



**“Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”**

**Geneva  
16-17 July 2012**

**Organized by the Office of the United Nations High Commissioner for Human Rights**

**Khasi Traditional Institutions: A forgotten national commitment in Northern India**

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*The views expressed in this paper do not necessarily reflect those of the OHCHR.*

## Background

North East India is the homeland of a large number of Indigenous Peoples who came from different direction at different historical times. This region has been occupied by different streams of the Mongoloid people who belong to different racial stocks, speak different languages and have varied socio cultural traditions. The migration of people from ancient to present time and from various directions to North East India have significantly contributed towards the growth of ethnic diversities. Besides the Indigenous peoples, a few other non-tribal groups have also come into existence as a corollary of prolong interactions between the cultures of the migrants and those of the indigenous peoples. The spread of Hinduism; invasions of different outside rulers at different historical periods; integration of the north eastern region with the rest of India in the nineteenth century and migrations that took place as late as the last century have resulted spectacular social, cultural, economic and political transformations in this region.

In the context of India the region occupies a distinctive place due primarily to its geographical, historical, social, cultural, and political features. It comprises seven states: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura surrounded by foreign territories like Bhutan, Tibet-China, Burma, and Bangladesh on the north-south and the east except for a long narrow passage in the west which connects the region with West Bengal and the rest of India. The region occupies an area of 255,000 sq km. This largely hilly area comprises about 7 per cent landmass of India. There are 145 Indigenous communities of which 78 are large each with a population of more than 5000. They constitute around 12 percent of the total tribal population of India and 25.81 per cent of the total population of North East India.

The North East India today is one part of the region which has been in conflict now for so many years. For any people from outside the region is known as the stage of rebellion or counter rebellion. Integration without consent, colonial attitude, legal and illegal migration, relative dispossession, cultural xenophobia, militarization, criminalization and other vicious conflict has sparked the region now for many decades. There have been as many as more than 13 (thirteen) Treaties and constructive agreement popularly known as "Peace Accords". The parties that are involved in the signing these treaties and other constructive peace agreement since 1947 includes different indigenous groups, the Government of India (and now also with the state government after the reorganization of the Province of Assam) which led to the formation of different states in the region. The aim and goal in signing these peace and constructive agreements are:

1. Making recommendations to the policy makers in involved in the conflicts resolution and peace buildings efforts;
2. Increasing international understanding of the role of peace agreement in creating sustainable development.

However, in many instances these treaties and other peace agreements have barely shown any characteristic of processes that would lead to a long lasting solution of peace in the North East India.

In order to have a better perceptible about these treaties and constructive agreements between the Indigenous peoples and the successive government in the region, the following illustrative case will provide a better sympathetic deliberation to the UN experts and indigenous advocates who continue to struggle for the realization of the rights of Indigenous Peoples.

### **The Treaty agreement of the Khasi Indigenous Peoples in Meghalaya North East India:**

Historically, the Khasi indigenous peoples under the banner of **“the Federation of 25 Khasi States”** had their own form of governance since time immemorial. These 25 states were annexed and subjugated under the British Government between 1835 and 1839. On India's independence, on 8<sup>th</sup> August 1947, the 25 Khasi States acceded to the Dominion of India only on three subjects on **“Defence, Foreign Affairs and Communication”** under the temporary Treaty known as **“the Standstill agreement”**, where the same would be in place for a period of two years after which the Dominion of India, the Province of Assam and the Federation of 25 Khasi States would mutually decide on the modalities of any future arrangement. But within five months of such arrangement the 25 Khasi States were forced to sign the **“Instrument of Accession”** and the **“Annexed Agreement”** on 15<sup>th</sup> December 1947 and acceded to the Indian Union. The acceptance by the 25 Khasi States was not only to accede to the Treaty that was signed by them but it was on the basis of the historical commitment made by the Indian Union to honor the Annexed Agreement on condition that special provisions to safeguard their customary and social rights of their unique partyless institutions with a recall electoral process be incorporated into the Constitution.

However, since the Indian Independence, there has been a constitutional difference between the accession of the Khasi States with the dominion of India and the other erstwhile Indian Princely States since many of these states have merged with the dominion of India by virtue of accepting the Treaty known as the **“Instrument of Merger”** and the process of Proclamation. The consent of the Khasi states in signing the Instrument of Accession was basically to retain their identity within the provision of the Constitution since they never made any Proclamation<sup>1</sup> which clearly defined the status of the Khasi Indigenous Peoples and officially accepted by the dominion of India on August 17, 1947. Since then the hope, trust and aspiration of the Khasi indigenous peoples has never been fulfilled till today, as no mention has been made about the inclusion of the Khasi States right from the time when the Indian Constitution was drafted and framed.

It was only under the Govt. of India Act, 1935, that the hill areas of Assam were divided into two categories - Excluded Areas<sup>2</sup> and Partially Excluded Areas. The Khasi hills district besides some

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<sup>1</sup> The Government of India Ministry of States, “White paper on Indian States” 1950 pgs. 45 & 46 Khasi Hill States.

