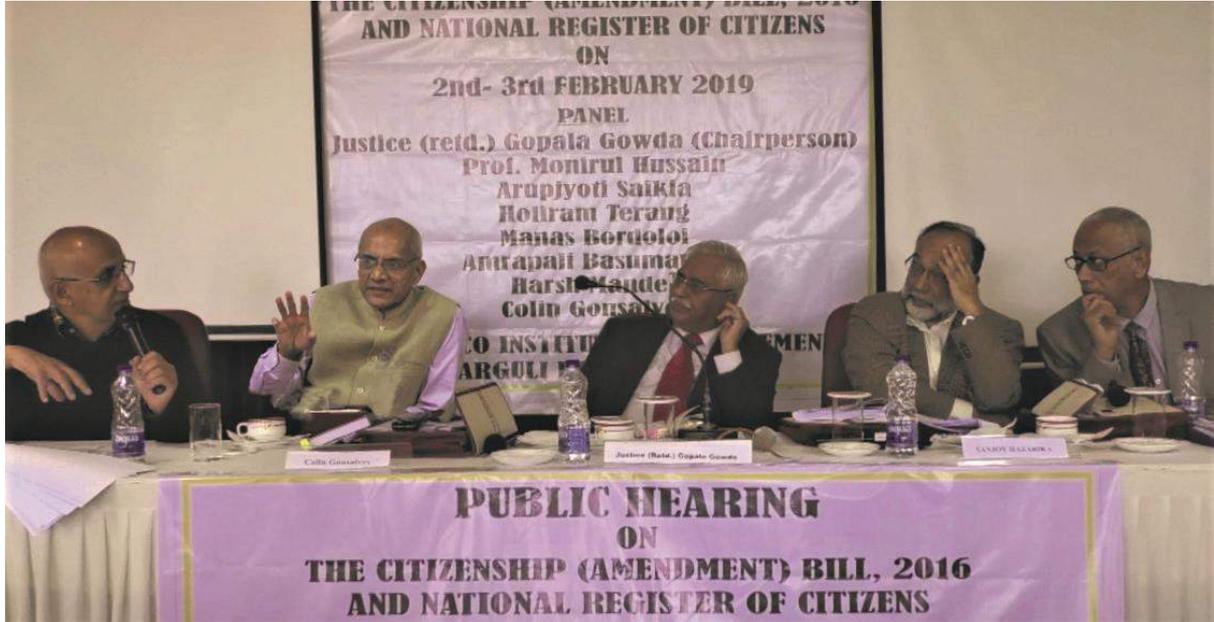


STATELESSNESS AND MARGINALISATION
IN ASSAM

**THE CITIZENSHIP AMENDMENT BILL AND THE
NATIONAL REGISTER OF CITIZENS**



REPORT OF THE PUBLIC HEARING OF FEBRUARY, 2019
AT GUWAHATI, ASSAM

Panel:

Justice Gopala Gowda (Chairperson),
Prof. Monirul Hussain (Co-Chairperson),
Harsh Mander,
Sanjoy Hazarika,
Colin Gonsalves

May 2019

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The aim of the Public Hearing was to look at the issues relating to the updating of the National Register of Citizens in the state of Assam from the perspective of the people, keeping into account all the different positions and trying to bring them in contact.

This would not have been possible without the voices of those who have been adversely impacted by this process. For this reason, the Panel was very grateful for the heroic efforts taken by those excluded from the complete draft of the National Register of Citizens to travel long distances and attend this Public Hearing. The Panel is grateful to the Association for Citizens' Rights and other organisations for the efforts taken to mobilise persons from the different districts of the state and prompt them to come to Guwahati and give their depositions before the panel. The panel is equally grateful to the many persons, men and women, young and old, who agreed to share the very personal and often tragic histories of exclusion, that are published in the present report.

Our expert speakers have also been similarly crucial, for their presentations and statements put the testimonies in perspective and shed light on the relevant background and the applicable principles.

All this would not have been possible without our panellists, who contributed their time and energy to the success of this project.

A special word of thanks to Dr. Joshua Castellino, Executive Director at Minority Rights Group International, as well as Dr. Matteo Zamboni who edited this report along with Fazal Abdali. Without them, this report would not be possible.

A special word of thanks to Advocate Fazal Abdali and Advocate Tariq Adeeb for coordinating and managing the Public Hearing.

Finally, the panel is grateful to the Don Bosco Institute of Management of Guwahati, Assam, for making the conference facilities and food available and for the kindness shown to the participants.

PROFILE OF THE PANELLISTS AND THE EXPERT SPEAKERS

Justice Gopala Gowda

Justice Gopala Gowda, the Chairperson of the Panel, is a former Justice of the Supreme Court of India and a former Chief Justice of Orissa High Court.

Harsh Mander

Harsh Mander is an activist, who works with survivors of mass violence and hunger, as well as homeless persons and street children. He is the Director of the Centre for Equity Studies and a Special Commissioner to the Supreme Court of India in the Right to Food case. He is associated with various social causes and movements and writes and speaks regularly on issues of communal harmony, tribal, Dalit and disabled persons' rights, the right to information, custodial justice, homelessness and bonded labour.

Professor Monirul Hussain

Professor Monirul Hussain, the co-Chairperson of the PANEL, has been a Visiting Fellow at the Queen Elizabeth House, University of Oxford and Visiting Professor at the School of Social Sciences, Jawaharlal Nehru University, New Delhi. At present, he is Professor at the Department of Political Science, Gauhati University. He has written extensively on the society and politics in North East India. His book *The Assam Movement: Class, Ideology and Identity* (1993) is regarded as an indispensable source for understanding Assam's colonial and post-colonial society and politics.

Sanjoy Hazarika

Sanjoy Hazarika is the Director of the Commonwealth Human Rights Initiative (CHRI). He is the founder and Managing Trustee of a trust which works actively in the NER, the Centre for North East Studies and Policy Research. He holds the Dr. Saifuddin Kitchlew Chair and is the director of Centre for North East Studies, Jamia Millia Islamia, New Delhi.

Colin Gonsalves

Colin Gonsalves is the Founder of Human Rights Law Network (HRLN), India's leading public interest law group. Upon attaining his law degree in 1983, Mr. Gonsalves co-founded the Human Rights Law Network (HRLN) and developed it into a national organization bringing together over 200 lawyers and paralegals operating out of 28 offices spread throughout India. Mr. Gonsalves transitioned his practice from the Labour Courts to the Bombay High Court in 1984 and was designated as Senior Advocate, before moving onto the Supreme Court of India in 2000. He has brought numerous precedent-setting cases to the Supreme Court and the High Courts of various states. Amongst these cases was the "Right to Food" case in the Supreme Court of India which ordered subsidized grain to be given to 700 million poor persons. Mr. Gonsalves has written, edited and co-edited a number of articles and books on a range of human rights law issues. He was presented with the "International Human Rights Award" by the American Bar Association in 2005. In 2010, he was conferred a Doctorate of the University, honoris causa, by the University of Middlesex, UK. He was

given the “Mother Teresa Memorial Award” for Social Justice “in recognition of remarkable contribution in legal services addressing human rights” in 2010 and an Award of the Centre for Reproductive Rights, New York, 2015—for Pioneering and Exemplary Leadership in Advancing Women’s Reproductive Rights and Social Justice in India. He was awarded the Right Livelihood Award 2017.

Abdul Mannan

Abdul Mannan is the current Leader of the Opposition belonging to Indian National Congress in the West Bengal Legislative Assembly.

Amrapali Basumatary

Amrapali Basumatary is Nodal teacher Kirori Mal College, University of Delhi and also a prominent activist articulating the rights of the tribals.

Hiren Gohain

Hiren Gohain is an eminent intellectual, literary critic, poet and social scientist from the Indian state of Assam.

Abdul Batin Khandakar

Abdul Batin Khandakar is the president of the Association for Citizens’ Rights (ACR).

H.R.A. Choudhury

H.R.A. Choudhury is Sr. Advocate at the Gauhati High Court.

Amal De Chickera

Amal De Chickera is the co-director of the Institute on Statelessness and Inclusion, an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion.

Joshua Castellino

Dr. Joshua Castellino is Executive Director at Minority Rights Group International in London and Professor of Law at the Middlesex University.

CONCEPT NOTE

At the request of individuals and groups from the state of Assam a public hearing was held in Guwahati on February 2 and 3, 2019, on the Citizenship Amendment Bill (CAB) and the National Register of Citizens (NRC). During the two days, the panel heard the testimonies given by those who had been excluded from the final draft of the NRC and their advocates from the districts of Biswanath, Daring, Goalpara, Golaghat, Kamrup, Morigaon, Nagaon, Sonitpur and Udalguri. The panel also heard presentations and received statements from expert speakers. The proceedings before the panel, its findings and recommendations are the subject of the present report.

The report approaches the social, political and legal issues facing the state of Assam and its people with caution and humility. Clearly, these issues are very complex, and the rest of the country is somewhat unaware of the historical background and the point of view of the various sections of Assamese society.

As originally envisaged, the project of updating the National Register of Citizens was perceived by the people of Assam as a reasonable solution to the vexed issue of migration. As decades have passed by, however, it became more and more obvious that a fair project of updating the NRC was sabotaged by the willful negligence of the Government, at both state and union levels. No implementation took place, creating a difficult situation for the people of Assam and particularly the tribals who found themselves demographically marginalized and their lands usurped by wealthy communities. Such a betrayal of the promises of the NRC, as originally envisaged, led to the current situation of potential chaos. Indeed, because of a hasty and arbitrarily implementation of the NRC, the Government created tension among the different communities in the state of Assam, thus continuing to play politics to the detriment, rather than benefit, of the people. After decades of residence, marriage, procreation, employment and agricultural work, approximately 4 million persons consisting of Hindus, Muslims and other communities find themselves stigmatized as non-citizens of India. Many have been threatened with expulsions. Thousands have been incarcerated in detention camps where conditions are appalling. Threats of punitive actions abound. Said by the State to be Bangladeshi, they find themselves as stateless persons since Bangladesh has categorically refused to accept them as its citizens. Against this backdrop, the central Government's announcement of the intention to implement the Citizenship Amendment Bill (CAB) compounded the politics of exacerbating, rather than solving, conflicts.

The Assamese society, from the members of the communities excluded from the NRC to the tribal organizations and the intellectuals of the state, have only one way forward: Coming together to share their perspectives and seek a practicable solution. Their very survival is at stake.

The efforts of the Assamese society as a whole are reflected in the present report which sums up the presentations, testimonies and discussions that have been presented before the Panel.

The report is divided into three main Parts.

In the first Part, the panellists set the framework of the discussion. In the introduction, **Colin Gonsalves** describes the tense social and political climate in which the public hearing occurred, a climate not only persisting in Assam but across the North-East. Mr. Gonsalves then explores domestic laws, judicial opinions and international laws related to migration, the social and legal implications of the central government's divisive policies, and the false narrative of nationalism in India that is resulting in a practice tantamount to ethnic cleansing. On a similar line, **Harsh Mander** describes the perverse effects of the three parallel processes of evaluating the citizenship of the people of Assam and highlights the importance of bringing together various viewpoints in order to reach a practicable solution. Drawing upon these premises, **Monirul Hussain** argues that fostering and deepening inclusion is the only way to counter the politics of exclusion which lie behind the NRC project. In turn, **Sanjoy Hazarika** explores the four questions which formed the object of the Panel's case: namely, the existence of a pattern of exclusion which adversely affects the members of minority groups and communities; the persistence of prejudice by members of the Foreigners Tribunals and, more generally, by the authorities; the role of the Assam Border Police; the future of the lot of people who would eventually be excluded from the NRC. Finally, **Justice Gopala Gowda**, Chairperson of the Panel, addresses the testimonies given by those excluded from the NRC from a legal perspective, giving an authoritative opinion as to the non-compliance of the bureaucratic and judicial practice established by the authorities to manage the NRC process with the principles enshrined in the Indian Constitution and in Indian law.

The second Part of the report is devoted to the presentations and the statements given or submitted by the expert speakers. This Part is divided into three sections.

Section A gives some relevant backgrounds. It opens with the statistical analysis of **Abdul Mannan** which put into proportions the debate over the infiltration of illegal immigrants into the state of Assam. In the spirit of peaceful dialogue followed by the Panel, this analysis based on solid numbers is followed by that of **Amrapali Basumatary**, who brought to the panel her inspiring point of view of woman and tribal as well as her scholarship and knowledge of Assam's society and colonial and post-colonial history. The somewhat contrasting views emerging from these presentations are then resolved in the speech given by **Harsh Mander**.

Section B focuses on the legal and procedural aspect of the NRC process. **Abdul BatinKhandakar**, gives a detailed account of the NRC process, referring to relevant legislation and case law, including on the documents required to be included in the complete draft of the updated NRC; the steps taken by the authorities during the process; and the availability of remedies to those excluded in terms of a procedure to review claims and objections. On a similar line, **H.R.A. Choudhury** describes the procedure to be followed before the Foreigners Tribunals, from the reference of a case by the police to the possibilities of appeal and other remedies. Both presentations do not spare criticism of the process based on the applicable Indian law and on the inherent principles of natural justice.

Finally, Section C addresses the question from the point of view of the obligations of India under international law. Namely, **Amal de Chickera** addresses the international legal framework concerning the prevention of statelessness and the prohibition of arbitrary deprivation of nationality, while **Joshua Castellino** stresses the importance of the rights of

minorities in international law and calls the Indian state to subscribe to the vision of its founders in promoting a system of access to rights - and the right to citizenship above all - not dependent upon religion or membership of an ethnic or linguistic community. Both presentations include recommendations to the Indian state to meet its obligations under international law.

The third Part of the present report contains the **direct testimonies** that have been given to the Panel by those excluded from the NRC. Thirty-eight persons, men and women, young and old, have given their testimony to the panel. Many more have travelled with them and made it possible for them to be here. These individual testimonies add a set of specific circumstances to the work of the Panel. Consequently, they constitute the thrust and, so to say, the hearth of the present report.

Based on the testimonies and the presentations and statements given by the expert speakers, the Panel drew a number of **recommendations** on the way forward, which are reflected in the conclusions of the present report

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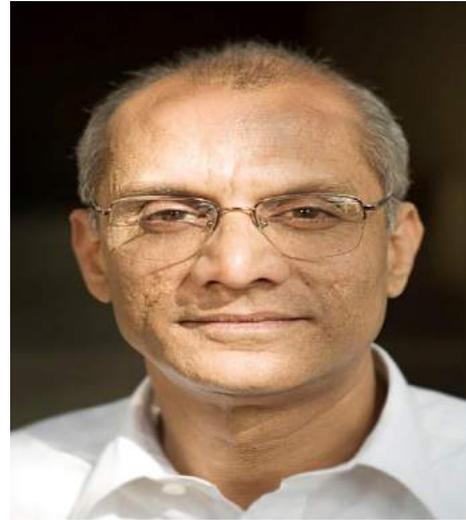
PART ONE
INTRODUCTION BY THE PANELLISTS



Stateless and Marginalized in Assam

Colin Gonsalves

A Peoples Tribunal was held early this year on the National Register of Citizens (NRC) and the Citizenship (Amendment) Bill, 2016 (CAB), and its report was published recently. The Indian Muslim minority was angered at the sheer injustice that 4 million of them faced a potential Foreigners Tribunal declaration holding that they were not Indian citizens. The enormous consequences of this: government-created statelessness was difficult for the panel to assess. Some of the 4 million were put in detention centres in violation of international law prohibiting the incarceration of stateless people. According to the National Human Rights Commission, they faced awful conditions while in confinement. They were terrified anticipating that they may have their employment contracts terminated, have their lands, shops and other properties expropriated and be denied government health and education services.



On the other hand, the indigenous and tribal people of Assam were fed-up with what they considered their growing marginalisation. Unchecked in-migration continued despite the Assam Accord of 1985, an enactment intended to curb in-migration. They were furious at the central government proposed CAB which, contrary to the Assam Accord, would regularise millions of migrants from Afghanistan, Bangladesh and Pakistan provided they were of Hindu, Sikh, Buddhist, Jain, Parsi, or Christian faith.

It was imprudent of the Panel to hold a public hearing during such a conflict-ridden time, particularly when it was nearly impossible to arrive at a rational framework given the complexity of the issues. Fortunately, leading members of both communities displayed extraordinary statesmanship and provided great insight. The highlight was an exchange with some tribal leaders who, when asked if they would press for the deportation of those declared “foreigners,” answered off the record that they would not take such an extreme stand. Rather they stressed that the burden of in-migration ought not to be on Assam alone as decisions were taken to allow in-migration on the national level. How to achieve this, however, was unclear given that there have been very few studies worldwide on the equitable distribution of migrants within a country.

The representatives of civil society were categorical in their view that the central and state governments had betrayed them by not implementing the Assam Accord and by paying “lip service” to the measures they had demanded the protection of the rights of indigenous people, including the prohibition of land transfers. They were (and are) justified in their anger that the Union Government was not interested in protecting tribals who had become a rapidly shrinking minority in their own land. The proposal to enact the CAB was the last straw. Justifiably strident and angry speeches made by indigenous and tribal leaders were met with

sedition cases and threats of arrests. But the Union could do well not to test their patience. The people of Assam are not likely to take things lying down.

This is not an Assam issue alone. Across the North-East, tribal communities are up in arms. If the Union thinks these tribals can be subdued by cunning majoritarian politics and police power they may be in for a surprise. The time has come for the Union to rise above petty politics and divisive policies, to engage with the local population; treat them with dignity and respect and come to a permanent solution that is monitored and implemented not by the State alone—because its officers cannot be trusted—but rather by the people, in constructive engagement with the State.

The Indian government's racially charged initiative to establish a National Register of Citizens and its campaign to deport 4 million residents of Assam leaves India vulnerable to a charge of ethnic cleansing, one of the most grievous of international crimes. There are 12 million stateless persons in the world today. India has now added 4 million to the list. That these people have lived in Assam for decades, have had their children born in Assam, are employed there and are integrated into the local community makes the Indian case stand out on the international stage for its sheer inhumanity.

Article 15 of the Universal Declaration of Human Rights affirms that everyone has a right to a nationality. The United Nations Convention on the Reduction of Statelessness, 1961 (UNCRS) provides guidelines on the prevention of statelessness. Though India has not ratified the Convention, the international law on the subject has been raised to the level of jus cogens and is to be read into Article 21 of the Constitution. India, therefore, has an international obligation to prevent statelessness. Indeed, international law prohibits the withdrawal of nationality in situations where persons would be left stateless. Nonetheless, the NRC is aggressively oriented towards creating precisely such a situation where persons would be declared non-citizens of India, their right to vote would be negated and their detention and deportation executed. International law requires that states change national legislation to prevent such a situation. Articles 1–4 of the UNCRS require children to be given nationality in a territory based on birth or habitual residence.

The judiciary which could have played an important role in restraining government added fuel to the fire. It is one thing to direct measures to be taken to prevent illegal migration, it is quite another to propose forced deportations. It is perfectly lawful for the state to identify and evict subversives within a migrant population, but it is not permissible to collectively punish millions of poor migrants. Thus state action must be directed to sealing the borders and regularising those who have resided in India for decades as has been done by the Supreme Court in the Chakma case.

The Supreme Court set a stridently irrational tone in *Sarbananda Sonowal vs. Union of India*, characterising the migration of poor Bangladeshis as an 'invidious demographic invasion...aggression of the worst order...turning districts into Muslim majority regions...' and irrationally anticipated that 'it will only be a matter of time when demand for a merger with Bangladesh will be made'. The Court then stated, 'Bangladesh has long discarded secularism and has chosen to become an Islamic state', thereby overlooking the Constitution Bench decision of the Bangladesh Supreme Court which held the Constitution of Bangladesh

mandated a secular state. Without factual basis, the Court went on to predict ‘loss of lower Assam will sever the entire land mass of the North East from the rest of India and the rich natural resources of that region will be lost to the nation. These imbalanced paragraphs have been picked up by militant Hindutva groups campaigning for mass forced deportations in Assam today.

Taking a cue from the Supreme Court, the Guwahati High Court issued an order to detain ‘suspected foreigners whose cases are sent to the Foreigners Tribunals in confinement till the respective references are answered by the Tribunals. It will be in the fitness of things to detain such suspected foreigners in detention camps’. Thus even before a determination by the Tribunals persons were to be detained in prison-like conditions. Such an approach of the Union was recorded by the Supreme Court in its 2014 order in the *Assam Sanmilita Mahasangha case* where the Supreme Court noted with approval that ‘for the purpose of detection of illegal migrants 500 police units will be activated in the state within one month’.

The NRC process was downright disgraceful and bereft of the rule of law. The panel heard heart-wrenching testimonies of people who had their citizenship stripped away in the most arbitrary manner. To prove citizenship the burden of proof was shifted by unconstitutional legislation to the migrant. The State could (and did) arbitrarily pick up members of the minority community, accusing them of being foreigners, and then pack them off to the Foreigners Tribunals to prove their innocence. The presumption of innocence was done away with. Then the migrants were required to produce documents that would show their presence in the State prior to 1971. This was an onerous and difficult to meet the condition in a state where floods take away all records and the poor, in any case, find documentation impossible to harness. History will condemn this exercise as ethnic cleansing, pure and simple.

The Foreigners Tribunals were required by law to have judicial members, but this requirement has been done away with. Tribunals without judicial members are unheard of in India. Attempts by the State to undermine the judiciary by replacing Courts with Tribunals not having judicial members have been condemned in judgments of the Supreme Court in *R.K. Jain’s case*, *L. Chandra Kumar’s case* and in the *Madras Bar Association* cases destructive of independence of the judiciary. And yet the Foreigners Tribunals flourish with an ever-increasing number of non-judicial members. Their appointments often depend on the advocate's closeness to the political powers that be. Their tenure extensions depend on the number of persons they have declared foreigners. Their understanding of the law is sometimes so poor that persons are tried again and again in different tribunals despite judgments in their favour until a tribunal finally declares the person to be a foreigner. The legal principle of *res judicata*, we are told, does not apply. These Tribunals are required, by law, to have similar service conditions and independence from the State. All this is missing.

The judiciary should have kept its distance from this great communal exercise that can only bring India shame at the international level.

A VERY DIFFICULT MOMENT OF HISTORY

Harsh Mander

The people of Assam are passing through a very difficult moment of history, as the various communities of the region have deep and legitimate worries for their futures.



On the one hand, having been historically wronged by colonial policies and by the lack of adequate protection after Independence, the indigenous populations of Assam, tribal and non-tribal, are afraid of being submerged by the immigrant populations, thus losing their language and culture, as well as the control over their lands and forests. On the other hand, the people of Bengali origin living in Assam fear that the requirement to prove their Indian citizenship may result in enormous suffering and actually amount to punishment by process. Indeed, the large majority of these people are those who (or whose forefathers and foremothers) came into Assam legally during colonial times, or in the first quarter-Century after Independence, and have settled there as labourers and farmers, with very poor access to documents of birth, voters' lists or land-ownership titles.

This Public Hearing is an attempt to bring various communities and viewpoints together in the spirit of respectful dialogue and to hear the testimonies of those who have had to struggle to establish their legitimate citizenship rights. True, the Public Hearing might not result in an agreement. Still, it underlines that none of the parties to the dispute are adversaries of each other. Hearing the testimonies of various individuals who were unable to establish their citizenship, the Panel was struck by the complete absence of compassion, and even elementary "due process", in the various processes of evaluating the citizenship of the people in Assam.

There are three processes that continue in parallel.

The first is the process of identifying individuals as "doubtful" voters, with a "D" being marked against their names on voters' lists. In Assam, this process was initiated as a one-time solution by an order of Chief Election Commissioner TN Seshan, in 1997, when the voters' lists could not be completed on time and there was the necessity to enable the elections to continue on schedule. However, with time the process has become an ongoing one. Without giving notice or providing reasons, a low-level civil functionary can now designate any person as a "doubtful" voter, thereby suspending his/her right to vote. In sum, two decades after its inception as a temporary measure, this process has become the basis to exclude individuals from the National Register of Citizens (NRC). The testimonies heard by the Panel also show that the cases concerning these "doubtful" voters have not been heard by any authority for almost twenty years, that no proceedings were started till very recently, when the Foreigners Tribunals (FTs) have started to give notice to persons marked as "D" voters

some twenty years ago calling them to prove their Indian citizenship in very narrow time-limits.

The second is the process by which the Assam Border Police makes a reference to the FTs about persons who they regard to be possible foreigners. In this context, many of the testimonies given to the Panel by individuals who had been referred to the FTs for having allegedly failed to produce the documents to prove their citizenship, when approached by the agents of the Assam Border Police, decried the arbitrariness of the referrals, denying at once of having been approached by the agents and/or of having failed to produce the required documents.

The third process is of course the one concerning the updating of the NRC. Even in this connection, many of the testimonies made before the Panel highlight manifold violations of the “due process” principle. In many cases, minor mistakes in the English spelling of names have been used to reject the evidence of a person’s link with his/her parents or other members of the family who were legitimate Indian citizens. In one case, the difference of a single letter in the spelling of the name of the elder brother of an applicant (from Omar to Onar) caused his application to be rejected.

Unsurprisingly, but equally disconcertingly, these flaws disproportionately affect the individuals belonging to more vulnerable groups. Women are specially burdened with exclusion, for they typically lack birth certificates, are not enrolled in school and get married before they become adults. As a result, more often than men women are unable to prove their descent from legitimate citizens and are, consequently, more likely to be excluded from the NRC. Likewise, impoverished migrant workers are at risk of being excluded from the NRC due to their travels to other districts of Assam in search of work as construction workers, road-builders, coal-miners and so on. This is so because, in the districts of their work, the local police would consider them as foreigners, record their names as illegal immigrants from Bangladesh and refer their cases to the FTs. These cases, however, are often revived years later, and these individuals would be given notices from FTs located in districts where they might have worked years earlier, but which were not their home districts. From a more general perspective, many of the testimonies given to the Panel suggest that the presiding officers of the FTs acted with open bias against individuals belonging to certain communities. As a matter of fact, there are FTs in which not a single person has been declared an Indian citizen over several months, even years. These testimonies claim that both the police and the FTs presiding officers worked to fulfil informal targets to judge people to be foreigners.

Several instances were also reported of double or triple jeopardy, in which even after an FT deems a person to be an Indian citizen, the same FT, or another FT, once again gives notice to the same person to prove his/her legitimate citizenship once again.

In not a single one of the testimonies that the Panel heard was any person granted legal aid by the state to instruct lawyers to fight their cases in the FTs and higher courts. Instead, these people had to spend enormous amounts of money to pay for their lawyers, as well as for the costs of travel of the witnesses they brought to testify in their favour. For this very reason, some people had to sell all their assets or take loans from private moneylenders. In this

connection, it is important to stress that the large majority of these people are poorly lettered and very impoverished, doing menial work like pulling rickshaws, domestic work or farm labour.

Placing the entire burden of proving citizenship on the shoulders of these people deprived of both education and resources, and the arbitrary and opaque multiple forums to which they are summoned, have trapped them in a Kafkaesque bureaucratic maze from which they find it hard to emerge.

THE NATIONAL REGISTER OF CITIZENS AND THE POLITICS OF EXCLUSION

Monirul Hussain

Historically speaking, Assam's society is a society of migrants. Some came earlier some came later. The issue of citizenship has emerged with the advent of state building and has ever since been linked to the evolution of the state. Assam's entry into the post-colonial era, and its acceptance of the criteria for Indian citizenship cutting across race, language, religion, ethnicity, etc., opened up the complexities of a functional democracy.



Competition for power intensified group politics based on primordial identities. Accentuation of politics based on identity created exclusive constituencies and thereby prevented counter-constituencies within the same political space to emerge. This has led to political conflicts based on ethnolinguistic and communal factors, which put under stress for a long time the basic foundation of the Constitution of India, rooted in common, secular citizenship. It was essentially the competition for power which has led to depriving certain groups of people of their citizenship in order to enhance the political support for some other groups. The conflict between the response from the citizens and the one from the state has put tremendous strain on the newly evolving political democracy in India.

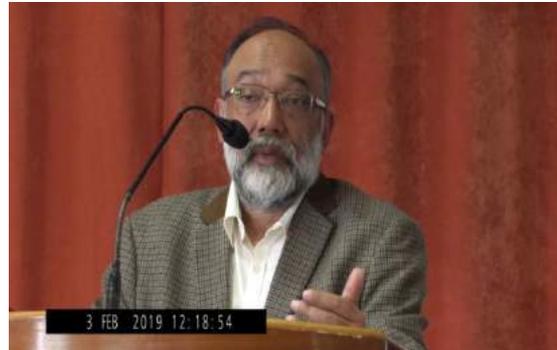
Such a conflict particularly affected the highly complex and diverse demographic composition of Assam. With the evolution of democracy, competition for power through democratic elections has often given rise to the illegal exclusion of citizens living within the community. Against these circumstances, it is a challenge for the Indian state to build a society of equality and fraternity within the constitutional framework. The exclusion of a large number of genuine Indian voters from the electoral rolls has very significantly affected the issue of citizens' rights and its inseparable linkages with the state. The solution to issues related to citizenship lies in fostering and deepening inclusion, rather than exclusion.

To be clear, I am not insisting on including in the National Register of Citizens those who are not entitled to Indian citizenship, but those who have been wrongly excluded should be included with all the dignity they deserve. Indeed, genuine citizenship should be an immutable and non-negotiable right of the people, rather than a concession from the state.

THE UNANSWERED QUESTIONS IN THE NATIONAL REGISTRY OF CITIZENS PROCESS

Sanjoy Hazarika

The concerns about the process and impact of the implementation of the National Register of Citizens (NRC) in the state of Assam were highlighted by the law students who attended a Panel hearing in New Delhi on February 1, 2019. The students voiced with great passion their thoughts and the findings of their research. These thoughts and findings reflect the deep concerns, anguish and confusion which transpire from the present hearing.



There are a few immutable points that are enshrined in the Constitution. The Preamble, as well as Articles 14 and 21 of the Constitution, protect the rights of ‘any person’ irrespective of citizenship, and place specific emphasis that no one’s right to life and liberty can be extinguished, except by due process of law, in any part of India. These issues go beyond citizenship, beyond law, to life itself. India is a designer and signatory of the Universal Declaration of Human Rights. These are applicable to the mandate holder and all stakeholders.

Turning to the specific circumstances relating to the process of implementation of the NRC in the state of Assam, the first question we need to answer is whether there is a pattern of exclusion which adversely affect the members of certain groups and communities. Such a pattern is indeed discernible. It is the result of a mixture of inadequate documentation and prejudiced conduct. As the testimonies before this Public Hearing have disclosed, such a pattern brings about cases of double jeopardy; that is to say, cases being foisted once after another against individuals who are dubbed as “D” voters, including against one person who had actually helped to conduct the elections himself, or against individuals who are excluded from the NRC and/or declared foreigners in spite of the fact that their parents, spouses or children have been registered as citizens. In other cases, individuals are excluded from the NRC even though they are listed in the electoral roll.

The second question we need to address concerns the nature of this pattern. In numerous cases there appears to be visible illegality, arbitrariness and impunity. These are unacceptable, especially where cases of no investigation and non-application of mind (if not prejudice...) by the Foreigners Tribunals are reported.

The third question relates to the role of the Assam Border Police and of the Border Security Force. Allegations of prejudice have been levelled against the police, who should be enjoined not just to enforce the laws but also to uphold duties and rights. In order to do so, however, they need to be held accountable.

Finally, we have to consider the significant internal migration caused by flooding and river bank erosion, especially when the chars and saporis are eroded and the river changes its

course. We need to understand that this is a significant issue, while at the same time being clear that the illegal migrants from Bangladesh, who have come to Assam after March 1971, are to be considered foreigners pursuant to the Assam Accord of 1985, which is at the heart of this effort. The fourth question, therefore, concerns those who are proven to be foreigners – what is to be done for them? Bangladesh has proclaimed they do not have a single national living in India, and India does not have a deportation agreement with Bangladesh. However, making these people stateless persons overnight would be unacceptable.

All these questions do not concern the NRC in itself, on which there is little disagreement. They rather concern the way it is implemented. For this reason, it is important that the testimonies and the statements given to the Panel are published in this report so that they can be handed to the NRC State Coordinator, to the Supreme Court bench hearing the matter and to the media, which need to be better informed on this side of the story and to be present here in Assam.

It is a landmark principle in the Constitution of India that religion and language are not nationality markers: Any Indian national who is left out of the NRC on these grounds calls into question the very validity of the entire system and harms the idea and basis of it all.

THE FOREIGNERS TRIBUNALS AND THE VIOLATIONS OF INDIAN LAW

Justice Gopala Gowda (Chairperson of the IPT)

At the Public Hearing, a large number of persons against whom notices had been issued by the so-called Foreigners Tribunals, constituted by the State Government of Assam on the basis of a notification issued by the Home Ministry of the Union of India under Article 258(1) of the Constitution of India, have appeared before this Panel and given their statements explaining certain factual aspects for due consideration by this Panel.



Based on these testimonies and on the applicable law (namely, the Constitution of India; the Foreigners Act, 1946; the Citizenship Act, 1955; the Foreigners (Tribunal) Order, 1964), as interpreted by the settled jurisprudence of the courts, I express the following views with regard to (1) the procedure which has been followed to initiate the proceedings before the Foreigners Tribunals; (2) the constitution of the Foreigners Tribunals; (3) the legal expertise of the judges presiding over the Foreigners Tribunals; (4) the proof required to establish Indian citizenship.

1. The Procedure Before the Foreigners Tribunals

It transpires from the testimonies that the proceedings are at the behest of the local police. It is the local police from the respective local jurisdiction that initiates the proceedings, register the cases and refer them to the so-called Foreigners Tribunals for initiating proceedings under para 3 of the Foreigners (Tribunals) Order, 1964 (the Order).

These Tribunals shall follow the mandatory procedure contemplated at para 3 of the above-mentioned Order by serving on the persons concerned a notice containing the main grounds on which they have been listed as foreigners, in order to allow them a fair and reasonable opportunity of making their case and showing that they are, in fact, citizens of India.

This procedure is mandatory. However, the testimonies and oral statements show that the proceedings are initiated in contravention of para 3 of the Order. It is the common statement of fact deposed before the Panel that the local police register the cases arbitrarily, without jurisdiction nor competency, and without even verifying the relevant records.

Therefore, the persons whose cases had been referred to the Foreigners Tribunals by the local police can enter a legal plea that the initiation of the procedure is without jurisdiction for it contravenes para 3 of the Foreigners (Tribunals) Order, 1964.

2. The Constitution of the Foreigners Tribunals

The Foreigners Tribunals themselves are without jurisdiction, for their constitution contravenes Article 258(1) and (2) of the Constitution of India. Therefore, the proceedings before these Tribunals as a whole are null and void in the eyes of the law and the orders and the judgments that may be passed by these Tribunals are unenforceable under the law.

