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To

Mr. Philippe TEXIER

Chairperson

Committee on Economic, Social and Cultural Rights

UNOG-OHCHR

1211 Geneva

Switzerland

Subject: Submission of shadow report to "combined second, third, fourth and fifth periodic report of INDIA/ E/C.12/IND/5/1 March 2007"

Through:

Ms. Wan-Hea Lee

Secretary

Committee on Economic, Social and Cultural Rights

UNOG-OHCHR

1211 Geneva

Switzerland

March 24, 2008

Dear Mr. Philippe Texier,

When the India State government finally submitted its required State report to the ICESCR, they unfortunately skipped a very important and pressing problem. This problem is the abysmal economic and social situation of India's Denotified and Nomadic communities (DNT). Quite astonishingly, the India state completely failed to acknowledge their plight, which is representative of how they have dealt with these persons over the past sixty years. That is, they are India's "invisible" people, plagued with a pervasive stigma of criminality and destitution. We write this shadow report in hopes that the ICESCR will recognize the substandard conditions of these persons and implore your committee for some action in respect to India's failing obligations. This report is the outcome of several consultations with the communities and civil society groups working on this issue for the last three decades, as well as field studies.

In India, there are an estimated 60 million people belonging to the Denotified and Nomadic Tribes, though a reliable census figure remains unavailable. The DNTs are those groups who were "notified" or classified by the British Colonial Government as born criminals in a series of acts and regulations leading to the Criminal Tribes Act

(1871). The British colonial administration viewed their itinerant and nomadic lifestyle with deep suspicion. The provisions of the Act were extremely oppressive and discriminatory insofar as it granted local administrations sweeping powers to identify and notify entire communities as criminals. Despite being "denotified," these nomadic groups continue to face severe discrimination and ostracism. They are still perceived as social outcasts by upper-caste villagers, unduly harassed by police enforcement officials, and effectively ignored by the Indian government.

The state party of India, in its comments on the issues listed for the consideration of the second to fifth periodic reports of India concerning the rights covered by Article 1 to 15 of the ICESCR (E/C.12/IND/5), did not respond honestly, but rather avoided the issues of DNTs.

We recommend that:

- The State of India repeals the Habitual Offenders Act (1952) as per the request of the National Human Rights Commission and the UN CERD's call (Para 11 of CERD/C/IND/CO/19, 5 May 2007).
- The State of India provide effective protection to members of the DNT and Nomadic Tribes, introduce mandatory sensitisation and educational classes on the DNT and Nomadic Tribes for the police, judges, and prosecutors and be proactive in taking disciplinary or criminal action against police and other law enforcement officers who violate their duty or participate in human rights violations. The Scope of the Prevention of the Atrocities against SC and ST Act (1969) should be broadened to include the Denotified and Nomadic Tribes.
- The Indian State urgently devises a plan and methodology for a census of NT-DNT communities in all States.
- This needs to be coupled with a debate in the country, in the State Legislative Assemblies and in the Parliament on regrouping of NT-DNT and the dire need for a third Schedule comprising of NT-DNT.
- The NT-DNT commission is made a permanent constitutional Commission just like the SC and ST Commissions.
- The Nomadic nature of these communities be recognised and supported by the State Governments and the Union Government. This should not be cited as an excuse for being unable to protect their Human Rights.
- Intensive sensitisation processes with the administrative machinery be initiated vis-à-vis these communities.
- The National Sample Survey Organisation conducts periodic surveys which shall feed into the development planning process of the country.
- The very nomadic nature of the community should not be used as an excuse by the State to fail to extend protection of basic facilities such as housing, credit (as many of them are in minor trade), health, education etc.
- In the case of communities who need primary recognition immediately and have no documentary evidence that more creative ways of official recognition needs to be enacted.

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- Travel concessions and nomadic settlements with basic facilities such as water, shelter, and sanitation should be seen as primary support mechanisms given that Nomadism is one of the niche skills of the livelihood of both performing and trade based communities. In particular, their customary and usufruct rights over common grazing lands need to be protected. The travel restrictions for the nomadic trade must be abolished.
- All those who have lands and are cultivating without land titles should be immediately regularised and this should be undertaken with the reality in mind that documentary evidences would not be available. The decisions taken by the respective state governments to regularise the rights should be implemented immediately.

