

OTHER RELEVANT STAKEHOLDERS' CREDIBLE AND  
RELIABLE INFORMATION ON INDIA TO THE  
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SUBMITTED BY:

## A. HUMAN RIGHTS : Taking Stock

### 1. State Imposed Internal Displacement through legal measures in the name of Development: Land Acquisition Act, 1894 and Special Economic Zone (SEZ) Act, 2005

Indian security forces and police have been engaged in rape and killing to suppress the people's genuine protest against the acquisition of their farmland for special economic zones (SEZs) and unjust industrialization. They killed 14 farmers and raped two of their women aged about 25 and 27 years after the firing at Sonachura village, near Nandigram of West Bengal on March 14, 2007<sup>1</sup>. The West Bengal High Court describes the firing as 'unjustified, unconstitutional and illegal'<sup>2</sup>. This is not an isolated case or an exception. It exposes the inhuman and barbaric face of Indian law enforcement officials.

The various state governments in India acquire land mostly from tribal communities, dalits and farmers under Land Acquisition Act 1894 which was legislated during the colonial period to take over land needed for public purposes. For the benefit of Vedanta<sup>3</sup>, the law enforcement officials forcibly evicted tribal communities from four villages i.e. Kinari, Borobhota, Sindhabahili and Kothduar in Lanjigarh tribal zones of Orissa. The state official, including the District Collector of Kalahandi and his colleagues manufactured "*the underlying principles of free, prior and informed consent*" which is mandatory under the Panchayati Raj Extension to Schedule Area Act<sup>4</sup>. Displaced villagers were shunted in lorries to a new "colony", 3 km. away, where they are being held under police guard. In the name of Relief and Rehabilitation they have been provided concrete boxes as houses in the foothills of Niyamagiri. The State government has violated the UN voluntary guidelines on internal displacement and other international human rights instruments such as CEDAW, ICESCR, ICCPR. The displaced persons have not been provided with adequate housing facilities and other health and sanitation facilities that they are culturally used to. Their movement into the forest is restricted with the colonies cordoned with fencing.

There is complete repression on any kind of protest by human rights defenders and local tribal communities to these incidents with illegal detention, arbitrary arrests and framing of false criminal charges. Tribals, especially women have faced the worst brunt both by State and Vedanta agents who have no qualms in hiring mercenaries to brutally execute their orders. On 3 March 2005, Sukru Majhi- tribal villager aged about 45 years and member of the gram panchayat (local self-governance institute) has involuntary disappeared and his dead body was found after few hours. The police covered the incident as road accident and did not conduct any investigation. 35 tribal young girls

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1 <http://www.asiantribune.com/index.php?q=node/4995>

2 [http://economictimes.indiatimes.com/PoliticsNation/Nandigram\\_firing\\_unconstitutional/articleshow/2547107.cms](http://economictimes.indiatimes.com/PoliticsNation/Nandigram_firing_unconstitutional/articleshow/2547107.cms)

3 Vedanta Resources Group is a London Stock Exchange registered British metals and mining group with its principal subsidiaries operating throughout India

4 Fifth and Sixth scheduled of Indian constitution is meant for tribal areas

involuntarily disappeared and the police did not make any investigation despite several complaints from the forcefully evicted tribal villagers.

## **2. Arming local population to counter opposition and suppression of human rights movement**

The government of India is arming the local population to counter peoples' aggression. In the past, such idea was used by various governments of India, and is now actively used in Chhattisgarh state of India. In response to Maoist operation, the government of Chhattisgarh in India formed a private army named Salwa Judum under the leadership of a local politician Mr. Mahendra Karma. Even minors are armed with weapons and trained to kill in complete violation of Convention of the Rights of the Child that India has ratified. The result was a direct confrontation with the people. Over 0.3 million innocent civilians are being forcefully displaced and many lost their life or were injured. As of today, 644 villages are forcefully evicted and the people forced to live in 23 makeshift camps organized by the Salwa Judum and the state<sup>5</sup> since 2005. The State has failed to provide them basic requirements such as access to safe drinking water, health and sanitation, complete lack of privacy and no scope for upholding their cultural practice. The outcome of this entire operation is involuntary disappearances, mass extra-judicial killing, rape and burning of the tribal villages with perpetrators being reported by local newspapers as salwa judum members, the army (brought in specifically to 'help' the situation) and maoists. Whatever be it, the operation has certainly caught the local tribals in a cross-fire with maximum casualties of death, displacement and loss of livelihood to the local tribals.

