

NGO SUBMISSION
INDIA

DISCRIMINATION AGAINST INDIGENOUS CHILDREN IN INDIA:
RACE, CULTURE AND CLASS

*Submitted to the
Committee on the Rights of the Child*

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*In Accordance with Article 44
of the Convention on the Rights of the Child*

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SUMMARY

This is the second alternate report from the Centre for Organisation Research and Education to the Committee on the Rights of the Child in respect of the monitoring and reporting obligations of the Government of India. This report has been submitted also the Committee on the Rights of the Child in a modified form for consideration at the General Discussion Day 19 September 2003.

In this context we should like to point out that since the Committee made its concluding observations to the initial report of India, there has been no substantive change in the decline in conditions and status of the indigenous child of the North east region of India. This can be verified from comments made even by a Union Minister of Health regarding the increasing infant mortality, maternal mortality and declining access to pre-natal services in the North East region.

A very superficial glance at the disaggregated statistics p ldren will convince the most skeptical of this reality.

At the same time human rights abuses are increasing due to what the Governmnet of India terms « *law and order problems and terrorist activities* » . Indigneous children for several generations have suffered the complete suspension of their civil and political rights, without recousre to domestic remedies.

The efforts of India to meet industry demands for resources incuding those of the tourism industry, is impacting with massive displacement and loss of indigenous lands to their original inhabitants. These losses take their inevitable toll on the lives and well being of indigenous families and communities and radically impair their ability and capacity to care for their own children.

The absence of culturally appropriate training for health workers and educators has even resulted in deaths of indigenous children because of misutilisation of medications. More and more children are leaving schools and schools are disfunctional because of lack of training and infrastructure support to teachers.

In sum the indigenous children of this region suffer increasing marginalisation making them vulnerable to active induction into the worst forms of child labour and exploitation.

1. India has one of the largest populations of indigenous peoples in the world. According to the Government of India classification of Scheduled Tribes the population is close to 70 million (Census of India 2001). However, this does not include many indigenous peoples who resist being named "tribal" or are excluded from this category by legislative fiat. All told the actual population of those considering themselves indigenous to their ancestral territories may be as much as 10 to 15 per cent over this figure. "Out of the 5653 distinct communities in India, 635 are considered to be 'tribes' or 'Adivasis'. In comparison, one finds that the estimated number of [Scheduled Tribes] varies from 250 to 593."¹ Again this does not include those who consider themselves distinct "nations" rather than "tribes" or "adivasi". This paper will focus largely on the indigenous children of the North Eastern region of India, in the overall context of the Indian Union.

Roots of Discrimination

2. Discrimination against the indigenous population in South Asia has many roots: conquest and displacement in ancient history, exclusion from the mainstream class and caste structures, into which they do not fit, isolation geographically from the more settled and feudal social and cultural environments of the ancient and medieval "Indian" kingdoms.

3. Colonization played a contributing role in the enhancement of this discrimination in British India. Despite imperialism, considerable regard for the classical South Asian social and cultural mainstreams developed in academia and subsequently in the political acknowledgement of these. Indigenous peoples on the other hand, were largely perceived as "primitive" worthy of anthropological rather than any other consideration, to be at best benevolently either brought into the fold of civilization or preserved in their splendid barbarity!

4. The successor government of the Indian Union has continued in such modes, tempered however with the insatiable thirst of a new born and impoverished country struggling to find a prominent place in the economic and political hegemonies that rule the world today. With this substantial population of indigenous peoples it is both surprising that these are some of the most discriminated group entities in the supposedly democratic Indian polity and obvious why they should be kept so.

5. It is only with the acceptance of this unpalatable truth: that it is in the immediate interest of the development thrust of Indian state to maintain indigenous peoples in their disenfranchised condition, that it is possible to make sense of the systemic action and inaction that characterizes discrimination against indigenous children in India.