Regards

Sincerely



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In association with Econet (Pune), National Campaign for the Nomadic Tribes Human Rights, Navjeevan Bahuyudyashiya Sanstha, Samvedana, Sankalp Gram Vikas Prakalp, SSDASBS, and Vicharata Samuday Samarthan Manch. Primary research conducted and report written by Catlan Reardon. Research directed by Subash Mohapatra. FFDA sincerely acknowledges the support expressed by the groups, communities and individuals, especially Anke Boone, Sarika Jadhav, Siddarth Kamal Gangale, Subhash Shinde, Panchpula Wadde, and Kuldeep Bhimrao Rathod for the field studies.

**Submission of Shadow Report to “Combined Second, Third,
Fourth and Fifth Periodic Report of India(E/C.12/IND/5)”**

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I. Historical and Legal Overview of the Denotified & Nomadic Tribes in India

The communities designated as Denotified and Nomadic Tribes of India includes an estimated population of over sixty million, though a reliable census figure remains unavailable due to regroupings of the SC/ST (Scheduled Castes/Scheduled Tribes) List in various states, the omission of some of these groups from any census count, and the difficulty of assessing the true population of any nomadic community. According to the 1991 census, there were 67,758,380 persons classified as belonging to scheduled tribes in India, or 8.08 percent of the population.¹ In the case of the Denotified Tribes (DNT) or “ex-criminal” tribes, enumeration is even more difficult as some tribes are included in amended lists of Scheduled Castes, Scheduled Tribes, or in Other Backward Classes, but many others still remain outside any schedule and thus lack many necessary constitutional safeguards.² This is because the “criminal tribes” were not officially denotified until 1952, while the scheduled lists for tribes were established two years earlier in 1950. On top of this, the scheduled lists lack uniformity between states leading to some tribes being included as a Scheduled Tribe (ST) in one state and an Other Backward Class (OBS), Scheduled Caste (SC) or unlisted in another. Clearly, this complicates efforts at providing much needed social and economic support as members of the same tribe sometimes qualify for different government schemes.

In order to fully understand the plight of the DNTs, it is necessary to understand their continued social and economic destitution in a historical context. Previously, these nomadic groups co-existed with the settled villages in a symbiotic relationship. They each specialized in a particular role, which connected distant villages or provided needed goods and services. However, the replacement of customary laws with a litany of land-use and criminal legislation stripped these communities of their traditional means of livelihood in one fell swoop. More specifically, the DNTs are those groups who were “notified” or classified by the British Colonial Government as born criminals in a series of acts and regulations leading to the *Criminal Tribes Act* (1871).

¹ Indian Census (1991).

² Meena Radhakrishna, “Dishonoured by History,” Online: The Hindu Folio <<http://www.hindunet.com/folio.html>> (date accessed: 17 January 2008).

The British colonial administration viewed their itinerant and nomadic lifestyle with deep suspicion, especially after the Indian Mutiny in 1857, when the British Raj equated their lifestyle to that of wandering “criminals” and antithetic to a modern, civilized existence. They viewed criminality through the lens of the pervasive caste system in India and thus, interpreted crime as caste-based or as an inheritable occupation. With the objective of establishing greater control over rebel rural regions and nomadic groups resisting the British Indian authorities, the CTA ostensibly labelled almost 200 tribal groups as “born criminals.”³ The provisions of the Act were extremely oppressive and discriminatory insofar as it granted local administrations sweeping powers to identify and notify entire communities as criminals. Thus, criminality in British India was seen not only as an individual act, but also as a community or caste-based phenomena where certain groups were “addicted to the systematic commission of non-bailable offences.” Criminal Tribes were required to register at local police stations, check in at certain times of the day and notify local authorities of any planned departure. Even to this day, DNT members are forced to notify police and local administrative officials before travelling to a different district for fear of being arbitrarily picked up on suspicion. In addition, many Notified Tribes were confined in prison-like settlements or rehabilitation camps in which they were “chained, shackled, caned, and flogged while being surrounded by high walls.”⁴ Landlords and industrial establishments often used these “settlements” for bonded labour with tacit approval from police. This practice of bonded labour continues in Gujarat and some parts of Maharashtra to this day.

