

The Naga People, India

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Abstract

The Naga people live on the mountains of Nagaland, Manipur, Assam and Arunachal Pradesh, in Northern India, as well as throughout the border in Myanmar. Their villages are located on the top of mountains and can only be reached through unpaved roads with four-wheel cars. During the British occupation of South-east Asia, the Naga people – although formally subjected to the British rule – proved to be too fierce for being effectively subjugated, and were therefore left free to organize their societies autonomously. Still today, they retain a high degree of autonomy from the government. However, the Indian government is now building a large highway in the middle of Naga lands, due to be completed by September 2019, seriously threatening their rights and culture. Since only little written sources exist on the Naga people, the present research is in part based on the personal contacts by two of the authors – Federico Lenzerini and Phutoli Shikhu Chingmak – with the leaders of Naga communities as well as with the government of Nagaland.

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1. Nagaland and the Naga People



“While [Naga] tribes differ noticeably in dress, ornament, culture and dialect, each Naga recognizes their common Sino-Tibetan ancestry and feels very much akin to others Nagas, with whom they share a ferocious desire for independence”.¹ The territory originally belonging to the Naga people is today divided between India (2/3) and Myanmar (1/3). State borders have been set by governments in order to keep the Naga people divided and, consequently, to reduce their autonomy. In fact, during the British occupation of India, the Naga people proved to be too fierce for being subjugated, and were therefore left free to organize their societies autonomously. Indeed, after forty-seven years of siege, the British were only able to effectively occupy a minor portion of Naga lands, while most of them continued to be controlled in fact by the Nagas as unadministered areas. Since there, they have been able to retain a high degree of autonomy from the government. Except for a century of formal British rule, Nagaland has never been subjugated by anybody and has never been part of what today constitutes India.² For about thirty years the *Naga National Council* (NCC) – the political wing of the underground Naga Federal Government, founded in 1946 – fought against the Indian government, claiming that Nagaland constituted an independent nation.³

In 1972 India and Myanmar – without the consent of the Naga people – marked a boundary line in the middle of the Naga territories, leaving about 3 million Nagas on the side of India and 1 million within the Burmese territory. The traditionally enjoyed free movement of the Naga people within the whole extension of their traditional territories was consequently constrained, and respect of the political borders (although members of the Naga community are free to move from India to Myanmar, and vice-versa, for a limited number of miles) has been imposed by the armed forces of the two countries.⁴ To accomplish its policy, the Indian

¹ See M. Dowie, *Conservation Refugees. The Hundred-Year Conflict between Global Conservation and Native Peoples*, London, 2009, p. 241.

² See U. Misra, “The Naga National Question”, 13 *Economic and Political Weekly*, 1978, p. 618 ff. Of the same author see also “Naga Peace Talks: High Hopes and Hard Realities”, 38 *Economic and Political Weekly*, 2003, p. 593 ff.

³ See Misra, “The Naga National Question”, cit.

⁴ See S.C. Bhatt & G.K. Bhargava (eds.), *Land & People of Indian States & Union Territories in 36 Volumes – Volume 20: Nagaland*, Delhi, 2006, p. 71.

government divided the Indian part of the Naga territory into four different States – Nagaland, Manipur, Assam and Arunachal Pradesh – to further weaken the Naga political struggle.⁵

Until the early 1980s most Naga tribes were head-hunters, and sometimes land-related disputes were settled through taking the heads of members of the competitor tribe; those who were able to take the higher number of heads belonging to the enemy won the dispute and acquired the property of the land.⁶ This notwithstanding, even if this might appear paradoxical in consideration of the foregoing, the Naga culture has always been characterized by a profound respect for human life. No class distinctions have ever existed in most Naga tribes, and the sense of the community is strongly felt within them. The main source of life is the Land, who is considered the Mother of the community, and is handed down from generation to generation. The Land is life and the community identifies itself in the Land. Private ownership of the Land is usually allowed, but only on behalf of the community, and the owner of the Land cannot sell the latter unless he is authorized by the community. In some tribes, land may only be sold within the village. Similarly, if a Land owner decides to leave the community, he has to return the Land to the latter. Land ownership by women is usually not allowed, to avoid that the property of the Land may be transferred to a different tribe, especially in consequence of the marriage of the woman with a man external to the tribe. Life is spiritually-driven, and those who do not behave correctly may be punished by God. Women are highly respected, as they are considered the bearers of life; the differential treatment between men and women is not the result of “discrimination”, but is simply made necessary by the different roles they play within the community. The Naga people do not consider themselves “indigenous”, but just people born and living in their own land; for them indigeneity is a characterization coming from the outside. Inter-tribal disputes are settled by the elders or customary (village) courts. Ancestors are considered revered and are accordingly respected.

