

**Response to the Questionnaire of the Expert Mechanism on the Rights of
the Indigenous Peoples**

Indigenous Peoples in India

The Government of India while voting on United Nations Declaration on the Rights of Indigenous People had voted in favour. However, the representative from India had mentioned that the declaration did not define what constituted indigenous peoples, issue of indigenous rights pertained to people in independent countries who were regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization or establishment of present state boundaries and who, irrespective of their legal status retained some or all of their socio-economic, cultural and political institutions.

He also mentioned that the right to self determination applied only to peoples under foreign domination and that the concept did not apply to sovereign independent States or to a section of the people or a nation, which was the essence of national integrity.

India reiterated its stand while appending signature on Universal Declaration of Human Rights in December 1948 with a reservation that the 'right of self determination shall apply only to the people under foreign domination and not to section of the people of a sovereign independent State, which is the essence of national integrity.'

It is clear that India has taken the stand that at independence, after the departure of the colonizers, all its people, including its tribal people, would be considered 'indigenous' in India. Hence, the entire population of India, not any specific group or section, is considered its 'indigenous' population. This position has been clarified on various occasions, including while extending India's support to the adoption of the UN Declaration on the Rights of Indigenous Peoples at the Human Rights Council and the General Assembly

National Human Rights Commission- India

The Commission has a wide mandate including civil and political rights, economic, social, and group rights. Section 12 lays down that the Commission shall perform the following functions namely:

- Inquiring, suo motu, or on petitions, presented to it by victims, or any persons on their behalf, or on a direction or order of any court, into complaints of violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant.
- Intervening in any proceeding involving any allegation of violation of human rights pending before a Court, with the approval of such Courts.
- Visiting, notwithstanding any thing contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and making recommendations.
- Reviewing the safeguards provided by, or under, the Constitution, or any law for the time being in force, for the protection of human rights, and recommending measures for their effective implementation.
- Reviewing the factors, including acts of terrorism, that inhibits the enjoyment of human rights, and recommending appropriate remedial measures.
- Studying treaties and other international instruments on human rights, and making recommendations for their effective implementation.
- Undertaking and promoting research in the field of human rights.
- Spreading human rights literacy amongst various sections of society, and promoting awareness of the safeguards available for the

- protection of these rights, through publications, the media, seminars and other available means.
- Encouraging the efforts of non-governmental organisations, and institutions working in the field of human rights.
 - Undertaking such other functions as may be considered necessary for the promotion of human rights.

The Commission has been deeply engaged, ever since its establishment in October 1993, in the promotion and protection of the Human Rights of all of the people of India, acting in a manner that is complementary to that of the higher Courts of the Country. The Commission has been especially concerned with the rights of the weakest sections of society, notable the Schedule Castes and Schedule Tribes.

The Commission has accorded the highest priority to ending discrimination against Schedule Castes and Schedule Tribes and in seeking to eradicate, in particular, two pernicious practices which largely affect members of these communities: these relate to manual scavenging and bonded labour. In respect of these matters, the Commission is coordinating its activities closely with all governmental and NGOs concerned in an effort to end these practices and to rehabilitate those who have been affected by them.

The Commission has also taken up the issue of the right of persons displaced by mega projects, specifically those affected by the construction of large dams, many of whom are tribal. The efforts of the commission in this respect are greatly facilitated by the presence of the Chairperson of the National Commission for Schedule Castes and Schedule Tribes, who is also an ex-officio Member of the NHRC.

In addition, the commission has continued to receive and redress numerous individual complaints that it has received daily from persons who are included among the Schedule castes and Schedule Tribes. In this context, the Commission clearly recommended that where the petitioners belong to the vulnerable sections of the society, scheduled castes and scheduled tribes being one of them, those complaints should be treated on an urgent basis.

At the policy level, the Commission recommended that the Central and State Governments re-examine and appropriately amend their laws, regulations and practices in order to ensure that, when it comes to acquisition of land for purposes related to national economic development, the provisions of the Constitution, as expounded by the Supreme Court and as contained in International instruments to which India is a party, notably ILO Convention 107, are fully respected. The Commission considered it to be essential if the 'National' interest was to be reconciled with true respect for the rights of the weakest sections of the society.

The Commission also undertook the responsibility of promoting research in the field of human rights, with rights of the tribal women as one of its major prerogatives.

Some of the major cases brought before the Commission relate to:

- Rehabilitation and resettlement of tribals affected by the construction of the Kabini reservoir in Karnataka;
- Rehabilitation and resettlement of tribals affected by the Bandipur Project Tiger National Park in Karnataka;
- Rehabilitation of persons affected by the Maheswar Dam in Madhya Pradesh;
- Rehabilitation of persons displaced in consequence of a Defense Ministry project in Karnataka;
- Rehabilitation of displaced tribal people as a consequence of the aluminium project of Sterlite Industries of Vendanta Resources at Lanjigarh in Kalahandi district, Orissa;
- Alleged violation of human rights of tribal people at the proposed site for the POSCO-India steel project in Jagatsinghpur district of Orissa

These cases have been examined individually. While the Commission made specific recommendations in respect of each of them, it nevertheless continued to urge that a comprehensive national policy on rehabilitation and resettlement be finalized by the Government of India at the earliest. In this connection, the Central Government initiated steps to draft a national policy for resettlement and rehabilitation, adopting a more holistic approach, rather than one that was essentially oriented towards cash-compensation. The Government has since drafted and passed the Land Acquisition Rehabilitation and Resettlement Bill (Amendment) with nine major amendments to address these issues.