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**Joint Stakeholders' Submission on:**

**Human Rights in India**

**Submitted by:**

**Franciscans International (FI),**  
**Congregation of Our Lady of Charity of the Good Shepherd**  
(NGOs in Consultative Status with ECOSOC)

**Geneva, November 2011**

## **I. Introduction**

1. This stakeholders' report is a joint submission of the above-mentioned organizations. The report highlights key concerns related to: *trafficking in persons, right to food, rights of the child, rights of Indigenous Peoples, and rights of the Dalits.*
2. In October 2011, Franciscans International (FI) in collaboration with the Franciscan Family (FF) of India, Church organizations and other Indian civil society groups in India held a series of in-country consultations to gather information regarding the implementation of the first cycle of UPR recommendations and the situation of human rights in India.
3. FI is a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable.
4. The Congregation of Our Lady of Charity of the Good Shepherd became affiliated with the United Nations as a Non Governmental Organization (NGO) in consultative status with ECOSOC in November 1996.

## **II. Trafficking in Persons**

### **Background**

5. India has taken significant steps toward the elimination of contemporary forms of slavery, including, at the international level, the ratification of many of the major international human rights instruments. In May 2011, the Government of India ratified the UN Convention against Transnational Organized Crime (UNTOC) and its three Protocols, in keeping with both the Indian Penal Code (IPC), and the Constitution which guarantees rights against exploitation, prohibits trafficking in human beings, and other forms of contemporary forms of slavery (Art. 23 and 24). At the regional level, India has ratified the SAARC (South Asian Association for Regional Cooperation) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002, and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare, 2002.
6. At the national level, India plans to set up 332 Anti-Human Trafficking Units (AHTUs) at the District Level, and "Nodal Officers" are appointed for each state. The Ministry of Home Affairs has also identified a Division to work as "Nodal Authority" for human trafficking. These efforts are meant to link up to regional initiatives. A combination of measures is as well being undertaken by the Ministry of Women and Child Development (MWCD) which include a legislative framework based on the Immoral Traffic (Prevention) Act, 1956 (ITPA, 1956) and other criminal law provisions, schemes and programs to raise awareness, improve capacity building, and empower vulnerable groups. The MWCD has also implemented the *Ujjawala Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration*. Under the *Ujjawala Scheme*, survivors of trafficking and their children can avail of safe

shelters, food, clothing, counseling, medical care, and legal aid. The Scheme provides also vocational training and income generation activities.<sup>1</sup>

## **Current Challenges**

7. India is a source, destination, and transit country for trafficked human beings, mostly for forced labour, bonded labour, and commercial sexual exploitation. It is difficult to know the magnitude of the problem because in-depth research and reliable data are lacking, and government-run rehabilitation centers for victims, though present, do not function efficiently.

8. Victims are mostly women and children belonging to the lower castes and tribes and living in disadvantaged regions. After being trafficked, they are exploited in brick kilns, embroidery factories, and the agricultural sector. Others are sexually exploited, forced into marriages, or fall prey to the organ transplanting rackets. Tribal adolescent girls from rural areas of the States of Bihar, Jharkhand, Chhattisgarh, Orissa, West Bengal, and Assam are deceived, trafficked, and then sold for sexual exploitation in Delhi, Mumbai, Kolkata, Chennai, Goa, and Bangalore. Widespread corruption among police and armed forces, along with the lack of proper documentation on victims of trafficking, exacerbate the problem.

9. Internationally, victims are trafficked to the Middle East, Europe, and the United States, primarily for the purpose of domestic labor. Children become factory and agricultural workers, domestic servants, and beggars. India is also a destination country for victims coming from Bangladesh and Nepal. It has been estimated that around 5,000 women are trafficked from Nepal to India each year and the majority of prostitutes in India are minors from Nepal and Bangladesh.

10. The Indian MWCD has the primary responsibility for designing and implementing programmes to address human trafficking, especially in women and children. The *Ujjawala Scheme* focuses exclusively on the issue of trafficking. In the north east of India, *Ujjawala* schemes have been implemented in Assam (13 projects), in Nagaland (3), and in Manipur (2). However, there is only one rehabilitation centre for victims, in Guwahati, despite the needs to have more.