The Foreigners (Tribunals) Order, 1964, was passed by the central Government in exercise of its powers under section 3 of the Foreigners Act, 1946, which is the pre-constitutional law. In providing for the constitution of the Tribunals, para 2 of the Order states that the central Government, or any authority specified in this regard, shall refer the question of whether a person is, or is not, a foreigner within the meaning of the Foreigners Act, 1946, to a tribunal to be constituted for this purpose. In other words, according to the aforesaid para 2 of the Order, the competence to refer to the Tribunals the question as to whether a person is, or is not, a foreigner lies with the central Government, or with any authority specifically delegated by the central Government. However, neither the Foreigners Act, 1946, nor the Foreigners (Tribunals) Order, 1964, delegates to the state Government, nor to any other authority, the power to constitute the Tribunals for the purpose of establishing whether a person is, or is not, a foreigner under the applicable law. That is to say, no provision in the Act or in the Order establishes the state Government's power to constitute the Foreigners Tribunals.

The view that the power to constitute the Foreigners Tribunals could have been delegated, from the central Government to the state Government, by means of a notification under Article 258(1) of the Constitution of India by his Excellency, the president of India, is not legally sustainable either. This is so because Article 258(2) of the Constitution of India requires Parliament to make a law which applies to all states in order to confer powers to the state Government in matters in respect of which the state's Legislature has no power to make laws. In the case at hand, the law referred to by Article 258(2) of the Constitution of India is the Foreigners Act, 1946, which is a pre-constitutional law and has passed the test of Article 13 of the Constitution of India. However, no provision in the Foreigners Act, 1946, confers power to the state Government.

Therefore, the state Government did not have jurisdiction to constitute the Foreigners Tribunals in order to determine whether a person is, or is not, a foreigner within the meaning of the Act. It follows that the persons concerned can raise a plea with regard to the jurisdiction of the Tribunals and, with a further request, ask them to decide such issue as a jurisdictional issue and record a finding in that regard.

3. The Legal Expertise of the Judges Presiding Over the Foreigners Tribunals

The state Government has appointed as judges in the Foreigners Tribunals lawyers who do not have the required judicial experience. According to the testimonies given to the Panel, the lawyers appointed as members of the Tribunals only have got experience of 7 years or above at the Bar. Therefore, they are not qualified to preside over the Foreigners Tribunals.

4. The Proof of Indian citizenship

Finally, it is to be pointed out that the persons appearing before the Foreigners Tribunals are entitled to produce documentary and oral evidence to prove their citizenship. This evidence shall be considered objectively; that is to say, keeping in view that many of the individuals concerned have settled down in various parts of Assam for more than two generations. Some of them have been employed in Assam and have by now been retired, some have been owning agricultural lands and residing in their respective villages for a large number of years. Some of them have migrated as early as the 13th/14th Century, while others have settled in Assam in the 19th Century, or anyway before 1971.

All these people, who have been peacefully residing in various parts of the state of Assam for a large number of years, qualify for Indian citizenship by birth under Article 5 of the Constitution (citizenship at the commencement of the Constitution) and Article 10 of the Constitution (continuance of the rights of citizenship), or for Indian citizenship by naturalization under section 6 of the Citizenship Act, 1955, which was enacted by Parliament pursuant to Article 11 of the Constitution in order to regulate the right of citizenship by law. All the persons who are eligible are entitled to submit to the Central Government a request under section 6 of Citizenship Act to obtain citizenship through naturalization. They could, then, furnish a copy of this request to the Foreigners Tribunals and ask them to stay the proceedings in order to await the decision of the Central Government on their request.

PART TWO
PRESENTATIONS BY THE EXPERT SPEAKERS

SECTION A
BACKGROUND

INFILTRATION: MYTH AND REALITY

Abdul Mannan

The question of infiltration of foreign national (read Bangladeshi) has been agitating the minds of the people dominating the socio-political and economic life in Assam since 1979. Various estimates have been put forward by interested quarters at different stages as to the number of foreign nationals, ranging from 15 to 84 lakhs. The former governor of Assam, General SK Sinha, had sent a report to the President of India in 1994 with the claim that six thousand Bangladeshi (former East Pakistan) enter Assam illegally every day. If this purported estimate were true, within 46 years (from 1947 to 1994) more than 100 million foreigners (Bangladeshi or East Pakistani) might have arrived in Assam. But according to the census report of 1991, the total population of Assam was 22.4 million. So Sinha's report would have us to believe that there are 100 million Bangladeshis in a state with a total population of 22.4 million. Fantastic information indeed!



Some people have argued that, during 20 years (1971-1991), when the question of foreign nationals was still very fresh in peoples' minds, at least 16 lakhs new infiltrators (mostly Bangladeshi) entered the state. According to these views, these people are mostly Muslims. Since the growth rate among Hindus in Assam in this period (1971-1991) happens to be 41.89% and that of Muslims 77.42 %, this excess growth of 35.53 % point was reportedly due to the heavy influx from across the border (Bangladesh), while the normal growth rate of Muslims should not have exceeded 45%.

The aim of this paper is to examine the credibility of such absurd opinions vis-à-vis estimates on infiltration, to shed some light on the issue and to draw inferences following a scientific investigation and demographic laws. The analysis is based on the data contained in the census reports of 1971 and 1991. The total population of Assam in 1971 and 1991 were 1,46,25,152 and 2,24,14,322 respectively; the growth rate being 65.25pc in twenty years (1971-91) for all socio-religious communities (SRC).

Annexure 1 gives the proportion of different SRC in 1971 and 1991. During two decades (1971-1991) while the proportion of Muslims, Christians and Buddhists have increased by 3.87%, 0.71% and 0.13% respectively, the proportion of Hindus and Sikhs decreased by 5.38% and 0.1%. Citing these figures, some people (for instance, Assam Bani a widely circulated Assamese weekly) claim that at least 16 lakh new Bangladeshi infiltrators entered Assam during 1971-1991. It was then suggested that the normal growth rate among Muslims should have been 45%. So the additional growth of 35.41% points would be due to large scale infiltration. To get an insight, it is useful to rely on information relating to different religious groups; Hindus and Muslims in particular, since 94 % of the population of India belongs to one of these two faiths. We shall also take into account the growth rate of the different Schedule Caste (SC) and Schedule Tribe (ST) population within Hindus separately and shall compare the growth rate of Assam with that of other states.

Annexure 2 shows the growth rates for all Hindus, Muslims, Schedule Caste (SC) and Schedule Tribe (ST) for (1971-1991) (figures are given in percentage).

Hindus: All India 52.24; Assam 41.89, Kerala 31.43, Tamilnadu 35.05, Punjab 37.39 Meghalaya 39.08. These figures show that the growth rates of Hindus in these states are less than that of Assam. In all other states the growth rates are more than that of Assam (see Annex 1).

Muslims: All India 71.47; Assam 77.42, U.P. 76.30, West Bengal 77.32, Madhya Pradesh 88.31, Punjab 110.32, Rajasthan 89.29, Tripura 89.0, Himachal Pradesh 77.64.

These figures show that in the eight largely populated states, the growth rate among Muslims is higher than, or equal to, that of Assam (see Annexure 2). If it is assumed that the high growth rate among Muslims in Maharashtra, Punjab and Haryana is due to migration of Muslim workers from U.P. Bihar, Assam or West Bengal, then how would we explain this high growth rate in U.P., H.P., Madhya Pradesh, Orissa, Rajasthan and West Bengal? Nobody has claimed that the large growth among Muslims in Orissa, Rajasthan, Madhya Pradesh, Himachal Pradesh, U.P., Andhra Pradesh and Karnataka is due to Bangladeshi infiltration. To the contrary, a careful study of Annexure 2 reveals that the growth rate among Muslims in Indian states – be it in the North, South, East or West – is no doubt high, but it is almost uniform as the trend is the same.

The growth rates among Scheduled Caste (SC) and Scheduled Tribe (ST) within the greater Hindu community are as follows.

SC: All India 72.78; Assam 81.84, Andhra Pradesh 83.67, West Bengal 82.40, Maharashtra 189.44, Manipur 126.58, Meghalaya 133.39, Karnataka 91.41, Rajasthan 86.67, Madhya Pradesh 76.52, Punjab 71.51 Haryana 71.47 etc. These figures show that the growth rate among the SC is higher in a few states and more or less equal in others in comparison to that of Muslims. For Assam, and India as a whole, it is higher than that of Muslims.

ST: India 78.24; Assam 78.91, Andhra Pradesh 153.34, Madhya Pradesh 83.60, Maharashtra 147.72, Manipur 89, Tamil Nadu 84.32, Tripura 89.38, etc, these growth rates are also higher than that of Muslims.

The picture is very clear. It is seen that the growth rates of Muslims in India or different states are much higher than that of Hindus as a whole. But when we separately examine the growth rates of SC and ST (within Hindus), it is seen that their growth rates are still higher than that of Muslims. This trend exists throughout India. What are the reasons behind this tendency of higher growth among Muslims and SC & ST (within Hindus)? Does it have any relation to poverty, illiteracy, and social backwardness of these groups (communities)?

Yes, it is related to these factors. According to demographic laws, poverty, illiteracy and social backwardness are primarily responsible for higher growth of a population. A study of Professor Pabitra Giri of Calcutta University had shown that the birth rate was always very high among the poor and illiterate segment of a population (Nandan, 1993). The birth rate

among rural people who can rarely spend Rs. 50.00 or less per head per month is 36.6. But it decreases to 19.9 for those who can spend more than Rs. 100.00 per head per month. These figures indicate that poverty and birth rate are directly related. Similarly, there is a direct relationship between the birth rate and the educational standard of the family. The majority of Muslims, SC and ST population are marginal farmers, landless agricultural labourers and poor artisans. They generally live in rural and slum areas. They are educationally backward because of extreme poverty. The birth rate is very high among them.

Muslims constitute 13.42% of the total population in the country. But according to data provided by the Gopal Singh Committee, Mandal Commission and Sachar Committee Reports, their share on national wealth are just one percent: 37% of Muslims are landless, while another 24% own one acre of land per family. Muslims own only 2% of the total land in India. In employment with both the public and the private sector, Muslim's share is a meager 2%; in trade and commerce, it is only 3%.

The comprehensive data of the census report 2011, finally rounded off on May 23, 2013, brought some significant dimension to the fore. It was observed that the population growth of the Muslim's majority districts, both in Brahmaputra and Barak valley, surpassed the growth rate of other districts of Assam. (see Annex- 7) The district of Dhubri tops out at the rate of growth reaching 24.4 %. Muslims make up 78.29 % of the total population in the district. Similarly, the rate of population growth in Muslim concentrated districts is Marigaon (23.3), Goalpara (22.6), Darrang (22.2), Nagaon (22), Karimganj (21.9), Hailakandi (21.4), Barpeta (21) Bongaigaon 20.6 pc and Cachar (20.2); that is to say, it is strikingly higher. These districts have a sizable proportion of Muslims population varying from 35% to 78.29%. By contrast, the districts with low Muslim population show a lower growth rate of population. The district of Jorhat, Sibsagar, Dibrugarh, Golaghat, Tinsukia etc. have a marginal Muslim population comprising 4.7%, 8.5%, 4.5%, 7.91% and 3.48% respectively. The corresponding growth in this district is 9.3%, 9.4%, 11.9%, 12.7% and 15.5%. The disproportionate district-wise growth of population is immediately conspicuous. This, in turn, begets the question, if this asymmetrical growth is, in all likelihood, due to an abnormal Bangladeshi infiltration into the soil of Assam. This article also proposes to address questions of this kind.

Ever since the days preceding India's independence, a great segment of the majority communally carrying the political and social leadership of Assam has ominously apprehended that Assam would have seen a day in the near future when the religious Muslims minority would have outgrown the Hindu majority community. Ever since the 1940s, this grave misgiving has preoccupied the minds of the political top brass of Assam. In 1950, Gopinath Bordoloi Govt. passed an act, The Immigrants (Expulsion from Assam) Act, 1950, and on its strength arrested a large number of Muslims of East Bengal origin who came long before independence and remained in Assam during the partition of the country, pushing them to then East Pakistan. Following the same strategy, around 1953-1954, the political dispensation of Assam under Bishnuram Medhi took upon itself the task of re-accorded the land pattas accorded earlier by the British in the early Forties, to the flood affected poor Muslim farmers. In the Sixties of the last Century, within a span of seven-eight years (1962-1968), a total of not less than 6 lakh Muslims of East Bengal origin charged as "illegal Pakistani infiltrators" were arrested under the scheme called Prevention of Infiltration from

Pakistan (PIP) by the Government of Bimala Prasad Chaliha and then hurled to then East Pakistan. In 1969, a continuing, massive protest by the minority people made the Government declare that there were no more illegal infiltrators, and the operation was put to an end.

After 10 years of silence, a vigorous movement for freeing Assam from illegal Bangladeshi nationals re-surfed again in 1979, alleging that Assam was overrun by 1.5 to 8.4 million illegal Bangladeshi migrants. For the last 39 years, the dispute on the illegal Bangladeshi immigrants has raged on, but nobody has been able as yet to figure out with valid data the exact number of illegal Bangladeshi immigrants in Assam.

The proportion of minority Muslims to the total population of Assam in percentage from 1901 to 2011 are shown below:

Year	1901	1911	1921	1931	1941	1951	1961	1971	1991	2001	2011
Proportion Muslim	12.40	16.69	19.21	23.41	25.72	24.68	25.26	24.56	28.43	30.92	34.22

Today, the Muslim population in Assam stands at 34.22% of Assam's total population. In 1951 the figure was 24.68%. A growth (increase) of 9.5% in 60 years might in all likelihood upset the protective majority community. This is a truth that the minority community also needs to understand in clear light. At the same time, the majority counterpart would also do well to adopt a scientific and analytical mind to get to the roots of the problem and find a solution to it, rather than perpetually fret about the invisible phantom of Bangladeshi infiltration. This would certainly be a conscientious and wise step ahead in the larger interest of Assam.

Annexure 7 shows the population in Dhubri district, with 74.29% Muslim of the total population of the district registering high decadal (2001-2011) growth of 24.44%. In sharp contrast to this, Jorhat district, with only 4.77% Muslim population registering the lowest growth of 9.3%. An exhaustive comparison between these two districts would bring many things to light. The comparative analysis is primarily based on the districts of Dhubri and Jorhat, since the former has the highest and the latter the lowest population growth and also Dhubri with 74.29% Muslim while Jorhat with only 4.77% Muslim.

The point of percentage gulf between these two districts is as high as 15.14% point. The geographical distance between the two districts is only 600 km. As per the census Report of 2001, life expectancy in Jorhat district was 62 years, while that of Dhubri was only 55 years, a difference of 7 years. What are the factors that make the people of Dhubri live shorter by 7 years than that of Jorhat? The following facts will answer this question. The crude birth Rate (CBR) of Dhubri is 22.1 while that of Jorhat is 20. The Infant Mortality Rate (IMR) of Dhubri is 72, while that of Jorhat is 57. The mortality rate of children below the age of 5 years is 71 in Jorhat against 91 in Dhubri. There is a hospital bed for every 2335 people in Jorhat, as against one bed for 3,623 people in Dhubri. In Jorhat, there is one Government doctor for every 7,189 people as against one doctor for 10,844 people in Dhubri. A close

analysis of the data corroborates the disparity in amenities between Muslim dominated backward districts and the privileged districts of Assam. It leads one to a definitive conclusion that the minority concentrated districts in general and Dhubri in particular, have fallen victims to overt discrimination on the health front.

A marked discrepancy is present in the field of education as well. The literacy rate of the district of Dhubri was 48.21% (2001 census report). Against this, it is 76.21% in Jorhat district. After 10 years, in 2011, it rose to 58.38% in Dhubri, while in Jorhat district it rose to 82.15%. For every 638 people, there is a Lower Primary School in Jorhat, while in Dhubri there is one Lower Primary School every 1,129 people; the teacher-student ratio in the district of Dhubri is 1:74 in contrast to 1:20 in Jorhat. In other Muslim concentrated districts like Goalpara, Barpeta, Nagaon, Morigaon and Karimganj, the ratio is one teacher for more than 40 students. Conversely, in the district of Golaghat, Sibsagar, Dibrugarh and Kamrup the teacher-student ratio is almost the same as that of Jorhat i.e. 1:20. In Sibsagar there is one Lower Primary School every 614 people, whereas in Barpeta there is one Lower Primary School every 896 people, in Nagaon every 1158 people, in Morigaon one every 952 people, and in Goalpara one every 810 people. In the district of Dhubri, the proportion of graduates among people aged 20 years or above is only 2.9%, while for Jorhat it is 7.2%. In Dhubri district, among the total population aged 15 years or more, only 10.7% successfully pass the HSLC or HSS Examination. For Jorhat, 29.4% of those above 15 years passed HSLC or HSS Exam. The foregoing facts speak volumes for the truth that in the past Seventy years of independence, the Governments have done little for the development of education for all segments of people or, anyway, that they have not done what they ought to have done.

Also in business and commerce minorities have faced active discrimination. In the entire district of Dhubri, there are 43 branches of nationalized banks and 13 branches of Gramin Vikash bank for 16,37,344 people (2001). That means that there is only one bank branch for as many as 29,239 people. The district of Jorhat, by contrast, boasts the presence of 88 branches ensuring the benefit of one branch every 11,355 people. The total amount of bank loans offered in the district of Dhubri is estimated at 331 crores (2009). Therefore, the per capita loan amount granted to each individual is only Rs. 2,021.00. By contrast, the total sum of loan granted in the district of Jorhat is Rs. 760 crore and the per capita loan amount granted to each individual is Rs. 7,606.00.

The number of registered motor vehicles may also indicate a parameter of development. The total number of registered private two wheelers or four wheelers in Dhubri district (2008-2009) is about 1,22,330. That means that only one individual every 134 people owns a registered motor vehicle. By contrast, the total number of registered motor vehicles in Jorhat district is 1,04,252. That is, one individual out of every 10 has a registered vehicle.

The proportion of children below age 10 in a few selected districts are shown below. Within bracket proportion or percentage is indicated: Dhubri (30.3), Goalpara (28.5), Barpeta (27.7), Nagaon (26.8), Marigaon (28.0), Karimganj (25.8), Golaghat (23.0), Tinsukia (23.6), Cachar (23.4). The figures clearly indicate that the districts with larger Muslim population are burdened with a higher birth rate which leads to a higher growth rate. The reason is lack of development and backwardness in education.

A high life expectancy indicates a longer life span of people. For a human being to live a long life he or she must have access to a required amount of nutritious food, good medical service and should maintain a proper lifestyle. A scientific sanitation system is also necessary. To develop such an environment a man should possess wit and wisdom. Education is essential to enrich intelligence. Therefore, society must march forward in the field of education. Economic stability is needed to achieve all these. That is why economist calculates the human development index on the basis of three factors; viz. average life expectancy, per capita income and literacy rate. The literacy rate in India according to the 2011 census is 80.89% for men and 64.64% for women. In Assam, it is 77.85% and 66.27% for men and women respectively. The literacy rate among the Muslims of Assam is 68% for men and 52% for women. 80% of the inhabitants in Char-Chaparis (riverine area) of Assam are Muslims. A deplorable scenario of education prevails in the chars. Nearly 70% of men and 85% of women are illiterate in char areas. Under such circumstances, how low the rights, respect and economic independence of women could drop demands careful scrutiny. The lives of women in the educationally backward chars are fraught with a multitude of problems.

According to a report prepared by the now-defunct planning commission on March 19, 2012, the Muslims living in the rural areas of Assam is the most underdeveloped and poor people in the whole country. It is to be noted that 94% of all the Muslims in Assam live in villages and most of them are residents of the districts of Dhubri, Goalpara, Barpeta, Nagaon, Morigaon, Karimganj and Hailakandi. Besides, a considerable number belongs to Darrang, Bongaigaon, Cachar, Kamrup and BTAD.

The report of the Commission also showed that, in comparison to 2004-2005, the number of people Below Poverty Line (BPL) in India has decreased in 2009-2010, with a slashing of the rate from 37.20% to 29.8%, i.e. a 7.3% reduction took place in that period. At the same time, the number of BPL population in Assam climbed up from 33.4% to 37.9%, a hike of 4.5%. The number of BPL people in Assam was 11.6 million in 2009-2010. Of this, 97.7%; that is to say, 9.77million, are from rural areas, while the rest 1.83 million dwell in urban areas. The rate of poverty among the rural Muslims of Assam is limping up in terrifying proportions. According to the report, the proportion of poor Muslims in Assam living below the poverty line is 57% which is more than that of Uttar Pradesh (44.4%), WB (34.4%) and Gujarat (31.4%)

According to the Sachar Committee Report (2006), the incidence of poverty among the rural Muslims in Assam is higher than that of other ethnic groups. It is 18 for general caste, 12 for upper caste Hindu, and 27 for Muslims. The mean per capita expenditure (MPCE) of rural Muslim in Assam is a mere 551 rupees. Chiefly because of poverty, illiteracy, wobbly infrastructure, derelict health service and absence of adequate economic activities, the Muslims are limping far behind other communities. They are crushed under the curse of population explosion due to these reasons and therefore the womenfolk in the Muslims community, particularly in the char areas, are denied all the rights of life. The poor parents are unenthusiastic about sending their children, particularly girls, to school. Instead, the girls are engaged in household chores to lend a helping hand to their mothers. These girls are married off at a tender age. By the time an educated girl of the majority community of the state gets the first child after marriage, a girl in the Muslim community in the char-Chaparis

is about to become a grandmother. A girl who is married at the age of 14/15 becomes a mother at around 15/16. If the child happens to be a girl and if she too is married at around 15 the following year she becomes a mother. That means that a girl who is married at the age of 14/15 becomes a grandmother at an age of 30-32. The women have to bear the burdens of childbearing and child-rearing and look after the family at a tender age, which shatter their health and make them sick. Marriage at tender age results in the birth of more children. Population explosion is an outcome of this cycle.

According to the data published so far, the Muslim populated area appears to the rank top than other areas of the state with regard to birth rate resulting in high population growth. The data of the 2011 Census shows that the proportion of children in the age group 0-6 years to the total population in Dhubri district is 18.89% which is higher than the all Assam ratio of 14.86%. The population ratio of Muslims in Dhubri is 79.67%. Again, in South Satmara revenue circle which has 98% Muslims, the ratio of children of 0-6 year age group is 23.26%. It is 19.85% in Mankachar revenue circle where more than 90% people are Muslims. But in Agomoni riverine circle, of the same district, which has more Hindus, the ratio of children of 0-6 years age group came down to 15.49%. Similarly, in many reverse circles with more than 80-90% Muslims, the picture is the same, i.e. high percentage of children. In Barpeta district the ratio stands at 16.99%; in Baghbar and Kalgachia revenue circle with more than 90% Muslims, the ratio is 20.91% and 20.94% respectively. But in Bajali revenue circle of Barpeta district, with only 5% Muslims (ie. 95% Non-Muslims), the ratio of children is only 9.58%. Similarly, in Rupahi and Dhing revenue circles, in Nagaon district, where the Muslim population is almost 85-90%, the ratio of 0-6 years children are 19.69% and 19.32% respectively.

The districts and revenue circles with a small number of Muslims and a large number of non-Muslims register a lower ratio of children indicating low birth rate. Muslims are 3.4%, 4.86%, 8.30%, 5.00% and 8.46% of the total population in the districts of Tinsukia, Dibrugarh, Sivasagar, Jorhat and Golaghat respectively. The ratios of children to the total population in these districts are 13.69, 12.30, 12.11, 11.40 and 12.63 respectively.

It is evident from the above facts and discussion that the ratio of children to total population is higher by 6 to 8 percentage points in the district and Revenue Circles (which include chars) where Muslim reside in large number. This overloaded number of children contributes to the spate in reproduction every ten years. Consequently, the decadal censuses show an increase in the population of Muslims by a margin of 2% in average, while groups with vested interests try to convince the people that this increase stems from the unabated influx from across the border.

The need of the hour is to make the educationally backward Muslims aware of the dangerous consequences of population explosion and mobilize the mass people with strong messages. The need for education, particularly for women, has to be emphasized through intense initiatives. Only women's education and empowerment can ensure a check on the spurt in the population. The fear and anxiety in the psyche of the majority would not be dispelled unless population explosion is brought under control. Social life will remain unstable. Hence the nation and society must strive together against this malady. Inclusive development with women empowerment is the only tool to fight the menace.

Annexure - 1

**Proportion (Percentage) of people in different states of India
according to socio-religious status (1971-1991)**

States	All Hindus	Muslims	Scheduled Castes	Scheduled Tribes
Andhra 1971	87·63	8·09	13·27	3·81
Pradesh 1991	89·14	8·91	15·92	6·31
Assam 1971	72·51	24·56	6·24	13·13
1991	67·13	28·43	7·40	12·82
Bihar 1971	83·46	13·48	14·11	8·75
1991	82·42	14·81	14·55	7·66
Gujrat 1971	89·28	8·48	6·84	13·99
1991	89·48	8·73	7·40	14·92
Haryana 1971	89·23	4·04	18·89	—
1991	89·21	4·64	19·75	—
Himachal 1971	96·08	1·45	22·24	—
Pradesh 1991	95·90	1·72	25·34	—
Kerala 1971	59·41	19·50	8·30	1·26
1991	57·28	23·33	9·92	1·10
Madhya 1971	93·68	4·36	13·09	20·14
Pradesh 1991	92·80	4·96	14·55	23·27
Maharasthara 1971– 1991	81·94 81·12	8·40 9·67	6·00 11·09	5·86 9·27
Manipur 1971	58·97	6·61	1·52	31·18
1991	57·67	7·27	2·02	34·41

States	All Hindus	Muslims	Scheduled Castes	Scheduled Tribes
Meghalaya 1971	18·50	2·60	—	80·48
1991	14·67	3·46		85·53
Karnatak 1971	86·46	10·63	13·14	4·20
1991	85·45	11·64	16·38	4·26
Nagaland 1971	11·43	·58	—	88·61
1991	10·12	1·71	—	87·70
Udishya 1971	96·25	1·54	15·09	23·11
1991	94·67	1·83	16·20	22·21
Punjab 1971	37·54	·84	24·71	—
1991	34·46	1·18	28·32	—
Rajasthan 1971	89·63	6·90	15·82	12·13
1991	89·08	8·01	17·29	12·44
Tamilnadu 1971	89·02	5·11	17·76	—
1991	88·67	5·47	19·18	—
Tripura 1971	89·55	6·68	12·39	28·95
1991	86·50	7·13	16·36	38·95
Uttar 1971	83·76	15·48	21·00	—
Pradesh 1991	81·74	17·33	21·05	—
West 1971	78·11	20·46	19·90	5·72
Bengal 1991	74·72	23·61	23·62	5·59
India 1971	82·72	11·21	14·60	6·94
1991	82·41	12·00	16·33	8·01

Sources : *Census Report of 1971 and 1991*

Annexure - 2

**Growth rate of socio-religious communities in different states
of India in twenty years (1971-1991) in percentage**

States	All Hindus	Muslims	Scheduled Castes	Scheduled Tribes
Andhra Pradesh	55·59	68·32	83·43	153·34
Assam	41·89	77·42	81·84	78·91
Bihar	51·37	68·34	58·12	34·14
Gujrat	55·08	59·32	67·65	65·00
Haryana	63·99	88·36	71·47	–
Himachal Pradesh	49·14	77·64	70·26	54·19
Kerala	31·43	63·07	62·88	19·16
Madhya Pradesh	57·38	80·76	76·52	83·60
Maharasthara	55·01	80·15	189·44	147·72
Manipur	67·48	88·31	126·58	89·00
Meghalaya	39·08	133·66	133·39	86·42
Karnatak	51·71	68·05	91·41	–
Nagaland	107·47	588·89	–	131·82
Udishya	41·90	70·97	54·92	38·65
Punjab	37·39	110·32	71·51	–
Rajasthan	69·75	98·29	86·67	75·17
Tamilnadu	35·05	45·00	46·43	84·32
Tripura	71·12	89·00	133·93	89·38
Uttar Pradesh	53·68	76·30	57·83	45·00
West Bengal	46·96	77·32	82·40	50·37
India	52·24	71·47	72·78	78·24

Annexure - 3

Growth rate of socio-religious communities in different districts of Assam in twenty years (1971-1991) in percentage

SRC Districts	All	Hindus	Muslims	Christian	Seheculated Castes	Seheculated Tribes
Dhubri	56·57	29·24	71·13	131·47	80·10	56·59
Kokrajhar	76·78	53·72	98·47	153·49	115·65	133·36
Goalpara	54·12	25·16	93·83	50·30	60·43	44·77
Bangaigaon	64·64	49·86	88·12	70·00	82·58	111·26
Barpeta	43·02	12·40	64·21	116·96	76·25	42·61
Nalbari	49·27	38·15	93·40	121·18	170·55	84·03
Kamrup	65·72	59·25	87·14	71·49	82·94	73·35
Darang	55·63	34·00	108·10	75·86	83·75	75·07
Sonitpur	57·14	47·35	132·90	106·62	92·47	166·86
Lakhimpur	56·29	39·01	200·52	142·12	80·55	74·88
Dhemaji	107·50	117·71	-59·03	-18·22	292·91	103·18
Dibrugarh	37·78	32·91	68·43	59·29	60·05	46·41
Tinsukia	47·03	47·62	89·56	73·04	139·31	107·19
Jorhat	33·10	33·54	60·89	40·84	59·91	67·88
Golaghat	58·26	46·13	97·24	202·73	80·03	114·29
Sibsagar	38·76	35·99	59·01	77·56	70·41	50·25
Nagaon	51·26	31·19	81·91	43·73	68·99	28·45
Marigaon	50·90	37·52	71·51	-31·63	66·45	40·46
Cachar	47·59	30·89	56·57	42·34	93·72	15·81
Hailakandi	45·94	34·34	55·56	72·45	50·85	50·53
Karimganj	42·08	29·20	57·93	52·48	49·28	156·27
Karbi Anglong	74·72	64·10	111·42	172·99	185·04	62·69
Dimahasao	98·00	87·70	409·92	121·93	374·33	87·96
Assam	53·26	41·89	77·42	95·37	81·84	78·97

Census Report 1971 and 1991 and Statistical Hand Book of Assam Published by Directorate of Economics and Statistics, Govt of Assam, 1990 and 1993.

Annexure- 4

Percapita monthly expenditure of the family and Birth rate in India for 1978

Percapita monthly expenditure	Birth rate	
	Rural	Urban
<Rs 50/-	36·6	33·9
Rs 50/- to Rs 100/-	29·3	27·4
> Rs 100/-	19·9	18·3

Sources : Registrar General of India, Levels trans and differential in fertility : 1979 ; as reproduced by Prof. Pabitra Giri of Calcutta University in Nandan- January 1993.

Annexure- 5

**Birth rate in few states of India according to
Socio-religious communities in the year 1978.**

Birth rate						
State \ SRC	Hindus		Muslims		Scheduled	
	Rural	Urban	Rural	Urban	Rural	Urban
Andhra Pradesh	30·9	25·4	35·6	25·1	32·0	29·1
Assam	31·3	23·9	34·6	26·2	35·7	29·4
Bihar	30·8	23·5	30·1	26·7	31·9	20·6
West Bengal	25·6	19·9	32·7	31·6	34·6	31·8
Uttar Pradesh	39·2	29·3	42·2	34·2	40·7	35·6
India	31·0	25·6	34·9	30·6	34·6	31·8

Sources : Registrar General of India, *Levels trans and differential in fertility : 1979 ; as reproduced by Prof. Pabitra Giri of Calcutta University in Nandan- January 1993.*

Annexure - 6

Percentage of Population Growth (%)			
India			Decreasing
Decade	1991-2001	2001-2011	
Growth (%)	21·50	17·7	3·8
Assam			
„	18·92	17·07	1·85
Growth	Bihar	25·4	

Source : Census Report 2001, 2011

Annexure - 7

Proportion (Percentage) and Growth Rate of Muslims in Different Districts of Assam (2001 and 2011)

Districts	Proportion (Percentage) of Muslims 2001	Growth Rate of all SRC 2001-11
Dhubri	74.29	24.4
Marigaon	47.59	23.3
Goalpara	53.71	22.6
Darang	35.58	22.2
Nagaon	51	22
Karimganj	52.30	21.9
Hailakandi	57.63	21.4
Barpeta	59.37	21.4
Bangaigaon	38.52	20.6
Cachar	36.13	20.2
Dhemaji	1.80	20
Kamrup	18.3	
Karbi Anglong	2.22	17.6
Lakhimpur	16.14	17.2
Kamrup	24.78	15.7
Sonitpur	15.94	15.6
Tinsukia	3.48	15.5
Dimahasao	2.48	13.8
Golaghat	7.91	12.7
Nalbari	22.10	12
Dibrugarh	4.5	11.9
Dibrugarh	4.5	11.9
Baksha		10.7
Udalguri		9.6
Sibsagar	8.15	9.4
Jorhat	4.77	9.3
Kokrajhar	20.36	5.2

Source : Census Reports 2001 and 2011; Statistical Hand Book, Assam, 2015.