Following independence, in 1952, the *Criminal Tribes Act* was abrogated and subsequently replaced by the *Habitual Offenders Act*, which contains provisions concerning individual offenders rather than whole communities. Despite being “denotified,” these nomadic groups continue to face severe discrimination as the invidious stigma of criminality permeates throughout Indian society. They are still perceived as social outcasts by upper-caste villagers, unduly harassed by police enforcement officials, and effectively ignored by the Indian government.

³ Motiraj Rathod (2000) “Denotified and Nomadic Tribes in Maharashtra.”

⁴ Meena Radhakrishna, “Dishonoured by History,” Online: The Hindu Folio <<http://www.hindunet.com/folio.html>> (date accessed: 17 January 2008).

II. The Legal Framework: The Economic, Social, and Cultural Rights of DNTs

I. Article 1: Self-Determination, Natural Wealth, and Resources

A. Implications of Irresponsible Development Programs and Forest-Bans on DNTs

India's rapidly growing economy and rising global position has spelled disastrous results for the DNT-NT groups. Traditionally, many of them relied on the land and forests for hunting game, food, and fodder. However, development projects such as large dams, factories, mining, and forest reserves have resulted in their drastic territorial displacement and cultural dissolution. Given that the Indian Government rarely issued legal land titles to the "ex-criminal" or nomadic tribes, these communities were left with no viable method through which they could claim compensation or remuneration. To add insult to this injury, there was no rehabilitation plan created for the communities who traditionally hunted small game for a living. These groups were effectively left out to dry without any alternate livelihood option once hunting was banned. Furthermore, agricultural policies leading to the consolidation of land holdings, irrigation, and mechanization have drastically changed nomad-sedentary relations. No longer are the specialized skills and roles of the DNT-NT groups needed in the settled villages as they have become obsolete. On top of these difficulties, the persistent cross-cutting negative social stigma against the DNTs makes it doubly difficult to find adequate means of subsistence.⁵ As point 6 of its list of issues E/C.12/IND/5, the UN Committee requested that the State of India provide information on the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of December 2006, and the mechanisms for its effective enforcement. The act requires State governments to constitute committees that will process the cases and ensure distribution of land rights. So far the Prime Minister has not required the Chief Ministers to immediately implement the act. At this time, the implementation has been initiated in some States, yet it has been undertaken in such a manner that the initial spirit of the Act remains defeated. For example, the Maharashtra State refuses to accept that Gram Sabhas should be constituted at the hamlet level arguing that they should be reserved only for the Revenue Village Panchayat level, not wanting to devolve any of their power.

⁵ Dutt, Bahar. "Livelihood Strategies of a Nomadic Hunting Community of Eastern Rajasthan." Vol. 8, No 2. Dec 2004. (pp. 260-273).

II. Article 2: Progressive Realization of Rights, Discrimination, and Non-Nationals

A. Lack of Proper Enumeration & Exclusion from Reservations

In the spirit of liberal democracy, the Indian Constitution entails specific provisions that provide for the “uplifting” of particular Scheduled Tribes and Scheduled Castes. Unfortunately, the DNTs are not categorized as a specific class under the constitutional schedule like the Scheduled Castes (SCs) and Scheduled Tribes (STs). Although some DNTs are included in ST/SC lists in their respective states, there is no coordination among different states, which leads to a lack of uniformity and counterproductive policies. Add to this, the unreliable census figure of the Denotified communities. Some estimates put their population at approximately 30 million; yet this figure remains questionable.⁶ Since many DNTs lack a fixed address and largely inhabit temporary dwellings, they are often simply not counted by census workers. Inclusion in the census is extremely important, especially in India, as the population of a marginalized group can translate into more welfare and government schemes. Quite shockingly, despite being independent for sixty years, the India State has still not fully recorded the real population of the Denotified and Nomadic Tribal community. This clearly illustrates the lack of planning for the development of these communities. The India State has again failed these communities by disregarding one of the basic principles of development planning, that is, knowing exactly who and how many persons you must plan for. As a result of their exclusion from the constitutional schedules, they lack necessary protective safeguards such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), under which the SCs and STs are protected. Or in some cases, a DNT in one state will be listed and thus protected as a ST/SC, but listed under the VJNT (Vimukta Jatis and Nomadic Tribes) list in another state. For example, the Banjaras are included in the VJNTs in Maharashtra, but in Karnataka are considered as SCs.⁷ Indeed, this is extremely counterproductive in creating pan-national economic and social improvements for an entire Denotified community. Additionally, since there is no separate census count specifically for the DNT tribes, there is no way to ascertain the number currently holding government posts under the reservation system.

