

## **Expert Mechanism on the Rights of Indigenous Peoples**

### **Statement to the 14<sup>th</sup> Session on the**

Draft report on achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, with a focus on self-determination

**12 to 16 July, 2021**

This statement is presented on behalf of **Inter State Adivasi Coordination Committee (ISACC)**, Mainland India.

India, as one of 143 voters, was in favour of UNDRIP when it was adopted in 2007 supporting it with a condition that after independence, all Indians are indigenous and the right to self determination was applicable only to the people who are colonized, but not to the sovereign state or nation or a section of peoples within.

The right to self determination in India is reflected in the constitution at different levels, in different forms though not under this specific term. Nagaland constituted under Article 371 A and Mizoram under Article 371G of the Indian Constitution, both overwhelmingly indigenous peoples dominated states, provide exclusive power to the State Assembly on matters concerning religious or social practices and, customary law and procedure of the concerned communities, administration of civil and criminal justice in areas covered by customary law, and ownership and transfer of land and its resources, prohibiting the application of any central law regarding ownership and transfer of land and its resources unless the State assembly resolves to apply them. The areas with substantial population of indigenous peoples have been notified as Fifth Schedule and the Sixth Schedule areas under Article 244 of the Constitution; the Governor of the States can prevent, or apply with modification, any law in the Fifth Schedule areas and constitute the Autonomous District Councils in the Sixth Schedule areas with legislative, judicial and executive powers over specific subjects, Areas under Fifth Schedule have been notified in ten states. Ten Autonomous District Councils under the Sixth Schedule have been constituted in Assam, Meghalaya, Tripura and Mizoram.

Besides there are special legislation Provisions of the **Panchayat (Extension to the Scheduled Areas) Act 1996 (PESA)** provides autonomy in specific subjects in the Fifth Schedule Areas at the village level. A separate legislation was to cover the urban areas in the Fifth Schedule Areas for which a bill, the **Municipalities Extension to Scheduled Area (MESA)** was drafted in 2001 but has not been enacted till date resulting in a legal vacuum de facto extending the general law to these areas in spite of the explicit prohibition by the constitution. **The Scheduled Tribes and Other Traditional Forest Dwellers**

**(Recognition of Rights) Act 2006 (FRA)** finally vested rights enjoyed traditionally and customarily on forest lands conferring village assemblies the power to determine the rights of forest dwellers, to define its geographical jurisdiction of the extent of forest with powers to protect, conserve, access, use and manage forest and protect the geographical area beyond. The prior informed consent for forest diversion for non-forestry purposes became mandatory, for demarcation of forest areas to be kept inviolate and voluntary relocation and associated rehabilitation. **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** repealed the colonial Land Acquisition Act 1894 where special provisions were made for indigenous peoples when their lands, whether forest or non-forest, were being acquired for public purpose requiring the free prior informed consent. Most states except for Tamilnadu and Karnataka have special laws that prohibit alienation of tribal land and restoration of illegally alienated lands. There are regional protective legislations such as the Santhal Pargana Tenancy Act of 1876 and the Chotanagpur Tenancy Act of 1908 to protect the lands of specific indigenous and tribal peoples.

Despite all these progressive legislative provisions, mainland India particularly have persistently experienced the disregard for these laws in implementation and a steady alienation from land and livelihood resources resulting in the displacement of tens of millions of indigenous peoples for various infrastructure and development projects without recognition of rights and little compensation if at all leaving them destitute as internally displaced peoples. A similar process of relocation in the name of forest conservation continues. These incursions results in the disruption of the traditional self governing systems.

These states acquiesced and aided violations of the laws of the land spills over into peoples' protests which are often violently crushed. Hundreds are imprisoned under the harsh provisions of various security related laws accused of sedition and anti-national acts under draconian laws as the Unlawful Activities (Prevention) Act (UAPA).

New laws are being enacted that curtails and prevents the indigenous peoples way of life in many different ways. For instance, the Jharkhand Bovine Animal Prohibition of Slaughter Act, 2005 violates the cultural rights of adivasis and dalits minorities where the consumption of beef is criminalized, and mob lynching by Hindu fundamentalist groups occur. In the last five year more than 35 cases of mob lynching incident took place in Jharkhand alone of whom 34% are adivasis..

Imposition of state languages on adivasis continues denying the right to learn in their own languages with self dignity.

**Recommendations:**

These above mentioned concerns regarding self determination in the context of mainland India, which are available in the constitutional provision but with a great threat. In the light of the above mentioned situation Inter State Adivasi Coordination Committee would like to draw the attention of EMRIP to urge the Indian state representatives for the urgent action on the following recommendation;

1. Formal recognition of Adivasi/tribal as Indigenous peoples.
2. Autonomy laws as PESA should be implemented in letter and spirit in the Fifth schedule Areas; MESA should be enacted for the urban areas in the Fifth Schedule Areas
3. FRA should be implemented in full, particularly the community / collective territorial rights to enable the concerned village assemblies to govern the forest lands under their jurisdiction
4. All the legislations to protect land rights should be strictly implemented and illegally alienated lands are to restored within a time frame
5. Rights are to be restituted and compensation through alternate lands made to all the internally displaced indigenous people whether through development or conservation projects or from conflicts