11. The causes of trafficking are numerous. For example, girls are trafficked as a consequence of ancestral practices such as the *Devadasi system*, and children are auctioned to men who believe that having sexual intercourse with them heals sexually transmitted diseases.

12. Traffickers employ recruitment methods which rely on these beliefs. Poor parents often sell their daughters on fraudulent promises of marriages or employments in towns, but in reality, girls are brought to brothels, locked up for days, starved, and beaten until they accept the demands of the traffickers by whom they are forced to entertain a maximum volume of clients every day. In Delhi, Christian girls are recruited by middle men who use business cards showing the picture of Jesus, Mary and Mother Teresa. In this way, the girls and their families are made to believe that the recruiters and their agencies are

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<sup>1</sup> Extracts from *India: Significance of the United Nations Convention against Transnational Organized Crime (UNTOC) to address human trafficking: Interview with Mr. G K Pillai, Union Home Secretary, Government of India*, available at: <http://www.unodc.org/southasia/en/frontpage/2011/june/significance-of-the-untoc-to-address-human-trafficking-interview-with-mr-g-k-pillai.html> (last accessed 11 November 2011).

closely associated with the Church to carry out their social work, and they do not realize that they are actually tricked into trafficking. The use of false addresses and religious symbols attract Christian tribal and Adivasi girls making it difficult to track these illegal agencies with little means to trace them once they are missing.

13. As it stands, the Indian legal framework to combat trafficking has proved to be ineffective. The Indian Constitution forbids human trafficking in Articles 23 and 39, but only the first one is justiciable and the second one is a mere guiding principle of state policy. India's Immoral Traffic Prevention Act of 1956, conceived to specifically address the issue, has many shortcomings including a lack of a comprehensive definition of trafficking and a clear distinction between trafficking and prostitution. Indian penal laws also deal with trafficking and criminalize such acts as procuring, buying and selling, importing or exporting human beings, and detaining people in slavery or slavery-like conditions,<sup>2</sup> but the reality of the situation on the ground reveals that these measures are insufficient.

14. Despite the measures already put in place by the Government and the commitment shown in the UPR National Report 2008, trafficking in persons continues to represent a major concern in India. The omission of this issue in the UPR recommendations has been a factor to the stagnation of progress in this area. Therefore, we are seriously concerned about the conditions in which victims of trafficking currently live in India and about the legislative gaps which allow for the flourishing of new forms of slavery-like practices daily.

#### **15. Franciscans International urges the Government of India to:**

- a) *Invite the Special Rapporteur on Trafficking in Persons, especially in Women and Children to visit and assess the situation of trafficking in the country and, through interaction with the Government and NGOs, assess the effectiveness of the anti-trafficking measures already in place;*
- b) *Adopt comprehensive victim-centered legislation on human trafficking with a definition of trafficking distinct from prostitution, which provides for a protection and relief scheme for victims to facilitate their rehabilitation and re-integration, labour related provisions, and a multi-sector oversight body including the Ministries of Women and Child Development, the Ministry of Labour, and NGOs;<sup>3</sup>*
- c) *Increase awareness, among both the general public and relevant officials, on how to report and register trafficking cases under the relevant national legislation, especially in rural areas;<sup>4</sup>*
- d) *Allocate adequate funding for the implementation of registration systems and protection schemes for victims of trafficking (Ujjawala schemes) in all Indian states;*
- e) *Regulate the registration and operation of placement agencies for migrant workers;*

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<sup>2</sup> Indian Penal Code, 1980; Prohibition of Child Marriage Act, 2006; Children (Pledging of Labour) Act, 1933; Bonded Labour System (Abolition) Act, 1976; Child Labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2000; Scheduled Castes and Scheduled Tribes (Prevention and Atrocities) Act, 1989.

<sup>3</sup> India ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 5 May 2011.