⁶ Scharz, Henry. “The DN Rights Action Group.” *Journal of Commonwealth and Postcolonial Studies*, Vol. 6, No. 2, Fall 1999.

⁷ Bokil, Milind. “De-notified and Nomadic Tribes: A Perspective.” *Economic and Political Weekly*. Vol. 36, No. 2, 12 January 2002.

B. Non-Implementation of Government Schemes & Welfare Programs

Even more alarming is that while many DNTs may be included under one of the ST/SC or OBC lists, many of the welfare programs or government schemes are not reaching these communities. The government schemes have been uneven at best with some schemes providing more assistance than others. For example, very few educational and economic schemes have been taken up for the communities in Bihar outside old Champaran and Darbhanga districts where non-Plan provisions have been drawn upon. In addition, an absence of public sympathy greatly hinders the DNTs in their rehabilitation—suspicion and disdain are still prevalent among villagers, refusing to give DNTs employment or accept them into their villages. Most of the DNT-NT settlements are located on the fringe of the main village on empty or deserted lots. In the large majority of the tribal villages visited, the tribal members had either been denied government funding or welfare, were still in the process of waiting, or simply were uninformed of allotted government grant money. This not only violates Article 2 of the ICESCR of the progressive realization of rights, but also the essential right to work, adequate living standards, education, social security, and a citizens' fundamental right to life outlined in the UDHR. For example, in the state of Maharashtra in the Biloli Ward # 2 (New Settlement), the Pal Pardhi community, listed as an ST, has not yet received any type of government scheme or support. After many of the 14 families applied for social security and pension, they were swiftly denied due to lack of money in the development budget. Given that the Indian State has not undertaken a proper census of the DNT-NT community, they clearly cannot sufficiently plan developmental funds accordingly. As a consequence, the community survives on an average of 35 INR a day in agricultural labour supplemented with begging in the cities. Their sombre village lacks electricity, water, adequate sanitation, and adequate housing. Yet, they continue to wait.⁸ Another important aspect to point out is the difficulty of actually accessing these government schemes. As many of these villagers are illiterate and unaware of government programs, they often don't see the purpose of applying. The cost - a small application fee, various bribes, and time - is not viewed as worthwhile. Furthermore, under Article 2 of the ICESCR and Article 15 of the Indian Constitution, it is the State's responsibility to prevent violations from non-state or third party actors. Yet the DNT-NTs continue to face severe discrimination from multiple fronts, including

⁸ Testimonies, Pal Pardhi Community in Biloli Ward # 2 (New Settlement) Block: Taluka Biloli, 05 February 2003.

upper-caste villagers, exploitative lenders, and ration dealers. For example, testimony from Kuldip Bhimrao Rathod revealed that while some members of the 51 Phase Pardhi families in Wadala Village, Akola District, have BPL (Below Poverty Line) cards or Ration cards, they were still being charged the regular price of rice instead of the subsidized price. The BPL cards that were shown were empty or sporadically filled out. In this village, as well as countless others, the local ration dealer blatantly took advantage of the Pardhi community. Another important note, there was one Phase Pardhi member in the Gram Panchayat or local village council. However, he was not informed of the times of village council meetings or allotted government schemes for his community.⁹ This inhumane exploitation is aggravated by the absence of official records such as Voter Identity cards, ration cards, and in some cases, Caste Certificates, Birth Certificates, etc. Ostensibly, this communicates from the administration that they have no intention of recording that these communities exist. It is easier for them, as well as the local state powers, to sweep the DNT-NT's under society's proverbial rug.