The State of Nagaland was established in 1963 and its organization is regulated by the *16-point Agreement between the Government of India and the Naga People* of 26 July 1960 (hereinafter: *16-point Agreement*).⁷ It established that the “*territories that were heretofore known as the Naga Hills-Tuensang Area under the Naga Hills-Tuensang Area Act, 1957, shall form a State within the Indian Union and be hereafter known as Nagaland*”,⁸ which was placed under the authority of the Ministry of External Affairs of the Government of India.⁹ The organs established by the *16-point Agreement* for governing Nagaland were the Governor of Nagaland, appointed by the President of India and vested with the executive powers, having “*special responsibility with regard to law and order during transitional period and for so long as the law and order situation continue to remain disturbed on account of hostile activities*”,¹⁰ the Council of Ministers and the Naga Legislative Assembly, placed under the responsibility of the latter and “*consisting of elected and nominated members as may be deemed necessary representing different tribes*”.¹¹ The *16-point Agreement* also established that “[t]wo elected members shall represent Nagaland in the

⁵ Ibid., p. 72.

⁶ The information included in this part of the text was collected by the author, Federico Lenzerini, during his June 2014 trip in Nagaland, as a result of his interviews with the (at that time) current or former leaders of several Naga tribes. Such information *generally* reflects the culture of the Naga people, but it is to be taken into account that differences actually exist among the different Naga tribes.

⁷ The text of the Agreement is available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_600726_The%20sixteen%20point%20Agreement_0.pdf> (accessed on 22 April 2019). The authors gratefully acknowledge Professor Gérard Teboul, Member of the ILA Committee on the Implementation of the Rights of Indigenous Peoples for the French Branch, for sharing with them a report of his on the *16-point Agreement*.

⁸ See point 1.

⁹ See point 2.

¹⁰ See point 3.

¹¹ See points 4-5.

Union Parliament, that is to say, one for the Lok Sabha and the other for the Rajya Sabha”,¹² while no act or law adopted by the Union Parliament affecting the religious or Social Practices of the Nagas, their customary laws and procedure, civil and criminal justice – “*so far as these concern decision according to the Naga Customary Law*” – as well as the ownership and transfer of law and its resources “*shall have legal force in the Nagaland unless specially applied to it by a majority vote of the Nagaland legislative Assembly*”.¹³ Local Self-Government was ensured through providing that each Tribe “*shall have the following units of the rule making and administrative local bodies to deal with matters concerning the respective tribes and areas: (a) The Village Council; (b) The Range Council; and (c) The Tribal Council*”, the latter having the competence of dealing “*with disputes and cases involving breaches of customary laws and usages*”.¹⁴ It was established that the pre-existing system of administration of civil and criminal justice would continue, with the following courts as appellate courts: “*(i) The District Court-cum-Sessions Court (for each district), High Court and Supreme Court of India; (ii) The Naga Tribunal (for the whole of Nagaland) in respect of cases decided according to customary law*”.¹⁵

As regards the administration of the Tuensang District, it was established that the Governor would “*carry on the administration of the Tuensang District for a period of 10 (ten) years until such time when the tribes in the Tuensang District are capable of shouldering more responsibility of advance system of administration in other parts of the Nagaland*”, while subsequently a Regional Council would be formed for the Tuensang District by representatives from all the tribes. Such a Regional Council would supervise the establishment of “*various Councils and Courts, in those areas where the people feel themselves capable of establishing such institutions*”, and “*no Act or Law passed by the Legislative Assembly shall be applicable to Tuensang District unless specially recommended by the Regional Council*”. Furthermore, the Regional Council would “*supervise and guide the working of the various Councils and Tribal Courts within Tuensang District wherever necessary and depute the local officers to act as Chairmen thereof*”.¹⁶ The Government of India had the duty “*to pay out of the Consolidated Fund of Nagaland, and a grant-in-aid towards meeting the cost of administration*”, while the Government of Nagaland “*will have general responsibility for ensuring that the funds made available by the Government of India are expended for the purposes for which they have been approved*”.¹⁷

In its last points the 16-point Agreement considered the possibility of including in the territory of Nagaland “*the Reserve Forests and [...] [the] contiguous areas inhabited by the Nagas*”,¹⁸ as well as that “*other Nagas inhabiting contiguous areas should be enabled to join the new state*”, as requested by the Naga delegation;¹⁹ both questions were referred to Articles 3 and 4 of the Constitution, providing for the procedure for transferring areas from one State to another. The commitment to examine the possibility of raising a separate Naga Regiment was also mentioned, so as to allow the Naga people to “*fulfil their desire of playing a full role in the defence forces of India*”.²⁰ It was finally established that, during the transitional period necessary for reaching the political settlement with the Government of India, the latter would prepare a bill for such amendment of the Constitution necessary to implement the decision, while an Interim Body with elected representatives from every tribe would be constituted to assist the advice the Governor in the administration of Nagaland during the transitional period;²¹ also, the rules

¹² See point 6.