SRC- Socio-religious Community

Annexure - 8

Life Expectancy in a few Selected Districts (2001)

Districts	Life Expectancy in year	District	Life Expectancy in year
Dhubri	55	Jorhat	61.8
Barpeta	59.1	Sibasagar	61.0
Nagaon	60.2	Golaghat	60.1
Marigaon	59.1	Dibrugarh	62.0
Goalpara	57.2	Kamrup	61.2
		Nalbari	61.8

Source : Statistical Hand Book Assam- 2009

Annexure - 9

Some information on Birth and Death of Children in Some Districts (2011)

Districts	General Birth Rate	Infant Mortality Rate	Mortality Rate below 5 yrs of age	Neonatal Mortality Rate
Dhubri	22.1	72	91	50
Barpeta	20.4	48	65	33
Goalpara	22.5	56	74	39
Nagaon	24.6	66	86	41
Marigaon	23.5	72	93	44
Karimganj	25.8	69	83	46
Hailakandi	32.1	55	91	36
Jorhat	20	57	71	43
Sibasagar	19.7	58	79	37
Dibrugarh	20.1	55	71	37
Golaghat	21.9	62	82	47
Tinsukia	21.1	55	74	39
Cachar	26.5	57	79	36
Kamrup	18.7	46	57	30

Source : Census Report 2001, 2011)

Annexure-10

Numbers of Govt. Hospitals, Primary Health Centres (PHE), CHC, Dispensaries, Govt. Hospital Beds, Govt. Doctors etc. in some Districts in 2009

Districts	District Civil Hospital	Sub-Divisional Civil Hospital	PHC	Dispensary	CHC	Hospital Bed in Govt. Hospital	One Bed for how many persons	Numbers of Govt. Doctors	One Doctor Among how many persons
Dhubri	1	1	34	13	5	452	3,623	151	10,844
Goalpara	1	0	33	12	1	350	2,349	104	8,138
Barpeta	1	1	36	8	6	454	3,628	158	10,426
Marigaon	1	0	26	13	2	190	4,086	76	10,214
Nagaon	1	0	58	19	9	590	3,923	202	11,459
Karimganj	1	0	22	24	1	222	4,540	77	13,090
Hailakandi	1	0	12	2	1	204	2,610	51	1,045
Jorhat	1	2	39	9	5	428	2,335	139	7,189
Sibsagar	1	2	33	1	2	404	2,603	103	10,211
Dibrugarh	–	–	36	9	5	242	4,897	103	11,507
Golaghat	1	1	34	5	5	324	2,445	169	5,600
Cachar	1	0	27	2	4	260	5,554	107	13,504
Tinsukia	1	0	19	5	4	318	3,617	96	11,980
Assam	21	13	844	239	103	8,592	3,102	2,813	9,476

Source : Statistical Hand Book Assam 2009, Published by Directorate of Economics and Statistics, Govt. of Assam

Annexure- 11

Literacy Rate and Level (rate) of Higher Education in a few Districts of Assam in 2001

Districts	Total Population (2001)	Number of Literate Persons	Percentage of Literate Person (%)	Number of High School & Higher Secondary School Passed Person above 16 yrs of age	Percentage of HS & HSS Passed Person above 16 yrs age	Number of Graduates above 20 Years age	Percentage of Graduates above 20 Yrs of age
Dhubri	16,37,344	6,25,369	48.21	1,00,119	10.7	23,131	2.7
Barpeta	16,47,201	7,52,682	56.24	1,63,130	16.5	33,386	4.0
Goalpara	8,22,035	3,84,670	58.03	59,850	12.4	10,964	2.7
Nagaon	23,14,639	11,65,617	61.73	2,25,393	16.0	45,957	3.9
Marigaon	7,76,256	3,67,292	58.53	69,425	15.0	11,307	2.9
Karimganj	10,07,976	5,50,119	66.24	88,949	13.1	17,096	3.26
Hailakandi	5,42,872	2,63,547	59.64	36,377	11.2	8,151	3
Jorhat	9,99,221	6,60,591	76.33	1,99,667	29.4	41,283	7.2
Sibsagar	10,51,736	6,72,158	74.47	2,07,113	29.5	31,707	5.3
Dibrugarh	11,85,072	6,98,148	68.96	1,92,341	24.5	41,634	6.3
Kamrup	25,22,324	16,08,191	74.16	4,61,515	27.30	1,69,680	11.75
Nalbari	11,48,824	6,57,925	67.23	1,73,689	23.22	30,251	4.79

Source : Statistical Hand Book Assam 2009 Published by Directorate of Economics and Statistics, Govt. of Assam

Annexure- 12

Literacy Rate in a few Districts of Assam in 2011

District	Literacy rate	District	Literacy Rate
Dhubri	58.34	Kamrup (Urban)	88.71
Darang	63.08	Jorhat	82.15
Chirang	63.55	Sibsagar	80.41
Barpeta	63.81	Cachar	79.34
Kokrajhar	65.22	Nalbari	78.63

Source : Statistical Hand Book Assam 2015

Annexure - 13

Number of Primary, Middle, High, Higher Secondary Schools, Enrolment, No of Teachers, Teacher Student Ratio etc in a few Districts as on 30 Sept. 2007

Districts	Institution													
	Primary School				Middle School				High School			H. S. School		
	No. of Schools	No. of Students	No. of Teachers	Teacher Students	No. of Schools	No. of Students	No. of Teacher	Teacher Students	No. of Schools	No. of Students	No. of Teachers	No. of Schools	No. of Students	No. of Teachers
Dhubri	1,450	2,25,649	2,894	1:78	834	1,50,541	4,601	1:33	186	25,760	1,787	34	6,681	1,139
Goalpara	940	87,963	2,228	1:40	446	70,523	2,640	1:27	152	18,443	1,599	13	1,638	466
Barpeta	1,839	1,70,661	4,175	1:41	720	1,30,676	4,561	1:29	290	46,701	4,040	42	8,160	1,581
Nagaon	2,008	2,39,162	5,883	1:41	868	1,67,231	4,642	1:36	304	46,978	4,142	60	12,173	2,135
Marigaon	816	87,298	1,930	1:45	386	62,356	2,580	1:24	138	17,770	1,474	14	3,070	440
Karimganj	1,245	1,19,659	2,751	1:44	374	81,040	2,440	1:33	92	14,814	1,229	25	7,751	791
Hailakandi	1,003	64,843	2,584	1:25	388	47,975	2,665	1:18	246	5,413	1,172	11	2,910	420
Jorhat	1,567	66,374	3,333	1:20	527	56,777	2,760	1:21	253	43,362	3,638	26	7,711	816
Sibsagar	1,714	77,594	3,493	1:22	469	55,942	4,279	1:13	191	38,327	2,159	41	7,793	1,472
Dibrugarh	1,184	70,616	3,262	1:22	332	57,218	2,173	1:26	156	27,856	1,679	25	4,877	976
Golaghat	1,002	70,719	2,526	1:28	448	60,477	1,469	1:25	173	25,477	2,171	23	3,445	741
Kamrup	2,172	1,65,237	6,600	1:25	850	1,38,348	5,284	1:26	540	69,974	5,900	72	20,227	2,326

One Primary School among how many people – Dhubri : 1129, Barpeta : 896, Nagaon : 1153, Marigaon : 952, Goalpara : 875, Karimganj : 810, Sivsagar : 614, Jorhat : 638

Source : Statistical Hand Book Assam 2009

Annexure -14

Districtwise Numbers of Scheduled Commercial and Rural Banks and Amounts of Credit (Few districts) in 2009

Districts	Number of Banks			Amount of Credit (in Crores)		
	Nationalised	Regional	Total	Nationalised	Regional	Total
	Com. Bank	Rural Bank		Com. Bank	Rural Bank	
Dhubri	43	13	56	314	47	361
Goalpara	24	11	39	206	47	253
Barpeta	51	17	68	397	86	483
Nagaon	44	32	120	769	103	872
Marigaon	27	10	37	202	41	243
Karimganj	45	17	62	309	41	350
Hailakandi	19	4	27	142	26	168
Jorhat	72	16	88	710	50	760
Sibsagar	57	21	78	558	50	604
Dibrugarh	79	13	92	896	32	924
Golaghat	50	24	74	382	75	457
Tinsukia	72	8	80	622	15	637

Percapita Loan :- Dhubri : 2204/-, Goalpara : 3077/-, Barpeta : 2932/-, Nagaon : 3767/-, Marigaon : 3130/-, Karimganj : 3472/-, Hailakandi : 3094/-, Jorhat : 7606 /-, Sivsagar : 5781, Dibrugarh : 7830/-, Golaghat : 4829/-, Tinsukia : 5539 /-

Source : Statistical Hand Book, Assam 2009

Annexure - 15

Districtwise (some districts) and Category-wise Length of Roads Under PWD in Assam (2008-2009)

Districts	Geographical area (in Sq km)	State Highway	Major District Road	Rural Road	Urban Road	Total Road	Black Topped	Earthen Gravel
Dhubri	2,114	56	53	814	39	962	263	699
Goalpara	1,824	137	48	729	10	924	411	513
Barpeta	2,677	159	171	864	31	1,225	367	858
Nagaon	3,973	297	327	1,710	53	2,387	884	1,503
Marigaon	1,551	142	86	795	0	1,023	192	831
Karimganj	1,809	35	343	462	19	859	212	647
Hailakandi	1,327	17	99	270	6	392	186	206
Jorhat	2,851	163	89	1,420	86	1,758	407	1,351
Sibsagar	1,668	100	310	1,420	40	1,870	830	1,040
Dibrugarh	3,381	155	163	1,183	63	1,567	551	1,016
Golaghat	3,502	159	157	1,284	33	1,633	597	1,036
Kamrup	4,043	89	230	1,682	381	2,382	701	1,681

Source : Statistical Hand Book Assam 2009

Annexure - 16

Numbers of Motor Vehicles Registered in a few Districts of Assam in 2008-09

District	Truck	Taxi	Two Wheeler	Private Small car	Tractor	Trailer	Auto Rickshaw	Total
Dhubri	1,056	157	9,228	772	22	109	133	12,233
Goalpara	2,104	161	9,550	1,227	26	80	744	
Barpeta	892	109	25,603	1,706	317	655	400	
Nagaon	3,453	676	46,267	6,606	507	414	2,250	
Marigaon	1,054	31	8,873	630	30	30	170	
Jorhat	5,481	1627	59,625	25,629	1,720	2,435	3,593	1,04,252
Sibsagar	8,399	2915	73,476	21,138	829	768	1,868	1,18,554
Dibrugarh	2,069	585	40,862	19,802	2,003	2,069	764	70,526

Source : Statistical Hand Book Assam 2009

Annexure- 17

Number of Children below the age 10 Years and their Proportion in a few Districts of Assam in 2001

District	Total Population	Children below 10 years of age	Percentage Total to Population
Dhubri	16,37,344	4,88,000	30·0
Goalpara	8,22,035	2,34,000	28·5
Barpeta	16,47,201	4,56,000	27·7
Nagaon	23,14,629	6,21,000	26·8
Marigaon	7,76,256	2,17,000	28·0
Karimganj	10,07,976	2,60,000	25·8
Hailakandi	5,42,872	1,47,000	27·0
Jorhat	9,99,221	2,03,000	20·3
Sibsagar	10,51,736	2,24,000	21·3
Dibrugarh	11,85,072	2,59,000	22·0
Golaghat	9,46,279	2,17,000	23·0
Tinsukia	11,50,062	2,72,000	23·6
Cachar	14,44,921	3,38,000	23·4

Source : Census Report 2001, Statistical Hand Book Assam 2009

Annexure- 18

Number of People above 60 Years of Age and their Proportion in a few Districts of Assam in 2001

District	People surviving above 60 yrs. of age	Proportion (%)	District	People surviving above 60 yrs. of age	Proportion (%)
Dhubri	89,000	5·4	Jorhat	62,000	6·2
Goalpara	43,000	5·2	Sibsagar	63,000	6·0
Marigaon	45,000	5·8	Dibrugarh	65,000	5·5
Karimganj	69,000	6·8	Cachar	97,000	6·7
Barpeta	1,02,000	6·2	Nagaon	1,48,000	6·4
Hailakandi	33,000	6·1	Tinsukia	64,000	5·6

(Source : Census Report 2001) Statistical Hand Book Assam, 2009.

Annexure - 19

District wise population percentage of Muslims, percentage of Children of 0-6 years age group and literacy rate in Assam (2011) of all SRC

District	Percentage of Muslims (%)	Percentage of Children of 0-6 yrs of all SRC (%)	Literacy Rate of all SRC (%)
Dhemaji	1.96	15.19	72.70
Lakhimpur	18.56	15.04	77.20
Dibrugarh	4.86	12.30	76.05
Tinsukia	3.64	13.69	69.66
Sivsagar	8.30	12.11	80.41
Jorhat	5.00	11.40	82.15
Golaghat	8.46	12.63	77.43
Sonitpur	18.21	14.44	67.34
Karbi Anglong	2.12	15.86	69.25
Dima Hasao	2.03	15.14	77.54
Kokrajhar	28.43	15.43	65.22
Chirang	22.66	15.18	63.55
Baksa	14.29	12.93	69.25
Udalguri	12.66	13.62	65.41
Cachar	37.70	14.78	79.34
Karimganj	56.36	17.25	78.22
Hailakandi	60.31	16.88	74.33
Dhubri	79.67	18.89	58.34
Goalpara	57.52	17.02	67.37
Barpeta	70.74	16.99	63.81
Bongaigaon	50.22	15.75	69.74
Nalbari	35.96	12.35	78.63
Kamrup (M)	12.05	9.99	88.71
Kamrup (R)	39.66	13.18	75.55
Darrang	64.34	16.84	63.04
Morigaon	52.56	17.11	68.03
Nagaon	55.36	16.29	72.37

Note : Newly formed Majuli is included with Jorhat district. Formation of Udalguri by dividing Darrang district causes increase of Muslim Percentage in Darrang district.

Source : Census Report 2011 and Statistical Hand Book Assam 2015.

Annexure - 20

Revenue Circle-wise Population with more than 70-90pc Muslims, Percentage of children 0-6 years age group of all SRC and Literacy rate of all SRC in few Revenue Circle in Assam (2011).

Revenue Circle	Population	Percentage of Children of 0-6 yrs. age group	Literacy Rate of all SRC
Rupahi	2,28,206	19.60	64.55
Dhing	3,30,891	19.32	62.84
Dobaka	3,03,767	18.21	72.09
Laharighat	2,53,582	20.05	57.14
South Salmara	2,49,504	23.16	51.76
Mankachar	3,05,606	19.85	49.97
Baghbar	3,06,065	20.91	49.57
Kolgachia	1,95,983	20.94	54.18
Chenga	1,42,845	19.30	54.02
Bhuragaon	1,23,469	18.69	63.44
Naoboisa	1,48,973	17.88	69.95
Nilam Bazar	2,42,451	19.37	75.44
Barkhetri	2,02,196	17.70	58.78
Barbhag	67,544	9.76	87.91

Source : Census Report 2011 and Statistical Hand Book Assam-2015

Annexure - 21

Revenue Circle-wise Population with less than 2-6pc Muslims, Percentage of children of 0-6 years age group of all SRC and Literacy rate of all SRC in few Revenue Circle in Assam (2011).

Revenue Circle	Population	Percentage of Children of 0-6 yrs. age group	Literacy Rate of all SRC
Bajali	1,05,419	9.58	87.77
Jorhat (E)	1,95,398	9.61	90.43
Jorhat (W)	2,11,539	11.25	84.99
Sibsagar	1,98,642	10.30	91.26
Amaguri	1,44,009	10.84	85.34
Nazira	1,97,614	11.74	80.64
Mariani	1,31,613	12.19	73.35
Dimow	1,52,166	12.64	79.66
Dergaon	1,46,101	10.90	83.23
Jalah	1,03,517	11.78	76.97
Dibrugarh (E)	2,70,230	11.00	78.58
Dibrugarh (W)	1,59,580	12.20	77.84
Maran	1,69,580	12.04	79.16
Tengakhata	2,20,478	12.35	76.72
Barbhag	67,544	9.76	87.91
Nalbari	1,54,826	10.05	87.24

Source : *Statistical Hand Book Assam 2015*
Directorate of Economics and Statistics
Govt. of Assam.

THE NRC AND THE CITIZENSHIP AMENDMENT BILL

Amrapali Basumatary

Let me state at the outset that today I was feeling quite uncomfortable to be standing alone here as the only woman and tribal, knowing that I will have had to take a very different position from the one taken by the other people who are present. Anyway, I am glad to be here today as a tribal



member and point out that, until and unless we do not seat back and recognise our shared history, we will never be able to move forward in the right way. Instead, we will offer to the current Government the invaluable advantage of divisions and suspicions between the different communities involved.

I am also the only female panellist. It is then important to me to point out that, as a feminist, I would really not be standing here to defend the issues and problems that are created by the men of the world and force us to jump in all the time and take positions, like if we were saying let's not talk about us for the time being, first let's solve your problems. It is tiring to think about the position one has to take, because as a feminist I do not think that the National Register of Citizens should, or should not, be updated, or that the Citizenship Amendment Bill should, or should not, be passed. As a feminist, I do not even think about citizenship. The reason is simple. How does a person become a citizen? He or she comes from the womb of a woman, but citizenship is mostly accorded through the figure of the man. I do not think that this will be sustainable in the long run. So, when people think that citizenship is the only way to be, I think we need to pause a little bit and reflect on the need to treat women as equals to men and full citizens. This is not the case, and in fact most of the persons excluded from the NRC are women who lack the documents required to be included. But why do women lack these documents? Our common sense will tell, because they get married early, they have no schooling, no property, no direct rights, and actually no voice. Therefore, I do not take part in this Public Hearing as a feminist, but as a person who regards history and sees that a problem of history has to be resolved in history. But I say at the outset, to those who are concerned about Muslims being unsafe in India today, please also register that women in India were never safe and do not have a community to fall back on.

Having said that, in my presentation I am going to touch upon (1) the relationship between the process of updating the National Register of Citizens (NRC) and the passing of the Citizenship Amendment Bill (CAB); (2) the historical backdrop to the tensions between the indigenous communities and the Bengali immigrants in Assam; (3) the problems inherent in the inaccurate description of the situation in Assam by the mainstream medias. In light of these sections, I will then draw some (4) conclusions and recommendations.

1. The Relationship Between the NRC and the CAB

The process of updating the NRC has brought a sense of ambiguity and confusion. Even those who supported it were not able to conceal the fact that human lives may actually suffer as a result of its implementation. On the other hand, the CAB has generated less ambiguity, although it is sometimes seen as a fallout of the NRC and, more precisely, as the Government's attempt to undermine the process of the NRC. Even those who were very vocal against the NRC, have chosen to remain silent on the CAB. Only the center-based, liberal and progressive circles have raised a few concerns.

The origin of the Bill was not transparent. The CAB was tabled in the Lok Sabha without listening to any of the suggestions coming from the General Purposes Committee (GPC), and even in the Government's website, the link to the Bill was so small that the internet surfers were not able to see it. It is, therefore, important to address the basic problems of the CAB and question whether it will concern the Northeast of India alone, or whether it is something that is going to have long term implications for the entire country by making religion the fundamental basis for privilege and discrimination in India.

To this end, it is necessary to briefly outline the problems with the CAB, as they are perceived in the popular domain. The CAB was tabled in the Lok Sabha on July 19, 2016, to amend the existing Indian Citizenship Act of 1955. To this effect, the CAB (1) accommodates all the non-Muslims persecuted minorities from the neighbouring countries of Afghanistan, Bangladesh and Pakistan, who have entered India before December 31, 2014; (2) reduces the required years of residence in the country to be eligible for Indian citizenship through naturalization from the current 11 years to 6 years; (3) makes religion the basis to claim Indian citizenship.

Against this backdrop, anyone who is even mildly familiar with the Indian political and demographic scenario and its neighbouring countries is bound to raise certain concerns, even if the Bill, being minimally worded, seems not to be intended to do any harm and actually looks benign in nature. These concerns relate, on the one hand, to the religious aspect of the CAB and, on the other hand, to the implementation of the CAB in Assam and in the Northeast region.

As far as the former aspect is concerned, it is to be noted that the three neighbouring countries mentioned in the CAB are Muslim majority countries. One might, then, ask why is the Government concerned only about religious persecution of non-Muslims in these countries and not about other persecutions? For instance, why does the CAB leave out Myanmar, where there is a recent, and in fact ongoing, history of brutality and persecution against the Rohingyas? And why does not it protect the Christian minorities from the three neighbouring countries, given that they, too, do not seem to be safe?

As far as the latter aspect is concerned, it is worth asking why the Northeast/Assam region is agitated about the CAB, while the rest of the country does not seem to be? And how did the CAB turn the people of the Northeast region from supporting the Bharatiya Janata Party (BJP) to taking such a passionate stance against it?

More generally, it is interesting to enquire whether the population from the Northeast/Assam region would be more supportive of the CAB if it were secular in nature. In other words, supposing that the CAB would allow persecuted Muslims from the neighbouring countries to be eligible for Indian citizenship, would the Northeast/Assam region still be protesting against it?

The answer to this last question goes back to the long history of migration politics in the region, which has complicated this issue since the colonial times and caused the indigenous populations of the region to feel threatened from the more and more sustained influx of immigrants. So just to give a backdrop, I want to go briefly into the history of colonial India, and more specifically of colonial Assam, which seems to have instigated the people from the Northeast to proceed in this manner.

2. Histories of Migration in Assam

The widespread resistance stems from the peculiar colonial history of the region, which has witnessed an overwhelming influx of poor peasantry from East Bengal and East Pakistan, since the last part of the 19th Century. For this reason, all questions of citizenship in Assam and the Northeast of India cannot be resolved without taking into account the colonial and post-colonial history of migration.

As a matter of fact, politics in the state of Assam have always centred around the primary issue of immigration of populations from East Bengal and East Pakistan. A glimpse of this overwhelming history of migration can be found in the words of Mr. Khanindra Chandra Phukan, the first non-British DC of undivided Goalpara from 1948 to 1952. According to him:

From the beginning of the present Century, land-hungry Muslims from East Bengal, later East Pakistan and now Bangladesh, began to pour into Assam in search for cultivators and grew varieties of crops. As there was plenty of wasteland available at that time, it created no problem at the beginning but gradually they began to encroach upon grazing reserves and into the tribal villages driving the simple tribals out of their hearth and home. To protect the simple folks from the onslaught of these immigrants the line system was introduced.

Those who are mildly aware of the history of Assam know that the “line system” was brought in to protect the tribal’s interests. To be sure, the line system was no divine boon; it had its problems and limited the people’s freedom of movements. Still, it was seen as a necessary evil, required in order to address the discontent, resentment and the fear of the tribals.

However, the line system did not meet these concerns. Even with the line system, most of the commons, grazing land went outside the control of the indigenous communities, as the immigrant populations were given land within the capitalist and colonial framework.

This is shown by numbers. For instance, according to Amalendu Guha’s book, ‘Planter Raj To Swaraj’, between 1881 and 1951, the population of immigrant Muslim has grown from 9% in 1881, to 19% in 1931, 23% in 1941 and 25% in 1951. In Barpeta Road alone, the

Muslim population rose from a figure of 0.1% in 1911 to 49% in 1941. The surge of Muslims in the population is reflected in the exponential growth of the land that was allotted to them. In 1940-1941, the area of land settled with immigrants from other Indian provinces was about 1.1 million acres; i.e. 1/5th of the temporary settled area inclusive of wasteland grounds in the Brahmaputra valley. Against this, East Bengali immigrants alone accounted for nearly half a million acres.

Conversely, in the Fifties of the last Century, a survey registered an astounding number of 12 lakhs non-landed unemployed persons among the tribal populations. This is the reason why the Assamese petitioned Nehru to stop further land colonization by bringing in more immigrants. More than sixty years later, part of the problem continues to focus on land. That notwithstanding, the issue of tribal land rights and their autonomous existence is still generally left out of the debate concerning the NRC and the CAB.

But there is another side of the issue which further flared up the conflict between the indigenous populations in Assam and the Bengali immigrants. Apart from the questions of linguistic identity and hegemony, the fundamental rift between the Assamese and the Bengali was between two different models of production. In the Bengal region, there was already a population boom and a form of advanced feudalism. That land had an excess of the population which was forced upon the Northeast region, especially in the undivided Goalpara, by the colonial state. These immigrants thus came from a more complex economic system to an easy society of tribals. They were already well versed in a modern, advanced, semi-feudal production system, whereas the indigenous tribals mostly lead a pre-modern way of life and practiced a pre-modern economic system. Therefore, it is fundamental to keep in mind that, rather than from a clash between two linguistic hegemonies, the conflict between the Assamese and the Bengali stems from the massive shift of population from a more complex and advanced economy to a domain of easy population and from the inherent discrepancy between the life-systems of the two communities, that created much of the problem and allowed the privileged middle class to take advantage of the imbalance.

Hence, the clash is not between two linguistic hegemonies. It is rather a clash between the indigenous tribal culture and the immigrants' more advanced, feudal culture which was already subsumed under a form of colonial capitalism.

3. The Inaccuracy of the Mainstream Media

In light of the above, it is to be understood that the complaints of the tribals fearing of not being protected enough against the threat of the immigrants coming and taking our land are well-rooted in history. A lot of the national and international media, however, have portrayed the entire tribal population of Assam as a pack of chauvinist and genocidal creatures, thus forcing many of the more progressive, secular intellectuals of Assam to become defensive on the NRC, in spite of their previous views. But the tribal section of the population in Assam keeps reminding of one thing they wanted to talk to people from outside the Northeast region, especially those coming from Delhi, that Assam has had a very serious issue of not being understood by the rest of the country and rest of the world.

As I have said before, this issue is the history of colonization. In this case, colonization literally means colonization; i.e. people brought in from outside to take over. Thus, DC Khanindra Chandra Phukan, whom I mentioned earlier, recalls that, as grazing reserve lands were increasingly given away to the poor peasants, who were brought in from East Pakistan and Bengal to settle in Assam, the tribals were displaced, asked to go to hilly areas and resettle there. This has created a huge problem in the larger context of the current Government awarding ST status to many of the other tribal communities. In the Karbi Anglong district, for example, there is a contention about whether the Bodos there should be getting hills' tribe status. Again, this problem stems from the tribals' history of displacement and eviction from the plains grazing land insinuated by the colonial regime.

Many of these ethnic groups feel that the history of colonization of land in Assam can only be compared to that of the white settlers in the Americas in the 18th Century. The same fear resonates in the writings of people like Minister Saadullah, who argues that, if the line system were not brought in, the situation in Assam would have become close to that of Palestine, where the Jews were kind of brought in to take over the land from the Arabs. These are, of course, very heightened rhetorical statements given by people with vested interests during times, but the comparison has real relevance and calls for a very cautious approach towards a plausible catastrophe which has happened in history elsewhere in the world.

Another comparison can be drawn between the situation in Assam and that of Tripura and the Andamans, where there has been a migration of hegemonic linguistic communities. Indeed, the tribal people constantly say that, without constitutional protection, Assam would turn into another Tripura, another Andamans. They also keep remembering episodes that shaped their history and lives and which reflect their own possible plight of dispossession and alienation in and from their own lands and resources

Against this backdrop, the indigenous people of Assam have particularly resented the fact that some of the mainstream organisations and intellectuals, including a leading trade union organization from Delhi, portrayed the entire tribal population in the Northeast as the ruling elite. These views fuel a sense of fear, among the persecuted people of Bengali Muslim origin, that the tribal people are going to attack them and kill them overnight, since Assam has not been very good in its historical record about riots and this kind of events have happened already. But these are sweeping generalisation. How can an entire population be projected as racially and ethnically genocidal, blood thirsty and xenophobic?

The mainstream narrative about the NRC process is that everyone in Assam is an immigrant, there being no original inhabitants. One of such responses was given in the context of the use of the term "original inhabitant" to distinguish who is going to be inside and who is going to be outside. Such sweeping and broad statements, however, are not grounded in history. To the contrary, they discredit the tribal and indigenous question in Assam and the Northeast, amounting to nothing more than mischievous, unfounded and scorned positions.

According to the language census of 2011, the 29% of Assam population are Bengali speakers. But if we use the same category relied on by the progressive circles and the liberal intellectuals from the national and international media; i.e. the category of "Bengali speaking Muslims" we see that all "Miyas" in Assam are to be taken into account and that, this way,

the percentage of Bengali speakers in Assam raises to approximately the 52% of the total population, making Bengali the single majority language in the state. Therefore, also those who have good reasons to see the NRC and the CAB as an anti-Muslim process will have to realise that most of the problems lie in these progressive tilting of balance in the demography of the region. This is the reason why the Government has been very clear as to whom would be the majority of the people to be excluded from the NRC and tried to push the CAB in this manner, with both the Prime Minister of India and the state Government going berserk and basically saying “whether this way or that way we are pushing this bill”. It is a desperate move by the Government to exploit the polarisation of our society, which is already in a very bad situation, by consolidating the division.

Because of its peculiar demographic history, the Northeast and Assam have now become the perfect workshop for the right-wing Government to test their ideas of consolidating the different boundaries of the country into a Hindu Rashtra. This is something we all need to be aware of. Even those who think that the CAB only concerns the Northeast, will soon find out that this is not the case. To the contrary, such a regressive policy is going to affect the entire Indian state as well as our neighbouring countries. For example, if, for the sake of the argument, Pakistan were to adopt a similar legislation, saying that it is going to recall all Muslims from its neighbouring countries, India would start pushing its Muslims towards that country. But a country cannot contain migration since migration is something that is very natural for the people. Trying to do so results in spoiling the relationship with other neighbouring countries, as it is made clear by the example of Assam and rest of the Northeast, which is still trying to grapple with unresolved questions stemming from the partition of the country, which never actually got over in this frontier, whereas in Punjab it was shut.

4. Conclusions and Recommendations

There is a need to acknowledge history and to discuss how to go about it. The testimonies heard by the Panel disclose fallouts of large and systemic human rights violations, not just against one set of the population, against the entire population of the state. In Assam, there is not one single community which can claim the status of being a pure victim. To the contrary, with time the same people have turned perpetrators and victims.

When addressing these issues, people will naturally raise the matter of numbers. But however important numbers may be, I think it is also necessary to focus on what does the state and the society wants to do with these number, because the problem comes out of the very nature and its roots are to be found in the formation the colonial and post-colonial state. In the last instance, these issues relate to the question as to the limits of what a nation-state can handle or not handle when it sets its boundaries and control migrations. Clearly, the mechanisms implemented in India is not efficient, as out international boundaries have been drawn in such a way that, in many cases, the kitchen has been left on one side and the restroom on the other. Likewise, we cannot stop people from crossing boundaries, which should be something hassle-free.

In light of the above, I think the fundamental problem is that of the nation-state, as it resulted from colonial and post-colonial politics. Therefore, for the time being the solution to the

problem has to be found within the liberal framework of the nation-state. That is the reason why we need to make sure that additional questions are not brought into the debate concerning the introduction or passing of the CAB. The Bill is out-rightly communal, yes, but at the same time it is also something that takes us back to a part of our history which risks to be going to be repeated. As a matter of fact, the only possible turn in history that we can have with the passing of this Bill is the establishment of a kind of “right to return”. However, the only real example of a right to return that exists in the world is that of Israel, and we do not want to become another Israel.

If we feel that the Citizenship Amendment Bill is something kind towards refugees or migrants of religious persecuted minority communities from the neighbouring countries, if we think that the state is trying to be kind to them, please rest assured that this is hardly the case. It is definitely not the case and these days in our country more and more people are kind of forced to take on religious identities. This is the way in which our future society and politics is going to run if we do not resist now. So what the current Government is trying to do is to make us into religious identities and nothing else at all and that is something that we need to resist.

To do so, we need to take historical and geographical realities into account, lest Assam becomes a mine of conflict and unrest and the history of riots, killings and agitations starts anew.

There might be emotions, there might be sentiments, but we cannot move ahead if all the affected parties and interested groups get together and try to travel this road together. Otherwise, we will give way to what is happening in our country right now, lynching here and there, for no rhyme and reason.

The Government is forcing us into a fight to establish who is the most marginalized, who is the most persecuted, but this is a fight we should not be willing to take.

To resist this scenario, there is an immediate requirement to:

- A. Give due respect and recognition in the public debate to, and spread the knowledge of, the indigenous people’s history of forced displacement from their land as a result of mass immigration.
- B. Afford indigenous communities with proper constitutional protection.
- C. Empower the indigenous and peasant population to control and manage their resources and capital.
- D. Curtail the cultural and economic hegemony of the so-called “superior” communities, like the Bengalis and the Marwaris.
- E. Spare Assam and the Northeast from being continually used as India’s dumping ground for “undesirable” populations.

- F. Dispel the perception of tribal populations, and more generally Northeasterners, in racist terms.
- H. Curtail the attempts of converting the tribals into the casteist culture of the dominant religion.

THE NATIONAL REGISTER OF CITIZENS AND THE STATELESS MILLIONS

Hiren Gohain

The burning issue before the present assembly of human rights activists and conscious democratic citizens is the imminent statelessness of four million people, the majority belonging to the poorest sections of the population, who seems to be in limbo in the national consciousness.



The concerns voiced by the assembled participants are doubtless inspired by noblest ideas of human fellowship and compassion. However, the cruel and shameful reality seems to be that there is very little public awareness of human rights in the country today, while older sensitivities to human suffering have withered under the scorching heat of neo-liberal economy. Otherwise, people murdered in broad daylight in public streets under the very nose of the police would have shocked the nation into action.

To the contrary, the distress of dam-displaced people numbering in lakhs is now swept way into the corners of struggling magazines. The misery of poor patients in overcrowded hospitals, charging fees that force them to mortgage their hearths and homes, does not attract concern. The lot of these 4 million, though on a massive scale and in a drastic emergency, is not an exception to this scenario.

The state, to which the people once looked for solution of such human catastrophes, has become a monstrous machine passing under the control of a political and economic elite driven by an urge to squeeze out of the misery of millions ever more profit and plunder. The powerful media and cultural organs are turning into its accomplices, singing hosannas to positive outlook, the glory of individual will and initiative winning over failures and setbacks and achieving, "excellence", in utter contempt of the alleged moral lapses and gutlessness of wretched multitudes. They do not talk about the insuperable social constraints. Likewise, the courts, that once used to hum with ringing calls to social justice and humanitarian concerns, are now getting immersed in Byzantine legal rigmarole, hair-splitting discussions on the dividing-line between the sphere of the state and the sphere of the citizen, often to the neglect of common decency and natural justice.

This is the backdrop to the case of these hapless four million people. But does that justify the narrative that they are primarily victims of a paranoid chauvinism that grips Assam and the Northeast?

People outside Assam show little awareness of the fact that, after more than a decade of terrible social turmoil and violence resulting from long-lasting ethnic rivalries and mutual suspicions, often leading to massacre of scores and hundreds of innocents, the consensus that eventually accepted the Assam Accord and its cut-off date of March 25, 1971, in the late Nineties, and culminated in the state Government's decision to prepare a National

Register of Citizens (NRC) on the basis of an initial document of similar nature of 1951, supplemented by voters' lists up to 1971, has become the bedrock of social peace in Assam.

This is now going under the monitoring of the Supreme Court, and 3.29 crore, if I am not mistaken, of the residents of the state of Assam, have applied for registration under it. Anything that upsets this process is likely to push us back into the nightmarish days of bloody anarchism.

But it must be admitted at the same time that the abstract concept of citizenship, the abstract concept of private individuals secured in an armoury of fundamental rights against invasion from competing individuals or from the state, is little understood by our masses, even today, seven decades after independence. Otherwise, the common people would not have felt so nervous and insecure in their transactions with the public authorities and the police. Furthermore, the notion of the need for documents in order to prove their rights is yet to be etched firmly on the consciousness of many marginalized groups. It is therefore ridiculous to ask them for such documents. All the more so, considering that the state, in its thirst for power, is all but in a hurry to bring this consciousness about. What is understood and continually fought for here is community rights – community rights to land, to water resources, to village commons, to livelihoods, while individual rights under protection of the Government and the courts are forever chipping away.

Against this backdrop, it is no surprise that the establishment of the NRC has caused unforeseen hassles and anxieties across the entire ethnic range of the Assamese population. On the one hand, the NRC has jotted many small indigenous communities into the dire, unrelenting demand for citizenship rights, though many of these people have no documents to prove their status. On the other hand, as a result of a deeper awareness prompted by decades of police harassment, immigrant Muslims are more often equipped with these documents as a kind of shield against abuse of power.

The ascend of the Bharatiya Janata Party (BJP) to power at national and state level has suddenly and manifoldly increased the heat. This party, piloted by an organisation with firm conviction in the Hindu Rashtra, has manipulated the NRC project ever since coming to power to suit its own clandestine aims.

Namely, the BJP has withdrawn the funds from the NRC project, until structure from the Supreme Court forced their release, and then initiated a tacit plan, at the State Government level, to communalise it and insinuate discrimination in favour of Hindus and against Muslims – a plan that was, again, flagged down by the Supreme Court. Moreover, the BJP has instigated the Border Police to become hyper-active and report scores of people as “doubtful” citizens and foreigners. The BJP has also appointed as judges at the Foreigners Tribunals lawyers with no more than 7 or 8 years of experience at the Bar, rather than seasoned judges as it used to be in the past, encouraging them to declare as many foreigners as possible. Finally, the BJP has allowed the police to put foreigners in detention centres with surprising agility and prompted the Election Commission to speed up detection of so-called “D” voters, allowing their detention too.