III. Article 6 & 7: Right to Work, Choice of Work, and Vocational Assistance

A. Failure to Implement Affirmative Action Legislation and Initiatives

In point 13 of its list of issues E/C.12/IND/5, the UN Committee requested that the State of India assess the effectiveness of the measures taken to implement affirmative action legislation and initiatives in the field of employment and education with regard to members of scheduled castes and tribes. Although the stated objective of the National Rural Employment Guarantee Act is to provide 100 days of guaranteed unskilled wage employment to each rural household opting for it, and despite the fact that it was enacted in 2005, this Act is yet to be fully realized in a majority of rural villages, especially with regards to the DNTs and Nomadic communities visited. A fundamental problem is that the Panchayats have a key role in the planning, implementation and monitoring of the Act through preparation of the plan, approval of projects, and execution of works to the extent of 50 percent of the costs.¹⁰ Of the 22 DNT and Nomadic villages visited in Maharashtra for the ESCR field study trip during Jan. 30- Feb. 11, 2008, none of them had received the guaranteed 100 days of employment. Others had applied, taken identity photos, and received a card; but were still waiting for employment. The remainder of the villages had not

⁹ Testimony of Kuldip Bhimrao Rathod and others in Wadala Village, Bassitakale Block, Akola District. 08 February 2008.

¹⁰ http://india.gov.in/sectors/rural/national_rural.php

applied due to lack of information and knowledge of the act and/or lack of motivation. In this case, the problems lie not only in inefficient governmental bureaucracy, but also that the guaranteed employment rests in the hands of the local village councils, which have been haphazard at best in providing allotted funds and/or schemes to the DNT and Nomadic communities. Moreover, these village councils are the bastions of certain powerful vested interests that do not want the DNT groups recorded in any official village census; hence, they conveniently exclude these groups. This renders their chances of obtaining grants or welfare schemes almost impossible.

IV. Article 9: Social Security

A. Lack of Social Security, Pension, and Insurance

Although India has enacted a non-contributory social security scheme with the goal to help those marginalized groups that lack employment or sufficient financial resources, the government has failed to provide these services to many groups including the DNT and tribal groups. The reasons for this are multidimensional. First, being illiterate, unaware, and exploited during the application process, some of the DNT members lack identity, caste, or election cards that effectively remove them from receiving any type of government assistance. Second, even after applying for pension or social security, their application is either ignored or they are left waiting years for the promised benefits to come. As per point 22 of its list of issues E/C.12/IND/5, do the formal and informal pension schemes and other income support schemes enable older persons to live with dignity? Not in the case of the elderly of the DNT communities. The elderly people observed in the villages were weathered, sickly, and in some cases, in need of serious health care.¹¹ Given the unavailability of the services and the lack of pension money, these persons are unable to receive adequate health care; thus, violating their fundamental right to life, adequate health, living standards and countless others.

V. Article 11: Adequate Standard of Living

A. Lack of Adequate Housing, Food, & Water

Undoubtedly, the DNTs and Nomadic Tribes have the highest percentage of individuals living in poverty. Although according to the government the percentage has decreased in the last ten years among tribal groups, the vast majority of DNT and Nomadic groups continue to live in conditions not suitable for living. According

¹¹ Observations and Testimonies, Field Work in Maharashtra, 31 January to 8 February.

to the Planning Commission, the percentage of rural and urban scheduled tribes living below the poverty line is 47.3 percent and 33.3 percent, respectively. However, this figure may not include the various DNTs who do not possess any permanent dwelling or those who were not present at the time of the survey due to their seasonal migrations. For example, in the state of Jammu & Kashmir, the Gujjars had appealed to postpone a BPL survey, as a large number of these families were under migration from the hilly areas to plains and warmer areas. At the time, lakhs of Gujjars and Bakerwals, who live below the poverty line (BPL), were migrating and according to local representatives the government had not devised any method to include nomads in the survey and distribute mobile BPL cards to them. "These tribes constitute about 25 per cent population of the state and live below the poverty line (BPL) and do not get even sufficient food, health, educational and employment facilities. The maximum number of nomads belonging to the tribe could not even manage two meals, proper shelter and fodder for their livestock," the spokesman said.¹²