Indigenous children and the Convention

6. What is the position of the Convention of the Rights of the Child concerning the specific needs of indigenous children? At first glance there are only two Articles² that explicitly address the question of indigeneity. However, the numerous references to family, community participation and culture appropriateness of interventions and services³, the prohibitions against discrimination on any grounds⁴ make it clear that the drafters of the Convention intended the broadest interpretation of its language, in favour of the child, in every circumstance.

7. Moreover the language of the Preambular section and the overall language of the Convention is evidently enabling rather than limiting, "[taking] due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child".⁵

8. What is or must be expected as "due account" in the case of indigenous children in order that the Convention may be applied in a non-discriminatory, inclusive, participatory and effective manner in the Indian context? It may be of value here to look at specific cases of the systemic impact of non-recognition or discrimination in order to answer such a question.

The basis of discrimination

9. The first question that comes to mind in the search for information is who and where are these millions of children? Their identity and location. The geographical locations are spread across India Indigenous peoples' territories exist in every state of the country, in larger or smaller areas⁶.

10. A major concentration is the North East region of India; one of the largest territories in the country still dominated by indigenous peoples in their traditional territories⁷. They are coastal or plains peoples, riverine or mountain dwellers, with a range of cultures to match the terrain. However large and increasing populations of indigenous peoples also live in non-traditional environments, rural or urban, even in those areas where the Census of India does not reveal their presence.⁸

11. The primary line of discrimination being drawn, it is not surprising that discrimination permeates every level of policy, and, concomitantly, of planning and social services. Indigenous peoples' identities are not recognised nor, therefore, are their rights or needs visible as legitimate aspirations in this gargantuan democracy.

Indigenous children in the North East region of India: Concerns of Survival

12. The situation of the peoples of the North East region of India, home to over 200 indigenous peoples, is strongly illustrative of this situation. In terms of food security and food availability, data is not available in most of the areas except for the State of Assam, which is identified as having a moderate problem.⁹

13. However considering that indigenous and tribal child populations in even the more prosperous states of India are suffering malnutrition and starvation incidence far higher than the national average¹⁰ it is not surprising that the Union Health Minister in January 2001 commented on the increasing neonatal morbidity and mortality in the region.¹¹

14. The word used by the Minister himself needs to be stressed - "increasing". This is an apparent anomaly. The usual contexts of strong male child preferences, extreme discrimination in caring for girl children, lack of education, especially of women or low status of women are not largely present in the majority of societies in the region.¹² Why then, when India is claiming to have improved its performance on these basic indicators, are these regions demonstrating a noticeable downward trend?

15. It is well recognised, all over the world today, that the survival and development of indigenous peoples is closely tied to their traditional lands.¹³ These lands provide not only food and medicinal products, shelter materials and other tangibles without which mere physical survival and well-being are threatened, but also are the basis of community, identity, history and culture.

16. What is the record of the Government of India¹⁴ in protecting indigenous peoples' rights to lands in this region?

17. Anachronistic colonial law based on the premise of *terra nullius* governs indigenous peoples' lands like all other lands in the territory of the Union of India. A range of laws therefore limits indigenous peoples' rights to their ancestral territories and policies including forest and conservation laws, land acquisition laws and development policies demanding land resources.¹⁵

18. Massive influxes, encouraged by the State, of mainstream ethnoses, into indigenous lands¹⁶, the on-going situation of armed conflicts, rapid and imposed urban development, the growth of extractive industry and plantations all make exorbitant demands on these lands, many of which support unique, sensitive and fragile ecosystems which have been maintained and possibly enhanced, for

thousands of years by the indigenous peoples, while supporting their survival and unique development of cultures.

19. There is not only a lack of but a reluctance to comprehend the critical importance of traditional land resources held by indigenous law and practice to the survival and well being of indigenous peoples and consequently to indigenous children.

20. There is, therefore, neither serious political commitment nor effort to assure that indigenous children are not deprived of these rights. With the growing marginalization of those called the *Poor*, whether they are indeed poor or more accurately rendered poor by deprivation of their wealth and non-recognition of their rights to it, indigenous children are probably the one of the most vulnerable sections of Indian society today.