<sup>4</sup> *Immoral Trafficking in Persons Act (ITPA)*, i.e. *The Indian Penal Code (1860)*; *Information Technology Act (IT Act 2000 U/s 67)*; *Indian Evidence Act (IE ACT 1872)*; *The Code of Criminal Procedure Act (1973)*; *Bonded Labour System (Abolition) Act (1976)*; *Child Labour (Prohibition & Regulation) Act (1986)*; *The Indecent Representation of Women (Prohibition) Act (1986)*.

- f) *Provide training for the judiciary and law enforcement personnel operating as in-service personnel, police officers, constables, and border control agents.*

### **III. Right to Food**

#### **Background**

16. Article 21 of the Indian Constitution states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The right to life has been interpreted as the right to live with dignity, not merely surviving or existing; the right to food is inherent to a life with dignity.<sup>5</sup> The UPR National Report 2008 reiterated the Government’s commitment to the protection of the right to life, but it does not mention the entitlement of Indian citizens to livelihood and food which are essential for the full enjoyment of the right to life.

17. The Department of Food and Public Distribution together with the Ministry of Consumer Affairs, Food and Public Distribution prepared the draft of the National Food Security Bill which the Government is planning to present in the upcoming winter session of the Indian Parliament.<sup>6</sup> However, the Bill overlooks CESCR General Comment No. 12 on the Right to adequate food, the Interim Orders of the Supreme Court of India on the right to food, and the constitutional provisions which should inform the central and state Governments in the implementation of these Interim Orders.<sup>7</sup>

#### **Current Challenges**

18. Citizens in the North East of India have recently been subjected to a denial of access to food and to work despite their inherent right to “an adequate standard of living (...) including adequate food.”<sup>8</sup> In its 2008 UPR National Report, the Government of India noted that “(...) a number of essential services like education, health, and public distribution system of food have been kept in the public sector to ensure its reach across all sections of the population.”<sup>9</sup> However, there are instances in Kalimpong subdivision, Darjeeling District, West Bengal, of some families being denied access to food through the Public Distribution System (PDS), despite the fact that they possess Below Poverty Line (BPL) cards which entitle them to this service. Complaints to the District Magistrate, the district controller of food and supply, and the sub-divisional officer of food and supply have not yielded results so far.

19. Article 47 of the Constitution of India affirms that it is the “[D]uty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties (...)” Yet the food grains distributed by PDS are of poor quality and insufficient quantity, while the PDS itself is regularly plagued by systemic inefficiencies.

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<sup>5</sup> India National Human Rights Commission, Case No. 37/3/97-LD, available at <http://nhrc.nic.in/impdirections.htm> (last visited 28 November 2011)

<sup>6</sup> Draft Bill available at [http://fcamin.nic.in/dfpd\\_html/Draft\\_National\\_Food\\_Security\\_Bill.pdf](http://fcamin.nic.in/dfpd_html/Draft_National_Food_Security_Bill.pdf) (last visited 23 November 2011).

<sup>7</sup> See Right to Food Campaign, India at <http://www.righttofoodindia.org/orders/interimorders.html> (last visited 23 November 2011).

<sup>8</sup> International Covenant on Economic, Social and Cultural Rights, article 11, par.1.

<sup>9</sup> A/HRC/WG.6/1/IND/1, par 19.

## 20. Franciscans International urges the Government of India to:

- a) *Provide a comprehensive report on the implementation of the recommendations given by the UN Special Rapporteur on the Right to Food after his visit to India in 2005;*
- b) *Conduct an in-depth study on the effectiveness of the Public Distribution System (PDS) which, together with the Interim Orders on the Right to Food of the Indian Supreme Court and the CESCR General Comment No. 12, should inform the Right to Food Bill;*
- c) *Conduct a thorough evaluation of the effectiveness of existing legislation and programmes dealing with the right to food, such as the National Rural Employment Guarantee Act (NREGA) “Eight Food Nutrition Programs”.*

## IV. Rights of the Child

### Background

21. With the largest child population in the world (420 million) the Government of India has committed to keeping the best interests of ‘the future of India’ at the heart of its policies. However, Franciscans International, the Franciscan Family in India, and partners are concerned that this is just a declaration of intent which has not been reinforced by a concrete plan of action. While the Government of India has committed 9% of the GDP to education and 3% to health, the current spending stands at 3.5% and 1.06% respectively.