In most of the villages visited, safe potable water and electricity are not available. Other times there are one or two hand pumps that are shared by the entire community. Overuse and faulty construction leads to poor water pressure and low quality. Adequate shelter and housing is rare. Most of the shelters observed were make-tents, thatched huts, or mud and clay houses. These types of shelters do not provide adequate protection from the elements. Privacy for woman remains non-existent. Furthermore, the conditions of the villages were abysmal. For over two to three generations, these communities have been living in makeshift and decrepit shanties, under harsh conditions without dignity or respect. Lack of adequate housing not only violates Article 11 of the CESC, but also Article 25 of the UDHR and Article 21 of the Indian Constitution, which sets forth the right to an adequate standard of living that includes the right to adequate housing. In General Comment 4 of the Covenant on Economic, Social, and Cultural Rights, it has been reaffirmed that the right to housing is not restricted to shelter but encompasses the right to live in security, peace, and dignity. This is coupled with the rights to participate in decision-making, information, as well as others that are required in order for the full

¹² Tribune News Service. "Wait for Nomadic Gujjars, appeals NGO." Srinagar, 22 September 2007. <http://www.tribuneindia.com/2007/20070923/j&k.htm#1>

realization of the right to housing.¹³ Due to a lack of proper sanitation and sewage systems, villagers live alongside human and animal waste.

B. Lack of Rehabilitation & Compensation for Development Induced Displacement

With regards to point 13 of the ESCR's list of issues, the DNTs and Nomadic communities are the most affected group of persons due to development and urban infrastructure projects. An estimated two per cent of the total Indian population has been displaced by development projects. Of these, 40 to 50 percent are tribal groups; although they constitute only eight percent of the total population.¹⁴ The India Social Institute estimated there were currently 21.3 million persons displaced because of development projects; of this number, 16.4 million were displaced by dams. According to the Central Water Commission, 3,300 dams had been built since 1947 and another 1,000 are under construction. The Indian Institute of Public Administration estimates that the average number of persons displaced by a large dam is 44,182.¹⁵ Clearly, those persons affected by development projects are subjected to forced evictions, lack of information or practical rehabilitation plans, low or no compensation, loss of traditional methods of livelihood, dissolution of community ties, discrimination, and destitution.¹⁶ Even more alarming is that the number of displaced persons who did not receive rehabilitation or compensation between the years of 1945-2000 could be as high as 50-60 million people.¹⁷ "Thus, forced evictions of tribals to make way for mammoth capital-intensive development projects have become a distressing routine and ever-increasing phenomenon.... Apart from the provisions of the Apprenticeship Act, there is no stipulation for private or joint sector enterprises to recruit certain percentage of dispossessed tribal workforce."¹⁸ Unfortunately, by using the 1894 Land Acquisition Act, the State of India continues to displace Denotified and Nomadic communities from their lands without sufficient compensation.¹⁹ Despite being more than 100 years old, the

¹³ Working Paper, "Confronting Discrimination: Nomadic Communities in Rajasthan and their Human Rights to Land and Adequate Housing."

¹⁴ Courtland Robinson, May 2003 pp. 10-11

¹⁵ Mahendra Lama, 2000, "Internal Displacement in India: causes, protection and dilemmas." In *Forced Migration Review*, August 2000

¹⁶ Mander, August 1999, p.4-5, 13-17

¹⁷ IDMC, "India: large numbers of IDPs are unassisted and in need of protection." 3 May

2007 .[http://www.internaldisplacement.org/8025708F004CE90B/\(httpCountries\)/5762D122F45E14B0802570A7004BBA1F?OpenDocument](http://www.internaldisplacement.org/8025708F004CE90B/(httpCountries)/5762D122F45E14B0802570A7004BBA1F?OpenDocument)

¹⁸ J. Felix Raj, "The Plight of the Tribals" *The Statesman* (India) July 9, 2003

¹⁹ HRW, January 2006.