21. The Government of India's First Periodic Report to the Committee on the Rights of the Child clubs together minorities, backward classes and Scheduled Tribes and Castes, under a chapter on "Special Protection measures" listing the constitutional and policy provisions allocated for these and the statistical evidence to demonstrate India's commitment.¹⁷

22. However a very superficial look at the ground realities would disabuse any observer, regarding the actual extent of discrimination. Indigenous children remain at the bottom of all the statistics on survival, development.

Development and displacement

23. The irony is that indigenous peoples' lands are the focus of much development activity especially in the last few decades. The exploitation of mineral resources, other natural resources such as timber or plantations of agro-industry, hydro-power generation are largely if not all implemented or planned on indigenous territories.

24. Why, therefore, do indigenous peoples and their indigenous children, not benefit from these initiatives? The answer is a two-fold discrimination. On the one hand, when such initiatives take place, no provisions are made for inclusion of indigenous peoples into the development paradigm posited by the projects.

25. On the other hand indigenous peoples (including their children) are very often perceived as an obstruction that must, one way or another, be removed at the lowest cost to the project. This almost always implies displacement without rehabilitative measures (which are extremely high cost). The statistics on displacement in India (some 40 million people at the lowest estimate) are in the majority indigenous.

Armed conflict

26. The refusal of India to recognize that it hosts a number of extended armed conflicts results in endemic discrimination against children in such areas. Specifically, in the North East region of India and in some Eastern States, indigenous children are the sufferers of multiple discrimination. While in the North Eastern States, conflict between India's Security Forces and the numerous armed opposition groups is consistently reflected as "Terrorism," thereby allowing the Government to impose what amounts to extended martial law in the region.

27. In some areas several generations of children have grown up in this abnormal environment of suspension of their civil rights¹⁸, including the right to life. While children of members of security forces receive considerable support, the vast majority who are inevitably indigenous, are discriminated against in rehabilitation or support programming.

28. Not only this, children are frequently targeted for aggressive or reprisal action by Security forces. The jurisdiction of the Juvenile Justice Act, itself a Special Legislation¹⁹, is in conflict with national Security Legislation which awards martial law powers and impunity in the national courts to the Security forces.²⁰ This in fact removes the vast majority of children taken into custody or sought to be taken into custody from the purview of the JJAct in these regions.²¹

Conclusions and corrective measures in the child rights framework

29. A clear understanding needs therefore to be developed regarding the linkage between children's issues and indigenous children's issues by all sectors of society and civil society in particular. While anti-discrimination positions and laws regarding children in general are a good baseline on which to start, this cannot be the standard set for indigenous children. Standards set for indigenous children must take into account their own realities: Primarily that they are indigenous. Their survival, protection, development and participation depend on their identification as indigenous in the first place. The refusal to name or identify them as such is the foundation of discrimination against them.

30. Request the Committee to make the following recommendations:

- a. The Government of India must effect appropriate changes to ensure that the rights of indigneous children are adequately addressed by all policies and programmes undertaken by The Government of India that have impact on their lives.