### Right to Education

22. 2009 statistics from the Ministry of Human Resource Development reveal that 8,000,000 children between the ages of 6 and 14 are still not in school. This puts India in a very difficult position as regards achieving the Millennium Development Goal of universal primary education by 2015. The 86<sup>th</sup> Constitution Amendment Act of 2009, known as *The Rights of Children to Free and Compulsory Education (RTE) Act*, provides for the establishment of education as a fundamental right, but only for those between the ages of 6 and 14.

23. While the school drop-out rates up to Class 8 stands at 62%, it is higher for vulnerable group such as girls (64%), Scheduled Castes (71%), and Scheduled Tribes (79%), according to Ministry of Human Resource Development (MHRD). In 2004/2005, Scheduled Castes and Scheduled Tribes had drop-out rates at the primary level of 34.21% and 42.32% respectively. According to 2006 Sachar Report,<sup>10</sup> drop-out rates among Muslims are higher at the level of primary, middle and higher secondary school.<sup>11</sup>

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<sup>10</sup> The Rajinder Sachar Committee, appointed in 2005 by the Indian Prime Minister Manmohan Singh, was commissioned to prepare a report on the latest social, economic and educational condition of the Muslim community of India. The committee was headed by the former Chief Justice of Delhi High Court Rajinder Sachar, including other six members. The committee prepared a report of 403 pages, and presented in the lower house (Lok Sabha) of the Indian Parliament on 30 November 2006.

<sup>11</sup> *Social, Economic and Educational Status of the Muslim Community of India: A Report*, 17 November 2006.

## Right to Health

24. According to the World Health Organization (WHO), India ranks 171 out of 175 nations on public health spending, and as of 2009, the total expenditure on health amounts to 4.2% of the total GDP, with 32.8% coming from government expenditure and the remaining 67.2% from private spending.<sup>12</sup> Vulnerable communities experience high infant mortality rates; Scheduled Castes communities suffer 88 deaths per 1000 births per year, while the figure for Scheduled Tribes is 95 deaths per 1000 births per year. These are very high compared to the average of the general population of 59 deaths per 1000 births per year.

## Child labour

25. The Indian UPR National Report praised the National Child Labour Project (NCLP) in 1988 as the solution to the issue of child labour. It also claimed that the NCLP “pledges that the government will protect the rights of the child, strive for the elimination of child labour, ensure facilities for schooling (...).” However, the case of children working in hazardous and often life-threatening situations in the coal mines of the Jaintia Hills (in Meghalaya) is an example of the undeniable existence of bonded child laborers in hazardous industries in India. According to a survey of video and photographic evidence carried out by the NGO Impulse,<sup>13</sup> about 70,000 children trafficked illegally from Nepal and Bangladesh are forced to crawl into ‘rat-hole’ mines in search of coal. Impulse has also recorded that these children become subject to sexual abuse, and inhuman, unhealthy and often life-threatening conditions.

26. The Bodo-Santhal conflict of 1996 had dramatic repercussions for much of the north-eastern population, and exacerbated the child labour issues in these regions. Many families suffered the loss of their livelihoods and, despite the Government’s commitment to provide compensation of Rs. 100,000 (US\$ 1,991.45) to families forced to live in relief camps, there are still numerous Santhal families awaiting their compensation. Unable to adequately feed themselves and educate their children, these families have had to engage in a high level of child labour.