Indian State continues to operate vis-à-vis land acquisition under this draconian legislation, which was not intended to deal adequately with development. On top of this, the resettlement and rehabilitation programs designed by the government have been an utter failure. The State of India refuses to enact a clear and transparent “land-for-land” policy with regards to appropriated land. The truth of the matter is that miserly cash compensations given to DNTs and Nomadic groups are counterproductive as they can continue to live off land for generations, while small cash amounts are more likely to be quickly spent. Furthermore, local social networks and traditional support systems that had been so important to the DNT-NT communities have unravelled, forcing many to move to urban slum dwellings and resort to begging.²⁰ The right to livelihood is threatened by the loss of home and the means to make a living—whether farming, fishing, hunting, and trading or the like—when people are displaced from habitual residences and traditional homelands. The right to own property and not to be arbitrarily deprived of this property, as well as the right to work, are spelled out in Articles 17 and 23 of the UDHR, as well as in Article 6 of the ICESCR.²¹

VI. Article 12: Right to Health and a Healthy Environment

The terms of reference for health rights are the Committee on Economic, Social and Cultural Rights adoption, at its April/May 2000 session, to general comment 14 on (E/C.12/2000/4): that “the right to health is not to be understood as a right to be healthy and contains both freedoms and entitlements.”

A. Lack of access to primary health care and services

With regards to the DNT-NT communities, the State of India has failed to live up to the above ICESCR obligations and is in contravention of the UDHR. Situated in isolated and remote areas, the DNT-NT settlements lack basic healthcare and services remain unavailable. Roads are inaccessible or non-existent; generally dirt or rocky paths that make it impossible for transportation to nearby hospitals that are often as far as 10 km away. Additionally, as per point 40 of the Committee’s list of issues, universal access to family planning services, including access to emergency contraception for women and girls who need it, have not even come close to being realized. In the majority of villages visited, pre-natal care remains obsolete and pregnancies continue to occur in the villages in the midst of squalid conditions. For example, following an interview with members of the Banjara Tribe in Narsitanda

²⁰ Mander, August 1999, p.8-10, 13-14

²¹ W. Courtland Robinson, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement,” The Brookings Institution-SAIS Project on Internal Displacement. 2003 May

Village, our fact-finding team was notified of a young pregnant woman nearly in labour who would have given birth in the village had we not been present at the time. Luckily, we were able to transport her and her family to the nearest hospital located seven km away. Unfortunately, this is not an isolated event but rather continues unabated.²² Article 12 of the ICESCR outlines the right of every human being to enjoy the highest attainable standard of mental and physical health, requiring the State parties to provide medical services and improve environmental conditions to prevent diseases. The lack of legislative and policy measures to provide medical access to the DNT and Nomadic communities violates not only Article 12, but the right to an adequate standard of living delineated in Article 25 of the UDHR.

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services..."

VII. Article 13 & 14: Right to Education and Implementation of Compulsory Primary Education

A. Primary Education not available for tribal communities

As per point 44 of the list of ESCR issues, the State of India has not taken enough measures to increase enrolment and attendance rates in primary and secondary schools of children belonging to DNT and Nomadic communities. The right of education for these marginalized groups is not being realized with the majority of DNT and Nomadic children barely passing fourth standard if attending school at all. First, most of the government-run schools are located far from the DNT and Nomadic settlements where inaccessible dirt and rocky roads prevent DNT-NT children from safely getting to school. On top of this, interviewers heard numerous reports of physical and verbal harassment from other children, as well as teachers, toward DNT children, leading to their withdrawal and non-attendance.²³ \

IX. International Obligations Concerning ESCR

The Indian State government has not only contravened on its obligations to the ICESCR, but also other key international treaties and agreements such as Universal Declaration of Human Rights (1948); International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Economic,

²² Observations & testimonies, Banjara Settlement in Narstanda Village, Naigaon Block. 04 February 2008.

²³ Observations and Testimonies, Field Work in Maharashtra, 31 January to 8 February.