¹³ See point 7.

¹⁴ See point 8.

¹⁵ See point 9.

¹⁶ See point 10.

¹⁷ See point 11.

¹⁸ See point 12.

¹⁹ See point 13.

²⁰ See point 14.

²¹ See point 15.

provided for by the *Bengal Eastern Frontier Regulation* of 1973 were declared to remain in force in Nagaland.²²

The *16-point Agreement* was not welcomed by the Naga people, who considered it as an effort of the Indian government to constrain their struggle for self-determination.²³ The Nagas continue to consider Nagaland (or *Nagalim*) as including the whole territory originally inhabited by Naga people, while Indians mean the State of Nagaland as defined by the established political borders.²⁴ The Naga people have never accepted the political “occupation” by India, developing a resistance movement through the NNC, aimed at obtaining independence first from the British and subsequently from India. “The one million Nagas of India, have, for over a century, been pursuing the longest lasting separatist insurrection in the world. Their early enemy was the British, who they first confronted in the Angami Naga rebellion of 1878 and fought on and off until independence in 1947. However, the departure of the occupiers didn’t end the insurrection which continued sporadically against the Indian government until quite recently when peace negotiations were opened”.²⁵ In 1958, the Indian parliament enacted the *Armed Forces (Special Powers) Act*,²⁶ authorizing the members of the Indian police legal immunity, the powers to arrest, search and seize without warrant, as well as the power to “shoot to kill” on the basis of mere suspicion. This led, *de facto*, to militarization of the State of Nagaland, against which the Naga people have never really stopped to resist.

2. The Status of Indigenous Peoples in India

Indigenous Peoples or Tribes in India have a special constitutional recognition and are considered as a certain class subjected to special provisions.²⁷ In this regard, the Constitution of India, adopted by the Constituent Assembly on 26th November, 1949, and entered into force on 26th January, 1950,²⁸ establishes that the State “shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of (...) the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.²⁹ As defined in the Constitution of India, *Scheduled Tribes* are “tribes or tribal communities or parts of or groups within such tribes or tribal communities (...)”,³⁰ specified under this qualification by the President, after consultation with the Governor of the State.³¹

²² See point 16. The text of the *Bengal Eastern Frontier Regulation* is available at < <https://www.latestlaws.com/bare-acts/state-acts-rules/west-bengal-state-laws/bengal-eastern-frontier-regulation-1873/>> (accessed on 22 April 2019).

²³ See Bhatt & Bhargava (eds.), *cit.* n. 4 above, p. 72.

²⁴ *Ibid.*, p. 72.

²⁵ See Dowie, *cit.* n. 1 above, p. 241.

²⁶ See <[https://www.icrc.org/ihl-nat.nsf/0/23fb81e4ad23e2b3c1257682002cfdfd/\\$FILE/The%20Armed%20Forces%20\(Special%20Powers\)%20Act.pdf](https://www.icrc.org/ihl-nat.nsf/0/23fb81e4ad23e2b3c1257682002cfdfd/$FILE/The%20Armed%20Forces%20(Special%20Powers)%20Act.pdf)> (accessed on 2 May 2016).

²⁷ Constitution of India Part XVI – Special Provisions relating to certain Classes.

²⁸ See <<http://www.legislative.gov.in/sites/default/files/coi-4March2016.pdf>> (last visited on 4 May 2019).

²⁹ Art. 46 Part IV. Directive Principles of State Policy, Constitution of India, see also Art 15(4) and (5) Part III Fundamental Rights, the Constitution of India.

³⁰ Art. 366(25) Constitution of India.

³¹ See Art. 342, and also Art. 342(2) Constitution of India: “Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”.

According to the Census of India 2011, different Naga tribes are deemed as Scheduled Tribes, in relation to different States.³² As pointed out above, the Naga people live especially in States of Northern India, in the mountains of Nagaland, Manipur, Assam and Arunachal Pradesh.

The extensive and detailed Constitution of India considers different regulations applicable to Naga People, as they are deemed as Scheduled Tribes and are distributed in different States.

