



Review of India under UPR during 4th Cycle: The case for specific recommendations on Indigenous Peoples

India is scheduled to be reviewed under the Universal Periodic Review (UPR) on 10th November 2022.

There are an estimated 476 million Indigenous Peoples in the world¹ and about 113 million² or close to 25% of Indigenous Peoples of the world live in India. Yet very few recommendations specific to Indigenous Peoples of India were made during the UPR. There were no recommendations on Indigenous Peoples during the 1st cycle³ and 3rd cycle⁴ while two generic recommendations⁵ referred to the 'Scheduled Tribes' as part of the vulnerable groups during the 2nd cycle of the UPR.⁶

India's democratic and civic spaces have shrunk, and it is an issue of global concern. Indigenous Peoples' issues are most likely to be overshadowed again. On the other hand, Indigenous Peoples' land and natural resources are being targeted for India's post COVID-19 recovery, augmenting strategic/security interest and economic development as explained in **ANNEX-1** of this submission. They are indeed the most vulnerable requiring specific recommendations.

The International Work Group for Indigenous Affairs (IWGIA) and its partner, Indigenous Lawyers Association of India (ILA) suggest the following recommendations:

- Ratify Indigenous and Tribal Peoples Convention, 1989 of the International Labour Organisation (ILO);
- Take measures to save the Particularly Vulnerable Tribal Groups (PVTGs) from extinction including prohibiting implementation of development projects except the schemes for "Upliftment of Particularly Vulnerable Tribal Groups" launched by the Government of India⁷;
- Ensure time bound implementation of the Panchayat (Extension to Scheduled Areas) Act (PESA), 1996⁸ and the Forest Rights Act, 2005⁹;
- Ensure respect for the free, prior and informed consent of Indigenous Peoples as provided under the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) and the Forest Rights Act, 2006 requiring consent of Gram Sabhas (Village Councils) of the Indigenous Peoples for any project effecting them; and
- Take measures to ensure respect for all the enacted laws relating to the Scheduled Tribes.

ANNEX 1:

Targeting of Indigenous Peoples for its Post Covid-19 Recovery:

On 18 June 2020, Prime Minister Narendra Modi launched the online auction of 41 coal blocks for commercial mining under the theme “*Unleashing Coal: New hopes for Atma Nirbhar Bharat*”¹⁰ out of which a staggering 30 coal blocks (73%) did not have the mandatory Forest Clearance as required under Section 2 of the Forest (Conservation) Act of 1980 relating to prohibition of the use of forests for non-forest activities without Forest Clearance.¹¹ Further, 37 coal blocks (over 90%) did not have the mandatory Environmental Clearance required under the Environmental Impact Assessment (EIA) Notification of 2006.¹² According to a statement issued by the Ministry of Coal, Government of India on 12 February 2022, a total of 42 coal blocks, including two in Jharkhand, had been auctioned for commercial mining.¹³ An overwhelming majority of the projects are on the lands and territories of Indigenous Peoples.

Targeting of Indigenous Peoples for security interests:

In the midst of COVID-19, the National Institution for Transforming India (NITI Aayog) which serves as the apex public policy think tank of the Government of India, and the nodal agency tasked with catalyzing economic development, continued with its US\$ 10 billion vision for the ‘Holistic Development of Great Nicobar Island in Andaman and Nicobar Islands’ which immediately threatens one of the five Particularly Vulnerable Tribal Groups (PVTGs) namely Shompen tribe with a population of 229 persons and another Scheduled Tribes namely Nicobarese tribe with a population of 27,168 persons as per 2011 census.¹⁴ The plan entails the development of a transshipment terminal with a Greenfield international airport, townships and solar and gas-based power plants¹⁵ to beef up security interest in the Indian Ocean. A draft Environmental Impact Assessment (EIA) report was prepared in haste after consultation on 27 January 2022.¹⁶ On 29 April 2022, the UN CERD Committee has intervened against this project under its “*early warning and urgent measures procedures*”.¹⁷

Targeting of Indigenous Peoples for economic development:

In the name of national economic security, the Government of India has been expanding palm oil production in the North East India and Andaman and Nicobar Islands (ANI) under the National Mission on Edible Oils-Oil Palm (NMEO-OP) announced in 2021. As per Government estimates, the total land identified for potential cultivation in Manipur, Meghalaya, Nagaland, Tripura and the Andaman and Nicobar Islands is around 180,000 acres, mainly inhabited by Indigenous Peoples. In Manipur alone, the land identified for palm oil plantation is a whopping three percent of the state’s total area.¹⁸

Weakening legal protections for Indigenous Peoples:

India has been making all efforts to dilute and weaken the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) and the Forest Rights Act, 2006 which currently make consent of Gram Sabhas/Village Councils of Indigenous Peoples mandatory before undertaking any project. After having failed to adopt the EIA Notification 2020, in October 2021, the government of India called for public comments on the proposed amendment of the Forest Conservation Act, 1980. The Ministry of Tribal Affairs and many State governments too objected to these amendments.¹⁹ In May 2022, India’s Ministry of Environment, Forests and Climate Change notified amendment to the Environment Impact Assessment (EIA) Rules, exempting highway projects of strategic and defence importance, which are 100 km from the Line of Control, among other locations, from an environmental clearance before construction.²⁰

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1. World Health Organisation, International Day of the World's Indigenous Peoples, 9 August 2022 09:00 – 11:00 UTC Time, <https://www.who.int/news-room/events/detail/2022/08/09/default-calendar/international-day-of-the-world-s-indigenous-peoples#:~:text=There%20are%20an%20estimated%20476,and%20represent%205%2C000%20different%20cultures.>
 2. Indigenous peoples constitute about 8.25% of India's 1.4 billion populations at present.
 3. Report of the Working Group on the Universal Periodic Review India, A/HRC/8/26/Add.1, 25 August 2008 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/161/58/PDF/G0816158.pdf?OpenElement>
 4. Report of the Working Group on the Universal Periodic Review: India, A/HRC/36/10/Add.1, 6 September 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/260/43/PDF/G1726043.pdf?OpenElement>
 5. The recommendations made with reference to indigenous peoples at the 2nd cycle of the UPR are:
Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved (Ghana)
- Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations. (Holy See)*
6. Report of the Working Group on the Universal Periodic Review: India, A/HRC/21/10/Add.1, 17 September 2012, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/167/57/PDF/G1216757.pdf?OpenElement>
 7. Ministry of Tribal Affairs, "Upliftment of Particularly Vulnerable Tribal Groups", 18 March 2021, <https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1705784>
 8. Though the PESA Act was enacted in 1996, only six States namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Rajasthan and Telangana had framed State specific PESA Rules for their respective States to implement PESA. Another four States i.e. Jharkhand, Chhattisgarh, Madhya Pradesh and Orissa have not enacted Rules for PESA. The status of implementation of the PESA is available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1781707>
 9. The status of implementation of the FRA is available at <https://tribal.nic.in/FRA/data/MPRJan2020.pdf>
 10. Unleashing Coal: New Hopes for Atmanirbhar Bharat, PIB, 11 June 2020, https://coal.nic.in/sites/upload_files/coal/files/curentnotices/PIB-Coal-11062020.pdf
 11. The Forest (Conversation) Act of 1980 is available at https://www.prsindia.org/uploads/media/Compensatory%20Afforestation/bill185_20080723185_Forest_Conservation_Act_1980.pdf
 12. Bearing the Brunt: The Impact of Government Responses to COVID-19 on Indigenous Peoples in India, International Work Group for Indigenous Affairs, 20th September 2020, <https://www.iwgia.org/en/resources/publications/3838-bearing-the-brunt.html>
 13. 42 coal mines auctioned till date for commercial mining: Government, Economic Times, 12 February 2022; <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/42-coal-mines-auctioned-till-date-for-commercial-mining-government/articleshow/89525299.cms>
 14. Tribals in A & N Islands, Press Information Bureau, Government of India, Ministry of Tribal Affairs, 24-February-2016 <https://pib.gov.in/newsite/PrintRelease.aspx?relid=136700>
 15. Indian government wants to strip even the Andaman Islands of their environmental protection, Scroll.in, 9 April 2021, <https://scroll.in/article/991827/indian-government-wants-to-strip-even-the-andaman-islands-of-their-environmental-protection>
 16. Compilation of the Public Hearing held on 27.01.2022 for environmental clearance of the proposed project "Holistic Development of Great Nicobar Island in Andaman and Nicobar Islands" is available at <https://www.andaman.gov.in/admin-pannel/whatsnew/1-1519-Combined%20EIA.pdf>
 17. REFERENCE: CERD/EWUAP/106 th session/2022/MJ/CS/ks, 29 April 2022, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT_CERD_ALE_Ind_9556_E.pdf
 18. Palm oil policy needs wider consultation, The Statesman, 2 September 2021, <https://www.thestatesman.com/opinion/palm-oil-policy-needs-wider-consultation-1503001799.html>
 19. Changes to forest conservation act delayed after new objections, The Hindustan Times, 9 January 2022, <https://www.hindustantimes.com/india-news/changes-to-forest-conservation-act-delayed-after-new-objections-101641749843786.html>
 20. EIA rules amended: projects near LoC, those of strategic value won't need green nod, The Indian Express, 20 July 2022, <https://indianexpress.com/article/india/environment-ministry-amends-eia-rules-exempts-highways-strategic-importance-8039740/>