Arbitrary detention of Human rights defenders continues as they oppose this move. A Peoples Union for Civil Liberties (PUCL) Activist Dr. Binayak Sen has been detained since May 14, 2007 under the Chhattisgarh Special Public Security Act, 2005 and the Unlawful Activities (Prevention) Act, 1967 on the charges of having links with the Maoists. Another human rights defender Subash Mohapatra of Forum for Fact Finding, Documentation and Advocacy (FFDA) was arrested on false charges by Chhattisgarh State Human Rights Commission where he went to inquire about the status of his complaints of human rights violations filed with them on 17 July 2007. During the fact-finding mission in 2005, a group consisting of media person, sociologist and historian Mr Ram Chandra Guha, Prof. Nandini Sunder and others was attacked.

## **3. Impunity and repression by special laws**

To protect the state agents with impunity the government of India has been using many special laws in different parts of its territories which contradict the Constitution of the country. The Unlawful Activities (Prevention) Act-1967 - later amended and reshaped by the Unlawful Activities (Prevention) Amendment Act-2004, the Armed Forces (Special Powers) Act-1958 and the National Security Act, 1980, are legislations currently in force in India enacted by the Central Government. The state governments are also not different. The Jammu and Kashmir Public Safety Act, 1978, the Jammu and Kashmir Disturbed Areas Act, 1992, the Chhattisgarh Special Public Security Act, 2005, Madhya Pradesh Special Areas Security Act, 2002, Uttar Pradesh Control of Organized Crime Bill (UPCOCA) are enacted by various state governments. All these legislations violate the constitutional safeguards on fundamental rights of the citizens and are also against the accepted norms of international law, the Syracuse

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<sup>5</sup> District collectors memo to the state government of Chhattisgarh in Jan 2007

Principles in particular. There are protests against such draconian laws. In response to one among countless incidents of arbitrary killing by the Armed Forces in the north east; a 35 year old woman Irom Sharmila Chanu has been continuing her hunger fast seeking repeal of the draconian AFSPA since 4th November 2000<sup>6</sup>. The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the more draconian legislations that the Indian Parliament has passed in its 45 years of Parliamentary history which contradicts the fundamental rights guaranteed under Article 21 and 22 of the Indian Constitution and human rights obligations under International Covenant on Civil and Political Rights (ICCPR) to which India is a party. Under this Act, all security forces are given unrestricted and unaccounted power to carry out their operations, once an area is declared disturbed. Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order". The AFSPA gives the armed forces wide powers to shoot, arrest and search, all in the name of "aiding civil power." It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the north- eastern region of India. In central tribal region of India, the state government used Chhattisgarh Special Public Security Act (CGSPA) against 14 persons since 2005 and most of them are civil rights activists. Even tribal children were charged under CGSPA and continue to be in prison without the trial.

#### **4. Discriminatory laws and bills**

The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 brings in undue powers to the State that can be abused if so desired. The bill, for instance, give state agencies sole discretion of declaring an area 'communally disturbed upon which various provisions of the Act will apply. Gujarat is a living example of how the State abused its powers to unleash terror on the Muslim community. Under the Communal Violence Bill, Central government's power to deploy armed forces to curb violence in disturbed areas is negated by the fact that prior permission would need to be granted by the state. This is particularly worrisome when, as witnessed in past incidents, state governments may be party to the problem.<sup>7</sup>.

#### **5. Right to food and right to work**

The experiences until now on the implementation of National Rural Employment Guarantee Act provide a dismal picture in most part of the country. Though the act has potential to reduce poverty and build rural infrastructure if properly implemented. A survey conducted by Allahabad University on NREGA in Orissa revealed huge scam in rural tribal areas<sup>8</sup>. In Gujarat, Mashurben Makwana- a widow from Sabarkantha has filed the first petition in Gujarat High Court against being paid Rs 4 per day instead of the Rs 60 stipulated under the scheme. She was also asked to get her own digging implements, for which she had to sell her jewellery<sup>9</sup>.