## 27. Franciscans International urges the Government of India to:

- a) *Ratify ILO Convention No. 138 on the minimum age for admission to employment and work and ILO Convention No. 182 on the worst forms of child labour;*
- b) *Invite the UN Special Rapporteur on trafficking in persons, especially in women and children and the UN Special Rapporteur on the sale of children, child prostitution and child pornography to assess the situation of child labour and related issues in India;*
- c) *Modify the Right of Children to Free and Compulsory Education (RTE) Act so as to ensure free access to quality education to all children including the most vulnerable, such as children living with HIV/AIDS and children from the scheduled caste and tribes.*

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<sup>12</sup> WHO, *Health Expenditure Ratios*, 2009, available at <http://apps.who.int/ghodata/?vid=1901> (last visited 23 November 2011).

<sup>13</sup> See Impulse NGO Network at [http://www.impulseasia.org/index.php?option=com\\_frontpage&Itemid=1](http://www.impulseasia.org/index.php?option=com_frontpage&Itemid=1) (last visited 22 November 2011).

## V. Rights of Indigenous Peoples

### Background

28. Adivasi in India constitute 8.2% of the nation's total population (84 million), according to the Ministry of Home Affairs, Government of India 2001 census. Though the Adivasis are the original inhabitants of India, they are the most vulnerable rung of Indian society.<sup>14</sup> They are excluded from the social, political, and economic life of the country and thus face big challenges such as accessing health-care and education. They are considered second class citizens and they are oppressed both by the government and the dominant classes.

29. The Constitution of India incorporates specific provisions for the promotion and protection of the social and cultural rights of the Scheduled Tribes. In addition to these rights, the Fifth and Sixth Schedules of the Indian Constitution, the *Prevention of Atrocities Acts* of 1989 and 1995, and the *Amendment to the Panchayat's (Extension to Scheduled Areas) Act* (PESA) of 1996 under Ministry of Panchayati Raj (MoPR), comprehensively deal with the welfare of the tribal people. The States and Central Ministries have been urged to frame provisions under the PESA and accordingly amend laws which deal with issues and activities that might affect tribal people, such as forests, excise, and mining.<sup>15</sup>

### Current Challenges

30. According to the Planning Commission, Scheduled Castes and Scheduled Tribes account for 80% of the rural poor.<sup>16</sup> About 36% of members of Scheduled Castes live in poverty, compared to 21% of the general population.<sup>17</sup> In 2004/2005, 36.8% of Scheduled Tribes in rural areas were living below the poverty line, while the figure was 39.9% for those in urban areas.<sup>18</sup>

31. In the first UPR National Report, the Government of India recognized the need to empower the Scheduled Tribes and committed to tackle discrimination perpetrated against them. However, India refused to consider the Scheduled Tribes as indigenous peoples, even though it voted in favor of the UN Declaration on Rights of Indigenous Peoples. During the first UPR Review, India was encouraged to compile disaggregated data on caste and related discrimination.

32. Based on our monitoring and observation, the Government of India has not fulfilled its commitments to tackle the discrimination against the Adivasis. Serious human rights violations are carried out against them, particularly in relation to their right to life, the right to culture, identity and ethnicity, and the right to land. This is particularly evident as regards India's developmental<sup>19</sup> and hydro-electric<sup>20</sup> projects.

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<sup>14</sup> The Constitution of India does not define Scheduled Tribes as such. Article 366 (25) refers to Scheduled Tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. According to it, the Scheduled Tribes are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification (more information available at <http://tribal.nic.in>).

<sup>15</sup> Excerpts from the Note by Secretary, Ministry of Panchayati Raj, Government of India, Dated: 31st March, 2010 (for more information see <http://panchayat.gov.in/>).

<sup>16</sup> Planning Commission, Government of India, *Eleventh Five Year Plan (2007-2012) Volume III; Agriculture, Rural Development, Industry, Services, and Physical Infrastructure*, 2008, 81.

<sup>17</sup> *Ibid.*, 106.

<sup>18</sup> *Ibid.*, 107.