In sum, the ruling party has cleverly manipulated both the NRC and the Citizenship Amendment Bill (CAB), even though there is no necessary logical relations between the two. In so doing, the BJP has repeatedly put the people before a stark choice by bringing them to the edge of a precipice, just like the British colonial rulers did with the people and the leaders of our freedom movement on the eve of Independence. The British colonial rulers have long and carefully tended the fire of communal passion through planned manoeuvres, surprisingly little explored by historians, and, in the Thirties and Forties of the last Century, let it become a dangerous blaze. They have thus put the hapless Indian people before an inexorable choice: Either accept the partition of the country, or face conflagration.

In exactly the same way, through the bill and the subsequent vicious propaganda, the current ruling party has brought the people of Assam and of the Northeast to the edge of a precipice and confronted them with the next excruciating dilemma: Either accept the CAB and its implications of a Hindu Rashtra, or get ready to be disrupted by aliens across the border. This is, of course, a false alternative, but clouds of propaganda twenty-four hours a day make it seem real. Likewise, the BJP tells Bengali Hindus: Accept the CAB, or get ready to be kicked out of India.

However, as we have stated earlier, any attempt to ditch the NRC may result in an interminable and ever-widening, intensive conflict among different horrible scenarios of recurring massacre under the watch of the army and the CRP. The national media did not care to go to the roots of the problem and practically painted Northerners as on the whole a blood thirsty horde. The centre has been playing on internal divisions among the people planted two hundred years ago by colonial rulers and the Assam Accord remains the only realistic, if imperfect, basis for social peace.

It is a welcome sign that various communities, of both indigenous and recent migrant origin, are resisting this false alternative. Indeed, the Assam Accord makes no distinction between Hindus and Muslims. Thus, the people fighting to save the Assam Accord are actually fighting for the secular idea of citizenship enshrined in the Constitution. By contrast, these masters of falsehood and fabrication are shouting day in and day out that, by protecting the people of Hindu and other faiths from the pogroms of Muslims, they are completing an unfinished task of the Constitution. In so doing, however, they either forget or want to hide the significant critical fact that the Constituent Assembly had debated at length on whether to make religion the basis of Indian citizenship and had categorically rejected this view. It was in fact the heritage of the freedom movement led by Mahatma Gandhi, Vallabhbhai Patel, Nehru and Maulana Azad, as well as the painful lesson of the partition riots, which gave them the strength to resist the idea that religion should have formed the basis for Indian citizenship. Therefore, our struggle in the Northeast today is a battle in this unfinished war.

The present Government thinks that, having been elected, they have every right to make over the Constitution itself, thus overthrowing the time-honoured practice of Parliamentary Governments not to tamper with significant Constitutional decisions made by preceding Governments. Indeed, by ditching the Assam Accord, the current Government are making light of an earlier agreement passed by both houses of Parliament, an agreement based on the Assam Accord, signed by the Central Government and the Government of Assam, with leadership of tumultuous movements that rocked the state for six years, an agreement

designed to solve a burning sensation of injustice in these areas, an agreement that has held for nearly three decades and gradually bringing peace and normalcy to a region shaken continually by turbulence and violence. If passed, this present amendment will serve any ruling party as a precedent for trifling with statutes honoured so far.

People like us have witnessed these scenes. I had visited a camp as a member of a delegation here in Assam, and found that the night before, or a couple of nights before, more than a hundred, hundred-and-fifty people had been gunned down by tribal militants. Nobody knows how they did this, why they did this. Nobody has been brought to book.

To be clear, we do not believe that all those who have made their way into Assam were victims of persecution, though some of them most certainly were. And it is not yet certain that four million people will get dumped as aliens, but we are in favour of a humane settlement of their lot and need to make our voice heard. As for flood displaced people, while some might have lost their papers in sudden erosion, others would these days have the sense to try to report the matter to the concerned authorities and acquire duplicate copies.

In conclusion, I reiterate the principal reasons why the indigenous communities, irrespective of the cynicism of many leaders, are anxious that foreigners are not given citizenship and allowed to enjoy its benefits here.

First, primary resources, especially land, are becoming alarmingly scarce while at the same time an estimate of up to about 30 lakh families, i.e. one-third of the population in the state of Assam, are flood-affected and, in many cases, have become landless. This is all the more so considering that, in Assam, development has mainly meant opening hotels, resorts and hospitals by outside capital, rather than fostering the local economy.

Second, since political power depends on numbers, these indigenous communities are afraid of losing their precarious majority over time.

Third, at a stage of the economy when jobs are simply not there for the young and burgeoning population, more claimants to the few available ones will naturally be considered a calamity.

However tragic and terrible, this whole mess is the end-product of the centre's deceit and negligence. Patience is vital to understand the tangled state of affairs resulting from quite arbitrary colonial policies, adopted in complete disregard of the interest and sentiments of the people. The colonial masters have always been thinking of this stretch of land as a mere field for harvesting colonial profits. Hence, they cared little for the traditions, the needs and the anxieties of the people, and have arbitrarily changed demography and borders, ultimately leaving the legacy of an interminable conflict.

As far as I can see, the centre is merely continuing this tradition.

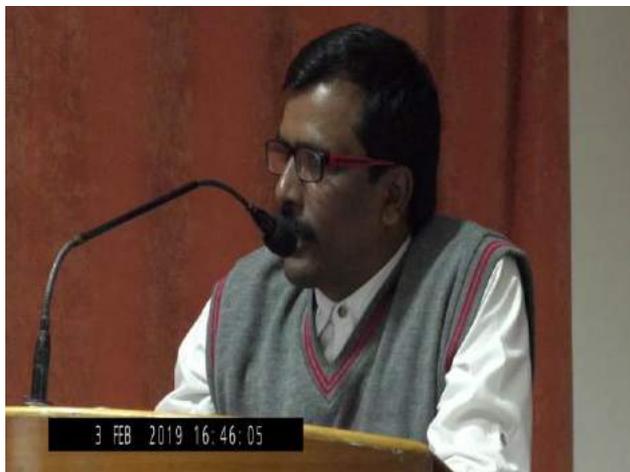
SECTION B
INDIAN LAW

UPDATION OF THE NRC: A BRIEF ANALYSIS

Abdul Batin Khandakar

1. The Decision to Update the 1951 NRC

At midnight on August 15, 1985, after six years of movement (1979-1985), the All Assam Student Union (AASU), the Government of the state of Assam and the central Government of India signed the Assam Accord. On May 5, 2015, the three parties, AASU, the state Government and the central Government, held a meeting in New Delhi in connection with the implementation of the Assam Accord and agreed to update the National



Register of Citizens (NRC) of 1951, pursuant to the section 6A of the Citizenship Act, 1955, and Rule 4A of the Citizenship (Registration of Citizens and issue of National identity cards) Rules, 2003.

2. The Recommendations of the Sub-Committee

To carry out the process, on August 30, 2007, a cabinet Sub-Committee was created and placed under the direction of Dr. Bthumidhar Barman, the then Revenue Minister, in order to examine the modalities for updating NRC.

The Sub-Committee's recommendations were accepted by the state Government and transmitted to the Central Government in June 2008. On the basis of these recommendations, in June 2010, the Registrar General of India notified to carry out a pilot project in two circles; namely Barpeta, in the Barpeta district, and Chaygaon, in the Kamrup district. However, the complexity of the modalities set out in the Sub-Committee's recommendations prompted a protest march that was called by All Assam Minority Student Union on July 21, 2010. During the protest march, the police opened fire killing 4 persons. The pilot project was subsequently stopped.

Again, on July 21, 2011, a new cabinet Sub-Committee was created and placed under the direction of Sri Prithvi Maji, the then Revenue Minister, in order to set out simplified modalities to update the NRC upon consultation with all stakeholders. On July 5, 2013, these simplified modalities were approved and included in a new recommendation, which was forwarded to the central Government. Based on this new recommendation, on November 22, 2014, the Union of India has prescribed the modalities for carrying out the NRC updation in the state of Assam.

3. The Documents Required to be Included in the NRC

As per the above modalities, eligibility for inclusion in the updated NRC has to be established on the basis of the following requirements:

The first requirement is the production by the person concerned of any of the following documents of List A, issued before midnight of March 24, 1971, bearing the name of the person concerned, or his/her ancestor, in order to prove residence in Assam before March 24, 1971.

LIST A

1951 NRC or

Electoral Roll(s) up to 1971 or

Land & Tenancy Records or

Citizenship Certificate or

Permanent Residential Certificate or

Refugee Registration Certificate or

Passport or

LIC or

Any Government issued License/Certificate or

Government Service/Employment Certificate or

Bank/Post Office Accounts or

Birth Certificate or

Board/University Educational Certificate or

Court Records/Processes.

Further, two other documents shall be accepted, if they are accompanied by one of the documents listed above. These are: (1) Circle Officers/GP Secretary Certificate, in respect of married women who have migrated after marriage and (2) Ration Card, issued up to midnight of March 24, 1971. The second requirement arises if the name in any of the documents of List A is not that of the applicant himself/herself but that of an ancestor; namely, the father or mother or grandfather or grandmother or great-grandfather or great-grandmother (and so on) of the applicant. In such cases, the applicant shall have to submit one of the documents included below in List B in order to establish the existence of a relationship with his/her ancestor (i.e. father or mother or grandfather or grandmother or great grandfather or grandmother etc.) whose name appears in the document produced pursuant to List A. Such document shall have to be a legally acceptable document which clearly proves such relationship.

LIST B

Birth Certificate or

Land Document or
Board/University Certificate or
Band/LIC/Post Office records or
Circle Officer/GP Secretary in case of married women or
Voters' Lists or
Ration Card or
Any other legally acceptable document

For example, the birth certificate bears the name of the father/mother and the child together in one place and can prove the parent-child relationship. Similarly, a land document carrying the name of both the child and the father/mother can be used to prove a parent-child relationship. Voters' lists may also carry the name of the father and child together and can be used to establish the parent-child relationship.

4. The Procedure to Update the NRC

On December 17, 2014, the Hon'ble Supreme Court has issued an order in cases WP (C) No. 562/2012, WP(C) No. 274/2009 and WP(C) No. 876/2014 directing all those concerned to complete the NRC updation within a fixed timeframe as per approved modalities. In the same order, the Chief Justice was requested to constitute a constitutional bench to take up some matters pertaining to these cases. From May 11, 2017, the constitutional Bench of Hon'ble Supreme Court has started hearing in the matters relating to the constitutional validity of section 6A, of the Citizenship Act, 1955, rule 4A of the Citizenship Regulation 2003 etc. regarding updation/preparation of the NRC process.

At the field level, the process of updation of the NRC has been started by the NRC authority (RGI, state Coordinator etc.) as per allotted task in the schedule given in the order mentioned above under the monitoring of the Hon'ble Supreme Court from February 2015.

As per the operating procedure, after setting up an establishment for the preparation/updation of the NRC, the following tasks have been completed: (A) Publication of Documents; (B) Receipt of Applications; (C) Verification;(D) Publication of the NRC; (E) Claims and Objections.

A. Publication of Documents

The NRC authority should have published documents like the NRC 1951 and the voters' lists up to 1971. These documents however were published only in the digitalized form and partially and are not available in all the places throughout the state uniformly. Moreover, the voters' lists other than 1965/66 and 1970/71, starting from 1952 and up to 1971, have not yet been published by the NRC authority.

It is also to be mentioned here that preparation of the NRC 1951 was incomplete and did not include many people of remote places and that also the voters' lists of 1965/66 and 1970/71 are not available throughout the state uniformly.

Since the documents are published in digitalized form, the poor and illiterates have mistaken the identity of their ancestors while collecting their documents from the NRC Sava Kendra (NEK). The authority has failed to publish the documents in hard copies to display and ascertain the identity of the legacy holders.

B. Receipt of Applications

After house to house distribution of the prescribed application form by the authority, an overwhelming response has been shown by the people of the state. About 68 lakhs families comprising 3.29 crores applicants have applied for inclusion of their name in the NRC. Only a small number of people failed to apply.

C. Verification

Two types of verifications have been carried out by the NRC authority; namely official verification and field verification. Official verification of the documents submitted by the applicants has been carried out at the source. It is understood, however, that response/cooperation from other states for the purpose of the official verification of records was not up to the mark.

Some major events occurred during verifications:

i. Introduction of the “Family Tree”

A new device named Family Tree has been introduced by the NRC authority during verification phase. The provision of Family Tree was not included in the modalities. The Family Tree verification detects the misuse of legacy data and establishes a linkage among the members of all the families using the same legacy data.

ii. Cancellation and Restoration of the Panchayat Link Certificate

A new document has been created for establishing the linkage between married women and their parents. This document is issued by the Panchayat Secretary, countersigned by the Revenue Circle Officer (CO)/Block Development Officer (BDO), and popularly referred to as the Panchayat Link Certificate.

During the ongoing verification process, the Hon’ble Gauhati High Court issued an order dated February 28, 2017, in the individual Foreigner Case No. WP (C) 2634/2016 of Monoara Bewa, alias Monora Bewa, declaring the link certificate issued by the GP Secretary and countersigned by the Revenue Officer/BDO, as a private document, which was prescribed as supporting document in the approved modalities for married women who have migrated from one village to another after marriage. About 30 lakhs married women have submitted this GP Certificate as Link Certificate along with their application.

As many as 7 Special Leave Petitions (SLPs) have been filed in the Hon’ble Supreme Court to challenge the Gauhati High court order. On December 5, 2017, (SLP (C) 13256/2017), the Supreme Court restored the legal validity of the Panchayat Link Certificate subject to verification of its authenticity and contents.

iii. Identification of the “Original Inhabitants”

On August 24, 2017, the Hon’ble Supreme Court passed an order in SLP (Civil) No. 13256/2017 etc., relating to the matter of admissibility of GP Secretary Certificate for married women for establishing the linkage to their ancestors for updation of the NRC. In pursuance of the Hon’ble Supreme Court Order, the state Coordinator, NRC, Assam has issued instructions to all concerned for identification and segregation of Original Inhabitant (OI) for coverage under clause 3(3) of the schedule to the Citizenship Rule 2003 (Registration of Citizen and issue of National Identity Card).

It is to be mentioned here that there is no definition of OI either in the Citizenship Rule, 2003, the Citizenship Act, 1955, or in the Constitution of India. The NRC authority has carried out the process of identification and segregation of OI arbitrarily and the inclusion of their names in the updated NRC is based upon caste, creed, religion, traditions, food habits, dress code etc. irrespective of any proof and any guideline so as to make the process free, fair and uniform. According to several reports, about 1.30 crore applicants were included in the partial Draft NRC as “OI”, while excluding Muslims, even though the history of their settlements in Assam is antecedent to that of the Ahoms.

iv. Publication of the First Draft NRC

On December 31, 2017, at midnight, a partial draft of the NRC, covering 1.90 crore applicants, has been published. Actually, the number of applicants to be included in this partial draft was to be 2.38 crore, according to the submissions made by the State Coordinator, NRC, before the Supreme Court. However, the NRC authority has failed to include the names of those who had been cleared by the DMIT (District Magistrate Investigation Team) during the months of November and December 2017.

v. Verification of the Panchayat Link Certificate

The Hon’ble Supreme Court has accepted the validity of the Panchayat Link Certificate with an instruction to examine their authenticity and contents. Accordingly, Standard Operating Procedure (SOP), public notice etc. have been issued by the State Coordinator for conducting free, fair and transparent verification of the Panchayat Certificate.

However, according to a report from field level and to the media, some of the verifying officers have not followed the letter and the spirit of the guidelines issued through SOP. Instead of recording statements from the applicant’s legacy person or from other descendants of the legacy person in order to substantiate an applicant’s claim of linkage, as prescribed by the SOP, the verifying officers have insisted upon applicants for production of alternative documents issued on or before December 2015, instead. As a result of this clear violation of the SOP, and also of the Hon’ble Supreme Court Order, a large number of married women has been excluded from the complete draft of the NRC, even though they are genuine Indian citizens.

vi. Family Tree Verification

Family tree verification of about 47 lakhs applicants has been done whose tree was mismatched. The concerned families are attending hearings from one part of the state to another, in accordance with the notifications by the Authority. The introduction of the family tree has made the system of checking misuse of legacy data watertight. The matching of family trees also establishes a linkage among the members of the families who have used the same legacy data/documents. Unfortunately, the Family Tree verification findings have been used for checking of misuse of legacy data only in a one-sided manner. The same findings have not been used for establishing linkages among the applicants using the same legacy.

vii. Weak Documents

On the May 1, 2018, letter No. SPMU/NRC/Dist-Co-Equip/68/2015/Pt-IV/177 has been issued to all DRCRs from the NRC State Coordinator regarding eligibility determination in cases of “weak documents” such as Affidavit, Gaonburha (Village Headman) Certificate, Private School/College Certificate, Immunization records, Ration Cards etc. In cases of determination of eligibility of those who have used such weak documents, the findings of Family Tree verification, as well as the ones of the District Magistrate Investigation Team (DMIT), could have been used.

It has been stated in the Standard Operating Procedure (SOP) that, for the verification of Panchayat Certificates, those Panchayat Certificates used by men and unmarried women were to be verified by DMIT. However, in contradiction to the statement contained in the SOP, it has been stated in the said letter GP/LM/CO that the certificates submitted by the men and unmarried women cannot be considered legally admissible at all for NRC purposes.

Again, in these cases the findings of the Family Tree verification, or those of the DMIT, should be used before rejecting the application made on the basis of such weak documents.

However, the said letter of May 1, 2018, established that the findings of the DMIT cannot be used for assessing the applications based on weak documents. As a result, a large number of children and other genuine Indian Citizens are excluded from the complete draft of NRC.

viii. Implementation of the Citizenship Act, 1955; the Citizenship Regulation, 2003; and the High court (WP (C) No. 360 and 1610 of 2017) Order

In contradiction to letter No. SPMU/NRC/Dist-Co-Equip/68/2015/Pt-3/93 dated October 16, 2017, another letter No. SPMU/NRC/HC-FT/537/2018/15 dated May 2, 2018, has been issued by the NRC State Coordinator. In this regard, the following few points may be mentioned.

The preparation of the NRC is carried out in the state as per the relevant section of the Citizenship Act, 1955, and the Citizenship Registration Rule, 2003, under the monitoring of Hon’ble Supreme Court. The NRC authority is empowered to update the NRC in accordance with the legislation referred to above. In the letter dated May 2, 2018, the State Coordinator has cited an order of the Gauhati High Court (WP (C) No. 360 and 1610 of 2017) which was passed one year ago in an individual foreigner case. In the said order, the Hon’ble High Court has directed SP border to cause enquiry in respect of brothers, sisters and other family

members of the declared foreigner and thereafter to make a reference to the competent Foreigner Tribunal.

The point is that the High Court has not stopped the NRC authority to verify applications placed under the Citizenship Act, 1955, and the Citizenship Registration Rule, 2003, by the brothers, sisters and other family members of the declared Foreigner for the inclusion of their names in the updated NRC. As section 3 of the Citizenship Act, 1955, regarding the Acquisition of Citizenship by birth is still in force, therefore, the application of brothers, sister and other family members of the declared foreigner should have been verified as per sections 3 and 6A of the Citizenship Act, 1955, as the State Coordinator has already instructed all the DRCRs (vide his letter No. SPMU/NRC/Dist-Co-Equip/68/2015/Pt-3/93 dated 16-10-2017). In practice, however, the instructions issued through this letter have not been followed. Hence, a sizeable number of genuine citizens have been left out in the complete draft of NRC.

ix. Non-receipt/Delayed Receipt of Notices for Attending Verifications

The NRC authority has displayed the verification schedule by publishing the date and venue of verification in their website. The LRCRs is to serve notice to the applicants for attending verifications. There are many cases, however, in which date and venues have been displayed in the website in the verification schedule but they haven't received notice from the concerned LRCRs. No verification has been carried out for those who have not received notice from LRCRs. There are many cases in which the applicants received notices after the date of verification. In some of the cases, rescheduling of verifications have been undertaken but in some of the cases no rescheduling have been undertaken and thus applicants have been deprived of verification. This type of anomalies leads to deprivation of inclusion of genuine applicants in the updated NRC.

x. Mismatching of ARN

A specific Application Receipt Number (ARN) has been issued against each household who have applied for registration in the NRC. There are many instances of mismatching of names lodged against the ARN. That means that names of members of one family have been enlisted in the ARN meant for another family. As a result, a sizeable number of applicants have been dropped out in the complete draft of NRC.

D. Publication of the Complete Draft of the NRC

On July 30, 2018, the complete draft of the NRC has been published by the State Coordinator, National Register of Citizens, Assam. A total number of 32.9 millions of applicants have applied for registration in NRC. Out of these, 32.9 million applicants, 28.9 million applicants have been included in the final draft of NRC, keeping 4.07 million applicants out of the final draft. Out of these 4.07 million applicants who have been excluded, applications of about 3.8 million have been rejected and 0.248 million applications have been put on hold. Those 0.248 million persons whose cases are still pending in the Foreigners Tribunals have thus been put on hold, together with their descendants.

E. Claims and Objections

On December 31, 2018, the submission of claims and objections has been closed. About 3.62 million dropouts have filed their claims within the stipulated period and about 0.20 million objections have been filed against the NRC draft included household's ARN. It may be mentioned here that up to December 30, 2018, i.e. one day before the closing date, the number of objections was a few hundred only but in the last day almost all the objections were filed. It is alleged that most of the objection has been filed by using a fake name and address of the objectors without any proof of identity. Moreover, no specific reason and evidence have been furnished in support of many of the objections filed.

5. Conclusions and Recommendations

In light of the above, the following conclusions can be drawn:

- A. The NRC authority has failed to publish the prescribed documents, including the NRC 1951 and the voters' lists up to 1971 in full and in simplified form. The authorities have published the above-mentioned public documents in part and in digitalized form, but a significant number of poor and illiterates, often belonging to minority communities, could not have access to this kind of documents. This leads to an adverse impact in inclusion in the NRC draft. Moreover, the NRC 1951, the voters' lists and other documents of the like, that were prepared and maintained by the public authorities are full of errors in names' spelling, age etc. This also has affected the applicants.
- B. The NRC authority has failed to make the verification process free of arbitrariness in the verification of the Panchayat Link Certificate in particular, and throughout the process in general. Hence, the rate of exclusion of married woman is high.
- C. The findings of the Family Tree verification have been used in a one-sided manner, only to check the misuse of legacy data. The matching of the Family Trees also ascertains the linkages among all the members of an household using the same legacy data. This established fact could have been used for establishing the linkage among the members of all the households, leading to minimizing the numbers of exclusion from complete NRC draft on the ground of deficient link certificate.
- D. The guidelines issued by the State Coordinator on May 1, 2018, for eligibility determination in respect of weak documents etc. have an adverse impact on the inclusion of children in the NRC. The authority could have used the findings of the Family Tree verification, as well as those of the DMIT (District Magistrate Investigation Team), in order to reduce the number of exclusion on the ground of weak documents.
- E. The NRC authority has failed to make the NRC updation procedure error-free. In many cases, the NRC authority has failed to serve notices in time to the applicants for attending verifications, causing an increase of dropouts in the complete draft of the NRC. Moreover, the mismatch between the name of the applicants and the assigned ARN has also caused high exclusion from the complete draft of NRC.
- F. Due to inadequate awareness and freezing of legacy data, about 400 thousand applicants have failed to submit their claims in the Claim and Objection phase. In some

of these cases, while obtaining legacy data from the website, the poor and illiterate applicants have mistaken to identify their actual ancestors and obtained legacy data of other persons, having a similar name to their ancestors, as there was no hard copy of the documents available in the NRC Seva Kendra (NSK) to cross check. Now, freezing of legacy data landed them in trouble in filing claims. Moreover, it is alleged that about 200 thousand false and fabricated objections affecting about 1 million applicants are filed. As it is alleged that large scale arbitrariness and biases have taken place during the verification of the applications prior to the publication of the complete draft, the NRC authority should take corrective measures and pay special attention to ensure disposal of the claims and objections as per Act and Rules.

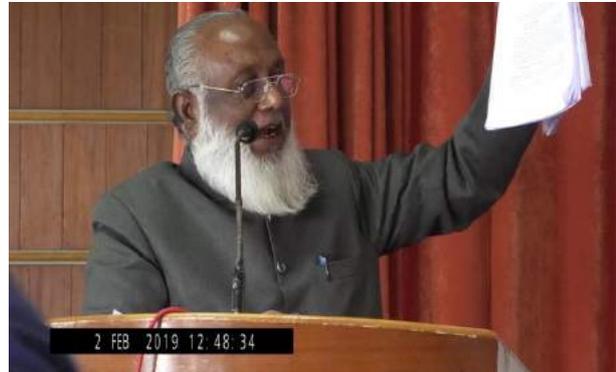
- G. There is a sizeable number of “doubtful” voters who have been marked “D” arbitrarily, without having been given the chance to produce a document in support of their citizenship in the year 1997, when no proceeding have been drawn against them. As they have applied for registration into the NRC, their applications should be verified instead of keeping them “on hold”. Moreover, a large number of voters that have been marked as “D” voters arbitrarily, after applying to the updation of the NRC with the admissible and valid documents, have been excluded. However, since they have applied to the NRC prior to having been marked as “D” voters, they should be verified under the NRC process instead of being kept “on hold”.
- H. The Border Police have referred thousands of NRC applicants to the Foreigners Tribunals without conducting any investigation, just to keep them out from NRC registration. Since these people have participated in the NRC process prior to being referred to the Foreigners Tribunals by the Border Police, their applications should be verified by the NRC authority instead of being kept “on hold”.
- I. Since section 3 of the Citizenship Act, 1955, (acquisition of citizenship by birth) is still in force throughout India, it should be enforced in connection with the applications filed by the descendants of persons who had been declared foreigners whose cases are pending before the Foreigners Tribunals.
- L. There are some instances of poor and illiterate people who have no documents to prove their citizenship though they are genuine Indian citizens. In these cases, a suitable measure, like a DNA test, oral evidence, witnesses etc. should be introduced for providing natural justice to them.
- M. As there is no policy concerning those who have been excluded from the NRC, a clear policy for the dropouts of the NRC should be formulated prior to publication of final NRC.
- N. In the interest of solving the issue of foreigners once and for all, an error-free NRC including all genuine Indian citizens and excluding all foreigners, as per the Assam Accord, is the need of the hour to facilitate sustainable peace and harmony in the state of Assam.

LEGAL ASPECTS OF FOREIGNERS DETECTION

H.R.A. Choudhury

1. The Establishment of the Foreigners Tribunal

Various organisations made a representation before Government authorities about harassments being caused to bona fide Indian citizens by arbitrarily serving 'Quit Notices' on them under the scheme called Prevention of Infiltration from Pakistan (PIP). Fearing adverse publicity on this issue over the international media, the central Government decided that, before eviction, every individual should be examined by a judicial authority.



This culminated in the issuance of a statutory order, called Foreigners (Tribunal) Order, on September 23, 1964, and the creation of Foreigners Tribunal, under clause-2 of the Order four Foreigners Tribunals were set up in 1964, the number increased to nine by 1968.

The Foreigners Tribunals were gradually wound up between December 31, 1969, and March 1, 1973, as the Government felt that they were no longer necessary since most of the "infiltrators" had in the meantime been deported. However, the Foreigners Tribunal were revived again in 1979 and ten Tribunals were constituted on July 4, 1979.

In 1983, Illegal Migrant (Determination) Tribunals were established under the Illegal Migrants (Determination by Tribunals) Act, 1983. Initially, twenty such Tribunals were established. In 2005, however, the Hon'ble Supreme Court quashed the Illegal Migrants (Determination by Tribunals) Act, 1983, as ultra vires, and stroke them down. The Illegal Migrant (Determination) Tribunals, as well as the competent appellate authorities, have thus ceased to function. All cases pending before them were transferred to the Foreigners Tribunals.

2. The Procedure before the Foreigners Tribunals and the Right to Appeal

The Tribunals constituted under the Foreigners (Tribunal) Order, 1964 follow the substantive law provided for by the Foreigners Act, 1946, and the procedure prescribed under the Foreigners (Tribunal) Order, 1964, later amended by the Foreigners (Tribunal) Amendment Order, 2012. These Tribunals have a quasi-judicial function. In the absence of designated appellate authorities, their orders/opinions can be directly challenged before the Division Bench of the territorially competent High Court.

Indeed, according to the 7-judges bench of the Supreme Court in *L. Chandra Kumar v. Union of India*, all decisions of the Foreigners Tribunals would be subject to scrutiny before the Division Bench of their respective High Court under Articles 226 and 227 of the Constitution.¹

¹ See *L. Chandra Kumar v. Union of India & Ors* (1997) 3 SCC 261, para 100.

While discussing the scope of interference with the Tribunal's order in a writ proceeding, the 3-judges bench of the Hon'ble Gauhati High Court in *State of Assam v. Moslem Mondal & Ors* stated that:

Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue a writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in the exercise of the jurisdiction under Article 226, however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with, if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however, grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant factor renders its decision on wholly irrelevant factors. Hence, the failure of taking into accounts the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for the interference of the Court or Tribunal's decision in exercise of the writ jurisdiction by the High Court.²

3. The Reference of Cases to the Foreigners Tribunals

The police in the state of Assam has a unique organization to deal with the purported problem of illegal immigration from erstwhile East Pakistan and present-day Bangladesh since 1962, when a Special Branch Organization was established under the PIP scheme, put under the direction of the Dy. Inspector General of Police and entrusted to detect and deport all "illegal foreigners" from then East Pakistan. Under the PIP scheme, nearly two lakhs Muslims were

² See *State of Assam & Anr v. Moslem Mondal & Ors* (2013) 1 GLT(FB) 809, para 112.

forcibly deported to then East Pakistan without due process. The Assam Border Police Organization is now present in all police stations in Assam.

In principle, the task of this special unit of the Border Police is to survey areas under its jurisdiction. If they come across any “suspect citizen” the Border Police should ask him for citizenship documents and give him reasonable time to submit such documents. If such a person cannot provide these documents, the Border Police are empowered to send a “Reference Case” (similar to a charge sheet) to the competent Foreigners Tribunal against this person. In practice, however, the Border Police randomly pick people and frame the persons concerned as “illegal immigrants” without any investigation whatsoever. In the Reference Case, they just write that they approached the concerned person and that he failed to show any citizenship documents. In many cases, the Border Police approach poor and illiterate citizens, mostly daily wage labourers, rickshawallas, and even beggars; take their thumb impression in blank paper, prepare a Reference Case alleging such person to be an “illegal immigrant” and refer the case to the Foreigners Tribunal without any proper investigation. Many such unfortunate people allege that the police asked them for bribe after having picked them up and, if the bribe is paid, do not frame them as “illegal immigrants”. On the other hand, when the bribe is not paid, the police refer the case to the Foreigner Tribunal for trial. Moreover, several cases are reported in which, following a dispute or rivalry between two private parties, one bribes the Border Police to frame the other as an “illegal immigrant”.

When asked in private, the officers of the Border Police admit that they are pressured by the higher authorities to frame as many people as possible as “illegal immigrants” in order to meet the targets that are given to them. As a matter of fact, any police station is given a target of five, ten or even twenty cases to be referred to the Foreigners Tribunal each month. Therefore, low-ranking police officers arbitrarily and randomly frame as many people as possible as “illegal immigrants” without any primary investigation. This fact has been ascertained before the National Human Rights Commission (NHRC) when Senior police officer Louis Aind, DCP Crime, Guwahati, who was earlier in charge of the units of the Assam Border Police, admitted that a monthly target of 6 reference cases is given to each Border Police unit. These findings have been incorporated in the Report on NHRC Mission to Assam’s Detention Centres.³

In addition to the above, the Assam Police Border Organisation has also been granted the discretionary power to identify “suspect citizens”, take their fingerprints and photographs.⁴ There are allegations that those fingerprints and photographs are used to register ‘reference case’ against the suspects.

Since 1997, the Election Commission of India (ECI) has started a strict scrutiny of the voters’ lists. In this connection, the Election Commission marks as “doubtful” voters (or “D” voters) any person who is not able to show adequate citizenship documents. The “D” voters cannot

³ See Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January, 2018, Annex No. 1.

⁴ See Govt. of Assam, Letter No PLB.149/2008/Pt/8 (21 October 2009) < <https://police.assam.gov.in/portlet-sub-innerpage/functions>>.

vote; they are disenfranchised and also deprived of the benefits of the Public Distribution System. Like the police, also the ECI officials arbitrarily and randomly frame individuals as “doubtful” voters without even approaching them, let alone perform an investigation as to their status.

Indeed, ECI identified as “doubtful” voters more than 3,70,000 people, mostly Muslims but also belonging to other marginalized communities, like a linguistic minority, Koch Rajbangshi, Nepali and others. The process of identification was ambiguous, and it is alleged that lower-ranking ECI officials, or officials from other Government departments, were committed to mark at least ten to twenty persons as “D” voters in each village. This process is, also, arbitrary. There are many examples where one or two members of a family were marked as “D” voters, while other members of the same family were spared. There are even instances where Government servants and Assam police constables themselves are marked as “D” voters only because of their religious or linguistic identity. These Government servants, police constables, Air Force officers, school teachers and even a Government servant who had acted as presiding officer during the elections, are all fighting legal battles to prove their Indian nationality. The “D” which marks “doubtful” voters in the voters’ lists is not removed unless the competent Foreigners Tribunal finds such person not to be a foreigner; that is, to be an Indian citizen, after a fully-fledged trial. The Election Commission, thus, sends “D” voters cases to the Superintendent of the Border Police in the respective district, and he refers the cases to the Foreigners Tribunal for its opinion on the citizenship status of the person concerned. The Foreigners Tribunal summons this person to appear before it prove his citizenship through documents. Before the Bharatiya Janata Party (BJP) came to power, most “D” voters appearing before the Foreigners Tribunal were held as Indian citizens.

4. The Procedure Before the Foreigners Tribunals

Once the case is referred, the Foreigners Tribunal issues a notice summoning the person concerned (the “proceedee” or “opposite party”) to appear before it and prove his citizenship, else he will be held a “foreigner” by ex parte judgment. However, the mere fact that the Tribunal holds someone a foreigner does not mean this is actually the case. In fact, Foreigners Tribunals consider as “foreigners” all those whose citizenship documents, or whose registrations in the voters’ lists, bear minor irregularities, for instance in the name and age, and even those who failed to mentioning certain facts in their written statement. Most people have been held “foreigners” on technical grounds, or for lack of competent legal support. Moreover, in many cases multiple notices are sent to the members of the same family. It may, then, very well happen, as it did, that one member of the family could be held as an Indian citizens, while another member of the same family, with the same set of documents, could be held as a “foreigner”. Moreover, many people who have already proved their citizenship once before a Foreigner Tribunal have received notice again from another Foreigners Tribunal and have to start their trial anew. Even people from Uttar Pradesh and Bihar are often being held as “foreigners” or “Bangladeshis”.

The procedure before the Foreigners Tribunals raises serious concerns as to the respect of the principle of the Rule of Law. These concerns relate to: (A) the lack of a “fair investigation” before the reference of a case to the Tribunals; (B) the lack of the main grounds in the notice served on the person concerned; (C) the lack of reasonable time to prepare the defence.