According to art. 244(1) of the Constitution of India, which regulates the administration of Scheduled Areas and Tribal Areas, the provisions of the Fifth Schedule³³ shall apply in any State,³⁴ other than four northeastern States bordering China and Myanmar: Assam, Meghalaya, Tripura and Mizoram. These four States are subject to the rules of the Sixth Schedule.³⁵ Under the Sixth Schedule, Tribal Areas in those States shall be autonomous districts or regions.³⁶

As explained above, the Constitution of India considers, in Part XVI, special provisions relating to certain classes. These include, among others, the Scheduled Tribes. In this regard, the Constitution provides for the right of political participation of Scheduled Tribes in the administration, establishing a system of proportional representation for the Scheduled Tribes. Regarding local administration, in every Panchayat³⁷ seats shall be reserved to the Scheduled Tribes. The same applies for every Municipality,³⁸ in the Legislative Assembly of every State³⁹ and in the House of People.⁴⁰

In the same vein, regarding Co-operative societies, the legislature of the State shall by law provide the reservation of one seat for the Scheduled Tribes.⁴¹

Regarding finance decisions and measures for promoting the welfare and development of the Scheduled Tribes in the State, or for raising the level of administration of the Scheduled Areas, the Parliament may by law provide special financial assistance by the Central Government, which shall be charged on the Consolidated Fund of India.⁴²

The members of Scheduled Tribes have the right to advance claims, and these claims “*shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State*”.⁴³

An important constitutional body is the National Commission for the Scheduled Tribes,⁴⁴ which was established by the Constitution (Eighty-ninth Amendment) Act in 2003. This institution has different functions, all of them related to the protection, welfare and development and

³² See <<http://dpar.nagaland.gov.in/list-of-recognized-nagascheduled-tribes-certificate/>> (last visited on 4 May 2019).

³³ Fifth Schedule [Article 244(1) Constitution of India] Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.

³⁴ Like the State of Manipur, where Naga people live.

³⁵ Sixth Schedule [Articles 244(2) and 275(1)] Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

³⁶ See Sixth Schedule, paragraphs 1(1) and (2). Naga People live in three of these States: Assam, Meghalaya and Mizoram; see <<https://tribal.nic.in/ST/LatestListofScheduledtribes.pdf>> (last visited on 4 May 2019).

³⁷ Regarding the definition of Panchayat, see Art. 243(d) Constitution of India and regarding reservation of seats, see 243D Constitution of India. See also: The Panchayats (Extension to Scheduled Areas) Act, 1996, available at <<https://tribal.nic.in/actRules/PESA.pdf>> (last visited on 4 May 2019).

³⁸ See Art. 243T Constitution of India.

³⁹ See Art. 332(1) Constitution of India, with the exception of the Scheduled Tribes in the autonomous districts of Assam. Special provisions are established for The State of Assam since 1969; see art. 244A, Constitution of India.

⁴⁰ See Art. 330(1) Constitution of India.

⁴¹ See Art. 243ZJ. Constitution of India (1): “*The board shall consist of such number of directors as may be provided by the Legislature of a State, by law: Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one: Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the (...) Scheduled Tribes (...)*”.

⁴² Art. 275(1) Constitution of India.

⁴³ See Art. 335 Constitution of India.

⁴⁴ See Art. 338 A Constitution of India. See also <<http://ncst.nic.in>> (last visited on 4 May 2019).

advancement of the Scheduled Tribes. *“It shall be the duty of the Commission— (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards; (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes; (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State; (...).”*⁴⁵

The Fifth Schedule deals with the control and administration of the Scheduled Areas, namely such areas as the President of India may by order declare.⁴⁶ Under this Schedule, the most important institution, with constitutional status, is the Tribes Advisory Council (TAC).⁴⁷ A TAC shall exist *“in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein (...).”*⁴⁸ This institutional body represents the interests of tribes, and it consists *“of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State (...).”*⁴⁹ Its main duty is *“to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.”*⁵⁰

The Governor⁵¹ has an important role in the application of the Fifth Schedule and has to make a report to the President of India regarding the administration of the Scheduled Areas.⁵² Regarding the Law applicable to Scheduled Areas, *“the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or shall apply subject to such exceptions and modifications as he may specify. Any direction given according to these norms may be given so as to have retrospective effect.”*⁵³

The Governor may also make special regulations for the peace and good government for a Scheduled Area: *“[i]n particular (...) such regulations may prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area, regulate the allotment of land to members of the Scheduled Tribes in such area or regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.”*⁵⁴

Under the Sixth Schedule, the most important constitutional institutions are the District Council and the Regional Council,⁵⁵ vested with special powers. The District Council consists *“of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage”*.

Regarding legislative powers, the District Councils and Regional Councils enjoy powers on specific subjects, including, amongst other things, *“the allotment, occupation or use, or the*

⁴⁵ See Art. 338 A(5) Constitution of India.

⁴⁶ Fifth Schedule paragraph 6.

⁴⁷ Fifth Schedule paragraph 4.

⁴⁸ Fifth Schedule paragraph 4.