Social and Cultural Rights (1966); Declaration on Social Progress and Development (1969); Convention on the Elimination of All Forms of Discrimination against Women (1979); Declaration on the Right to Development (1986); Convention on the Rights of the Child (1989); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

Their protection and promotion are included as general State duties within the legal and policy spheres in many other national constitutions, including those of India.

X. Concluding Observations and General Recommendations

Indeed, rectifying the plight of the DNTs and the Nomadic tribes will be no easy task; yet it is the responsibility of the State of India to put forth all necessary resources to facilitate their uplifting. This is not to say that the historic policies and ideas such as an isolationist approach, where specific park areas are established for the DNTs to take refuge, or an assimilationist approach, which in reality reveals itself as cultural authoritarianism, should be expanded. Rather, a more compassionate integrationist approach needs to be pursued, where the DNT and Nomadic tribes are integrated with the rest of the Indian population on the basis of equality and mutual respect. In other words, forced assimilationist and discriminatory policies need to be stopped, and an environment where every minority group feels secure needs to be fostered.²⁴ Up until now, the State of India has pursued tribal development policies and schemes with the end-goal of assimilating tribal groups into the so-called mainstream. Given the failure of such programs, we should re-evaluate these types of culturally insensitive policies, and opt for more cooperative programs aimed at improving the economic and social situation of the DNTs and Nomadic tribes.

So far, the recommendations of the National Human Rights Commission have not been enacted. They included appointing a retired senior police officer of high reputation in every state to watch for cases of atrocities against DNTs, reorienting the syllabi of the Police Academy to increase sensitization of the DNT situations, and the repeal of the Habitual Offenders Acts. In March 2007, the UN Committee on Elimination of all forms of Racial Discrimination asked India to repeal the Habitual Offenders Act. Unfortunately, India failed to implement its obligations to CERD's concluding observation.

²⁴ Hashain, Nadeem. "Tribal India."

Recommendations:

1. We recommend that the State of India repeal the Habitual Offenders Act (1952) as per the request of the National Human Rights Commission/CERD.
2. We recommend that the State of India provide effective protection to members of the DNT and Nomadic Tribes, introduce mandatory sensitisation and educational classes on DNTs and Nomadic Tribes for the police, judges, and prosecutors, and be proactive in taking disciplinary or criminal action against police and other law enforcement officers who violate their duty or participate in human rights violations. The Scope of the Prevention of the Atrocities against SC and ST Act (1969) should be broadened to include the Denotified and Nomadic Tribes.
3. We recommend that the Indian State urgently devise a plan and methodology for a census of NT-DNT communities in all States.
4. We recommend that this needs to be coupled with a debate in the country, in the State Legislative Assemblies and in the Parliament on regrouping of NT-DNT and the dire need for a third Schedule comprising of NT-DNT.
5. We recommend that the NT-DNT commission be made a permanent constitutional Commission just like the SC and ST Commissions.
6. We recommend that the Nomadic nature of these communities be recognised and supported by the State Governments and the Union Government. This should not be cited as an excuse for being unable to protect their Human Rights.
7. We recommend that intensive sensitisations processes with the administrative machinery be initiated vis-à-vis these communities.
8. We recommend that the National Sample Survey Organisation conduct periodic surveys which shall feed into the development planning process of the country.
9. We recommend that the very nomadic nature of the community should not be used as an excuse by the State to fail to extend protection of basic facilities such as housing, credit (as many of them are in minor trade), health, education, etc.
10. We recommend that in the case of communities who need primary recognition immediately and have no documentary evidence that more creative ways of official recognition needs to be enacted.

11. We recommend that travel concessions and nomadic settlements with basic facilities such as water, shelter, and sanitation should be seen as primary support mechanisms, given that Nomadism is one of the niche skills of their livelihood for both performing and trade based communities. In particular their customary and usufruct rights over common grazing lands must be protected.
12. We recommend that all those who have lands and are cultivating without land titles should be immediately regularised and this should be undertaken with the reality in mind that documentary evidence would not be available. The decisions taken by the respective state governments to regularise these rights should be implemented immediately.

[END]