<sup>2</sup> The Lushai Hills (now Mizoram) the Naga Hills and the North Cachar Hills were under the excluded areas, over which the provincial ministry had no jurisdiction. Expenditure incurred in these hill areas was also not voted by the provincial legislature because there were no representatives from these hill districts. Not only this, even no federal or provincial legislation extended to the districts automatically.

other areas partially excluded areas had only five representatives in the Assam Legislative Assembly which was administered by the state government subject to the special powers of the Governor. This, in fact, did not change the administrative machinery of the districts. In effect the 1935 Constitution did not afford local self-government or political autonomy to the hill tribes of the excluded and partially excluded areas to manage their local affairs according to their own genius and ability. No political activities of any kind in these districts were permitted. There was also no political entity, which could voice the people's aspirations and grievances. The British Superintendent and the local chiefs in most of the districts of the excluded areas used to rule the people as virtual dictators.

After Independence, there were demands for regional autonomy and better status within the constitutional framework from the tribes of the hill areas of Assam. The Interim Government of India in 1947 was sensitive to the political aspirations of the tribal people of the hill areas of Assam in the background of assurances given by the outgoing British rulers. In order to ensure their participation in decision making and management of the affairs and safeguarding tribal interests, the government appointed a Sub-Committee of the Constituent Assembly<sup>3</sup> – the North-East Frontier (Assam) Tribal and Excluded Areas Committee – under the Chairmanship of Gopinath Bardoloi, Chief Minister of Assam. For a simple and inexpensive set up, later by the Article 244(2), the sixth Schedule was incorporated with the setting up of the District Council.

The politico-administrative arrangements made by the Centre have also been lacking. For instance, the introduction of the Sixth Schedule Autonomous Councils (currently there are ten such Councils in the region and many more demanding such status) ended up creating multiple power centers instead of bringing in a genuine process of democratization or autonomy in the region. Moreover, Para 12 (A) of the Sixth Schedule clearly states that, whenever there is a conflict of interest between the District Councils and the state legislature, the latter would prevail. It is even alleged that it is “a mere platform for aspiring politicians who nurture ambitions to contest assembly polls in the future”<sup>4</sup>.

By the middle of the 1950's the political movement for a separate State became one of the agenda's and gradually became a peoples movement from the 1960. Ultimately the Union Government had to reconsider the state of Assam and the formation of the State of Meghalaya in 1972.

Further, the provisions of the Sixth Schedule suffer from certain short-comings and defects. There is no provision for coordination of the activities of the District Council, the State Government and the traditional institutions (Federations of Khasi States). The State has no power to review and assess the working of these councils except to approve their legislations by the Governor. As a consequence, the councils have neither been able to do anything of standard in the interest of hill masses nor to involve

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<sup>3</sup> Bardoloi Committee made an on the spot study of the demands and aspirations of the hill tribes and submitted its recommendations. The Bardoloi Committee also made provision for Regional Council for the tribes other than the main tribe. The Committee also recommended the abolition of the excluded and the partially excluded areas and representation of the hills districts in the legislative Assembly on the basis of adult franchise.

<sup>4</sup> Teresa Rehman Tehelka, January 30,2009.

the poor indigenous peoples in development activities either as beneficiaries or as decision makers on any significant scale. Further any law enacted by the District Council with an aim to protect and safeguard indigenous peoples land, territories and resources, such laws have come into conflict with many laws enacted by the nation state and this has been the resulted of the constitutional anomaly due to the non-recognition and non-inclusion of the unique traditional institution that exist very much even today within the Khasi Indigenous Peoples. Therefore the wrongful inclusion of the Khasi States in the Sixth Schedule of the Constitution of India has failed to build a democratic edifice and in fulfilling the dream and aspiration of the Khasi indigenous peoples.

## **Conclusion**

Today these institutions still maintain their own legislative, Judicial, and other administrative matters and their powers and functions have eroded as they did not sign or accept the Instrument of Merger. These institutions have been kept out from many agenda or decision especially on matters concerning their land, territories resources, custom and practices, their history, culture and their languages. The political hegemony in the state and at the Centre have failed in their duties to recognizes the fact that there can never be any economic development and advancement unless the khasi indigenous peoples through their traditional institutions are not fully involved in all matters concerning them and that their confidence are not taken into consideration.

The Khasi traditional institution under the Federation of Khasi states are by and large, a true people's government, somewhat on the perception of the Father of the Nations, Mahatma Gandhi. They have evolved as a party less democratic institutions and therefore the indigenous peoples have always resisted the present political setup. There can be no solution, until and unless the constitutional anomaly is removed base on the non-recognition of the Instrumentation of Accession now for more than 65 years which deserves a fresh look.

The Constitution of India has been amended by the parliament of India on numerous occasions for the well-being of the people in the entire country. The need of the hour is to make improvements to recognize, protect and also promote the existence of these Institutions. These age-old institutions need re-moulding to be more vibrant in further serving the interest of development and progress. It is therefore imperative for the policy makers in India to transfuse and transform these institutions as lively functionaries thereby pulling them out from the mire of stagnation and neglect. Therefore the Khasi indigenous peoples and their institutions have a lot to contribute and share with the rest of the world in institutionalize the system of self- government which is the need of the hour.

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