⁴⁹ Fifth Schedule paragraph 4. This norm explicitly adds: *“(...) that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.”* See also Fifth Schedule paragraph 4(3): *“The Governor may make rules prescribing or regulating different aspects regarding the Tribes Advisory Council, such as the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and its procedure in general and all other incidental matters”*.

⁵⁰ Fifth Schedule, paragraph 4(2).

⁵¹ Art. 155 Constitution of India: *“Appointment of Governor. The Governor of a State shall be appointed by the President by warrant under his hand and seal”*. Art. 156: *“Term of office of Governor — (1) The Governor shall hold office during the pleasure of the President”*.

⁵² Fifth Schedule, paragraph 3.

⁵³ Fifth Schedule, paragraph 5.

⁵⁴ Fifth Schedule, paragraph 5(2).

⁵⁵ Sixth Schedule, paragraphs 2(1) and (2).

setting apart, of land, other than any land which is a reserved forest⁵⁶ for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town (...).⁵⁷ In this regard, the Constitution adds that “nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorizing such acquisition”.⁵⁸ Accordingly, the District or Regional Council is allowed to adopt laws regarding, among other subjects: “(b) the management of any forest not being a reserved forest; (c) the use of any canal or water-course for the purpose of agriculture (...)”.⁵⁹

It is important to emphasize that all laws adopted under these regulations shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.⁶⁰

Regarding administration of justice, the District or Regional Council “may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas (...) to the exclusion of any court in the State”,⁶¹ with certain exceptions established in the Sixth Schedule, such as cases in which punishment ranges to death sentence.⁶² The Regional Council or the District Council, “or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal (...) and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases”.⁶³

Even though the Fifth and the Sixth Schedule were established to serve the purpose of strengthening the rights of Indigenous Peoples or Tribes in India, it is clear that the Sixth Schedule is an example of regulation that favours the autonomy of the indigenous peoples in a series of decisions, whether it be legislative, financial, or judicial. This is explained by the fact that the Constitution has established the District or Regional Councils, special institutions with constitutional status and with specific powers.

⁵⁶ According to the Constitution, a “reserved forest” means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. As far as forests are concerned, the *Forest Rights Act*, 2006, is also to be mentioned, which regulates different rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands; “[t]he Act goes beyond the ‘recognition’ of forest rights and also empowers the forest rights holders, Gram Sabhas and local level institutions with the right to protect, regenerate, conserve and manage any community forest resource that they have been sustainably using traditionally” (see Ministry of Tribal Affairs, *Annual Report 2017-18*, available at <<https://tribal.nic.in/writereaddata/AnnualReport/AR2017-18.pdf>>, last visited on 4 May 2019, p. 65).

⁵⁷ Sixth Schedule, paragraph 3(1)(a).

⁵⁸ See Sixth Schedule, paragraph 3(1)(a).

⁵⁹ See Sixth Schedule, paragraph 3(1)(a)-(j).

⁶⁰ Sixth Schedule, paragraph 3(3).

⁶¹ See Sixth Schedule, paragraph 4: “A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating— (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph; (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph; (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph; (d) the enforcement of decisions and orders of such Councils and courts; (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph”. See also Sixth Schedule paragraph 4(1): The Regional or District Council, as the case may be, “may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made by the district or regional council under paragraph 3 of this Schedule”.

⁶² Sixth Schedule, paragraph 5.

⁶³ See Sixth Schedule, paragraph 4(2).

One State in which Naga People live⁶⁴ is the State of Nagaland. It was created by a constitutional Amendment⁶⁵ in 1962, with effect from December 1 1963.⁶⁶ This amendment Act was a consequence of the *16-point Agreement*⁶⁷ reached in 1960 by the Government of India with the leaders of the Naga Peoples.

The Constitution establishes special rules concerning the administration of the State of Nagaland,⁶⁸ especially referred to legislative power, executive power and also to the administration of Tuensang District, the largest and the most eastern district of Nagaland, considering its relative backwardness.

Regarding the legislative power, the Constitution establishes a Legislative Assembly of Nagaland, with not less than forty-six members.⁶⁹ In practice, the Legislative Assembly is composed of 60 members.⁷⁰ In matters of Naga religion or social practices, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, ownership and transfer of land and its resources, the Parliament of the Federation is only allowed to legislate with the concurrence of the Legislative Assembly.⁷¹

Regarding executive power and government administration, the Governor of Nagaland has plenary powers and special attributions in the State of Nagaland, such as those aimed at *“ensur[ing] that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand”*.⁷²

Regarding to internal disturbances occurring in the Naga Hills-Tuensang Area, *“the Governor shall have special responsibility with respect to law and order (...)”* and, *“after consulting the Council of Ministers, shall exercise his individual judgement to the action to be taken (...) and the decision (...) shall be final”*.⁷³ In any case, the President of India *“may by order direct that the Governor shall cease to have this responsibility”*⁷⁴ after the Governor reports that this responsibility is no longer necessary.