A. The Lack of a “Fair Investigation” Before the Reference of the Case

In *State of Assam v. Moslem Mondal & Ors*, the 3-judges bench of the Hon’ble Gauhati High Court stated that:

Fair investigation and fair trial being the basic fundamental/human right of a person, which are concomitant to preservation of the fundamental right of a person under Article 21 of the Constitution, there has to be a fair and proper investigation by the investigating agency before making a reference to the Tribunal. In such investigation, the attempt has to be made to find out the person against whom the investigation is made so that the person concerned is given the opportunity to demonstrate at that stage itself that he is not a foreigner. In case the person concerned could not be found out in the village where he is reported to reside or in the place where he ordinarily resides or works for gain, the investigating agency has to record the same in presence of the village elder or the village headman or any respectable person of the locality, which in turn would ensure visit of the investigating officer to the place where such person ordinarily resides or reported to reside or works for gain and making of an effort to find him out for the purpose of giving him the opportunity to produce the documents etc., if any, to demonstrate that he is not a foreigner. The investigating officer, as far as practicable, shall also obtain the signature or thumb impression of the person against whom such investigation is initiated, after recording his statement, if any, provided he makes himself available for that purpose. There are also instances where the person against whom such investigation is initiated, changes his place of residence, may be in search of livelihood or maybe to avoid detection. To ensure proper investigation and also having regard to integrity and sovereignty of the nation, once investigation relating to the nationality status of a person starts he must inform the investigating agency in writing about the change of residence, if any, thereafter. In case such person has failed to intimate the investigating agency in writing the subsequent change of his place of residence, the investigating agency has to mention the same in his report with his opinion relating to the status of such person on the basis of materials collected at the place where he earlier resided. That will ensure a fair investigation and submission of a proper report on such investigation to the authority. Needless to say, such investigation need not be a detailed or an exhaustive one keeping in view the nature of the proceeding before the Tribunal and the object sought to be achieved. Hence it need not be equalled with an investigation conducted in criminal cases.⁵

However, far from the principles set out by the Hon’ble Gauhati High Court, the officers from the Election Commission of India and the Assam Border Police Organisation randomly accuse genuine citizens of being “doubtful” voters or “illegal immigrants”, respectively, without any investigation whatsoever. The verification forms that are meant to be filled by the Investigation Officer in any given case are often empty, or report only the name and

⁵See *State of Assam & Anr v. Moslem Mondal & Ors* (no 2) para 97.

address of the person concerned. The grounds indicated in the verifications form are generally framed; in most cases they simply mention that “the proceedee could not provide any citizenship documents”. As a result, even decorated Army and Air Force officers are randomly accused of being “illegal immigrants” without any investigation whatsoever.

B. The Lack of the Main Grounds in the Notice Served on the Person Concerned

According to section 3(1) of the Foreigners (Tribunal) Order, 1964, the Foreigners Tribunal shall serve on the person concerned a document setting out the main grounds on which he is alleged to be a foreigner in order to allow him to make his case.

In full, section 3(1) of the Foreigners (Tribunal) Order, 1964, states that:

The Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.

Section 3 was amended by the Foreigners (Tribunal) Amendment Order, 2012. Following this amendment, section 3 now reads:

The Tribunal shall serve on the person to whom the question relates a show cause notice with a copy of the main grounds on which he or she is alleged to be a foreigner. This notice should be served as expeditiously as possible, and in any case, not later than ten days of the receipt of the reference of such question by the Central Government of any competent authority.

In *State of Assam v. Moslem Mondal & Ors*, the 3-judges bench of the Hon’ble Gauhati High Court stated that:

The proceedee shall be served with the notice, together with the main grounds on which he is suspected to be a foreigner, as far as practicable, personally, whose signature/thumb impression, as proof of service, is to be obtained.⁶

Moreover, the Hon’ble Supreme Court in *Sarbananda Sonowal (II) v. Union of India*, established that

Having regard to the fact that the Tribunal in the notice to be sent to the proceedee is required to set out the main grounds; evidently, the primary onus in relation thereto would be on the State. However, once the Tribunal satisfied itself about the existence of grounds, the burden of proof would be upon the proceedee.⁷

⁶See *State of Assam & Anr v. Moslem Mondal & Ors* (no 2), para 97.

⁷ See *Sarbananda Sonowal (II) v. Union of India* (2007) 1 SCC 174, para 60.

Despite statutory provision and categorical guidelines by the Hon'ble Supreme Court and Gauhati High Court, the Foreigners Tribunals uniformly issue notices to the proceedee without any grounds. Therefore, without knowing the reasons for his referral to the Foreigners Tribunal, in his written statement the proceedee is expected to rebut by way of imagination. This clearly prejudices the case of the petitioner, who is called to submit his defence in the absence of clear cut and tangible grounds against him.

C. The Lack of Reasonable Time to Prepare the Defence

According to the Foreigners (Tribunal) Amendment Order, 2012, every case should be disposed of within a period of 60 days after the receipt of the reference from the competent authority, but the Tribunal has the power to regulate its own procedure for disposal of the cases more expeditiously. These provisions are creating unimaginable problems.

For instance, the Foreigners Tribunal in Jorhat asks for two surety (one from the native place and one from Jorhat itself) at the time of the submission of the written statement. The Tribunal in Jorhat, and also in Kamrup (Rural)-1, gives the person concerned a time-limit of 3-4 days to submit his/her written statement. However, in the lack of prior investigation, the person concerned receives the notice suddenly out of the blue. Even if he or she applies for certified copies of the records of the voters' list with the District Election Office immediately after receiving the notice, it takes months to obtain such documents. As a consequence, many people fail to prove their citizenship despite having relevant citizenship documents.

D. The Lack of Government Pleaders and the Role of the Tribunals' Members

In many Foreigners Tribunal, the Government pleader have not yet been appointed, or have only recently been appointed. In their absence, it is for the Tribunal members to cross-examine the proceedees. Hence, in these cases, tribunal members act as judges and prosecutors at the same time, thus allowing doubts to be casted as to their impartiality.

4. The Undue Influence of the BJP Government

The doubts surrounding the impartiality of the Foreigners Tribunals' members are compounded by those relating to their independence, given the undue influence which is exercised on them by the BJP Government.

Indeed, the BJP came to power accusing all Indian Muslims to be, in fact, Bangladeshis. During the electoral campaign, Himanta Biswa Sarma openly decried that, in 35 seats, Muslims (that is to say, Bangladeshi immigrants according to the BJP) are the majority, while Indians are the minority. This strikes a chord with a large number of people. Thus, the BJP has won an absolute majority, from a mere 5 seats in the previous election. After the BJP came to power, Chief Minister Sarbananda Sonowal held a meeting with all the Foreigners Tribunals' members stressing the "golden opportunity" to work for a national cause and exhorting them not to let go such an opportunity. This fact alone; that is to say, that the Chief Minister had met the members of a judicial body and had encouraged them to pursue Government policy, is contrary to Article 50 of the Constitution of India, which establishes the principle of separation between the executive power and the judiciary.

But there is more. The mandate of the Foreigners Tribunals' members is based on a two-year contract and can be extended from time to time on the basis of "need" and "performance". On this basis, on June 21, 2017, the state Government showed the door to 19 Foreigners Tribunals' members due to their purported "underperformance" during the last two years for having issued more than 40,000 orders finding that, in spite of the reference by the Border Police, the persons concerned were, in fact, Indian citizens. Evidently, these decisions didn't go well with the BJP Government. However, the 19 Foreigners Tribunals members have challenged the Government's decision to terminate their mandate before the Hon'ble High Court, annexing documents showing that they were working judiciously. The Hon'ble High Court held that the Government have no authority to assess the performance of Tribunal members. Still, the Government issued a strict warning to another 15 Foreigners Tribunals' members prompting them to improve their "efficacy". One has to keep in mind that, when a lawyer gives up his private practice to become a member of a Foreigners Tribunal for two years, and his service is terminated abruptly, he is left humiliated and briefless, needs to return to private practice and, so to say, start afresh from the scratch. Against this background, the termination of 19 Foreigners Tribunals' members, as well as the warning to other 15 of them, is a message to the rest of the Foreigners Tribunals' members to follow the Government's police and find as many persons concerned as possible to be "foreigners".

In addition to the above, the BJP Government has also established Screening Committees, both at the state and the district level, to screen judgements where the person in question was declared 'not foreigners' contrary to the submissions of the police and appeal them before the competent High Court. These Screening Committees have challenged around 100 cases before the High Courts.

The fact that the Tribunals are declaring the majority of the persons concerned to be "not foreigners" actually shows that the police are framing genuine Indian citizens as illegal immigrants and referring their cases to Foreigners Tribunal without prior investigation. Against this background, a sensible Government would pull up the police for harassing genuine Indian citizen. To the contrary, the BJP Government are firing the Foreigners Tribunals' members who proved to work judiciously, while challenging before the High Courts the judgements by which genuine Indian citizens are, quite rightly, found to be Indians.

However disconcerting, this policy seems to have served the purpose of the BJP. While the Foreigners Tribunals once used to declare the majority of the persons whose cases were referred as genuine Indian citizens, they now mostly hold these persons to be "foreigners". For example, the Foreigners Tribunal No. 2 of Kamrup (Metro), which was earlier headed by a retired District Judge and hardly declared people as "foreigners", is now presided over by a new lawyer, who declares almost everyone as a "foreigner". Unfortunately, this is the condition with almost all the Foreigners Tribunals across the state of Assam.

SECTION C
INTERNATIONAL LAW

STATELESSNESS AND ARBITRARY DEPRIVATION OF NATIONALITY IN INTERNATIONAL LAW

Amal de Chickera

This written statement by the Institute on Statelessness and Inclusion⁸, which is offered as an amicus curiae to the Indian Peoples' Tribunal held in Guwahati, Assam, in February 2019, focuses on the right to nationality, arbitrary deprivation of nationality, risk of statelessness and related human rights challenges arising out of the procedure to update the National Register of Citizens in the Indian state of Assam.



1. Statelessness Around the World

Under international law, a stateless person is someone ‘who is not considered as a national by any state under the operation of its law’.⁹ Nationality, in this context, refers to a particular type of legal bond between an individual and a state.¹⁰ It is a type of formal membership that results in rights and duties on both sides. The individual, for instance, holds the right to reside in the territory and the state a corresponding duty of admission; the individual holds a duty of allegiance (which may include a duty to perform military and/or national service) and the state the right to exercise diplomatic protection on behalf of its nationals abroad.

Where a person lacks any nationality, he or she may not enjoy the attached rights or duties, resulting in a lack of protection.¹¹ Moreover, a person without nationality lacks the gateway through which people access rights and services in our state-centric world. Nationality is also an integral part of an individual’s legal and social identity, offering a place to call home and a

⁸The Institute on Statelessness and Inclusion is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. More information about the Institute are available at <www.institutesi.org/>.

⁹ United Nations Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117.

¹⁰ Citizenship is commonly used as a synonym for nationality, also referring to this specific type of legal bond between a person and a state. In some disciplines and various domestic or regional contexts, nationality and citizenship can also have distinct meanings, but within writing on statelessness – and in this report – the two terms are used interchangeably.

¹¹ It is important to note however, that all persons – including stateless persons – are protected by international human rights law. Thus, while stateless persons may not necessarily benefit from the rights attached to citizenship (such as the right to vote), they are entitled to the general protection of international human rights law.

community to be part of. For these reasons international law stipulates that nationality is a human right. That notwithstanding, over 15 million people around the world are stateless.¹²

Without nationality, the world's stateless people face discrimination and disadvantage, and are more likely to be left behind. They count among the most unequal in today's societies and the problem is growing. Without nationality, the stateless people find themselves on the "outside", often unable to organise and advocate for change and to challenge injustice and exclusion through legal means. Statelessness can also render people invisible to Government systems and the development sector because they are simply not "counted", making it harder to ensure they benefit from development programming.

It is therefore important to look beneath the seemingly technical and value-neutral facades which mask discrimination as the true root-cause of statelessness; to better understand how statelessness adds a further layer and level of intensity to the discrimination and exclusion already experienced by marginalised groups; and to challenge the structures which disadvantage, exclude and undermine true equality for those affected by statelessness.

Against this backdrop, the unfolding situation in Assam requires urgent attention and action to ensure that no one is arbitrarily deprived of their nationality, rendered stateless and subject to further discrimination and human rights violations.

2. The Assam National Register of Citizens

In July 2018, Assamese authorities published a first draft of the updated National Register of Citizens (NRC). Provision was made for individuals to register objections to the draft NRC and requests for inclusion, until December 31, 2018, after which steps would be taken to finalise the NRC. In order to establish proof of Indian citizenship and thereby be included in the NRC, applicants were required to submit family documents that go back generations. In many instances, minor spelling errors and discrepancies have been the only basis upon which those who submitted their documentation have been excluded from the NRC. If the situation is not resolved, as many as 4 million persons who have been excluded from the NRC are at heightened risk of being declared foreigners, rendered stateless and subject to detention and removal proceedings.

The NRC is an outcome of the Assam Accord between the Government of India and the Assam Nationalist movement. However, the Bharatiya Janata Party (BJP) converted what was an insider-outsider debate in Assam into a Hindu-Muslim debate.¹³ This initiative fits into a wider trend of xenophobia, Islamophobia and Hinduisation of India. For example, a recent Citizenship Bill seeks to render immigrants from Muslim majority Pakistan, Afghanistan and Bangladesh who belong to six minority communities (Hindus, Sikhs,

¹²See Institute on Statelessness and Inclusion, *The World's Stateless* (2014) <<http://www.institutesi.org/worldsstateless.pdf>>.

¹³See Chanakya, 'What we know, and don't, about the National Register of Citizens', *Hindustantimes* (6 August 2018) <<https://www.hindustantimes.com/columns/what-we-know-and-don-t-about-the-national-register-of-citizens/story-w8rdzNcscAzxN4I28cABUI.html>>.

Buddhists, Jains, Christians and Parsis) eligible for citizenship, while denying such eligibility to Muslim immigrants from these same countries.¹⁴

On January 25, 2019, Assamese Finance Minister Himanta Biswa Sarma stated that only the Citizenship Bill can save Assam from becoming the next Kashmir.¹⁵ This stated objective is clearly discriminatory and arbitrary, as it targets the members of minority communities without fulfilling any legitimate purpose. Indeed, the ongoing NRC process must not be viewed in isolation, but rather as the latest step in a long history of discriminatory and exclusionary practices targeting minorities and those with migrant backgrounds in Assam.

3. India's Human Rights Obligations

The world's largest democracy, India is a Rule of Law based society with a long tradition of rights protection, enshrined in the Federal Constitution and national laws, and also reflected in the international treaty obligations of the state. For example, India has ratified the ICCPR (1979a), CEDAW (1993), CERD (1968), CESC (1979a), CRC (1992a), CRPD (2007). Moreover, it has signed, but not yet ratified, the CAT in 1997.

India's accession record on statelessness and refugee protection treaties is less impressive. The country is not party to the 1954 and 1961 Statelessness Conventions, nor to the 1951 Refugee Convention and its Protocol. Nonetheless, as will be elaborated further below, India has several human rights obligations in relation to the right to a nationality and the avoidance of statelessness that arise from the various human rights treaties it is party to.

India did not receive recommendations specific to Assam during its last Universal Periodic Review before the UN Human Rights Council session in May 2017, as the first draft of the NRC was only published a year later. However, India did receive five recommendations related to statelessness and the right to nationality. It only supported the recommendation made by Mexico to promote and facilitate universal access to birth registration, while taking note of the recommendations to accede to the relevant statelessness conventions (by Kenya and Slovakia), to ensure that every children enjoys the right to acquire a nationality (by Slovakia) and to implement birth registration regardless of castes or schedule tribes (by Bahrain).

4. International Law Standards and Norms

The unfolding situation in Assam raises a range of concerns under international human rights law. These can be broadly categorised into norms which directly relate to the right to nationality and deprivation of nationality, and norms which relate to human rights violations which are taking place (and are likely to continue to unfold) as a result of the arbitrary deprivation of nationality. Below, is a non-exhaustive look at some of the key standards and norms.

¹⁴See Apoorvanand, 'The new citizenship bill and the Hinduisation of India', Al Jazeera (12 January 2019) <<https://www.aljazeera.com/indepth/opinion/citizenship-bill-hinduisation-india-190110141421871.html>>.

¹⁵ See 'Only Citizenship Bill Can Save Assam From Becoming "Next Kashmir": BJP', NDTV (25 January 2019) <<https://www.ndtv.com/india-news/only-citizenship-bill-can-save-assam-from-becoming-next-kashmir-bip-1982908>>.

A. The Right to Nationality

The main human right under threat as a result of the NRC process is the right to nationality. According to the narrative of the Assamese authorities, the NRC will exclude undocumented immigrants from Bangladesh. Indeed, the official position of the authorities is that the individuals who are identified as “foreigners” through this procedure never actually had Indian citizenship, but instead immigrated illegally.¹⁶ The reasoning behind this exercise is to identify those “illegal immigrants” and separate them from the true Assamese citizen population. However, when seen in light of the political climate and polarisation in Assam, it is evident that the NRC process is being used as a political tool to disproportionately impact the right to nationality and belonging of the individuals belonging to one of the minorities in the state.

Although the authorities state that those excluded from the NRC never had citizenship in the first place, the ground reality is very different. There is ample evidence that many of the persons excluded from the NRC have in fact been living as Indian citizens, contributing to society and identifying as Indian. Among those excluded, there are teachers, Government servants and soldiers.¹⁷ Excluding them now from the NRC would mean excluding them from the society they live and work in.

Moreover, Bangladesh does not recognise those excluded from the NRC as its citizens, nor has it agreed to accept those who will be expelled from India. Under international law, only states have the competence to decide on their own citizens, and thus India does not have the authority to determine who is a citizen of Bangladesh. The assumption India makes is not legally grounded and creates a risk of mass statelessness, resulting from the discriminatory deprivation of the right to nationality protected under international law.

It is important to note that states are free to regulate the acquisition and loss of nationality, within the limits set by international law. In addition to recognising the right to a nationality,¹⁸ international law explicitly prohibits the “arbitrary deprivation of nationality”. This norm can be found in:

¹⁶ See Abdul Gani, ‘Assam: Some four million left out of final India NRC draft list’, Al Jazeera (30 July 2018) <<https://www.aljazeera.com/news/2018/07/4-million-people-left-final-draft-nrc-list-assam-180730044002717.html>>.

¹⁷ See Rohini Mohan, ‘Excluded from the NRC, These Soldiers from Assam Are Tired of Proving They Are Indian’, Huffpost (8 February 2019) <<https://www.huffingtonpost.in/2018/08/02/nrc-these-soldiers-guarded-indias-borders-only-to-be-excluded-from-assams-national-register-of-citizens-a-23494581/>>.

¹⁸ See Convention on Certain Questions Relating to the Conflict of Nationality Laws (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89 (Article 1); Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th, 1921 (Advisory Opinion) 1923 <https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_B/B_04/Decrets_de_nationalite_promulgues_en_Tunisie_et_au_Maroc_Avis_consultatif_1.pdf>; International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries, Yearbook of the International Law Commission, II(2) (1999) 24. See also, among other international instruments, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (article 15); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (article 24 (3)); International Convention on the Elimination

Article 15(2) of the Universal Declaration of Human Rights;
Article 18(1)(a) of the Convention in the Rights of Persons with Disabilities;
Article 20(3) of the American Convention on Human Rights;
Article 4(c) of the European Convention on Nationality;
Article 29(1) of the Arab Charter on Human Rights;
Article 18 of the ASEAN Human Rights Declaration; and
Article 24(2) of the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms.

A variety of other international standards also relate to the deprivation of nationality. The 1961 Convention on the Reduction of Statelessness (article 9) prohibits deprivation of nationality from a person or group on racial, ethnic religious or political grounds. This Convention also restricts the freedom of states to deprive a person of his or her nationality where this results in statelessness, allowing only for specified exceptions (articles 7-8), which include the possibility for a state to retain the power to deprive a person of his or her nationality where “inconsistently with his duty of loyalty to the contracting states, the person [...] has conducted himself in a manner seriously prejudicial to the vital interests of the state” (article 8(3a)). The 1961 Convention also provides that the deprivation of nationality must always be in accordance with the law and allow for the right to a fair hearing (article 8(4))¹⁹. On a similar note, the European Convention on Nationality contains a set of norms providing further procedural guarantees for decisions relating to nationality (articles 10-13) and allowing deprivation of nationality that would result in statelessness only where this is in response to fraudulent acquisition (article 7)²⁰.

Furthermore, the Convention on the Rights of the Child (article 8) and the International Convention for the Protection of All Persons from Enforced Disappearances (article 25(4)) each recognise the right of every child to preserve his or her identity, including nationality, and to have this re-established if illegally deprived. The Convention on the Elimination of All Forms of Discrimination Against Women (article 9(1)) provides, among other things, that a ‘change of nationality’ (including through loss or deprivation) by the husband during marriage shall not automatically change the nationality of the wife or render her stateless. The 1961 Convention on the Reduction of Statelessness (article 6) protects the children and spouse from deprivation of nationality as a consequence of the deprivation of nationality of the father/husband, where that would otherwise lead to statelessness.

of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (article 5(d)(iii)); United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (Article 7); Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (article 9). For the full text of all provisions listed in this section, see Annex 1.

¹⁹ See Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

²⁰ See European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS No166.

In 1996, the UN General Assembly recognised the prohibition of arbitrary deprivation of nationality as a ‘fundamental principle of international law’.²¹ Several commentators suggest that the norm has achieved the status of customary international law, but this has not been considered in detail and there does not appear to be a consensus in this regard. International law protects certain rights and freedoms as non-derogable, i.e. they cannot be limited or suspended under any circumstances, including under a declared state of emergency. The right to a nationality is not among these rights. However, violations of other non-derogable rights under the ICCPR, including the freedom from torture, cruel, inhuman or degrading treatment or punishment, and the right to recognition as a person before the law, may follow as a result of arbitrary deprivation of nationality.

From 1997 onwards, resolutions on “Human Rights and the Arbitrary Deprivation of Nationality” have been adopted periodically by the Commission on Human Rights and subsequently the Human Rights Council.²² These resolutions have formed the basis for a number of studies by the Office of the High Commissioner for Human Rights and the Secretary-General and the report published in December 2009 offers a helpful overview of the legal framework applicable to the prohibition of arbitrary deprivation of nationality.²³ Importantly, this report clarifies the meaning of deprivation of nationality for the purposes of this norm as applying to any involuntary loss, deprivation or denial of nationality:

While the question of arbitrary deprivation of nationality does not comprise the loss of nationality voluntarily requested by the individual, it covers all other forms of loss of nationality, including those that arbitrarily preclude a person from obtaining or retaining a nationality, particularly on discriminatory grounds, as well as those that automatically deprive a person of a nationality by operation of the law, and those acts taken by administrative authorities that result in a person being arbitrarily deprived of a nationality.²⁴

B. The Prohibition of the Arbitrary Deprivation of Nationality

The UN Secretary General’s report of 2009 also recalls important elements in the interpretation of the concept of “arbitrariness”, a term that ‘applies to all state action, legislative, administrative and judicial, and guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of [human rights law] and should, in any event, be reasonable in the particular circumstances’.²⁵

²¹ See UNGA, Res 50/152, Office of the United Nations High Commissioner for Refugees (9 February 1996) A/RES/50/152, para.16.

²² See UNHRC, Res 32/5, Human rights and arbitrary deprivation of nationality (15 July 2016) A/HRC/RES/32/5.

²³ See UNHRC, Report of the Secretary-General, Human rights and arbitrary deprivation of nationality (14 December 2009) A/HRC/13/34.

²⁴ Ibid., para 23.

²⁵ Ibid., para 24.

The scope and content of the prohibition of arbitrary deprivation of nationality has been further clarified in a number of important rulings by regional adjudication bodies. To date, this body of jurisprudence comprises cases brought before the Inter-American Court on Human Rights, the African Commission on Human and Peoples' Rights, the European Court of Human Rights and the Court of Justice of the European Union.²⁶ For example, in the recent *Anudocase*, the African Court on Human and People's Rights found that:

International Law does not allow, save under very exceptional situations, the loss of nationality. The said conditions are: (i) they must be founded on clear legal basis; (ii) must serve a legitimate purpose that conforms with International Law; (iii) must be proportionate to the interest protected; (iv) must install procedural guaranties which must be respected, allowing the concerned to defend himself before an independent body.²⁷

There have also been a number of international consultation initiatives on deprivation of nationality, aimed at clarifying the content of specific international norms. The most significant of these efforts, to date, are a UNHCR- led process that convened global experts and resulted in the Tunis Conclusions on the interpretation of the 1961 Convention standards relating to the loss and deprivation of nationality²⁸ and an academic initiative focused on loss and deprivation of nationality in the EU context which led to the publication of the ILEC Guidelines.²⁹

With reference to the aforementioned normative frameworks and drawing on the available soft law instruments, jurisprudence and doctrine, it is possible to distil six core components of the prohibition of arbitrary deprivation of nationality: (i) non-discrimination, (ii) firm legal basis in domestic law, (iii) due process, (iv) legitimate purpose, (v) absence of less intrusive means and (vi) proportionality. This test is cumulative, in the sense that if a measure or decision falls short in any of these areas, it must be understood to be arbitrary. Running alongside the test and influencing the assessment of several of its elements (for example, proportionality and non-discrimination) is the consideration of whether the deprivation of nationality will result in statelessness.

C. The Prohibition of Discrimination

²⁶ See, among many other cases, IACtHR, *Expelled Dominican and Haitian persons v the Dominican Republic*, (28 August 2014) Series C No 282; IACtHR, *Ivcher Bronstein v Peru* (6 February 2001) Series C No 23; ACmHPR, *Open Society Justice Initiative v Cote d'Ivoire* (27 May 2016) Comm No 318/06; ACmHPR, *Amnesty International v Zambia* (5 May 1999) Comm No 212/98; ACmHPR, *Modise v Botswana* (6 November 2000) Comm No 97/93; ACmHPR, *Malawi African Association and Others v Mauritania* (6 November 2000) Comm No 97/93; ECtHR, *Ramadan v Malta* (21 June 2016) App No 76136/12; ECtHR, *K2 v the United Kingdom* (7 February 2017) App no 42387/13; CJEU, *Janko Rottmann v Freistaat Bayern* (2 March 2010), Case C-135/08.

²⁷ See ACtHPR, *Anudo v Tanzania* (22 March 2018) Comm No 12/2015, para 79.

²⁸ See UNHCR, Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality Summary Conclusions (Tunis Conclusions) (2014).

²⁹ See ILEC (Involuntary Loss of European Citizenship), Guidelines on Involuntary Loss of European Citizenship (ILEC Guidelines, 2015).

The NRC process in Assam is part of a longer series of systemic steps taken to discriminate and exclude minorities in the state. The populations at risk are overwhelmingly from minority ethnic, religious and linguistic groups – consisting Muslims and Hindus of Bengali descent and Nepali-speaking populations – with high percentages of women, children and daily wage workers, all among the most marginalised and excluded communities.

A self-proclaimed pluralistic society, India is bound by the principle of non-discrimination. Under the Indian Constitution, all persons are equal before the law (Article 14) and protected from discrimination on grounds of religion, race, caste, sex or place of birth (Article 15.1). Further, under international law, the right to equality and non-discrimination is guaranteed in a number of instruments, in particularly article 1 of the UDHR, article 1(3) of the UN Charter, articles 2, 3 and 26 of the ICCPR, and articles 2(2) and 3 of the ICESCR. The ICERD in its entirety is devoted specifically to discrimination on the basis of race, colour, descent, or national or ethnic origin. The right to non-discrimination is not limited to only direct discrimination, but also applies to indirect discrimination that disproportionately affects particular groups.³⁰

The 2009 Secretary-General's report on arbitrary deprivation of nationality recalls that 'the principle of non-discrimination is a common feature applicable to the context of international human rights instruments', including in respect of 'issues related to nationality'.³¹ Any deprivation of nationality on discriminatory grounds is considered arbitrary for the purposes of international law. This is affirmed across different international conventions,³² soft law instruments,³³ jurisprudence³⁴ and enjoys broad consensus in doctrinal writings. In 2016, with India as a member, the Human Rights Council adopted by consensus a resolution on human rights and arbitrary deprivation of nationality, which reaffirmed that states shall 'refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including disability, especially if such measures and legislation render a person stateless'.³⁵ Even in the absence of explicit treaty norms, 'the prohibition of arbitrary deprivation of nationality, which aims at protecting the right to retain a nationality, is implicit in provisions of human rights treaties that proscribe specific forms of discrimination'.³⁶ International jurisprudence confirms this. For instance, in *Open Society Justice Initiative v. Cote*

³⁰See HRC, *Althammer v Austria*, (8 August 2003) CCPR/C/78/D/998/2001, para 10.2.

³¹ See UNHRC, Report of the Secretary-General(2009) (no 23), paras 18 and 26.

³² See, for instance, 1961 Convention on the Reduction of Statelessness (no 19) (article 9); European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS No166 (Article 5).

³³ See, in addition to the resolutions of the Human Rights Council referred to above, CERD, General Recommendation XXX, Discrimination Against Non-Citizens (1 October 2002).

³⁴ See, among other cases, IACtHR, *Expelled Dominican and Haitian persons v the Dominican Republic*, (no 26); ACmHPR, *Open Society Justice Initiative v Cote d'Ivoire* (no 26).

³⁵See UNHRC, Res 32/5 (2016) (no 22), paras 2 and 4.

³⁶ See UNHRC, Report of the Secretary-General(2009) (no 23), para. 26.

d'Ivoire, the African Commission on Human and Peoples' Rights found a violation of articles 2 and 3 of the African Charter, which provide for non-discrimination and protect equality before the law.³⁷ Furthermore, discriminatory deprivation of nationality may even amount to persecution in the sense of the 1951 Convention relating to the Status of Refugees.³⁸ According to the Tunis Conclusions, which are comprehensive on this point:

Loss or deprivation of nationality may not be based on discrimination on any ground prohibited in international human rights law, either in law or in practice. These include, inter alia, all the grounds established in Article 2 of the ICCPR... Participants noted the jus cogens character of the prohibition of racial discrimination as well as the specific prohibition of racial discrimination in relation to nationality in the CERD and underlined its relevance in many situations of deprivation of nationality. International law prohibits deprivation of nationality on other grounds, including under Article 9 of the 1961 Convention which refers specifically to religious and political as well as ethnic and racial grounds, Article 9 of the CEDAW in relation to discrimination against women and Article 18 of the CRPD which explicitly addresses deprivation on the ground of disability. The resolutions on nationality of the Human Rights Council have also set out a broad range of prohibited grounds for discrimination.³⁹

D. Due Process

The current procedures of the NRC do not meet due process standards. There are indications that the system is not a bureaucratic exercise aimed at mapping who is an Indian citizen, but rather a covert operation to exclude particular groups. The Supreme Court of India closely monitors the NRC process, following a 2012 Writ Petition. The Court has also played a proactive role in driving the updating, deciding on procedure and criteria and determining timelines. However, there have been signs that the Court has not acted impartially, but has instead contributed detrimentally to the situation.⁴⁰ The Supreme Court bench hearing the Assam NRC case is led by Justice Ranjan Gogoi, himself an ethnic Assamese and an NRC applicant, raising conflict of interest issues.

Moreover, in the so-called Foreigners Tribunal (FTs), those excluded from the NRC are de facto accused of being undocumented immigrants. In principle, the burden of proof for the application of a rule concerning the loss or deprivation of nationality lies with the authorities.⁴¹ In practice, however, the citizens of Assam have to convince the authorities that they are citizens and are presumed to be foreigners, contrary to procedural standards. The Guwahati High Court stipulated that automatic referrals to the FTs do not follow fair and

³⁷ See ACmHPR, *Open Society Justice Initiative v Cote d'Ivoire* (no 26) paras 151 and 156.

³⁸ See, for an in-depth discussion, Eric Fripp, *Nationality and Statelessness in the International Law of Refugee Status* (Oxford-Portland: Hart Publishing, 2016).

³⁹ See Tunis Conclusions (no 28).

⁴⁰ See Mohsin Alam Bhat, 'On the NRC, Even the Supreme Court is Helpless', *The Wire* (7 January 2019) <<https://thewire.in/law/nrc-supreme-court-crisis>>.

⁴¹ See Tunis Conclusions (no28).

proper investigation already in 2013.⁴² Members of the FTs serve for two years, which may be extended based on their “performance”, i.e. how many persons they declared as foreigners. The incentive given to these civil servants is not fair. Quite the contrary, it encourages them to exclude from the NRC all those who do not fit the alleged identity that the state aims to enforce. Deprivation of citizenship should not undermine the rule of law. As such, a person can only be stripped of his or her nationality if there is a firm legal basis for doing so in the applicable domestic law. Without this, deprivation of nationality is unlawful, and thereby arbitrary.⁴³ According to the Tunis Conclusions and the ILEC Guidelines, provisions concerning deprivation of nationality:

Should be clear and predictable, in order to guarantee legal certainty;

Should not be enacted or applied retroactively, i.e. a person can only be stripped of nationality for a particular act if the law in force at that time allowed this;

Should not be interpreted extensively or applied by analogy such that they are applied in a context which is not evidently covered by the wording of the provision.⁴⁴

It is also necessary for the procedure for deprivation of nationality to be in line with domestic law more generally and to be vested with, or carried out by, the appropriate authority. In this regard, in the case of *Ivcher Bronstein v Peru*, the Inter-American Court of Human Rights found that the nullification of the applicant’s citizenship violated the prohibition of arbitrary deprivation of nationality because ‘the procedure used to annul the nationality title did not comply with the provisions of domestic legislation [and...] the authorities who annulled Mr. Ivcher’s nationality title did not have competence’.⁴⁵

States must ‘observe minimum procedural standards in order to ensure that decisions on nationality matters do not contain any element of arbitrariness and ‘violations of the right to a nationality must be open to an effective remedy’.⁴⁶ Central to the protection of due process is that:

Decisions on deprivation of nationality must be issued in writing, including the reasons for deprivation;

Such decisions must be open to effective administrative or judicial review, by a court or other independent body, including meaningful review of relevant substantive issues and the right to be heard;

⁴²See *Moslem Mondal & Ors v the State of Assam* (2010) 2 GLT 1.

⁴³ See UNHRC, Report of the Secretary-General(2009) (no 23), para 25. See also 1961 Convention on the Reduction of Statelessness (no 19) (article 8(4)).

⁴⁴ See Tunis Conclusions (no 28) paras 16-17; ILEC Guidelines (2015) (no 29), section I. See also IACtHR, *Expelled Dominican and Haitian persons v the Dominican Republic*, (no 26), para 298; ACmHPR, *Open Society Justice Initiative v Cote d’Ivoire* (no 26), para 142.

⁴⁵ See IACtHR, *Ivcher Bronstein v Peru* (no 26), paras 95-96.

⁴⁶ See UNHRC, Report of the Secretary-General(2009) (no 23), paras 43 and 46.