In addition, the discrimination against dalit children continues in state educational institutions while implementing Supreme Court directions on Mid-day meal schemes in school<sup>10</sup>.

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<sup>6</sup> [http://news.bbc.co.uk/2/hi/south\\_asia/5348414.stm](http://news.bbc.co.uk/2/hi/south_asia/5348414.stm)

<sup>7</sup> [http://www.actionaidindia.org/Scrap\\_Communal\\_Violence\\_Bill\\_Press\\_Release.htm](http://www.actionaidindia.org/Scrap_Communal_Violence_Bill_Press_Release.htm)

<sup>8</sup> <http://www.rediff.com/money/2007/oct/16jobs.htm>

<sup>9</sup> <http://www.indianexpress.com/story/6515.html>

<sup>10</sup> <http://www.ahrchk.net/ua/mainfile.php/2004/602/>

## **6. Violence against women**

Finding justice and sensitive procedures for a fair and just trial for Indian women in cases of violation of their human rights is a struggle despite various structures and mechanisms in place. Overcoming a gendered society is the first major hurdle that a woman encounters before she sets out to seek justice soon to be followed by other institutions such as the administration, police, hospital and the court where women face gendered discrimination. In times when the State itself gives a free hand to the police, army and civilians in some cases to use them as instruments to repress people's resistance, all commitment to social, economic and cultural rights are wrapped up by the State and what is meted out to women and the complete violation of state procedures to enable women victims for a fair and just trial stands out shamefully against the very Constitution of the country.

Two cases are pointers to complete failure of State mechanism for justice for women despite the country's tall claims. Eleven women belonging to Kondh<sup>11</sup> tribe of Vakapalli village in Nurmati panchayat of G. Madugula mandal in Visakhapatnam district, Andhra Pradesh were raped by personnel of a Greyhounds<sup>12</sup> unit in the Vakappalli village on the morning of August 20, '07. As a consequence to the wrath of 30 Greyhound personnel who let loose terror in the village for two hours, women in the village were gang raped when most men were out in the fields. The police despite an immediate First Information report with the nearest police station and a medical examination, delayed the matters by deliberately taking them to unequipped hospitals and threatening doctors. Despite appeal to the State Human Rights Commission and the Chief Minister of Andhra Pradesh, investigations are still dragging making the case weaker for just and fair court proceedings.

In another similar incident in village Nakulnar in district Dantewada, Chhattisgarh, terror was unleashed by India Reserve Battalion (IRB – Mizo Battalion F Company) on 03.02.2007 where several women were gangraped as well. In response to a complaint, Chhattisgarh State Human Rights Commission (No. 7644/HRC/DTW/13/2007) closed the case by attaching a report from the Director General Police that confirms the act of terror yet pleads inability to act upon the culprits as the women were unable to recognize the perpetrators during the identification parade. As an action, the Department has replaced the Mizo Battalion with the Central Reserve Police Force.

## **B. INFORMATION ON INDIA'S VOLUNTARY PLEDGES: A REALITY CHECK**

### **B.1 Independency of National Human Rights Institutes**

Government of India has established National Human Rights Commission (NHRC), National Women's Commission (NCW), National Commission for Minorities (NCM), National Commission for Scheduled Castes and Scheduled Tribes, and National Commission for Backward Classes. But as a quasi-judicial body and functioning under the Ministry of Home Affairs, Government of India, the National Human Rights Commission has been practicing a protocol of police investigation. Article 12(a) of the Protection of Human rights Act 1993, later amended in 2006 empowers NHRC to 'inquire' independently. The National Commission for Women, further, operating

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<sup>11</sup> Kondh tribe is administratively listed as primitive tribal group in the State of Andhra Pradesh.

<sup>12</sup> Greyhounds is an elite commando force of Government of Andhra Pradesh raised as vital organ of the State Police in 1989 particularly brought to deal 'effectively' with left wing extremist violence on law and order front, including natural disaster.

under the Ministry of Women and Child Development has to rely on the state departments for support as protocol. NHRC, in most cases taking full cognizance of state-investigation-report, closes the matter. On the matters where the government of India and its state governments remain silent over the NHRC query, the NHRC does not invoke legal action against the concerned state parties<sup>13</sup>.