<sup>19</sup> Eleventh Five Year Plan (2007-2012), Planning Commission, Government of India, Working Groups /Steering Committees / Task Force for the Eleventh Five Year Plan (2007-2012), for details see <http://planningcommission.nic.in/plans/planrel/11thf.htm>

33. The Government is planning to build 168 dams to generate 63.328 MW of hydro-electric power in Brahmaputra River Basin. These dams and hydro-power projects pose a threat to the environment of the North East India and to the livelihood of the indigenous peoples living there. Moreover, the Government has not implemented a fully democratic and participatory process in the formulation of the hydro-power policy for North East India.

34. The 2006 Traditional Forest Dwellers Act recognizes the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers, as well as the legitimacy of their traditional occupations on forested lands. However, the Forest Conservation Act of 1980 and the Land Acquisition Act of 1892, and subsequent amendments, allow evictions of indigenous people from their homeland and the seizure of their lands to the advantage of corporate entities.

35. The violations of indigenous peoples' land rights are many and diverse.

1) In the effort to expand its alternative energy resources, the Government of India has been developing Jatropa cultivations in the north-eastern Indian states occupying tribal lands. The contract was concluded for over 51,000 hectares of land with D1 Williamson Magor Bio Fuel Ltd.

2) The tribal districts of Jashpur, Surgaja, Baster and Raigarph and Dantewada in the State of Chhattisgarh are desirable locations for development for government and multinational corporations. The arrival of large-scale industry could lead to the total displacement of the tribal population and the loss of their culture, customs and languages.

3) The Government of Chhattisgarh is making a concerted effort to acquire land for the mining industries. The worst affected district is Bastar, where 644 villages had been vacated to give way to the operations of Tata Steel.<sup>21</sup> Those who opposed this development were termed as Naxalites (militant Communist groups). Jashpur district (in the same state) has been descended upon by 112 big industries. According to the 2001 Census of India, 70% of a total population of 743.160 is tribal. Jashpur district has a total area of 6.092km<sup>2</sup> of which 6.023km<sup>2</sup> will be used by industries. Just 69km<sup>2</sup> will remain for the accommodation of the entire population. Jashpur district has 765 villages, all of which will be relocated, which means 95% of the tribal population is going to be displaced.

36. Despite the existing provisions and commitments made at international level, the Government of India is neglecting the indigenous peoples' right of Free, Prior and Informed Consent (FPIC) in the decision making concerning their land and natural resources.

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<sup>20</sup>See List of Upcoming Thermal Plants in India, last updated 4-May-2011, available at <http://thermalpower.industry-focus.net/index.php/industry-overview/342-list-of-upcoming-thermal-plants-in-india.html> (last visited 18 November 2011).

<sup>21</sup> Tata Steel will stay put in Chhattisgarh, where it has planned a Rs. 20,000-crore steel plant. It signed the memorandum of understanding with the State government in 2005. For details read – The Hindu: Tata Steel has not dropped Chhattisgarh project <http://www.thehindu.com/news/national/article395583.ece> and Chhattisgarh sweetens rehab package for Tata steel project <http://www.business-standard.com/india/news/chhattisgarh-sweetens-rehab-package-for-tata-steel-project/393609/> also read AHRC-HK The Adivasis of Chhattisgarh: Victims of the Naxalite Movement and Salwa Judum Campaign <http://www.achrweb.org/reports/india/Chattis0106.pdf>

37. The indigenous peoples of North East India are also prevented from fully enjoying their right to freedom of expression. Despite the on-going violations perpetrated against them, the situation is not fully covered by the national media. Any effort made by the local media to speak about tribal issues raises suspicion and is sometimes met with heavy-handed reprisals, as in the case of the banning of the Information Service Television Network (ISTV) in Manipur during the 2004 protest against the rape and murder of Th. Manorama by the 17 Marathi Assam Rifles Unit.

38. Furthermore, the indigenous peoples of India cannot enjoy their cultural rights. The government has failed to preserve their languages, scripts, and cultures. In North East India, the indigenous languages (Sema, Lotha, Ao, Aimol, Chiru, Kharam) are not included in the school curricula and there are no official commitments to preserve these languages and cultures, for example, by including them in local history school books.