An effective remedy must be available in cases of arbitrary deprivation of nationality which allows for restoration of nationality.⁴⁷

Further procedural safeguards include ensuring that decisions are taken within a reasonable time and that fees relating to, for instance, appeal proceedings, do not form an obstacle.⁴⁸ In its jurisprudence, the European Court of Human Rights has also held that, as a matter of due process, authorities must act ‘diligently and swiftly’.⁴⁹

Meeting these various procedural obligations requires individualised decision-making, whereby the state takes a motivated decision in each case and communicates this to the person concerned.⁵⁰

A further procedural consideration relates to the mechanics of the deprivation itself and in particular to the moment at which it should take effect. Importantly, ‘deprivation decisions are only to enter into effect at the moment all judicial remedies have been exhausted’.⁵¹ If, until that time, a person must still be treated as a national, this would have implications not only for accrued rights but also for non-expulsion or the granting of re-entry.

E. Freedom of Movement

One significant concern is that efforts are being taken to expel and remove those who have been excluded from the NRC. However, as the arbitrary deprivation of their nationality is likely to leave them stateless, there is nowhere to remove them too. Moreover, the forced removal of these people would breach their rights under Article 12(4) of the ICCPR, that establishes that ‘No one shall be arbitrarily deprived of the right to enter his own country’. In its authoritative interpretation of this provision in General Comment No. 27, the Human Rights Committee has stated as follows:

The scope of ‘his own country’ is broader than the concept ‘country of his nationality’. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a

⁴⁷ See UNHRC, Report of the Secretary-General(2009) (no 23), paras 43-44 and 46; UNHCR, Tunis Conclusions (no 28), paras 25-29; ILEC Guidelines (no 29), section III. See also IACtHR, *Ivcher Bronstein v Peru* (no 26); ECtHR, *Ramadan v Malta* (no 26); *K2 v United Kingdom*(no 26); 1961 Convention on the Reduction of Statelessness (no 19) (article 8(4)); European Convention on Nationality (no 20) (articles 11-12).

⁴⁸ See European Convention on Nationality (no 20) (articles 10 and 13); UNHCR, Tunis Conclusions (no 28), para 28; ILEC Guidelines (no 29), section III.3.

⁴⁹ See ECtHR, *Ramadan v Malta* (no 26), para 88; *K2 v United Kingdom*(no 26), para 53.

⁵⁰ This is also necessary with a view to testing the proportionality of a decision.

⁵¹ See Tunis Conclusions (no 28), para 28; ILEC Guidelines (no 29), section III.4.

broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence (...)

In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all state action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A state party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.⁵²

F. Liberty and Security of the Person

Another matter of significant concern is the indefinite detention of those excluded from the NRC, while efforts are made to remove them. Indefinite detention, including of foreigners, violates Article 21 of the Indian Constitution, besides amounting to a violation of international human rights standards.

Article 9(1) of the ICCPR protects the right to liberty and security of person, prohibiting arbitrary arrest or detention. In the landmark case of *A v Australia*, the Human Rights Committee found that proportionality requires a legitimate aim, and that this aim ceases to exist when removal is no longer an option – which is most likely the case when the detainee is stateless. The Committee also stated that decisions to detain ‘should be open to review periodically so that the grounds justifying the detention can be assessed’.⁵³ The Committee also found that detention could be arbitrary if it is not necessary ‘in all the circumstances of the case, for example to prevent flight or interference with evidence’.⁵⁴

The Working Group on Arbitrary Detention, in its 2010 report, has stated that the principle of proportionality requires for detention to be the last resort, and there are constraints to such detention including ‘strict legal limitations’ and judicial safeguards which must be in place. Proportionality also requires for detention to have a legitimate aim, which, in the context of removal, ceases to exist as soon as there is ‘no longer a real and tangible prospect of removal’. Furthermore, states must provide reasons to justify detention, including ‘the necessity of identification of the migrant in an irregular situation, the risk of absconding, or facilitating the expulsion of an irregular migrant who has been served with a removal order’ among others.⁵⁵

⁵² See HRC, General Comment No 27: Article 12 (Freedom of Movement) (2 November 1999), CCPR/C/21/Rev.1/Add.9, paras 20 and 21.

⁵³ See HRC, *A v Australia* (30 April 1997), CCPR/C/59/D/560/1993, para 9(4).

⁵⁴ *Ibid.*, para 9(2).

⁵⁵ See UNHRC, Report of the UN Working Group on Arbitrary Detention to the Human Rights Council (18 January 2010), A/HRC/13/30, para 59.

In its Handbook on Protection of Stateless Persons, UNHCR clearly establishes that being undocumented or not being in possession of the necessary documents cannot serve as a justification of detention. Detention should always be the last resort and can be justified only when ‘other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention’.⁵⁶

G. Prohibition of Cruel, Inhuman or Degrading Treatment or Punishment

The NRC process can amount to cruel, inhuman or degrading treatment or punishment in one of two ways. Firstly, the very act of severing the bond between citizen and state through arbitrarily depriving the nationality of individuals can have a deep and lasting psychological impact. This is further exacerbated when families and communities are split as a result. Even before the NRC was finalised, the discriminatory and arbitrary manner in which this procedure is being carried out caused despair among many and has, in the second half of 2018, resulted in 40 suicides of people excluded from the list, or their relatives.⁵⁷ The high incidence of suicide as a direct result of the process is an indication of the level of cruelty imposed.

Secondly, the indefinite detention of those who are arbitrarily deprived of their nationality and subject to removal proceedings can also amount to cruel, inhuman or degrading treatment or punishment. Until their expulsion, citizens declared as foreigners by the Foreigners Tribunal will be put in detention camps and face deportation, while being more and more isolated. A recent enquiry by a special monitor of India's National Human Rights Commission (NHRC) into these detention centres provides a chilling account.⁵⁰

The indefinite nature of such detention, as well as the conditions of detention, can both contribute to cruel, inhuman or degrading treatment. As stated by the UN Special Rapporteur on the Human Rights of Migrants:

Substandard detention conditions may potentially amount to inhuman or degrading treatment, and may increase the risk of further violations of economic, social and cultural rights, including the right to health, food, drinking water and sanitation.⁵⁸

Article 7 ICCPR states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. Repeated attempts to expel a person to a country where his/her well-being is not guaranteed and where he/she could be subject to cruel, inhuman or degrading treatment or punishment or to a country that is refusing to admit the individual in question could amount to inhuman or degrading treatment.

⁵⁶ See UNHCR, Handbook on Protection of Stateless Persons (30 June 2014), para 113.

⁵⁷ See Jyoti Punwani, ‘This is not atonement for partition’, The New Indian Express (9 January 2019) <<http://www.newindianexpress.com/opinions/2019/ian/09/this-is-not-atonement--for-partition-1922433.html>>. See also NHRC, Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January, 2018 (Annex No. 2).

⁵⁸ See UNHRC, Report of the Special Rapporteur on the Human Rights of Migrants, Francois Crepeau, (2 April 2012), A/HRC/20/24/2012, para 26.

H. The Best Interests of the Child

Another concern is the impact this process will have on children. Article 3 CRC, which obligates states to always consider the best interests of the child, is a foundational principle which guides the interpretation and implementation of the CRC, and is also relevant to the interpretation of other treaties relating to children.⁵⁹ The best interest of the child in the context of migration and statelessness, pursuant to articles 3 and 7 CRC, entails the duty to take the interests of the child as a primary consideration and protect children from statelessness by realizing their right to acquire a nationality at birth, or as early as possible after birth.⁶⁰

In the quote below, the UN Secretary General's recent report on the arbitrary deprivation of nationality of children elaborates on the reasons why it is crucial that the child's right to a nationality is always respected. The failure to do so often results in a snowballing of human rights violations, with the denial of the right to a nationality leading to various other abuses:

The arbitrary deprivation of nationality of children is in itself a human rights violation, with statelessness its possible and most extreme consequence. International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings. In practice, however, those who enjoy the right to a nationality have greater access to the enjoyment of various other human rights.⁶¹

In this respect, the African Committee of Experts on the Rights and Welfare of the Child, has further stated that:

While it is always no fault of their own, stateless children often inherit an uncertain future [...] difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realization of their socio-economic rights such as access to health care, and access to education.⁶²

⁵⁹ See CRC, General comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3(1)), (29 May 2013), CRC/C/GC/14; UNHRC, Report of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration (5 July 2010), A/HRC/15/29.

⁶⁰ See UNHCR, Guidelines on Statelessness No 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness (21 December 2012), HCR/GS/12/04.

⁶¹ See UNHRC, Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless (16 December 2015), A/HRC/31/29, para 27.

⁶² See African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, (7-16 April 2014) ACERWC/GC/02.

Therefore, deprivation of nationality, the separation of families, detention and expulsion can never be in the best interests of the child.

5. Consequences and Lessons Learnt From Other Contexts

There is an inextricable link between inequality, discrimination and statelessness. Inequality and discrimination both cause statelessness and impact the stateless.⁶³ Consequently, the violation of the principle of prohibition of statelessness and the deprivation of nationality can have grave consequences. Chief Minister Sarbananda Sonowal, the de facto head of the state of Assam, said that those excluded from the list will be declared foreigners and barred from all constitutional rights, until their expulsion.⁶⁴ While non-citizens have rights, the Assamese not included in the NRC are seen as foreigners, and will likely be denied access to justice and also denied access to basic rights such as the right to education, housing and work, among others.

Mass deprivation of nationality is not unprecedented, and previous situations have shown how damaging and entrenched the consequences could be. In particular, the NRC shares certain aspects with the 1962 Census in the Syrian Arab Republic, which was held solely in the al-Hasakah province, inhabited predominantly by Kurds.⁶⁵ In that census, the authorities gave only one day for people to prove their nationality. In practice, those who were not home that day lost their citizenship. While the reason given by authorities of the necessity was illegal immigration, it almost solely affected Syrian Kurds and formed a part of wider Arabisation of the country. Almost 60 years later, many of the descendants of those excluded in 1962 remain stateless today, with deep human rights consequences to individuals and socio-political consequences to society at large.⁶⁶

⁶³See Amal de Chickera & Joanna Whiteman, 'Addressing statelessness through the rights to equality and non-discrimination', in *Solving Statelessness* [Laura Van Waas & Melanie Khanna eds.] (Oisterwijk: Wolf Legal Publishing, 2016).

⁶⁴See Prabin Kalita, 'Assam CM: No fundamental rights for those failing NRC test' *Times of India* (3 January 2018) <<https://timesofindia.indiatimes.com/india/assam-cm-no-fundamental-rights-for-those-failing-nrc-test/articleshow/62344296.cms>>.

⁶⁵ See Zahra Albarazi, *The Stateless Syrians*, Tilburg Law School Research Paper No. 011/2013 (March 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269700>.

⁶⁶ More recently, but for similar reasons, the Dominican Republic retroactively stripped Dominicans of Haitian descent of their nationality and deported 58,271 people between July 2015 and September 2017 as a consequence, see *Dominicanos por Derechos*, ISI and CEJIL, Jointed Submission to the HRC at the 32nd Session of the UPR: Dominican Republic, 2018 <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6225&file=EnglishTranslation>>; Vasudha Chhotray, 'Nullification of citizenship: negotiating authority without identity documents in coastal Odisha, India' in 26(2) *Contemporary South Asia* (2018), 175.

6. Conclusions and Recommendations

On the basis of the above, the Institute on Statelessness and Inclusion would like to make the following recommendations.

- A. **Retract the NRC process:** Irrespective of the logic that underpinned the decision to implement the NRC, significant hurdles remain to be overcome if such a process, even if considered justifiable, is likely to be completed in a manner that does not place significant burden on some of the poorest and most excluded populations within the country. Faced with such consequences the only course of action would be to suspend and retract the process until a better solution can be found.
- B. **Right to nationality:** India's obligation to protect the right to a nationality, to prohibit the arbitrary deprivation of nationality and to avoid statelessness extends to all persons in Assam. The current NRC process undermines these rights and is therefore not tenable. In particular, there is no legitimate purpose evident in the current NRC process, neither has the necessity or proportionality of the process been established.
- C. **Non-discrimination:** Regardless of what the authorities claim to be the reason for the current census, Muslim and other minority groups are disproportionately affected by the NRC process. Discriminatory execution of any effort to identify citizens is by definition, arbitrary. Any process or system should be carried out in a non-discriminatory manner and ensure that already marginalised groups are not further excluded.
- D. **Procedural safeguards:** In line with India's international law obligations, it is required to ensure that procedural safeguards are upheld. This includes fair and equal trials before independent and impartial courts, as well as the opportunity to appeal as equal citizens before the law. At least, citizens currently excluded from the NRC should be seen and treated as citizens, until authorities can prove beyond reasonable doubt that they are indeed non-Indian.
- E. **Ensure that there will be no new cases of statelessness:** Most Assamese citizens not included in the first draft of the NRC have no second nationality, and never have had one. Neither Bangladesh, nor any other state, has recognised these persons as its citizens, which would make them stateless if deprived of their Indian citizenship. It is India's responsibility to ensure that these persons are not made stateless.
- F. **Enjoyment of other rights:** Regardless of the implementation and outcome of the NRC process, India is obligated to protect the other rights of excluded persons. These include their freedom of movement and the right to enter and live in their own country, the prohibition of torture, cruel, inhuman or degrading treatment or punishment – particularly in the context of detention – and the liberty and security of the person. Furthermore, India has a fundamental obligation to at all times, ensure it acts in the best interests of the child.

ANNEX: INTERNATIONAL TREATY NORMS RELATING TO DEPRIVATION OF NATIONALITY

Universal Declaration of Human Rights

Article 15(2): “No one shall be arbitrarily deprived of his nationality [...]”.

Convention in the Rights of Persons with Disabilities

Article 18(1)(a): “States Parties shall recognise the rights of persons with disabilities to [...] a nationality, on an equal basis with others, including by ensuring that persons with disabilities: (a) [...] are not deprived of their nationality arbitrarily or on the basis of disability”.

American Convention on Human Rights

Article 20(3): “No one shall be arbitrarily deprived of his nationality [...]”.

Arab Charter on Human Rights

Article 29(1): “[...] No one shall be arbitrarily or unlawfully deprived of his nationality”.

ASEAN Human Rights Declaration

Article 18: “Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality [...]”.

Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms

Article 24(2): “No one shall be arbitrarily deprived of his citizenship [...]”.

1961 Convention on the Reduction of Statelessness

Articles 8: “1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless; (...)

3. Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body”.

Article 9: “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds”.

Convention on the Rights of the Child

Article 8: “1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality (...) without unlawful interference;

2. Where a state is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity”

International Convention for the Protection of All Persons from Enforced Disappearances

Article 25(4): “Given the need to protect the best interests of [children who are or whose parents are subjected to enforced disappearance] and their right to preserve, or to have re-established, their identity, including their nationality (...)”.

The Convention on the Elimination of All Forms of Discrimination Against Women

Article 9(1):“States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither the marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless (...)”

European Convention on Nationality

Article 4(c): “no one shall be arbitrarily deprived of his or her nationality”

Article 7: “1. A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases:

- a. voluntary acquisition of another nationality;
- b. acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c. voluntary service in a foreign military force;
- d. conduct seriously prejudicial to the vital interests of the State Party;

- e. lack of a genuine link between the State Party and a national habitually residing abroad;
- f. where it is established during the minority of a child that the preconditions laid down by internal law which led to the ex lege acquisition of the nationality of the State Party are no longer fulfilled;
- g. adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

2. A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article”.

Article 10: “Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time”.

Article 11: “Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing”.

Article 12: “Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law”.

Article 13: “1. Each State Party shall ensure that the fees for the acquisition, retention, loss, recovery or certification of its nationality be reasonable.

2. Each State Party shall ensure that the fees for an administrative or judicial review be not an obstacle for applicants”.

THE IMPORTANCE OF THE RIGHT TO NATIONALITY IN THE PROTECTION OF MINORITIES

Joshua Castellino

This brief statement is offered as an *amicus curiae* to the Indian Peoples' Tribunal to be held in Guwahati, Assam, in February 2019. It supplements a recorded statement made available to the organisers of the hearing. This brief is divided into six sections, with the final section outlining five recommendations on the next steps.



1. Minorities Matter in International Law

The importance of the protection of minorities in international law has been noted for centuries, since the earliest treaties that sought to shield the Maronites, a Christian minority who sought to travel through Ottoman lands on their great migration to Beirut.⁶⁷ Since that era, the international community has been emboldened to celebrate many universal and legally binding standards to ensure that the few, distinguished from their compatriots on the basis of their ethnic or linguistic background or religious beliefs, are protected from the tyranny of the majority.⁶⁸ While human rights standards are designed to protect the inherent dignity and worth of every individual, statesmen and stateswomen, global judiciaries, advocates and policy makers have long been aware of the difficulties of access to law that are common to those individuals and communities who live far from sites of power.⁶⁹

In contemporary international law the importance of minority protection is celebrated in the acceptance of the prohibition of the crime of genocide as a peremptory norm of international law⁷⁰ and one of *jus cogens*.⁷¹ This highlighted, seven decades ago, the need to be vigilant against any processes that stigmatise group identity and make them vulnerable to the crime of

⁶⁷See Promise of St. Louis of France, 1250. For general background information on St. Louis, see Jacques Levron, 'Louis IX, King of France' in Encyclopedia Britannica <<https://www.britannica.com/biography/Louis-IX>> [all web references accurate as of April 5, 2019]. For references to other historical treaties protecting minorities, see Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1992), Chapter 1.

⁶⁸For references to the development of the minority rights regime over time, see Joshua Castellino, 'The Protection of Minorities and Indigenous Peoples in International Law: A Comparative Temporal Analysis' in 17(3) *International Journal on Minority & Group Rights* (2010) 393-422.

⁶⁹ For a specific global standard that articulates this, see Office of the High Commissioner for National Minorities, OSCE, *The Graz Recommendations on Access to Justice and National Minorities* (November 2017) <<https://www.osce.org/hcnm/graz-recommendations>>.

⁷⁰ See William A Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000).

⁷¹ See Thomas Kleinline, 'Jus Cogens Re-examined: Value Formalism in International Law' in 28(1) *European Journal of International Law* (2017) 295-315.

crimes⁷² that was a key factor in the articulation of universal human rights standards in the aftermath of World War Two.⁷³ Seeking accountability for those who perpetrate such crimes has become a key strand within the normative frameworks and institutions that are part of international criminal law. The protection and promotion of minority rights have also become a key legal obligation in human rights treaties, specifically in article 27 of the International Covenant on Civil and Political Rights.⁷⁴

While there is debate about the definition of “who” may be a minority,⁷⁵ the thrust of every definition would include those who run the risk of becoming stateless in Assam, who are: (a) long term residents in India and (b) assumed to have Indian citizenship as an inherent inalienable right. The lack of registration documents in populations living beyond traditional access to such documents does not prove them to be without Indian nationality. Rather, the onus falls upon the state to explain why long-term residence without registration is inadequate in determining access to Indian nationality. This aspect gains further salience in light of the clear obligation under the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).⁷⁶ While the former provides a definition of a “stateless person” and is considered the foundation of the international legal framework to address statelessness, the latter is the leading global instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent incidence of statelessness.

India has not acceded to either of the treaties and lags behind the current global standard, which recognises the sheer importance of “visibility” of every individual as a citizen of somewhere,⁷⁷ in a bid to achieve the protection of their inherent dignity and worth.

A final point to emphasize in terms of minority rights and protection against statelessness is that these are minimal protection thresholds, which the global community, with India

⁷² See Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951), 78 UNTS 277.

⁷³ For a detailed account of the vision of the drafters of the Universal Declaration of Human Rights, see William A Schabas, *The Universal Declaration of Human Rights* [3 vols.] (Cambridge: Cambridge University Press, 2013).

⁷⁴ See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (Article 27): ‘In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’. See also Human Rights Committee (HRC), General Comment No. 23: Article 27 (Rights of Minorities), (8 April 1994), CCPR/C/21/Rev.1/Add.5.

⁷⁵ See Francesco Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities* (1979), E/CN.4/Sub.2/384/Rev.1.

⁷⁶ See Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 and Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117.

⁷⁷ See Stephanie DeGooyer, Alastair Hunt, Samuel Moyn, Astra Taylor, Lida Maxwell, *The Right to Have Rights* (London-New York: Verso Publishing, 2018). For a review, see Masha Gessen, ‘The Right to Have Rights: The Plight of Statelessness’ *The New Yorker* (3 May 2018) <<https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless>>.

championing such causes as a leading post-colonial non-aligned actor, decided were civilizational markers, available to all irrespective of their identity. To deny such basic rights calls into question the salience and worth of any provisions of equality and non-discrimination that may reside in the Constitution of any state.

2. The Vision of the Indian State

Mindful of the extent to which identity politics could disrupt the emerging state, the visionaries who were the founding mothers and fathers of the Indian state were determined to emphasize the notion of secularity and linguistic diversity.⁷⁸ Recognising that India would consist of different communities,⁷⁹ these visionaries understood that the Union was only likely to hold together if there was a long-standing irrevocable promise made to all who were resident within the emerging state, that their access to rights would not depend on their religion or membership of an ethnic or linguistic community.⁸⁰ The notion of India as a secular democracy that values the principle of inclusion and views its diversity as its greatest strength is admired in every corner of the globe, and forms a significant part of the aura in which the country is held, especially among post-colonial states that view the Indian example as a model through which to understand how their myriads of communities, usually a consequence of random boundary-line drawing by former colonial rulers, could be constructed to forge a strong unified national identity that guarantees state stability.

Developments in Indian jurisprudence emphasize the notion of a secular, inclusive democratic state as a “basic feature” of Indian law, beyond the reach of any incumbent Government.⁸¹ Taking measures that may unravel this structure reneges on promises made to myriads of ethnic, religious and linguistic communities, who decided to join the Union⁸² in the belief that their commonalities with other communities was greater than their differences, united in the common belief that a strong and plural national identity would be the best option for their own development as autochthonous communities.

⁷⁸See Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (New Delhi: Oxford University Press, 1999) 143-156.

⁷⁹See Judge Khare’s statement in *T. M. Pai & Ors v the State of Karnataka & Ors*, WP (Civil) No 317/1993 (31 October 2002).

⁸⁰ See States Reorganisation Commission (SRC), *Report of the States Reorganization Commission* (New Delhi: Government of India Publications, 1955).

⁸¹See *SR Bommai v Union of India* AIR 1994 SC 1918, para 153. The discussion on the “basic features” of the Constitution is a rich one in Indian constitutional history owing to the relative ease of amending the Constitution and the question of the extent to which the Government of the day can amend the “basic features” thereof. The case law where this has been discussed at length includes: *I.C. Golaknath & Ors v State of Punjab & Anr* (1967) 2 SCR 762; *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* AIR 1973 SC 1461; *Minerva Mills Ltd. & Ors v Union of India & Ors* AIR 1980 SC 1789; *Waman Rao & Ors v Union of India & Ors* AIR 1981 SC 271; *Srinivasa etc. v State of Karnataka & Ors* AIR 1987 SC 1518.

⁸² See Shefali Jha, ‘Rights versus Representation: Defending Minority Interests in the Constituent Assembly’ in *Politics and Ethics of the Indian Constitution* [Rajeev Bhargava ed.] (New Delhi: Oxford University Press, 2009) 339-353.

3. Minorities are Protected in Law

Reference has already been made above to the protection of minorities in international law. These instruments form the contemporary standard of protection acceded to by states who validate the role of international law as a 'gentle civilizer of nations'.⁸³ While the articulation of global standards is a celebration of wide consensus nourished by individuals, civil society, international organisations and states, irrespective of some who may not have formally validated these standards, minority protections is also particularly well ensconced in Indian law. The "minority rights package" of the Indian Constitution includes passive and active elements of protection. The more passive elements are set forth in the strong statements contained in article 14 promising equality and non-discrimination, which have been substantiated time and again by the Indian judiciary and forms the lynchpin of the rule of law in India, the perspective that no one is above the law, and the guarantee that everyone within the jurisdiction has the right to equal treatment.⁸⁴

However, Indian law goes well beyond this standard. In articles 29 and 30 of the Constitution, Indian law takes a positive stride towards minority protection that has been recognised as being world-leading in its application and impact. By facilitating minority communities' access to education, the drafters offered a cast-iron guarantee to minority communities, which at the time were being actively frightened by stories of their submersion and assimilated in the majority communities' vision of India. Over the years the strength of articles 29 and 30, which were subject to some legal challenge over the decades,⁸⁵ lies in being able to ensure in a meaningful way that the basic feature of Indian law, as a guarantor of the rights of all of its communities, have continued to be upheld.

But Indian law goes even further in mandating a system of affirmative actions (reservations) that are mindful of the lack of access to the fruits of development for those communities who live far beyond the sites of power;⁸⁶ and also in articulating special regimes that are applicable in territories that are home to communities that are significantly different from the

⁸³ See Martii Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2009).

⁸⁴ For an account of the protection of the rights of minorities in Indian law, see Joshua Castellino & Elvira Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis* (Oxford: Oxford University Press, 2006) Chapter 2.

⁸⁵ See *T.M.A Pai & Ors v State of Karnataka & Ors* (no 12). See also *In Re: Kerala Education Bill* (1959) 1 SCR 995; *Rev. Sidhajbhai Sabhai & Ors v State of Bombay* (1963) 3 SCR 837; *S. Azeez Basha & Arn v Union of India* (1968) 1 SCR 833; *State of Kerala etc. v Very Rev. Mother Provincial, etc.* (1971) 1 SCR 734; *Regina v Aloysius Higher Elementary School* (1971) Supp. SCR 6; *The Gandhi Faiz-e-am College, Shahjahanpur v University of Agra* (1975) 2 SCC 283; *Lily Kurian v Sr. Lewina & Ors* (1979) 1 SCR 820; *All Saints High School, Hyderabad etc. v Government of Andhra-Pradesh & Ors* (1980) 2 SCR 924; *The Managing Board of the Mills Talimi Mission, Bihar Ranchi v The State of Bihar* (1985) 1 SCR 410; *A.P. Christians Medical Educational Society etc. v Government of Andhra Pradesh & Anr* (1986) 2 SCR 749; *Frank Anthony Public School Employees Association v Union of India & Ors* (1986) 1987 SCR (1) 238; *All Bihar Christian Schools Association & Anr v State of Bihar & Ors* (1988) 2 SCR 49; *St. Stephen's College v The University of Delhi*, AIR 1992 SC 1630 (1991) Supp. SCR 3; *Unni Krishnan, J.P. & Ors v State of Andhra Pradesh & Ors* (1993) 1 SCR 594; *The Ahmedabad St. Xaviers College Society & Anr v State of Gujarat & Anr* (1975) 1 SCR 173.

⁸⁶ See Castellino & Dominguez (2006) (no 90) 92-94.

majority population of the state. The decision to re-draw and re-constitute Indian states along the lines of linguistic affiliations is a clear indicator of the vision of the drafters to promote and celebrate diversity, rather than to assimilate and subsume historic identities through a bludgeon of homogenisation.

In short, Indian law has proved to be a bulwark of inclusivity in the way in which it was imagined and designed by the drafters, has been upheld in every decade by the Indian judiciaries at state and national levels, and compellingly argued before the courts by advocates and members of civil society. In doing so, generations of policy makers, judges, advocates and scholars have substantiated a vision articulated at a time of great crisis by visionary drafters, and their success has been a key determinant in the glue that binds the different communities together in a shared vision of progress, while being mindful that ensuring its salience leaves continuous scope for further concerted work.

4. South Asian Boundaries Drawn by “Foreigners” Divide Local Populations

Boundaries in international law have usually emerged as jurisdictions have sought to flex and maximise their own power to ensure wide and sustainable territorial control. Usually forged over centuries, international frontiers mark the end of one exclusive jurisdiction and the start of another.⁸⁷ Yet this principle is violated in nearly every (non-island) post-colonial state. Lines drawn on maps, usually by foreign and colonial powers in order to mark the extent to which their writ spreads in contrast to that of a rival colonial power, are the norm for post-colonial states. In the words of a famous British jurist, in 1890:

We [the white man] have been engaged in drawing lines upon maps where no white man’s foot has ever trod; we have been giving away mountains and rivers and lakes to each other, only hindered by the small impediment that we never knew exactly where the mountains and rivers and lakes were.⁸⁸

These lines became sacrosanct in international law at a time of transition, when a decision was taken, validated in fora as different as the Organisation of African Unity (1963)⁸⁹ and the Badinter Commission in Yugoslavia (1992),⁹⁰ that international frontiers were inviolable, and that they could only be changed through consent.⁹¹

⁸⁷ For a general reading of boundaries in international law and their origin, see Joshua Castellino & Steve Allen, *Title to Territory in International Law: An Intertemporal Analysis* (Dartmouth: Ashgate, 2003).

⁸⁸ Lord Salisbury 1890, quoted in *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Separate Opinion of Judge Ajibola) 1994 <<https://www.icj-cij.org/files/case-related/83/083-19940203-JUD-01-03-EN.pdf>> para 9.

⁸⁹ This is referred to as the principle of respecting existing borders on achievement of national independence, as enshrined in Organization of African Unity (OAU), Resolution AHG/Res.16(I) on Border Disputes between African States (adopted in Cairo in July 1964).

⁹⁰ See, generally, Steve Terrett, *The Dissolution of Yugoslavia and the Badinter Arbitration Commission: A Contextual Study of Peace-Making Efforts in Post-Cold-War World* (London: Routledge Revivals, 2017).

⁹¹ See Joshua Castellino, ‘Territorial Integrity and the “Right” to Self-Determination: An Examination of the Conceptual Tools’ in 33(2) *Brooklyn Journal of International Law* (2008) 503.

This is consistent with India's international position when articulated as a global principle at the UN, and when evidenced in concerns over Northeastern and Kashmiri boundaries.⁹²

This meant that a 'photograph of the territorial situation' of a colony was taken,⁹³ usually at a 'critical date'⁹⁴ considered to be the departure of the colonial ruler, and considered as the basis for the permanent frontiers of any given post-colonial state, irrespective of whether it exercised full sovereignty and effective territorial control over the land ostensibly within its jurisdiction.⁹⁵

In India, the boundaries were drawn by colonial powers to suit their interest, and in the region concerned this had already resulted in the partition of Bengal, including the division of Assam to create the colonial entity of East Bengal.⁹⁶ The salience of this is clear in the current proceedings. Lines drawn on maps by persons with vested regional interests determined who was "local" and who was "foreign".⁹⁷ These lines randomly divided populations and communities. Many of these communities, who were far from sites of power and had little or no opportunity to consent, or be heard, in the line-drawing process, continued to live their lives, traversing lines they did not know had been created.⁹⁸ In sum, the line-drawing process treated them as "objects" rather than "subjects" of law, even though in some cases it had minimal impact on their existence.⁹⁹

In terms of land law and the international regime of rights, the continued presence of these communities in the territory concerned gives rise to acquired rights through adverse possession, with the onus falling upon others to demonstrate why their continued presence on the land had to be terminated.¹⁰⁰ Moreover, even in case of dispossession, international standards make it clear that they would be eligible for restitution or reparation.¹⁰¹ Indeed

⁹² See e.g. Mirza Zulfiqur Rahman, 'Territory, Roads and Trans-boundary Rivers: An Analysis of Indian Infrastructure Building along the Sino-Indian Border in Arunachal Pradesh' 5(1) *Eurasia Border Review* (2014) 59.

⁹³ The notion of the 'photograph of the territorial situation' is used in *Frontier Dispute Case (Burkina Faso v. Republic of Mali)*, (Judgment) 1986 < <https://www.icj-cij.org/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>>.

⁹⁴ See Frederick L E Goldie, 'The Critical Date' in 12 *International & Comparative Law Quarterly* (1963) 1251.

⁹⁵ See Siba Grovogui, *Sovereigns, Quasi-Sovereigns and Africans: Race and Self-Determination in International Law* (Minneapolis: University of Minnesota Press, 1996).

⁹⁶ See Radhika Singha, *A Despotism of Law: Crime & Justice in Early Colonial India* (Delhi: Oxford University Press, 1998) 21-27 (Chapter I: 'From Faujdari to Faujdari Adalat: The Transition in Bengal').

⁹⁷ See Gyanesh Kudaisya & Tan Tai Yong, *The Aftermath of Partition* (New York: Routledge, 2000) 143.

⁹⁸ See Prasenjit Biswas & Chandan Suklabaidya, *Ethnic Life-Worlds in North-East India* (Delhi: Sage Studies, 2008) 231-255.

⁹⁹ See Russell L Barsh, 'Indigenous Peoples in the 1990s: From Object to Subject of International Law?' 7 *Harvard Human Rights Journal* (1994) 33-86.

¹⁰⁰ See Joshua Castellino & Steve Allen, 'The Doctrine of *Uti Possidetis*: Crystallization of Modern Post-Colonial Identity' 43 *German Yearbook of International Law* (2000) 208.

¹⁰¹ For such treatment in very different jurisdictions, see Frederic L Kirgis, 'Restitution as a remedy in US Courts for Violations of International Law' 95(2) *American Journal of International Law* (2001) 341-348; Mariana Karadjova, 'Property Restitution in Eastern Europe: Domestic and International Human Rights Law

there are clear international standards against mass expulsion and mass dispossession: when these are operated on the basis of flawed processes for determining nationality, and actually causing statelessness, they amount to serious violations of international human rights law.¹⁰²

A further point needs to be emphasized which potentially has impact for all communities across India. Internal boundaries within the state of India were drawn to harness linguistic protection and facilitate the flourishing of local languages developed over centuries.¹⁰³ This formed a protection, as it would in the case of indigenous communities in Assam, that they would be able to continue to pursue their cultural and intellectual development without being dominated or assimilated by other communities or linguistic groups.¹⁰⁴ However, this positive element, a sign of the validation of minority rights, was never meant to guarantee exclusivity to any specific community, nor to result in the expulsion of any other. Such a stance would have major and potentially devastating ramifications for linguistic minorities in every Indian state.

5. Consequences of Implementing the NRC to the 4 Million & over 1 Billion

The potential harm from the action to implement the National Register of Citizens falls upon a potential forty lakh people in the region who run the risk of becoming stateless. Their exclusion without a due and fair process of law violates basic Constitutional guarantees.¹⁰⁵ Undertaking such actions without catering for potential consequences is deeply harmful to regional peace and stability. Furthermore, the absence of any bilateral or regional discussion about the fate of those found to be “foreigners” as a result of this flawed process is tantamount to a bold statement that human lives do not matter. Such a statement would mark India out as an international pariah at a time when human insecurity is a cause for major disruptions to peace and security the world over. It could further destabilise the region by placing a swathe of population, bigger than that of many countries, beyond the scope of human rights, since the right to a nationality is a gateway to gaining and exercising other rights. Indian lawmakers need to be aware of the jurisprudence concerning community land rights, including the *Ogiek* case, where the African Court of Human and Peoples’ Rights not only validated the rights of a community that had faced violations which included being barred from their territory, but also ordered compensation and reparations.¹⁰⁶ However, differently from the *Ogiek* case, where the exclusions had taken place under a regime that

Responses’ 3 *Review of Central & Eastern European Law* (2004) 325-364; Patrick Macklem, ‘Restitution and Memory in International Human Rights Law’ 16(1) *European Journal of International Law* (2005) 1-24.

¹⁰² See Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice* (The Hague-Boston: Martinus Nijhoff, 1995).