As pointed out above, also as a result of the *16-point Agreement*, special provisions were adopted for the administration of the Tuensang District.⁷⁵ These provisions were meant to be in effect for a period of 10 years from the formation of Nagaland.⁷⁶

The executive power and administration of the Tuensang District shall be carried on by the Governor,⁷⁷ and the final decision on all matters relating to the Tuensang District shall be made by him in his discretion;⁷⁸ *“the Governor may make regulations for the peace, progress and good Government (...) and any regulations so made may repeal or amend with retrospective effect,*

⁶⁴ Of the five communities notified as Scheduled Tribes in Nagaland, the Naga constitutes 98.2 per cent. See <http://censusindia.gov.in/Tables_Published/SCST/dh_st_nagaland.pdf> (last visited on 4 May 2019).

⁶⁵ See <<https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-thirteenth-amendment-act-1962>> (last visited on 4 May 2019).

⁶⁶ See art. 371 A and footnote n. 2 Constitution of India.

⁶⁷ See Section 1 above.

⁶⁸ Constitution of India, Part XXI, Temporary, Transitional and Special Provisions, Art. 371 A, Special provision with respect to the State of Nagaland.

⁶⁹ See Articles 371A(2)(h) and 170(1) Constitution of India.

⁷⁰ See <<https://www.nagaland.gov.in/portal/portal/StatePortal/Government/StateLegislature>> (last visited on 4 May 2019).

⁷¹ See Art. 371A(1)(a) Constitution of India.

⁷² See Art. 371A(1)(c) Constitution of India.

⁷³ See Art. 371A(1)(b) Constitution of India.

⁷⁴ Ibid.

⁷⁵ See Art. 371A(1)(d), (2)(a)-(h) Constitution of India.

⁷⁶ See Art. 371A(2) Constitution of India.

⁷⁷ Art. 371 A(2): The administration of the Tuensang District shall be carried on by the Governor *“for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council (...)”*.

⁷⁸ Art. 371A(2)(f) Constitution of India.

if necessary, any Act of Parliament or any other law (...) applicable to that district".⁷⁹ The Governor may only apply Legislative acts of the Legislature of Nagaland to the Tuensang District on the recommendation of the Regional Council, institution that must be established by the Governor,⁸⁰ with 35 members, and the tribal representatives to be the members of the Nagaland Legislative Assembly shall be nominated by this council.⁸¹

Regarding financial matters, *"where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State"*.⁸²

As far as the political administration is concerned, one person shall be appointed as Minister for Tuensang affairs by the Governor on the advice of the Chief Minister.⁸³

Cultural Survival recently denounced that, *"[d]espite these constitutional rights and special provisions granted by the Constitution and ratification of 18 International Human Rights Treaties, which includes the Convention on the Elimination of all Forms of Racial Discrimination, socially accepted discrimination, harassment, and violence towards disadvantaged and marginalized groups continue, with the government itself using the discriminative portrayal of Indigenous Peoples, as 'backward' in its own constitution. Also, the 1989 Schedules Castes and Scheduled Tribes (Atrocities Prevention) Act enables legal prohibition against discriminatory attitudes but as a result, atrocities continue towards Scheduled Tribes and strong prejudices from law enforcement, especially security forces"*.⁸⁴ It is also to be noted that India has not yet ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989), which would certainly represent a notable step towards the improvement of indigenous peoples' rights in the country.

3. The Nagaland Road Project and the Rights of the Naga People

The expression "Nagaland Road Project" is commonly used to refer to the construction of a four-lane highway in the heart of Nagaland, connecting Kohima with Dimapur. The project was approved in 2004-2005,⁸⁵ after the former Indian prime minister AB Vajpayee travelled through the traditional Dimapur-Kohima road in October 2003,⁸⁶ and is due to be completed by September 2019.⁸⁷ The execution of the project is generally seen as a notable improvement in the social conditions of the Naga people, as *"[p]oor road has kept the entire Naga territories*

⁷⁹ Art. 371 A(2)(d) Constitution of India.

⁸⁰ See Art. 371A(1)(d) and (i)-(vi) Constitution of India: The Governor of Nagaland has specific attributions regarding this council and decides any matter necessary to make rules for the constitution and proper functioning of the council, such as the composition and the way the members shall be chosen; the qualifications for being chosen and for being member; the term of office, salaries and allowances to be paid to the members and; procedure and conduct of business of the council.

⁸¹ See Art. 371A(2)(c); see also art. 371A(2)(g) Constitution of India.

⁸² See Art. 371A(2)(b) Constitution of India.