### **39. Franciscans International urges the Government of India to:**

- a) *Ratify ILO Convention No. 169 on Indigenous and Tribal People;*
- b) *Invite the UN Special Rapporteur on the rights of indigenous peoples and the UN Independent Expert in the field of cultural rights to visit India and assess the situation of Adivasis, tribal, and other indigenous peoples;*
- c) *Cease displacements and forced evictions of Adivasis, tribal, and other indigenous peoples perpetrated in connection with developmental and hydro-electric projects;*
- d) *Set up an independent and genuine inquiry commission to ascertain the magnitude of the impact which developmental and hydro-electric projects – already implemented<sup>22</sup> and in the process of being implemented – have on the livelihood and on the enjoyment of the rights of Adivasis, tribal, and other indigenous peoples;*
- e) *Mainstream the principles found in the UN Declaration on the Rights of Indigenous Peoples, in the Indian Constitution, and in the 1996 PESA Act to all development projects so that indigenous peoples' rights are respected.*

## **VI. Rights of the Dalits<sup>23</sup>**

### **Current Challenges**

40. Dalits represent 16% of the Indian population and, due to the traditional South Asian caste system; they have been socially, economically, and politically marginalised for centuries. Dalits who converted to Christianity face even more discrimination because, on the basis of their faith, they are excluded from the Scheduled Caste Status (Presidential Order 1950)<sup>24</sup> which provides affirmative actions, constitutional protection, and inclusion in the economic development programmes. The Dalits (both Christians and

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<sup>22</sup> For example, Tipaimukh Dam in Manipur, Lower Subansiri Dam, Dibang Multipurpose Project in Arunachal Pradesh, Teesta IV Project in Sikkim, Gullu Hydro Electric Power Project, Lokar Dam Project in Chhattisgarh, Dumbur Dam in Tripura and the Loktak project in Manipur.

<sup>23</sup> This section is based on the common stand taken by the joint council of the National Council of Churches in India, the Catholic Bishops' Conference in India, and the National Council of Dalit Christians. This confederation has been leading people's struggles and legal fights towards the goal of repealing the Presidential order in 1950.

<sup>24</sup> The presidential order is part of the amendment in the constitution of India. The presidential order denies the Scheduled Caste status to people other than Hindus, Sikhs and Buddhists.

Muslims) live in abject poverty, engage in demeaning occupations, and do not have access to basic services such as sanitation and medical aid. Their conversion should not change their social status, but in reality it has a major impact.

42. According to the National Crime Bureau, in 2008, 33,615 atrocities were committed against Dalits, and only 31.7% of the perpetrators were convicted. The funds allotted under the Special Component Plan<sup>25</sup> for Dalits are not properly used and there are allegations that funds are diverted to non-Dalit components. There are no affirmative action plans for employment in the private sectors specifically targeting them.<sup>26</sup>

#### **43. Franciscans International urges the Government of India to:**

- a) *Take appropriate measures to ensure, protect, and respect the right to freedom of religion and belief of Dalits – so that Dalit Christians and Muslims are not excluded from the Scheduled Caste list – and implement the recommendation of the Government’s National Commission for Religious and Linguistic Minorities (NCRLM<sup>27</sup>) to disregard religion as a factor in granting Scheduled Caste status;*
- b) *Respond to the Indian Supreme Court’s query about the Dalit Christian issue (Writ Petition [Civil] 180/2004) submitted by the National Council of Dalit Christians;*
- c) *Establish at the government level a national enforcement body whose function is implementing economic programmes, legal protection, and affirmative actions for the benefit of Dalits.*
- d) *Extend the reservation policy in the private sectors for employment at all levels.*

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<sup>25</sup> Special Component Plan is the plan derived by the central Government of India to uplift the social, economical, educational status of Scheduled Caste people.

<sup>26</sup> Indian Constitution article 16(4a).

<sup>27</sup> This Commission was established by the Government of India and headed by Justice Ranghanath Misra to study the discrimination done to religious minorities of Dalit Origin. The Commission has submitted their report to the Prime Minister’s Office.