¹⁰³ See Vappala Pangunni Menon, *The Integration of the Indian States* (London: Longmans Green and Co., 1956); Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (New Delhi: Oxford University Press, 2003) 143.

¹⁰⁴ See SRC, Report (1955) (no 86).

¹⁰⁵ See, generally, Granville Austin, ‘Making and Preserving a Nation’ in *Working a Democratic Constitution* (New Delhi: Oxford University Press, 2003) 143-170.

¹⁰⁶ See ACtHPR, *African Commission on Human and Peoples’ Rights v Republic of Kenya* (26 May 2017) Application No 6/2012.

commenced with colonial rule, in Assam it is the post-colonial state that has decided to make foreign a section of its own people.

While focussing on the impact of these actions on forty lakh people of Assam, it is worth bearing in mind that giving an incumbent Government a chance to determine who is in and who is out among long-standing populations constitutes a real risk for every other community in India. The facts that in twenty-first Century India ideology can determine nationality goes against the grain of the vision of the founding parents of the Indian state and reneges promises made in bringing together a country as diverse as India. Doing so based on lines drawn on maps by foreign powers is dangerous to regional peace and stability and could impact all the Northeastern states. It could, indeed, prove disruptive if other state Governments decided to enact laws that treated members that were not of the majority community in the state as having less rights. As reflected in the debates at the Constituent Assembly, such a policy could potentially harm the rights of the Marathi speaking populations in Bengal and the Tamil speaking populations in Maharashtra, in addition to all the other communities who have moved freely around India without fear that they could, at some point in time, be considered “foreign” by an incumbent state Government. Contemplating such a possibility means countenancing a risk that could be deeply destabilizing and unleash newer forces of communalism on a scale yet to be imagined, in a country that should be well aware of these dangers from recent history.

6. Conclusions and Recommendations

In light of the above, five recommendations on the next steps can be formulated.

- A. Completing a process likely to have such dire consequences for some, potentially disenfranchises people in tens of lakhs and runs the risk of unleashing regional communal forces in the country is fraught with great danger. This brief statement concludes with five concrete actions:
- B. Retract the NRC process: Irrespective of the logic that underpinned the decision to implement the NRC, significant hurdles remain to be overcome for such a process to be completed in a manner that does not place significant burden on some of the poorest populations within the region. To avoid such a risk, the only sensible course of action would be to suspend and retract the process until a better solution can be found.
- C. Engage all local communities in dialogue: The underpinning tensions that are the cause of the decision to implement the NRC are real and need to be addressed. This involves genuine, and some legitimate fears of submergence of Assamese indigenous populations by those from outside the region. These fears need to be addressed through a mediated dialogue designed to build long-term confidence among different communities. The issue of the potential implementation of the NRC should also be a legitimate issue on the agenda of this discussion. For this to be meaningful an active list of stakeholders needs to be created with the principle of inclusivity valued highest, and while it is legitimate to place restrictions on the extent to which those who have not been resident in the territory can participate, these have to be backed by a process that provides all with a fair chance of demonstrating their residence.

- D. Engage the indigenous population of Assam in a specific dialogue: The concerns that were drivers to the longstanding conflict in Assam need to be addressed in a separate and ongoing dialogue with indigenous communities. Their concerns about the extent to which indigenous peoples in Assam and elsewhere in the Northeast are becoming submerged are legitimate and they must be given the opportunity to promote their culture without trends towards homogenisation. Creating fair measures against encroachment are important confidence-building steps to indigenous communities in keeping with the promises that have been made to them in the envisioning of the Union of India.
- E. Naturalize long term residents guaranteeing rights and access: While it is justifiable for a sovereign state to enact measures to protect its external boundaries from encroachment, this can only have salience once measures have been taken to delimit boundaries and secure the rights of all residents within the delimited territory. Long-term residents accrue rights that must be recognised. Therefore, the only way to guarantee stability is to consider an amnesty for all those who are currently residing in the territory, with the understanding that this is a one-off process designed to safeguard local populations against future encroachments, while respecting the precautionary principle of doing no harm to populations who may not be able to meet evidence thresholds beyond their reach. It is equally important to design processes, institutions and remedial mechanisms that rely on the types of documentation likely to be held by those who are long-term residents in the state.
- F. Build long term regional peace and security: As a legitimate permanent aspirant to the UN Security Council, it is imperative for the Indian Government to act in a manner that builds long-term peace and security, rather than adopting short/medium-term measures that compromise them. This would involve working with regional partners to guarantee the sanctity of boundaries as a means of protection against encroachment, while paying attention to the unfolding humanitarian disaster caused by statelessness in the region. As part of its commitment to international peace and security, the Indian Government should also take steps to ratify the strongest human rights standards on offer to prevent statelessness.

PART THREE
TESTIMONIES

DISTRICT OF BISWANATH

Name: Ibrahim Ali - Occupation: Daily Wager

A notice from the Foreigners' Tribunal was served on my younger brother, Ibrahim Ali, stating that he was suspected to be a foreigner. He attended the proceedings and eventually was held to be a foreigner on the ground that, in some documents, my father's name was recorded as Alimad, while in some other documents his name was Alimuddin. There is also some discrepancy with regard to age.

Only because of these minor discrepancies, which can be found everywhere in India, my brother has been declared a foreigner.



Ibrahim's father's and elder brother's names are present in the NRC of 1951. One brother's name is also present in the new NRC. Nonetheless, Ibrahim was put in the detention centre at Tezpur and has now been there for four years. We visit him once or twice a month. We have appealed for him up to the Supreme Court, where the case is now pending.

DISTRICT OF DARRANG

Name: Abdul Jubbar; Occupation: Daily Wager

I am Abdul Jubbar. I am a resident of the village of Dolgaon Khuti, in the district of Darrang, Assam. My father's name is Abdul Rahim. I am a citizen of India by birth. My name appeared in the voters' list and I have been casting my vote up to date.

I have applied for enrolment in the NRC by submitting all the documents required, including the voters' list of 1966 with my grandfather's name and other relevant documents to establish the linkage with my father and grandfather.



Initially, I was included in the NRC draft, along with the other members of my family. Subsequently, though, the Border Police referred my case to the Foreigners' Tribunal of the district of Darrang. The Police had never visited my house, nor did they call me to prove my citizenship through documents. Yet, in September 2018, I have received a notice from the Foreigners' Tribunal.

My case has been registered with No. 2355/16 and is now pending before the Hon'ble Foreigners' Tribunal No. 5 of Darrang. I was shocked when I knew about the case against me and that the burden of proof is upon me and that I will not be included in the NRC if I fail to prove my Indian citizenship. At the same time, I am relieved that the names of my children and my other family members are included in NRC.

Name: Abul Kashem; Occupation: Teacher

I am Abul Kashem and I am a school teacher. I am a permanent resident of the village of Kasumari, Sonari, Dalgaon in the district of Darrang, Assam. I am an Indian citizen by birth. My father's name is Ajimuddin. He was born in the village of Kasumari, and his name appears in the voters' list of 1966 for the district of Darrang. I am myself enrolled in the voters' list for the year 1997 and have never been marked as a "D voter".



I used my father's legacy data to apply to the NRC. I submitted valid and admissible documents to prove the linkage with my father, such as the copies of the voters' list, land documents, and the Permanent Residential Certificate issued by the Deputy Commissioner of Darrang. Surprisingly, while the name of my father and of my brothers have been included in the draft NRC, my name is not on the list despite using the same documents.

When I approached the NRC office, I was informed that a case was pending against me before the Foreigners' Tribunal to prove my citizenship. To date, however, no notice has been served upon me.

I do not understand why my name has not been included in the NRC, given that I used the very same documents of my father and brothers, who have been included. Yet, I am not the only one in my village who has been harassed in the name of NRC.

Name: Ajgar Ali; Occupation: Daily Wager

I am Ajgar Ali. Due to land erosion, I moved from the district of Goalpara to the district of Darrang, where I currently reside. My father's name is Late Makram Ali of the village of Alikash in the district of Darrang. I am a citizen of India by birth. My name is included in the voters' lists of the districts of Goalpara and Darrang. Still, two proceedings have been initiated against me before the Foreigners' Tribunal of the district of Darrang for the same cause of action; i.e. to prove my Indian citizenship.



First, the Border Police arbitrarily referred my case to the Hon'ble Foreigners' Tribunal of Darrang, without affording me any opportunity to prove my citizenship. The Tribunal then issued a notice against me, stating that I had entered into Assam without valid documents after March 25, 1971. I have appeared before the learned Tribunal and fought my case producing all the relevant documents, such as the Voters' list of 1966, current Voters' list, the certificate from the village headman, current etc.

Based on these documents, on February 9, 2018, the Foreigners' Tribunal of Darrang declared me as an Indian citizen (case No. 585/12).

Disconcertingly, though, on July 12, 2018, a second notice from the same Foreigners' Tribunal of Darrang was served on me, stating that I had to prove yet again my Indian citizenship. The second case is currently pending before the Tribunal.

Name: Baser Ali; Occupation: Cultivator

My name is Baser Ali. I am a cultivator and I own 4 bighas of land in my name in the village of Kheroni Chapori, district of Darrang, Assam, where I reside. My father was a native of the district of Barpeta, but moved to Darrang when I was a kid due to land erosion. His name was included in the voters' list of 1966 for the district of Darrang.

I had applied for to the NRC by submitting all the valid and admissible documents required, including the copy of the voters' list of 1966 bearing my father's name and other relevant documents to establish the linkage with my father. At first, my name and the names of my family members have been included in the draft NRC after several rounds of verifications.



In 2018, however, I received a notice that a proceeding has been drawn against me before the Foreigners' Tribunal on the basis of a reference case by the Darrang Border Police which had marked me as a "D Voter". The case has been registered with No. 420/15 and is currently pending before the Hon'ble Foreigners' Tribunal No.4, Darrang.

Name: Omela Khatun; Occupation: Housewife

My name is Omelia Khatun. I am a resident of the village of Niz-Nagajan, in the district of Darrang, Assam, and I am a Citizen of India by birth.

My name was not included in the draft NRC, but my husband's name is there. My son, who works as a teacher, helped me filing an objection against the non-inclusion of my name in NRC.

At the same time, the Border Police of Darrang made a reference against me, alleging that I was a foreigner without giving me the opportunity to produce my documents.



I have then appeared and contested my case before the Foreigners' Tribunal with all the relevant documents, including the voters' list of 1966, land documents, the certificate from the village's headman, the current voter's list etc. After going through the materials, the Hon'ble Tribunal declared me as an Indian Citizen.

But surprisingly on March 29, 2018, another notice was served upon me, summoning me to appear once again before the Hon'ble Foreigners' Tribunal of the Darrang district and prove once again my Indian citizenship. The case has been registered with No. 1764/12 and is currently pending before the Tribunal.

Name: Saha Ali, Occupation: Teacher

My name is Saha Ali and I am a teacher. I am a resident of the village of Barkhat, in the district of Darrang, Assam. My father, Atar Ali, is also a permanent resident of this locality. My name is enrolled in the draft NRC, but it is marked with a “D” in the voters’ list of 2017-18 for the Panchayat Election of 2018, as I found out when I was not allowed to cast my vote even though I had been appointed as a polling officer.

Having been working as a Government employee I have witnessed many cases of minor and major discrepancies in the voters’ list. One example concerns my daughter. When her name was enrolled in the voters’ list, it was placed against my ID number, her gender was written as male and her age was registered as 59 years-old.

I have all the valid documents to establish myself as an Indian citizen. But to date I have neither received a notice from the Honb’le Foreigners’ Tribunal, nor have I been visited by the Border Police.



Name: Ambia Khatun; Occupation: Housewife

My name is Ambia Khatun and I am a resident in the village of Kamarpara, in the district of Darrang, Assam. My grandfather, Idu Sheikh, was an Indian Citizen and his name was registered in the voters' lists of 1966 and 1971. I got married to Hazrat Ali and started living with my husband at the address which was registered in the voters' list.

Unpredictably, after 2013 my name has been marked with a "D" on the voters' list without proper inquiry. The Election Department did not give me a chance to produce documents in support of my claim to Indian Citizenship and dismissed me.

I have applied for inclusion in the draft NRC, but due to the "D" mark on my name in the voters' list I have been excluded. Therefore, my name and the name of my mother do not appear in the draft NRC. To the contrary, my other family members have been included.

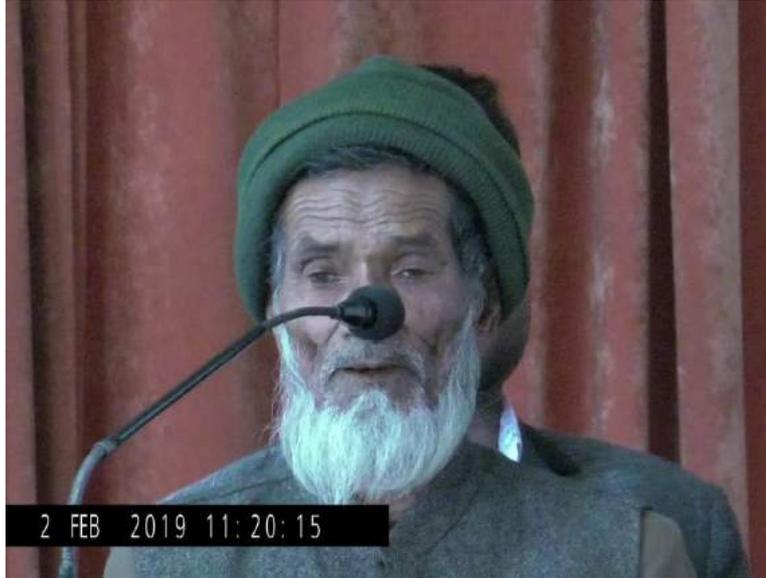
I have filed an objection against the exclusion, but to date I have not received any notice either from the Court or the Tribunal.



DISTRICT OF GOALPARA

Name: Kuddus Ali; Occupation: Daily Wager

My name is Kuddus Ali. I am the son of late Khos Mamud Sheikh. I reside in the village of Singulipara, province of Chunari, district of Goalpara. I had five children, but one of them has died. Therefore, I now have four children alive. I have landed property in my name, but not being able to work, I am dependant on my sons, who work as cultivators.



My name, along with the names of my parents, has been

recorded in the voters' lists of 1966, 1970 etc. of No. 44 Goalpara West L.A.C and I am still casting my vote. I possess legacy data from 1951 in my father's name and I have been issued an electoral voter ID card by the Election Commission of India. I was also included in the first draft of the NRC.

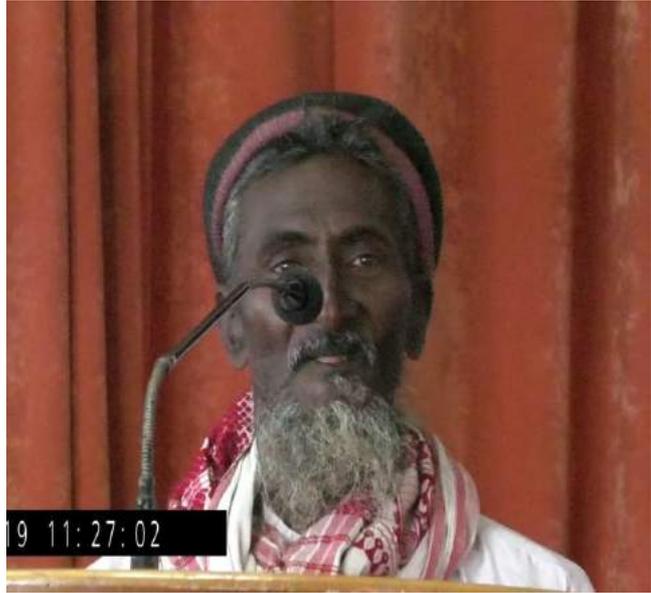
All that notwithstanding, a reference was arbitrarily made against me by the Border Police of Goalpara, without any investigation and without giving me the opportunity to produce the relevant documents. I told the Police I had all the documents to prove my Indian citizenship, but they nonetheless made a reference case against me to the Foreigners' Tribunal No. 8 of Goalpara.

The case is currently pending at the evidence stage. But I am a poor man and do not have the money to run the case. Most of the people of Singulipara have been going through such harassment. I have to go all the way to the Foreigners' Tribunal in Goalpara, which is almost 90 km away from my remote area. To fight my case, I have to start my journey at 6 in the morning from my home to reach the Tribunal on time.

Name: Joynal Abdin; Occupation: Daily Wager

My name is Joynal Abdin. I am the son of Juran Ali. I have been casting my vote since 1985 and my wife has also casted her vote along with me. I have never missed my vote, whether it was a Panchayat election or assembly election or parliamentary election.

Two months ago, however, the Police served on me as well as on my wife a notice. I asked the Police officer, why had I been served the notice, but he said that he did not know the reasons and just asked me to took the notice. I also asked him, what I would have had to do, and he advised me to contact a lawyer.



I did contact a lawyer and found out that my case was pending before the Foreigner Tribunal No. 8 at Goalpara. Before the Tribunal, I submitted the voters' lists of 1951, 1966, and 1985, where the name of my father is recorded. I also submitted a sale deed of 1963 in the name of my father, along with all my other documents, such as my written statement.

Sometime later, me and my wife have been served another notice by the same referring authority before the same Tribunal. Later, my wife has been served one more notice. I have repeatedly asked the Police about the notices issued against me and my wife, but I did not have any answer. The investigating officer never visited The Police never asked me for money, still they made the case against me and my wife without any proper enquiry and investigation. Moreover, they have never answered my questions on the reasons why I was considered a "D Voter" or a "suspect citizen".

I guess the reason is that I am a poor man. And poor men are always harassed.

Name: Abul Hussain; Occupation: Daily Wager

My name is Abul Hussain. I am a resident of the village of Singulipara, P.S. Chunari, in the district of Goalpara, Assam. My father's name is Keramat Ali. His name was included in the NRC of 1951 and recorded in the voters' lists of 1966, 1970 etc.

I was born and brought up in the village of Goyal Bhita under Chunari Police Station, in the district of Goalpara. I have been casting my vote since 1985, and never failed to do so.



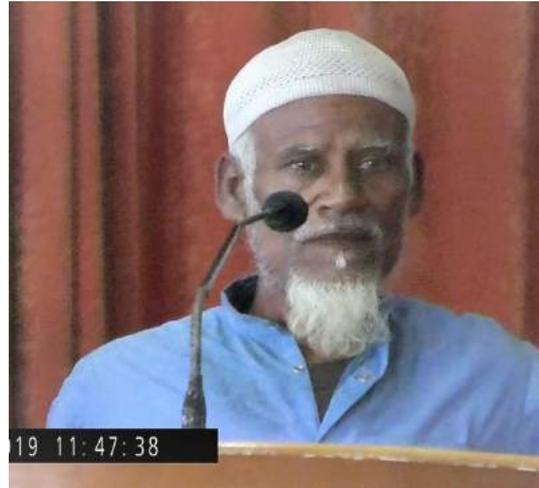
But surprisingly, a reference was arbitrarily made against me by the Border Police of Chunari to the Foreigner Tribunal No. 8 of Goalpara, without any investigation and without giving me the opportunity to produce the relevant documents. I do not know the reason why the case has been referred against me. When I have received the notice at police station, I asked the police officer about it, but I did not receive any answer. The case against is pending and now it is at the evidence stage.

I have also received a notice in the name of my wife, who died long years back.

Name: Ibrahim Ali; Occupation: Daily Wager

I am Ibrahim Ali, a resident in the village of Singulipara, P.S-Chunari, in the district of Goalpara. My father is Nur Hosen. His name has been included in the NRC of 1951 as well as in the voters' lists of 1966 and 1970.

I was regularly casting my voter up until 2011. Thereafter, I have been marked as a "D voter" in the voters' list, without having the opportunity to produce a document in support of my Citizenship to the Election Department.

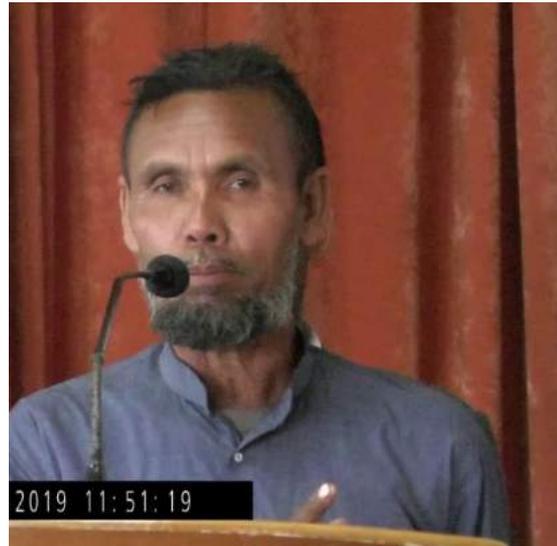


Subsequently, a notice has been served on me by the Foreigners' Tribunal No.8 of Goalpara to prove my citizenship. The case is currently pending at the evidence stage. I have submitted my written statement and evidence in chief and it is fixed for cross-examination.

Name: Hajera Khatun; Occupation: Housewife(testimony given by husband Hamed Ali)

My wife, Hajera Khatun, was called by the local police to visit the police station and there she was asked to put her thumb impression in some papers.

Later on, a notice was issued to her and directed her to appear in the Goalpara Foreigners' Tribunal and produce all the relevant documents. To prove her citizenship, my wife has submitted the copies of the NRC of 1951 and of the voters' lists of 1966, 1970, 1975, 1980, 1981, 1985, which all included the name of her father. She has also submitted her voter ID, PAN card, a certificate from the village Panchayat, and the copies of all the voters' lists



subsequent to 1985, where her name was recorded, in order to establish her linkage with her father. Indeed, my wife has casted her vote regularly since 1985.

However, the Tribunal held that my wife failed to established her linkage with her father and, therefore, declared her a foreigner. The Foreigners' Tribunal's order has been challenged and the matter is now pending before the Gauhati High Court. But we come from a poor background, somehow living our life by fishing or working as casual wagers, and we do not have the money to run our case properly.

Name: Abdul Awal; Occupation: Daily Wager

My name is Abdul Awal. I am the son of Nurul Hussain, and I am a resident of the village of Singulipara. P.O. Roukhowa, P.S. Chunari, in the district of Goalpara.

I have been regularly casting my vote from 1985 to 2010. In 2011, however, my name has been marked as a “D voter” in the voters’ list by the Electoral Department, which did not give me the chance to produce the documents required to establish my citizenship. The investigation officer never visited my house. Still, he said that I have failed to submit proper documents and hence failed establish the linkage with my father. For this reason, my case was referred to the Foreigner’s Tribunal.

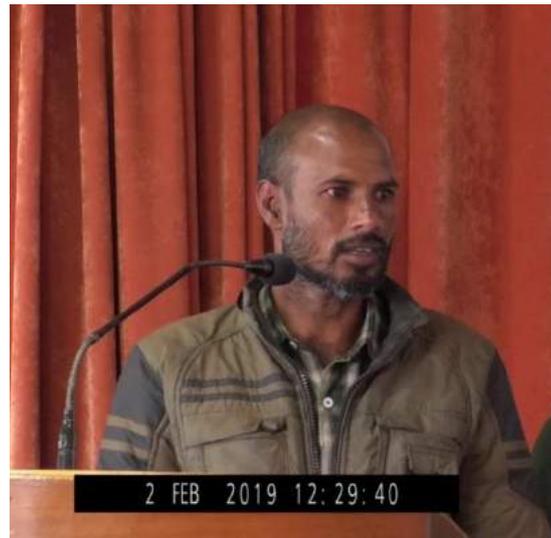


Thereafter, I received a notice from the Foreigners’ Tribunal No. 8 of Goalpara, where my case is pending at the evidence stage. I have submitted all the relevant documents, including copies of the NRC of 1951 and of the voters’ lists of 1966, 1970, 1971, where the name of my father was recorded. I have also submitted my written statement and evidence in chief.

A part from me, all my family members and siblings have been included in the draft NRC.

Name: Bahatun Nessa; Occupation: Housewife (testimony given by husband Sahar Ali)

My name is Bahatun Nessa and I give this testimony for my wife, Bahatun Nessa, who has been declared a foreigner and excluded from the NRC draft.



My wife's case was pending before the Foreigners' Tribunal No. 8 of Goalpara. My wife submitted the copies of the NRC of 1951 and of the voters' lists of 1966, 1970 and 1977, where the name of her father (my father-in-law) was recorded. To establish the linkage, my wife submitted the certificate from the village Panchayat, her marriage certificate, her school certificate. Moreover, my wife's father, Sameji Ali (alias Samej Uddin), himself submitted his evidence-in-chief as DW2's, together with the school Headmaster, who came as an official witness in order to prove the authenticity of the school certificate.

Despite all the documents and the evidence the Tribunal issued an order that declared my wife a foreigner.

The said order has been challenged, and now the case is pending at Gauhati High Court. My wife is absconding.

All the family members of my father-in-law are on the list except my wife. Three persons in my family, i.e. me, my son and one of my daughters, have been included in the draft NRC, but my youngest daughter's name is not there.

I am an illiterate person and do not know how to file objections and claims, but need the help of my brother, who studied up to class VIII.

Name: Moinal Hoque; Occupation: Daily Wager

My name is Moinal Hoque. I am the son of late Monser Ali and I am a resident of the village of Singulipara, P.S. Chunari, in the district of Goalpara.

My name, along with the name of my wife, has been included in the final draft of the NRC.

I am also registered on the voters' list and from 1985 I have casted my vote, along with my wife, in both Panchayat and general elections every five years. An Electoral ID card has been issued in my name by the Election Commission of India.



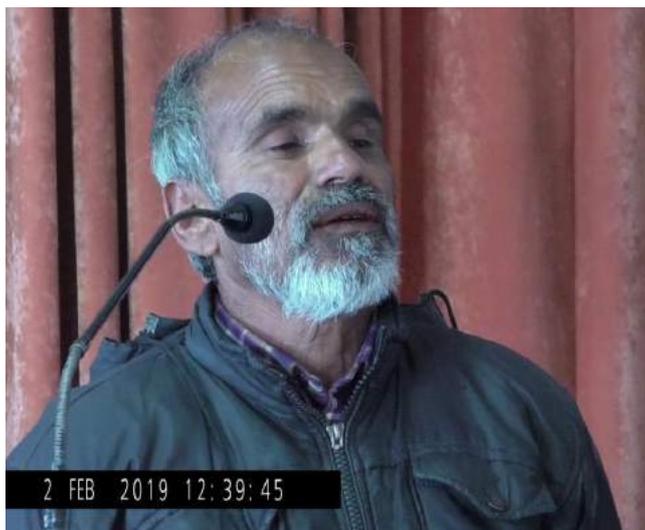
Yet 15-17 days ago, I received a notice from the Border Police and I came to now that a case had been registered against me before the Foreigners' Tribunal. I have all the documents of my father to prove my citizenship; viz. the NRC of 1951, the voters' lists of 1966, 1970, 1971, 1977 and also land documents. Despite these documents and the fact that my name was included in the draft NRC, the Police arbitrarily made a reference against me to the Foreigners' Tribunal without ever visiting my house, or making any inquiry.

Name: Sorhab Ali; Occupation: Daily Wager

My name is Sorhab Ali and I am a resident of the village of Singulipara, P.O & P.S. Chunari, in the district of Goalpara (Assam). I have casted my vote for the first time in the year 1985. Since then, my name appears in all the voters' list up until 2019 and I have been included in the final draft of the NRC.

However, I have been marked as a "D Voter". One day the Police asked me to take a notice and, when I refused to accept it, the police officer, who was a Muslim, told me that I would have been in trouble if I did not appear before the Foreigners' Tribunal.

I have submitted all the documents, including the voters' list of 1966 and land documents of 1961, which prove that I have landed property in my name. I do not understand why they have registered the case against me, and also against my wife. I have all the documents to prove my citizenship. I know that the Government has set the cut of year of 1971, but I have documents prior to 1965. The Government are definitely going to lose the case.



DISTRICT OF GOLAGHAT

Name: Kashim Sheikh; Occupation: Mason

I was marked and tagged as a “D voter” since 2011. I have 2 wives, one from Golaghat district and another from Nagaon district. Therefore, I was marked as “D voter” and I was served notices from both the districts to prove my citizenship.



The Superintendent of the Border Police in Golaghat referred my case to the Jorhat Tribunal to prove my citizenship status. Then, the Foreigners’ Tribunal of Jorhat registered a case against me in 2011 and a notice was served upon me.

On receipt of the notice, I appeared before the Tribunal and filed a written statement with the relevant documents in support of my claim of Indian Citizenship by birth. I had filed written evidence in form of affidavit along with documents relied upon me in support of my claim which was marked as exhibits.

It is worth mentioning here, that I was declared an Indian Citizen by the Foreigners’ Tribunal-II of Nagaon district by a judgement passed in 2010 (Case 21/2009). Yet another case was registered before the Foreigners’ Tribunal of Jorhat district for the same cause of action; i.e. to prove my citizenship once again. In the pleadings before the Tribunal, I clarified that my actual and good name is Kashim Sheikh, but in some of my documents my name is reflected as Kasim or Kashim Ali. I also asserted that my father’s actual and proper name is Gafur Sheikh, but in some of his documents, his name is wrongly recorded as Gafur Mia Sheikh. The documents that I have produced before the Foreigners’ Tribunal of Jorhat include: the certified copies of the electoral rolls for the year 1965, 1970, 1975, 1993, 1994 and 2016, along with the certified copy of the judgement passed by the Foreigners’ Tribunal-2 of Nagaon in 2010 which declared me an Indian citizen in the name of Kashim Sheikh.

All these documents notwithstanding, in 2017 the Foreigners’ Tribunal of Jorhat declared me to be a foreigner. I had to appeal this decision before the Hon’ble Gauhati High Court, where my case is currently pending.

I was a mason by profession, but had to stop working due to asthmatic problems. Now my livelihood depends upon my children. I live at Sikhoni Borhola (Hatikhola) under Bokakhat police station, District Golaghat, Assam.

Name: Nasima Begum; Occupation: Housewife

I am Nasima Begum. I belong to the indigenous Muslim community of upper Assam within the District of Golaghat. My ancestors reside in Assam since before the Ahom reign. My parents are Saifuddin Ahmed and Nilima Begum. I was born and brought up in the village of Dhuliagaon, P.S Golaghat, Mouza Morongi, district of Golaghat Assam. I went to school in the nearby village of Haragaon. I got married when I was 16 years-old. After the marriage, I have been residing with my husband at my matrimonial home in the village of Islampur No 2, P.O. & P.S. Merapani, in the district of Golaghat (Assam).



In the register of my school, my address is written as Haragaon, instead of Dhuliagaon. For this reason, I was marked as “D voter” in 2008. Accordingly, a case was registered against me before the Foreigners’ Tribunal of Jorhat and a notice was served upon me in 2016. After receiving the notice from the Foreigners’ Tribunal of Jorhat in 2016, I appeared before the Tribunal and submitted around 19 documents as evidence in support of my claim to Indian citizenship. These documents include: the voters’ list enrolling my grandparents’ name for the years 1951-1952, 1958, 1961, 1965; the voters’ list enrolling my father’s name for the years 1970, 1985, 1989, 1997, 2005. Before the Tribunal, also my father, my school teacher and the Gaonbura of the village where I was born produced witness statements in my favour.

In spite of all these documents and testimonies, the Foreigners’ Tribunal of Jorhat declared me as a foreigner based on the fact that my address was registered in Haragaon, whereas in the documents submitted by my father our village’s name was recorded as Dhuliagaon.

My husband was also marked as a “D voter”. However, upon submission of documents and other evidence, he was declared as an Indian citizen. There are no other “D voters” in my family. My parents and my other siblings have been included in the draft NRC on the basis of the same documents that I have produced before the Tribunal in support of my case. But the Tribunal declared me as a foreigner on the basis of minor discrepancies in the record of my address.

Thereafter, I appealed to the Hon’ble Gauhati High Court and, while my case is pending, I am under bail.

DISTRICT OF KAMPRUP (M)

Name: Gita Hajong; Occupation; Housewife

I was born in the village of Phul Hari, in the district of Mymensingh, erstwhile East Pakistan. In 1964 I came to India, along with my father, late Rohini Ranjan Sarkar, my mother, late Kompeshari Sarkar, my grandparents, Lakhikanta Sarkar and Polaisori Sarkar, my brothers Manoranjan Sarkar (since deceased), Ashutosh Sarkar (since deceased) and Poritosh Sarkar (since deceased), due to civil disturbance and communal flare-up.



At the time, we took shelter in the Sitabari Refugee Relief Camp, under Matia Police Station, in the district of Goalpara, Assam. My father, late Rohini Ranjan Sarkar (since deceased), was issued a Relief Eligibility Certificate which mentions the names of all his family members, including my name. My father was also issued with a Citizenship Registration Certificate. Moreover, my father has worked for the Government of Assam as a school teacher, and after his death my mother has received a family pension.

With time, my name was enrolled in the voters' list together with the name of my father and other family members pertaining to No. 37 East Goalpara Legislative Assembly Constituency. Subsequently, I got married to Robert Hajong, son of late Maheswar Hajong of camp No. 4, Paschim Matia Refugee Relief Camp, who died in the camp in 1986. Later on, in 1990, I had moved along with my minor children to the village of Bonda Colony, under Pragjyotishpur Police Station, in the district of Kamrup, Assam, where I re-married to Gandharaj Hajong, son of late Maheswar Hajong of the same village, who subsequently died. Later, when I had transferred my vote from the district of Goalpara to the district of Kamrup, I have been marked as a "D Voter". In 2017, I was served with a notice from the Foreigners Tribunal No. 4 of Kamrup (M) to prove my citizenship. The case is currently pending before the Tribunal.

I do not know why my name has not been included in the draft NRC, whereas the names of my other family members are listed.

Name: Premati Sangma; Occupation; Housewife

My name is Premati Sangma and I was born at Burunga, in the district of Mymensingh, erstwhile East Pakistan. Together with my husband, late Jatindra Chambugong, my sons, and other family members, I came to India in 1964, due to civil disturbance and communal flare-up. We took shelter in Refugee Relief Camp No. 1 in Matiya, under Dolgoma Police Station, in the district of Goalpara, Assam. My husband,



Jatindra Chambogong (alias Jatindra Marak, alias Jatindra Sangma, since deceased) was issued with a Relief Eligibility Certificate, which mentioned the names of all of his family members. Later on, in 1972, when the Government of Assam allotted my family some land in the Bonda Colony as a part of rehabilitation and agreement, we moved to the village of Bonda colony, under Pragjyotishpur Police Station, in the district of Kamrup (M), Assam. Since then, my family has been residing in the same locality.

My name was enrolled in the voters' list along with the name of my husband, under No. 52 Dispur Legislative Assembly Constituency. In 2018, however, I was served with a notice from the Foreigners Tribunal No. 4 Kamrup (M) to prove my citizenship.

My case has been referred to the Tribunal without proper enquiry and is currently pending. I have many documents to establish my citizenship, including the Relief Eligibility Certificate, the Citizen Registration Certificate, and land documents, etc.