- b. The Government of India must formulate and implement policies and programme for promoting the rights of indigenous children.
- c. The Government of India must ensure that the policies and programmes on Employment, Healthcare, Education, Housing, and Public Representation does not discriminate against indigenous peoples and their children.
- d. The Government of India must promote and protect the right to life, physical and mental integrity of indigenous children, youth and their communities, especially those exposed to or involved in armed conflict or other vulnerable situations.
- e. The Government of India must ensure prompt and just punishment on all those found responsible for violations of human rights committed against children, including violations of the rights of juvenile detainees. Children in conflict with the law must be treated in accordance with the provisions of the Juvenile Justice Act 2001 whether under proceedings of apprehension or in custody.
- f. The Government of India must adhere to the principles, and the provisions of the International Covenant on Civil and Political Rights and the recommendations of the Human Rights Committee, International Covenant on Economic, Social and Cultural Rights and its Committee, International Covenant on the Elimination of Discrimination of all Forms of Discrimination and the recommendations of its Committee with special attention to the implications for indigenous children.
- g. Expedite ratification and implementation of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and its two Optional Protocols.
- h. Ensure that the Government of India respects the need for taking prior informed consent, participation of indigenous peoples in formulation, implementation and benefit sharing in all development projects especially hydro-power projects, mining and other extractive industries and plantations.
- i. Mandatory training and education on the Convention on the Rights of the Child and collective rights of children, and the rights of Indigenous peoples among all levels of administrative institutions, civil authorities and armed forces.
- j. Implement the recommendations merging from the previous examination of India's country report by the Committee on the Rights of the Child without any further delay and encourage inter-governmental agencies such as UNICEF to effectively support the governments efforts to honour its commitments to children.

¹ C.R. Bijoy, PUCL Bulletin, February 2003; The Adivasis of India - A History of Discrimination, Conflict, and Resistance.

² Articles 17 and 30, Convention on the Rights of the Child

³ Convention on the Rights of the Child, Article 5: 'States Parties shall respect the responsibilities, rights and duties of parents, where applicable, the members of extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention.'

Article 15, United Nations Draft Declaration on the Rights of Indigenous Peoples: 'Indigenous children have the right to all levels and forms of education of the state. All indigenous peoples also have the right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including health and social security with the particular attention be paid to the rights and special needs of indigenous women, youth, children.'

⁴ Convention on the Rights of the Child, Article 2, 28 and 30: State Parties shall respect and ensure ...rights....without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States parties shall take all appropriate measures to ensure that the child is protect against all forms of discrimination of punishment on the basis of the status, activities, opinions, beliefs of the child's parents, legal guardians, or family members. Part 1, paras 15, 18, 19, 22 of the Vienna Declaration on Human Rights Commitments 4 and 5 of the Copenhagen Declaration on the World Summit for Social Development

Para 24 and 32 of the Beijing Programme of Action, World conference on Women
Para 7, Istanbul Declaration, Habitat II

Articles 2 and 4 of the Declaration on the Elimination of All forms of Intolerance and of Discrimination based on Religion or Belief

Article 1, 2, 7, and 23 of the Universal Declaration of Human Rights

Article 2, 3, 7 and 13 of the International Covenant on Economic, Social and Cultural Rights

Article 2, 3, 14, 23, 26, 27 of the International Covenant on Civil and Political Rights

Article 2, 7, 10, 11, 12, 14, 15, 16 of the Convention on the Elimination of All Forms of Discrimination Against Women

Articles 3,4 and 5 of the Convention Against Discrimination in Education

⁵ Preambular paragraph 12, Convention on the Rights of the Child

⁶ India's First Periodic Report to the Committee on the Rights of the Child, 2001
Pg 406 -428

⁷ The highest ethnic diversity among the indigenous population is in the North Eastern region, where 220 distinct groups have been identified and comprise approximately 12% of the total indigenous population of India: Indigenous People's Self Determination in North East India by Christian Erni, Indigenous Affairs, Self Determination, March 2001, International Workgroup on Indigenous Affairs.

⁸ Census of India 2000 makes no reference to these at all.

⁹ World Food Programme

¹⁰ The Hindustan Times (16 April 2001) reported neo-natal deaths of 8000 tribal children in Nasik revenue division, State of Maharashtra, between 1995 and 2001. The deaths were clearly related to food insecurity in one of India's wealthiest states including poor maternal nutrition and with high indicators of malnutrition in other siblings

¹¹ The Hindustan Times, 11 January 2001.

¹² Or for that matter, present to the same extent in tribal / indigenous societies in India, in comparison to mainstream cultures. However, despite this, the morbidity statistics for Scheduled Tribes and Scheduled Caste children are a frightening near 85 per thousand with reliable data not available from many areas.

