areas.

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