### **B.2 Discriminatory national Schemes for children of manual scavengers**

Government of India enacted in 1993 the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Prevention with the objective of complete abolition of manual scavenging of human waste all over the country. Public interest litigation filed by Safai Karmachari Andolan and 13 other organizations in 2003 records 1.2 million persons still in practice of manual scavenging. In contrary to the said act, the children of manual scavengers are denied scholarship under the scholarships scheme for children of families practicing unclean occupations no sooner the families surrender the practice of manual scavenging in full support of the Act. This forces drop-out from schools, especially girl children. It denies right to development and fundamental right to education.

### **B.3 Restriction on civil society seeking to protect and promote human rights**

The government of India introduced Foreign Contribution (Regulation) Bill, 2006 in the Rajya Sabha on 16<sup>th</sup> December, 2006 seeking to replace the Foreign Contribution Regulation Act, 1976. This Act, in effect, restricts, regulate and strangulates non-governmental organizations and makes them non-functional. In particular, human rights organizations will be under threat.

### **B.4 Non-Ratification of ILO convention No. 169**

India has ratified the ILO Convention 107. Convention 107 advocates for the assimilationist approach of indigenous and tribal peoples. Convention No 169 which revised the convention 107 marks a move away from the integrationist and paternalistic approach of its predecessor, towards an acknowledgment of indigenous and tribal peoples cultures and ways of seeing the world, an assertion of the importance of their full participation in the decision making processes and other factors that affect them so that they have the right to decide their own priorities. India has not ratified Convention No 169.

### **B.5 Lack of commitment to persons with disability**

Although India has ratified the Convention on the Rights of Person with Disabilities, it has not ratified the optional protocol to the International Convention on the Rights of Person with Disabilities and domestic measures have not been taken adequately.

## **C. INDIA'S RESPONSE TO HUMAN RIGHTS INSTRUMENTS AS A STATE PARTY**

India acceded to the ICESCR in 1979 with a number of declarations, including one to the effect that the right of self-determination mentioned in Article 1. India's second, third, fourth and fifth report was due in 1991, 1996, 2001 and 2006 respectively. India has submitted the combined second, third, fourth and fifth periodic report in March 2007. India acceded to the ICCPR in 1979 with a number of declarations, including one to the effect that the right of self-determination mentioned in Article 1. India's fourth periodic report was due 9 July 1995; the fifth periodic report is due 31 December 2001 and sixth periodic report in 2006.

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<sup>13</sup> NHRC reference – no response from state

India became a signatory to the CEDAW in 1980 and ratified it in 1993 making declaration on Article 5 (a) and 16 (1). India submitted a declaration regarding Articles 5(a) and 16(1) that reiterates India's commitment to abiding by the provisions "in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent." India also registered a declaration regarding Article 16(2) on minimum marriage ages and compulsory registration; although India fully supports the principle, "it is not practical in a vast country like India with its variety of customs, religions and level of literacy." The Government of India submitted its initial report in 1998 which was considered by the Committee in 2000. The Second and third periodic report was submitted by India in 2005.

India acceded to the Convention on the Rights of the Child in 1992, with a declaration regarding the progressive implementation of Article 32 thereof on child labour, particularly with reference to paragraph 2(a) on the provision of a minimum employment age. India's second periodic report which was due in 2000 was submitted in 2003. India is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, since 1968. Till date, as per the requirements it has submitted 14 periodic reports covering the period till 1996. India submitted the 15<sup>th</sup> -19<sup>th</sup> periodic report due on 4 January 1998, 2000, 2002, 2004 and 2006 in one document. India has signed the Convention against Torture and other cruel inhuman or degrading treatment or punishment on 4.10.97. India has ratified the Convention on persons with disability on Oct 1<sup>st</sup>, 2007.

Concluding conversations made by various UN treaty bodies (e.g concluding observation by CERD, CRC, CEDAW etc.) are not followed.

#### **D. LISTS OF ISSUES TO ACT/RECOMMENDATION**

Ask government of India to:

- Repeal the special power laws, discriminatory laws and laws in interest in private interests.
- Adopt policy measures according to international human rights instruments and ratify UN the Convention against Torture and other cruel inhuman or degrading treatment or punishment and sign optional protocol to Convention on persons with disability.
- Implement the UN Guiding principles on Internal Displacement