⁸³ See Art. 371 A(2)(e)(i) and footnote n. 1 to Art. 371A(2)(e)(i) Constitution of India.

⁸⁴ See Cultural Survival, "Observations on the State of Indigenous Human Rights in India. Prepared for: The United Nations Human Rights Council Universal Periodic Review 2016 27th Session Third Cycle", available at <<https://www.culturalsurvival.org/sites/default/files/INDIAUPR2016final.pdf>> (accessed on 4 May 2019).

⁸⁵ See L. Chuhwanglim, "Current road development in Nagaland", *NagalandPost*, 16 February 2019, available at <<http://www.nagalandpost.com/current-road-development-in-nagaland/190542.html>> (accessed on 23 April 2019).

⁸⁶ See "Rs. 15000 crore for roads but with a rider!", *The Morung Express*, 3 November 2015, available at <<http://morungexpress.com/rs-15000-crore-for-roads-but-with-a-rider/>> (accessed on 23 April 2019).

⁸⁷ See "Dmp-Khm 4 lane project: 185.32 Cr utilized till now", *The Morung Express*, 12 January 2018, available at <<http://morungexpress.com/dmp-khm-4-lane-project-185-32-cr-utilized-till-now/>> (accessed on 23 April 2019).

to backward land and the people in the planet”, and road development “is the primary route to the subsistence of the Naga people”.⁸⁸ It has also been noted that “[g]ood road produces sustainable future [...], it promulgates the global economy through the feasible engagement of the people in maximizing own income and well-being through good road”;⁸⁹ the project was assumed to “bring a better future subsistence of the Indigenous Nagas that liberates them from the shadow of poor roads for the past more than 70 years”.⁹⁰ In the end, the implementation of the project was defined by the Chief Minister of Nagaland as a historic moment, benefiting “the Naga people as well as the whole of the North East of India”.⁹¹

The execution of the project was expedited in 2015, when the Indian government promised the Nagaland State Government additional money on the condition that it would manage to expedite land acquisitions in Nagaland.⁹² These acquisitions presupposed expropriation of lands belonging to members of Naga tribes, and in most cases such expropriation took place according to modalities that were totally disrespectful of the rights of the above tribes as indigenous communities, as well as of the individual rights of their members.

One indigenous Naga landowner, Vichutuolie Mere, living in Medzhiphema town, interviewed by Phutoli Shikhu Chingmak on 9 June 2019, revealed that he and other indigenous Naga landowners were first approached by the Government of Nagaland to acquire land without holding prior consultation. During the preliminary discussion between the landowners and the government, the landowners set the price at 400 Indian rupees (US \$ 5.82) per square feet for inhabited areas along the Medzhiphema national highway, and 100 (US \$ 1.45) and 200 (US \$ 2.91) Indian rupees for, respectively, undeveloped and forested regions. However, the Government of Nagaland forced the landowners to accept the amount it unilaterally decided, and the landowners had no option but to take the price determined by the authorities. The landowners were forced to accept 40 rupees (US \$ 0.58) per square feet in town areas that were developed and densely inhabited; for forested and undeveloped regions, the price went down to 15 rupees (US \$ 0.22) per square feet, while for semi-developed areas the landowners were paid 20 rupees (US \$ 0.29) per square feet. No real consultation was carried out by the Government of Nagaland with the landowners, who never gave their consent to cease their lands to the Government to develop the national highway from two to four-lane drive. In the words of Vichutuolie Mere, “they did not ask whether we could give the land or not and announced that four lanes were to be constructed from Dimapur to Kohima”. After becoming aware of the payment figure, some of the landowners refused to accept the payment, and, at the moment of this writing, they have not yet received any compensation. In the section from Purana bazaar to Chümoukedima, in the Dimapur district, no compensation was made available for the landowners other than the traditional ones, since it was held that no individual or organization could claim to be landowners, because it was known as the right of way acquired during the British era, and they were accordingly not allowed to disturb the development work in the area. According to the landowners in the Dimapur area, “[b]esides not being compensated for their land, [...] many commercial buildings were being demolished in clear violation of high courts standing order”.⁹³ In many cases the landowners were not even sure whether or not their property was included among those expropriated for developing the project, and only when the latter began to be executed they discovered that their land was included as part of the area for highway development. In the area between Piphema and Kohima, the traditional landowners were willing to give the land for the development of the project, but they did not receive a fair

⁸⁸ See Chuhwanglim, *cit.* n. 84 above.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ See “Rs. 15000 crore for roads but with a rider!”, *cit.* n. 85 above.