¹³ Lands include water bodies and courses, natural features and resources, flora and fauna

¹⁴ Historically, most indigenous territories until the time of British colonization were left largely to themselves. Occasional forays by the sub-continental feudal states attempted forays into their territories sometimes to extend land holdings, more often to raid, most frequently for passage to the next major town, for conquest or other reasons. The British followed a similar pattern, using indigenous territories as corridors rather than attempting to impose administrative fiat, compelling access to some resources usually minerals or timber, more rarely demanding land holdings, such as in the case of Sikkim which leased the approximate territory of what is today the Darjeeling District of West Bengal for tea plantations.

Subsequently, the Government of India encouraged massive migration from Nepal into this area in order to consolidate its political hold over the indigenous peoples and the territory, particularly after the merger of Sikkim into India.

¹⁵ Of the not less than 40 million displaced people in India, the great majority are indigenous people. At present the Ministry of Environment is working with the support of some environment agencies and NGOs to implement a massive Forest and conservation area eviction programme. In the North East region these are indigenous peoples and these forests are traditional territories. What will happen to these children? No doubt the majority will migrate to cities and occupy slums as they have in the past, where they are not even identified as tribal/indigenous any more.

¹⁶ Population Growth and Alien Influx, Aribam Brajakumar Sharma, Manipur: Past and Present Vol III Edition Dr Naorem Sanajaoba 1996, Manipur: A Preliminary Report on Human Rights in the North, Compiled by INDEGENE , CORE

¹⁷ The Constitution of India seeks to protect aliens, except enemy aliens under Articles 14, 20(1), (2) and (3), 21, 25(1), 27 and 28(3). In all these provisions of the Constitution the guarantee is extended to all persons, including 'refugees'. Page 331,

Article 51 (a) of the Constitution states: "It shall be the duty of every citizen of India to defend the country and render national service when called upon to do so". However, there is currently no compulsory recruitment in India, page 339.

The GOI has repealed the Juvenile Justice Act, 1986 and introduced the Juvenile Justice (Care and Protection of Children) Act, 2000 that has come into force from 1 st April 2001. Page 341

The Juvenile Justice (Care and Protection of Children) Act, 2000 ensures that no child is deprived of his/her liberty arbitrarily or unlawfully, according to Section 12 of the Act. Arrest, Detention or imprisonment of a child is used as a measure of last resort if there appear reasonable grounds under the Juvenile Justice (Care and Protection of Children) Act, 2000. Page 357

Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000 prohibits sentencing of a delinquent Juvenile to death or imprisonment or commitment to prison in default of payment of fine or in default of furnishing security. Similarly, the Indian Penal Code prohibits imposition of death penalty on children. Page 361

The Juvenile Justice (Care and Protection of Children) Act, 2000 states that the rehabilitation and social integration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social integration of children shall be carried out alternatively. Page 3638

¹⁸ Imposition of continuous "disturbed areas" declaration along with use of armed forces of the Union over entire state of Manipur since 1980.....every person in Manipur under the age of 18 was born during this during this period recognized as abnormal by Indian law, page 7,

Children of Manipur: A Supplementary Report on the Rights of the Child, submitted by Centre for Organisation, Research and Education to the Committee on the Rights of the Child in the consideration of the initial reports of States Parties due in 1995

¹⁹ i.e., superceding other legislation affecting the subject

²⁰ The Armed Forces (Special Powers) Act, 1958; The National Security (Amendment) Act, 1980, Unlawful Activities (Prevention) Act, 1967, The Punjab Security of the State Act, 1953, the Seditious Meetings Act, 1911.

²¹ "Juvenile Justice (Care and Protection of Children) Act, 2000: Does it provide Protection for Children in Armed Conflict", a paper by Arvind Narrain, Centre for Child and Law, National School of Law India University, presented at the First National Workshop on Children in Armed Conflict, 10-12 January 2002, Shillong, Meghalaya.