⁹² *Ibid.*

⁹³ See “15 days ultimatum on govt to resolve compensation issue”, *Nagaland Post*, 7 August 2019.

payment as well. Mhasikhotuo Zhunyu, Village Council Chairman in Zubza, interview by Phutoli Shikhu Chingmak on 19 June 2019, confirmed that also in his area most lands were taken without the consent of the landowners. Another Village Council Member living in Zubza, Seyiekielie Nagi, also interviewed by Phutoli Shikhu Chingmak on 19 June 2019, said that he remembered having signed a blank document and that not a single landowner received a receipt or sale deed for their lands taken by the government. Most of the landowners with private buildings along the highway were forced to dismantle their edifices and received such an insignificant compensation that they could neither afford to buy new land nor built a new house. As a result of being deprived of their lands for highway development, a large number of landowners were displaced from their lands and were unable to repurchase properties and built houses; for this reason, many have migrated back to their villages or are currently residing in rented houses, due to the inadequate compensation received. Other damages suffered by villagers consisted in bad health conditions resulting from dust pollution and significant landslides caused by the water flowing down the road during the execution of the works, for which scarce or no compensation was granted by the government.

While expropriation of land for the execution of public development projects is a process ordinarily occurring in most countries in the world, and, due to the fact of being grounded on public utility, may normally be forcibly imposed and does not usually require the free consent of the land owner, the situation is different when traditional territories of indigenous peoples are involved, due to the special spiritual and cultural significance such territories have for the communities concerned. According to Article 19 of the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*”. More specifically, Article 32, para. 2, UNDRIP affirms that “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources*”. These provisions presuppose that, before using traditional lands of indigenous peoples for whatever kind of development project, States have *at least* an obligation to consult and cooperate in good faith with the communities concerned. More precisely, taking into account the practice of international human rights monitoring bodies, indigenous peoples have “*the right to be consulted with respect to any project that may affect them and the related right that projects significantly impacting their rights and ways of life are not carried out without their prior, free and informed consent*”.⁹⁴ Hence, consultation is obviously not enough, when it is merely formal and – just like in the case at hand – it is followed by different kinds of violations of the rights of the land-owners, including the specific rights recognized to them as members of indigenous communities.

Furthermore, pursuant to Article 29, para. 1, UNDRIP, “*Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination*”. In this regard, it appears that no environmental impact assessment was carried out before planning and executing the Nagaland Road Project. Indeed, Naga Tribal Union Chümoukedima Town

⁹⁴ See International Law Association, Resolution No. 5/2012, “Rights of Indigenous Peoples”, available at <<http://www.ila-hq.org/index.php/committees>> (accessed on 23 April 2019), para. 5.

(NTUCT) expressed concern over dust pollution determined by the execution of the project, particularly in the tract between Dimapur and Chümoukedima town.⁹⁵

Having in mind the modalities through which the Nagaland Road Project has been accomplished, as described above, it is clear that multiple violations of the rights recognized by international law in favour of the Naga tribes (as indigenous communities) have occurred. Furthermore, as may be easily imagined, the execution of the project brought notable devastation to the lands traditionally belonging to the Naga people. The absence of consideration for the rights of the Naga indigenous peoples goes hand in hand with the systematic policy of assimilation of such peoples pursued by the Government since the 1940s.



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4. Conclusion

The execution and management by the Indian Government of the Nagaland Road Project has been carried out without taking into account international rules on indigenous peoples' rights – especially the UNDRIP. At the same time, one has to take into account the fact that in situations of the kind of the Nagaland Road Project it is unlikely that, within indigenous communities themselves, all members agree on the same position. In the case of the Nagaland Road Project, certainly some, probably a minority, of the members of the Naga tribes were attracted by the benefits brought by the improvement in the Nagaland road system. At the same time, one of the authors of this study (Federico Lenzerini) personally collected, during his 2014 trip to Nagaland, the opposition of the leaders of several Naga tribes to the completion of the Nagaland Road Project, in light of the prejudice that it would have been brought to the integrity of their own traditional territories and, consequently, to their own cultural identity. Further evidence collected by another of the authors of this study, living in Nagaland (Phutoli Shikhu Chingmak), confirms that the modalities of expropriation of the lands belonging to tribal members and other modalities of execution of the project translated into multiple violations of the rights of the Naga people. This is certainly inconsistent with the right of indigenous peoples to self-determination (although, in general terms, the Naga people may enjoy a relatively satisfactory

⁹⁵ See “4-lane road project: NTUCT concerned over dust pollution”, *NagalandPost*, 22 April 2019, available at <<http://www.nagalandpost.com/4-lane-road-project-ntuct-concerned-over-dust-pollution/194457.html>> (accessed on 4 May 2019; courtesy of Barbara Katz).

degree of autonomy), as well as with their rights to lands, territories, and resources, including their right to free, prior and informed consent operationalized in the context of said land rights. In light of this, certainly the outcome of the incident does not appear just and equitable under the perspective of the indigenous communities concerned.