Name: Niresh Hazong; Occupation: Daily Wager

My name is Niresh Hazong. I work as a daily wage earner. I was born in the village of Rajapara, under Sunamganj Police Station, in the district of Sylhet, erstwhile East Pakistan, and came to India in 1964 due to civil and communal disturbances. At that time, I took shelter in the Bamunigaon Refugee Relief Camp, Boko, Assam, along with my elder brother, Kina Ram



Hajong (alias Kina Hajong, since deceased), my sister-in-law, Ganapati Hajong (since deceased), and my elder sister, Romola Hajong. While we were there, my elder brother was issued with a Relief Eligibility Certificate and an identity card which mentioned all the names of his family members, including my name.

As a part of rehabilitation, the Government of Assam have allotted us one Katha of land at Bonda Colony, under Pragjyotishpur Police Station in the district of Kamrup (M), Assam. They built a house there and also provided us with a loan of Rs. 5000/- for our settlement.

In due course of time, my name was enrolled in the voters' list pertaining to No. 52 Dispur Legislative Assembly Constituency. However, since 1997 I am marked as a "D Voter" and as such I could not cast my vote. The name of my elder brother appears in the draft NRC along with all his family members. In 2017, however, I was served with a notice from the Foreigners Tribunal No. 4 of Kamrup (M) to prove my citizenship. The case is still pending.

Name: Narayan Hajong; Occupation: Carpenter

My name is Narayan Hajong and I work as a carpenter. I was born in the village of Bonda colony, under Pragjyotishpur Police Station, in the district of Kamrup (M), Assam, and I went to school in the same locality.

As per my knowledge, my father, Namendra Hajong (since deceased), my mother, Santa Moni Hajong (since deceased), and my



elder sister, Minula Hajong, came to India in 1964 due to civil and communal disturbances from the village of Ragapara, under Sunamganj Police Station, in the district of Sylhet, erstwhile East Pakistan. They took shelter in the Bamunigaon Refugee Relief Camp, under Boko Police Station, in the district of Kamrup, Assam.

My father was issued with a Relief Eligibility Certificate. He served in Rashtriya Vikas Dal, Department of Rehabilitation, Government of India. Subsequently, my family moved to the village of Bonda colony, under Pragjyotishpur Police Station, in the district of Kamrup (M), Assam, where my father was allotted some land as a part of rehabilitation.

My name was enrolled in the voters' list pertaining to No. 52 Dispur Legislative Assembly Constituency. But after 1995 my name was marked as a "D-Voter". Since then, I have been debarred from casting vote. In 2018, separate notices were served on me and my younger brother by the Foreigners Tribunal No. 4, where our cases are currently pending.

DISTRICT OF MORIGAON

Name: Abdul Kadir; Occupation: Farmer

My name is Abdul Kadir. I was born and brought up in the village of Solmari, under Bhelowguri Police Station, in the district of Morigaon, Assam. I am presently a resident of the same village. The name of my father is late Miya Baksh and he had landed property in the village of Solmari, under Moirabari Mouza, since pre-independence era. In 2002, the Brahmaputra eroded the land on which our house was built. My father owned a lot of land in other places too, such as at the village of Singimari, where I still have some land.



I received a notice from the Foreigners' Tribunal in April 2017. It said that in three days' time I had to submit a reply before the Tribunal challenging the allegation that I was a foreigner. The notice was addressed to me and five of my seven children. I contacted a lawyer and showed him all the documents of my father that were in my possession. After seeing the documents, the lawyer told me I had nothing to worry about.

I had documents of my father from 1932, including the land revenue receipts in the name of my father from the year 1941 onwards, my father's pilgrim Passport (Haj) of the year 1950. Moreover, my father's name was included in the NRC of 1951 and in the voters' lists of 1965 and 1970. I also have the will through which my father's property was bestowed to me and my brothers. Moreover, my name is recorded in the voters' list from 1989 onwards, and I still cast my vote. We challenged the case before the Tribunal by filing a written statement and evidence-on-affidavit. The final order in my case was delivered in December 2017. Before that, only one occasion I had to appear before the Tribunal and was asked about mine and my father's names and whether my father had landed property. In the final order, the Tribunal declared me and five of my children as foreigners on the ground that it was not established that Miya Baksh was my actual father.

I had to appeal the order of the Tribunal before the High Court, where the case is presently pending while I am on bail.

Name: Abdul Rahman; Occupation:
Daily Wager

My name is Abdul Rahman. I was born and brought up in the village of Nagabandha under Laharighat Police Station, in the district of Morigaon, Assam. My father is late Ohed Ali (alias Ohed, Wahed and Ohedalji. I have four elder brothers and one younger brother.

One year and three months ago, a notice was issued to me and six of my children by the Foreigners' Tribunal in Morigaon. My father had land documents from

1949, and his name was included in the NRC of 1951 as well as in the voters' lists of 1965, 1970, etc. up to 1985 from the village of Nagabandha under No. 84, Laharighat L.A.C. My name was also enrolled in the voters' lists from 1971 up to 1996, along with the names of my brothers.

Despite producing all the documents, the Foreigners' Tribunal held me and my children to be foreigners. The ground on which the decision was based was that the Tribunal has suspected that the person I have projected as my father was not my actual father.

I have appealed the order of the Tribunal before the High Court, where the case is pending. I am currently on bail.



Name: Abu Taher

My name is Abu Taher and I am a resident of the village of Kalikajari, under Mikirbheta police station, in the district of Morigaon, Assam. My father's name is Abdul Mannaf (alias Mannas) and my grandfather was late Mujafar Hussain (Alis Mujafar). My grandfather had four brothers, and one of his elder brothers, late Amir Uddin (alias Moulobi Mohammad Amir Uddin) was the first Deputy Speaker of pre-independent Assam Legislative Assembly from 1937 up to 1946. My family also has landed property in Assam.



A reference against me was made to the Foreigners' Tribunal without any enquiry and a case was accordingly registered. After receiving the notice from the Tribunal, I have challenged my case submitting all the relevant documents, such as the land documents from 1930 and from 1947, 1949 and 1968, and the voters' lists of 1966, 1970 and others containing the name of my grandfather. I have also submitted the voters' lists containing my name and my school certificate.

The Tribunal heard the arguments more than one year ago, but the final order has not been passed. Since there is a case pending against me, I have been excluded from the draft NRC.

Name: Faijul Islam (alias Faijul Hoque); Occupation: Daily Labourer

My name is Faijul Islam. I am the son of Hatem Ali and my grandfather was Hasen Ali. My great grandfather late Naimuddin Fakir.

My grandfather had land documents of the year 1941. His name, along with the name of his father (my great grandfather), was included in the NRC of 1951. Moreover, my grandfather's name is recorded in the voters' list of 1966 and so is my father's.

Initially, my family used to reside in the village of Doloigaon, under Moirabari Police Station, and presently under Bhowguri Police Station. Due to the land erosion caused by the mighty Brahmaputra, my family moved to the nearby village of Ulubari, where we are currently residing.

Neither my name, nor my children's feature in the final draft of the NRC, but the names of all our other family members, including my father's, appear there.

A case was registered against me before the Foreigners' Tribunal. The Tribunal declared me based on the fact that I could not establish the linkage between me and my father.

I have challenged the order of the Foreigners' Tribunal before the High Court and I am under bail.



Name: Rafiqul Islam

My name is Rafiqul Islam and I am a resident of the village of Kalikajari, under Mikirbheta Police Station, in the district of Morigaon, Assam.

My father's name is Samsul Hoque (alias Samsul Islam). My great-grandfather was late Mujafar Hussain (alias Mujafar).

My grandfather is one of the five brothers of late Amir Uddin (alias Moulubi Mohammad Amir Uddin), who was the first Deputy Speaker of pre-independent Assam Legislative Assembly from 1937 till 1946.



There was a reference against me to the Foreigners' Tribunal, which was made without any investigation. My case has been pending for three years now. I submitted before the Tribunal the voters' lists of 1966 and 1970 containing the names of my father. I also submitted the land documents of 1930 and 1931 belonging to my grandfather.

All that notwithstanding, I was held to be a foreigner by the Foreigners' Tribunal on the ground that I could not establish my linkage with my father.

I have now appealed the order of the Foreigners' Tribunal before the Gauhati High Court.

Name: Jalaluddin; Occupation: Daily Worker

My name is Jalaluddin and I am a resident of Kalikajari, P.S. and Mouza: Mikirbhata, in the district of Morigaon, Assam.

A proceeding was initiated against me in the Foreigners' Tribunal. My father was late Mohammed Alimuddin, alias Alimuddin Sheikh. My father's name was included in the land records of 1947, as owner of land bearing Patta No. 27, Dag No. 231. I have submitted the documents proving the above facts to the Foreigners' Tribunal, together with my father's details from the NRC of 1951 and in the voters' lists from 1966 to 1977, in addition to other land documents of 1942, 1948 and 1955 concerning my grandfather. I have also submitted certified copies of the voters' lists from 1997 to 2018, which contain my name.



In the Tribunal's final order, however, the voters' list of 1966 were discarded because they were scanned copies. As regards the land document of my father from 1947, the Tribunal held that the land was not inherited by my father from my grandfather and by us from our father. On these grounds, I was declared as foreigner, even though the aforesaid land did get transferred in my name in 2002 after my father's death.

I actually believe that I was declared a foreigner because I had on one occasion spoken against the Foreigners' Tribunal to the media.

Name: Abdul Khalek; Occupation: Farmer

My name is Abdul Khalek and I am a resident of the village of Doloigaon, in Morigaon district.

Around 2016/2017, I received a notice from the Foreigners' Tribunal. I am a farmer by profession and I have some land of my own and also work on other's lands. I have eight children, four sons and four daughters. My name was first enrolled in the voters' list of 1977. In 1997, however, I was marked as a "D-voter" because my name appeared as Malek in the voters' list instead of Khalek. This is because 'Kha' and 'Ma' are written similarly in Assamese.



The "D" tag was removed in 2005, and I have been voting ever since. From 2005, however, my name appears twice in the voters' list and one time it is marked as a "D voter".

There was no discrepancy in the documents that I have submitted before the Tribunal, although, when giving oral evidence, I said by mistake that the approximate number of years since the death of my father was 44/45, instead of 42/43.

It is on this ground that I have been declared foreigner.

I have now filed a petition with the High Court, which granted my released on bail. Provision of food grains under our ration card has been stopped and so has the old-age pension that I was provided earlier. In the course of the proceedings of the case in Morigaon, we had to spend around Rs. 20000- Rs. 30000. And in the High Court, we have had to spend over Rs. 20000.

DISTRICT OF NAGAON

Name: Jamina Khatun; Occupation: Housewife (testimony given by father Abdul Rezzaque)

My name is Abdul Rezzaque. I am a resident in the village of Rongrai Chapari, under Mouza Moirabari, P.S.-Dhing, in the district of Nagaon, Assam. I have 6 children; 2 sons and 4 daughters. I give this testimony on behalf of one of my daughters, Jamina Khatun, who was born on December 3, 1982, in the village of Rongrai Chapari, and brought up in the same locality.

My name has been recorded in the voters' list since 1971 to date. My father's name has also been recorded in the voters' list of 1965. My wife, my forefathers and me are, we are all Indian citizens. Accordingly, everyone in my family has been included in the draft NRC but my daughter Jamima Khatun, who has been left out.

The investigating officer neither visited my house nor asked my daughter to produce any document about her citizenship. Still, he made a false reference against her to the Foreigners' Tribunal No. 5 of Dhing, in the district of Nagaon.

Before the Tribunal, my daughter submitted all the relevant documents, including the voters' lists with the names of her grandfather (my father) and with my name, her school leaving certificate.

After the trial, despite producing all the documents of my family, the Foreigners' Tribunal gave an opinion that my daughter was a foreigner on the ground that she failed to identify herself, and that her identity is contradictory and doubtful due to the two names of her husband as well as the two places that are registered as her address of residence.

Thus, in spite of all the documents that have been produced and in spite of the fact that she has been enrolled in school up to class VII, my daughter was held to a foreigner. Now, I filed an appeal on behalf of my daughter before the Gauhati High Court, where the case is currently pending. Meanwhile, however, my daughter is absconding.



Name: Musst. Nur Nehar Begum; Occupation: Housewife

My father's name is Nur Islam. He is residing in the village of Rupohi, in the district of Nagaon, Assam. My grandfather's name was enlisted in the voters' lists of 1965, and 1970 to 2014. My father's and my uncle's names have been registered on the voters' list, together with that of my grandfather, since 1979. I was married with Mainuddin, s/o late Abdul Hakim, of the village of Singia Pather, P.S. Juria, in the district of Nagaon.



Still, the Border Police issued a reference against me, without any fair investigation. During the trial before the Foreigners' Tribunal No. 4 of Juria in the district of Nagaon, I have submitted all my relevant documents, including my school leaving certificate and my residence certificate. Moreover, my father, the headmaster of school where I studied and the Gaobura of my village gave evidence before the Tribunal in my favour.

Unfortunately, during the proceedings against me, also my husband and my two sons have been served a notice summoning them to appear before the Tribunal and prove their citizenship, even though the initial reference was made against me alone. The case is pending before the Tribunal since 2 years.

Name: Md. Abdul Kadir, Occupation: Daily Wager (testimony given by wife Sofia Khatun)

I, Sofia Khatun, give this testimony on behalf of my husband Md. Abdul Kadir, son of Md. Abdul Hakim, resident in the village of Gayan Gaon, P.S.-Dhing, in the district of Nagaon, Assam. My husband was born and brought up in the village of Mikir Gaon, under P.S. Laharighat, in the district of Nagaon, now Morigaon, Assam.

The name of my husband's grandfather was enrolled in the voters' lists of 1966, 1970, 1975 and 1985. Moreover, the names of my husband's parents have been recorded in the voters list of 1997, 2005, 2010, 2013 and 2015.

The name of my husband himself has been recorded in the voters' list of 2005, along with those of all of his family members.

Before the Foreigners' Tribunal, my husband has submitted all the relevant documents, but the learned Tribunal did not uphold his claim to Indian citizenship due to minor mistakes in the spelling of his grandfather's name in some documents. For instance, in the voters' list of 1966, the name of my husband's grandfather was recorded as Moffiz Uddin, whereas in 1977 it was recorded as Mohez. Again, in the land documents, his grandfather's name was recorded as Moffiz Uddin, but in the election roll of 1997 it was misspelled.

These are the reasons why my husband is now declared as a foreigner.



Name: Tojiman Nessa; Occupation: Housewife (Testimony by Tojiman's brother)

Tojiman was marked as a “D voter” in 1997 without any reason.

Some months ago, she received a notice from the Foreigners' Tribunal. Before the Foreigners' Tribunal, she submitted the voters' lists of 1966 and 1970, containing the names of Tojiman's father, two land documents dated 1945 and 1951, and, for the purpose of establishing linkage with her father, a school certificate from the year 1967.



When she submitted the school certificate, it was found that, while the copy of the certificate submitted contained the signature of the school's principal, the counterfoil of the certificate in the records of the school did not contain the signature of the principal. This is the ground on which the Tribunal held that Tojiman could not establish the existence of the linkage with her father and, accordingly, declared her a foreigner.

The principal who had issued the certificate is now dead, but the present principal has appeared before the Tribunal and gave a testimony in favour of Tojiman, confirming the authenticity of the certificate she had exhibited. The Tribunal, however, was not convinced. The Gaonbura (village headman) has also given a testimony in support of Tojiman, but nothing seemed to convince the Tribunal that Tojiman was indeed an Indian citizen. In the end, she was held to be a foreigner.

The Tribunal's order has now been challenged before the Gauhati High Court.

Name: Mohibur Rahman; Occupation: Mason (testimony by brother)

In 2007, Mohibur went to Sivasagar to work as mason. There, he was held by the Border Police along with nine other workers. Then, in 2017, Mohibur was served a notice from the Foreigners' Tribunal, stating that he was suspected to be a foreigner. Since then and up to two months ago, he and his family members had to attend the Foreigners' Tribunal of Jorhat.



Before the Foreigners' Tribunal, Mohibur produced the voters' lists of 1965 and 1970, which contained the names of his grandfather and also the name of his grandfather's brother and niece. The certified copies of these voters' lists, however, contained only the name of Mohibur's grandfather, and not those of his grandfather's brother and his grandfather's niece. These names were not material to Mohibur's case. But, according to the Tribunal, the discrepancy between the copies produced by Mohibur and the certified copies of the voters' lists proved that the former had been forged.

On this basis, the Tribunal passed a final order holding Mohibur to be a foreigner. Since then, Mohibur has been put in a detention centre.

DISTRICT OF SONITPUR

Name: Majibur Rahman; Occupation: Lawyer

My name is Majibur Rahma, I am 35 years-old and work as a lawyer. I reside in the village of Nurpurjut in the district of Sonitpur, Assam. My father's name is Safiruddin Ahmed. He is a retired teacher.



My grandfather was originally a resident in the district of Nagaon, but moved to our present residential area due to the land erosion caused by the river in the place where he was formerly living. My father came to Sonitpur in 1969, when he found a job here. My family has moved in 1984 and, since 1985, our names have been included in the electoral rolls of the district of Sonitpur. I have been enrolled in the voters' lists and have been voting regularly since 2005.

All my family members have been included in the NRC, but me, my father and my brother. This is unsettling, as we have all used the same legacy data and produced the same documents.

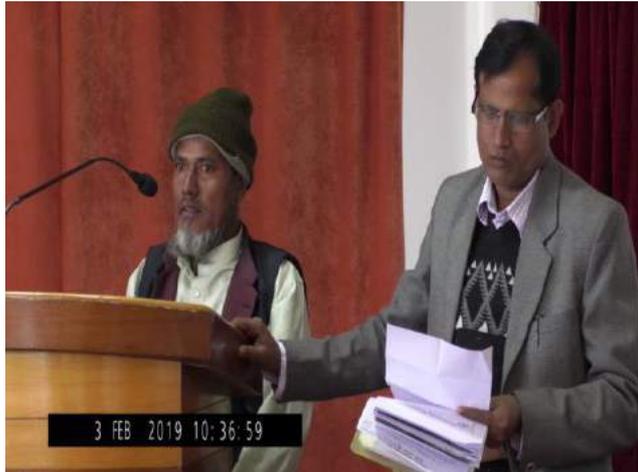
More specifically, before the Foreigners' Tribunal, I produced the voters' lists of 1966 and 1970, which contain my grandfather's name. For the purpose of establishing my linkage with my grandfather, I have submitted my admit card and the electoral list containing my name.

However, the Tribunal declared me a foreigner on the ground that the linkage between me and my grandfather could not be established.

Name: Md. Shah Jamal; Occupation: Daily Labourer

I am a resident of the village of Solmari, under Misamari Police Station, in the district of Sonitpur, Assam. My father is Haider Ali. He was born and brought up in the same village.

My father has land documents of 1950 and his name is present in the voters' lists of 1961, 1966, 1977 up to 2005. My mother's name has also appeared in the voters' lists since 1965. My name has also been included in the voters' lists from 1989 to date.



Me and all of my family members have been included in the recently released final draft of the NRC.

Surprisingly, however, I have received a notice from the Foreigners' Tribunal of Dhekiajuli and I learnt that a proceeding had been registered against me on the ground that I am alleged to be a foreigner. The reference case to the Foreigners' Tribunal was made without prior investigation.

As a result, I now find myself under great stress, as I fear that my name will be deleted from the NRC.

DISTRICT OF UDALGURI

Name: Nadim Ali; Occupation: Farmer

I am a resident of the village of Jhakhwapara in the district of Udalguri. My name is Nadim Ali and I am a cultivator. My father's name is Ifaruddin Sheikh. I am marked as a "D voter" and, thereby, my name has not been included in the final draft of the NRC.



The Border Police arbitrarily made a reference against me to the Foreigners' Tribunal No. 2 of Darrang, without any investigation and without giving me the opportunity to produce relevant documents. The Tribunal, then, issued and served on me a notice and registered a case against me under No. 555/15.

I have appeared regularly before the Tribunal and contested the case by submitting several documents, including the voters' lists for the years 1966 and 1970, a certificate from the village headman etc.

In the end, on the basis of these documents, the Foreigners' Tribunal declared that I am an Indian citizen.

However, when I had just won my case, the same Tribunal issued another notice against me and registered another case, summoning me again to prove that I was an Indian citizen. I informed the members of the Tribunal that I had already been held to be an Indian citizen by the same Foreigners' Tribunal, but they insisted that I had to fight the case again.

In the end, as an outcome of the second case against me, I was declared to be a foreigner.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

Hearing the testimonies of those excluded from the NRC one cannot help but conclude that the entire NRC process was flawed by arbitrariness, highhandedness, state interference and, possibly, racism. The Foreigners Tribunals were manned by persons not having the required judicial experience. Advocates perceived to be close to the state were allegedly appointed with an agenda of declaring as many people as possible as “non-Indian”. While poor and illiterate persons were forced to desperately search for documents of ancient vintage which even middle- class people would find hard to obtain, the Tribunals remained aloof, indifferent and uncaring. Persons declared Indian citizens after a proper trial, were often surprised to receive fresh notices from the police and the Tribunals and were then “re-tried” and were declared non-Indian. Huge confusion existed as to the documents which were to be treated as acceptable requiring cases to be filed right up to the Supreme Court. The agricultural workers, rikshaw pullers and daily wage earners incurred huge expenses paying for legal fees and other expenses. It pushed an already bankrupt community into dire poverty. Some committed suicide.

Particularly galling was the attitude of the National and State Legal Services Authorities who are witnesses to the way in which persons were treated by the Foreigners Tribunals and yet remained mere spectators refusing to provide legal aid to the destitute persons who were on the brink of being deprived of their citizenship. There is no doubt after listening to the way in which some of the proceedings were conducted, that the conclusions were vitiated on account of denial of legal aided self.

To add to this miserable situation we heard certain complaints regarding appointment of a large number of advocates having connections with the state Government being appointed as members of the Foreigners Tribunals even though they had no judicial experience. Thus, the Foreigners Tribunals which dealt with a life and death situation were manned (using the term literally) by persons having no judicial experience at all. We have no doubt that all these proceedings are legally unsustainable and their findings contrary to law.

Having considered the testimonies and the experts’ point of view, the Panel now draws the following conclusions and makes the following recommendations:

- A. Historical injustice has been done to the people of Assam by successive Governments at the centre and the state level by not taking responsibility for migration into the state of Assam and by thrusting the entire burden on the people of Assam.
- B. Sensitive areas in Assam and particularly the tribal areas need extensive protection and effective monitoring to prevent any further demographic decline, to prevent the transfer of land from tribal to wealthy non-tribal communities, to reverse the alienation of lands and to prevent effectively any further transgression into the tribal areas. All plans and programmes are required to be effectively enforced in consultation with the tribal communities and cannot be left in the hands of the Government officials alone.
- C. There is no doubt that the Citizenship Amendment Bill must be immediately repealed not merely because it discriminates against Muslims but mainly because it will

exacerbate the already excessive burden on land and resources. The enactment of the CAB was the height of Governmental irresponsibility and political maneuvering at its worst.

- D. Though the NRC at the time of its introduction and the cut off date of 1971 may have been a reasonable solution to the Assam conflict at that time, it has by willful negligence of the union and the state Government been sabotaged leading to a possible irreversible situation that must never again be allowed to arise.
- E. Those persons (Hindu, Muslims and other communities) who have resided in Assam for decades and are now excluded from the NRC must be treated with dignity and with the full protection of their human rights. They should not be subjected to any punitive action. They should certainly not be incarcerated. Their economic rights and their civil and political rights cannot be abrogated. They cannot be deprived of their land, shops and other properties and cannot have their employment taken away from them.
- F. The obnoxious detention camps are abhorrent to Indian democracy and the protection of constitutional rights and must be dismantled forthwith. That they continued to exist in full view of the Indian judicial system is a sad commentary on the functioning of the legal system.
- G. The Union of India must take financial, legal and other steps immediately to correct the historical injustice done to the people of Assam to bring in effective protection for the tribal and other sensitive areas and this protection must be effectively monitored and enforced in consultation with the effected people's organizations.
- H. All the members of the Foreigners Tribunal not having judicial experience should be removed forthwith and all their decisions declaring persons non-citizens set aside.
- I. Members of the Foreigners Tribunal ought to be given regular appointment and the extension of their appointment ought not to be made based on the number of persons declared non-Indian. They ought not to be called to the secretariat and instructed as to how they are expected to perform. In other words, since they perform a quasi-judicial function they should be insulated from state interference.
- J. Economic migrants and refugees who have resided in India for long periods of time ought to be regularized in accordance with a scheme devised for this purpose but in such a manner that no particular state or indigenous community bears the burden and adverse consequences of such regularization.

ANNEXES

Report on NHRC Mission to Assam's Detention Centres from 22 to 24 January 2018

This mission on behalf of the National Human Rights Commission on the detention centres for suspected illegal immigrants in Assam was undertaken from 22 to 24 January 2018. The Mission was initiated as a response to very disturbing reports about the situation of Bengali Muslim residents in Assam, as well as a smaller number of Bengali Hindus, both relating to the process of determining the legality of their citizenship, as well as the legality and conditions of the detention centres where persons deemed to be foreigners, are held.

The members of the mission were Harsh Mander, in his capacity as the Special Monitor for Minorities, accompanied and ably assisted by two senior officials Dr Mahesh Bhardwaj, SSP, NHRC and Indrajeet Kumar, Assistant Registrar (Law), NHRC. The Special Monitor also drew upon the assistance of two scholars to assist him in the research for this Mission, Dr Mohsin Alam Bhatwho teaches at the Jindal Law School, and Abdul Kalam Azad, an independent researcher formerly with the Tata Institute of Social Sciences, Guwahati.¹⁰⁷

In the mission from 22 to 24 January 2018, the team visited two detention centres and met the detainees. The Mission held meetings with jail and police authorities, district magistrates and senior officials in the state secretariat. The team also had a series of meetings with civil society groups in Goalpara, Kokrajhar and Guwahati. The detailed report of the journeys and meetings of the Mission is attached in Annexure 1.

This note summarises the major findings and recommendations, for the kind consideration of the Commission.

Terms of Reference

The TORs of the Mission were as under:

1. Is due process being followed in sending out notices to suspected illegal immigrants?
2. What are the conditions – and legality – of detention camps where so-called 'doubtful voters' and those found illegal immigrants are detained, what happens to women and children, does and should the Prison Code apply, and if not, then what regulatory Code or mechanism of these camps?
3. What happens to those whose appeals are rejected? Bangladesh certainly isn't going to take them. Are there then to be in these camps for life? They face incarceration with no relief. Is this lawful, constitutional and just?
4. What are the respective jurisdictions of the foreigners' tribunals and the NRC? If the NRC is supposed to be the definitive definition of citizenship, how can the

¹⁰⁷ Research assistance was also provided by law students Aishwarya Birla (NALSAR University of Law) and RishabhBajoria (Jindal Law School).

foreigners' tribunals continue to adjudicate on citizenship? Someone may be on the NRC list of citizens, but that does not matter to the tribunals.

MAIN FINDINGS

In its visit to the two detention camps the Mission found a situation of grave and extensive human distress and suffering. They were held in a corner of the two jails for several years, in a twilight zone of legality, without work and recreation, with no contact with their families, rare visits from their families, and with no prospect of a release. In the women's camp, in particular, the women wailed continuously, as though in mourning. The members of the Mission also held detailed discussions with senior as well as district-level officials of the state government, and civilian members of the community.

Below are the main findings of the Mission.

Legality of Detention Centres

1. The first major finding of the Mission is that the state does not make any distinction, for all practical purposes, between detention centres and jails; and thus between detainees and ordinary inmates. There is no clear legal regime governing the rights and entitlements of detainees. Consequently, the jail authorities appear to apply the Assam Jail Manual to them, but deny them even the benefits, like parole, waged work etc., that the inmates get under the jail rules.
2. The Mission was informed by officials that they are not aware of any specific guidelines or instructions from the central or state government to guide the treatment and rights of the detainees. The detention centres are therefore de facto, if not de jure, administered under Assam Jail Manual, and the detainees are treated in some ways as convicted prisoners, and in other ways are deprived even of the rights of convicted prisoners.
3. When we spoke to senior officials of the Assam state government, they too clarified that the legal status and rights of the detainees would have to be defined by the central government, and until then they have no option except to treat them in the way they treat jail convicts.

Indefinite Incarceration

Since there is no formal agreement between India and Bangladesh governments for India to deport persons they deem to be foreigners, not only are the persons who the Foreigners' Tribunal judge to be foreigners detained for many years, there is no prospect of their eventual freedom from this incarceration. At present, it appears that they may actually be detained for the rest of their lives.

Separation of Families and Difficulties in Meeting Family Members

The Mission found that men, women and boys above six years were separated from the members of their families, further compounding their distress. Many had not met their spouse for several years, several never once since their detention, since women and men were housed in different jails, and they never were given parole or permission to meet. A detainee Subhash Roy in a moving representation to the NHRC Chairperson has asked ‘which country’s constitution in the earth separates husband from wife and children from their parents?’

Difficulties for families to meet are compounded because only a few jails in the state are converted into detention centres, therefore even for members of the families of detainees who are not detained, meeting their loved ones is often too expensive due to distance and travel expenses if they live in districts in which there are no detention centres. There are at present 6 detention centres in jails in Assam. Until 2014, there were only two. Goalpara District jail is designated as detention centre and in case of women and small children the ‘foreigner’ is sent to Kokrajhar detention centre. Kokrajhar still remains the only woman’s detention centre, so it remains even harder for families in other districts to meet women and children detainees in other districts. And even now, Goalpara detention centre has detainees from 8 districts of the state.

The detainees are not allowed legally to communicate with their family members. Occasionally the jail authorities facilitate the communication on humanitarian grounds on their mobile phones.

Lack of Work and Recreation

The Mission found that the detainees are not given any work in the jail/ detention centre. Work is seen by jail officials to be the right only of prison convicts, because they are Indian citizens. They also by the same token have no right to opt to earn a wage within the centre, if they choose to do so, so as to support their families outside the centre.

There are also no recreation facilities. The Mission members were told that the detainees spend their entire time in painful idleness, because they are not allowed to work and have no recreation facilities. Each day is unchanging in its monotony. Early morning they wake up, stand up for the counting, have breakfast, then lunch and go inside ward after having early dinner at 4 pm. For many years, the entire day they do nothing, because the detention centre doesn’t have even a television or access to newspaper and library. One of the detainees broke-down while narrating their stories. He said ‘either you take us out of this hell or kill us’.

Absence of Parole

The Mission was informed that parole is not allowed to detainees even in the event of sickness and death of family members. In their understanding, parole is a right only of convicted prisoners, because they are Indian citizens.

Special Vulnerabilities of Separated Children outside the Detention Centres

The Mission found that in the separation of families, a particularly vulnerable situation was created for children of parents who were detained. A child below 6 years would stay with the mother within the detention centre. But after 6 years, there are situations in which the child is declared Indian and both parents are declared foreigners. In these cases, the state takes no responsibility for the child, and the child is left to be taken care of by distant family members or the community. The legal handling of children above 6 who are declared foreigners is even more unclear and shaky.

Special Vulnerabilities of Detainees with Mental Health Issues

The Mission found that very many detainees seemed affected by depression, not surprisingly, given their situation. But some displayed signs of severe mental health problems. But there are very few specialised facilities and services

available with them. The Kokrajhar jail authorities have taken some assistance from a local NGO in Tezpur with positive results. This can be expanded.

Particular Predicament of Detainees Who Admit to be Foreigners

1. The detention centres predominantly consist of individuals who have been declared as foreigners by the Foreigners Tribunal, most of whom maintain that they are Indian citizens. Apart from them, there are other individuals who have not gone through the Foreigners Tribunal but accept that they are foreigners. Their predicament is that they do not, and never have, contested their nationality. The Mission found 'actual foreigners' who are in detention for as long as nine years, from countries Bangladesh, Pakistan, Nigeria and Afghanistan. Their repatriation has not been possible for long years despite their jail term ending long back, because of bureaucratic tangles and delays between India and their respective countries. We learn from news reports that after our visit, they have gone on hunger strike demanding their return to their countries.
2. The Mission found a total of 62 convicted foreign nationals detained in the Goalpara detention centre. Out of these 54 are from Bangladesh. All the 54 Bangladeshi national including 4 four Hindus have completed their term of punishment and all of them are willing to go back to their country. Unlike the declared 'foreigners' who are resident in Assam, these detainees have no visitors. For years, they have had no contact or information about their family members back in Bangladesh. Most of their families do not even know that they are detained in Indian detention centre. One of the detainees showed a Bangladeshi phone number which he memorized 5 years back and now written on a piece of torn paper and keeping the hope alive that someday he will get the opportunity to call the number and inform his whereabouts to his family members.
3. In the women's detention centre also there were many individuals who claimed to be foreigners as well. To take just one example, a Muslim woman from Myanmar said she married an Assamese Muslim man and had a child from him. Both mother and child were detained. Since then, for a while her husband would come

to visit her, but his visits have also stopped. She has no contact with her family in Myanmar, and is completely desperate about her future.

4. The Mission observed that unlike other states where civil liberties organization like PUCL has been working with the jail authorities and concerned ministries to release the foreigners who have completed their jail term in Indian jail, there is no such organization working in Assam.

Process Flaws and Lack of Legal Defence

1. The Mission found that the fate of an overwhelming majority of persons who were deemed to be foreigners and were detained in detention camps was on the basis of ex-parte orders by the Tribunals; moreover most lacked any kind of legal representation. Even the Deputy Commissioner we spoke to said that every time he visits the detention centre, the detainees complain that they did not get proper legal representation and that they actually have the required documents but there is no one to whom they can appeal.
2. For those who do get notices, the Mission learned that typically, a huge panic sets in and many sell their properties and take large loans so as to hire lawyers to steer them through this process. Many of the lawyers also are poorly qualified or deliberately let them down.
3. Many claimed that they never actually received the notices: we saw omnibus notices to large numbers of persons, sometimes naming some persons and simply adding a number for the others. Many persons are migrant workers, or were not at home, or for a variety of other reasons did not get the notice.
4. The Mission was informed that every police station has a separate police unit called the 'Border Police'¹⁰⁸. Mostly the regular SP also holds charge as

¹⁰⁸ Assam Police has a unique organization to deal with so problem of illegal immigration from erstwhile East Bengal and present day Bangladesh. In 1962 Assam Police established a Special Branch Organization under PIP Scheme (Prevention of Infiltration of Pakistan). Initially the organization was headed by the Dy. Inspector General of Police, Special Branch. This special police was unit entrusted to detect and deport illegal foreigners from the than East Pakistan. Under PIP scheme nearly two lakhs Muslims were forcibly deported to the than East Pakistan without any legal process.

Later on the unit was transformed into 'Assam Police Border Organization' as an independent organization within Assam Police headed by one Additional Director General of Police (ADGP) of Assam Police. Now APBO is manned by 4000 plus personnel.

APBO is mandated to i) Detection and deportation of illegal foreigners, ii) Prevention of entry of illegal foreigners from across the International Border by maintaining the 2nd Line of Defense along the Indo-Bangla International Border, iii) Joint patrolling with BSF along the Indo- Bangla International Border, iv) Monitoring of developments along the Inter-State Border and v) Maintenance of law and order, prevention and detection of crimes, detection and deportation of illegal foreigners settled in riverine areas and char areas and trying to infiltrate through riverine routes.

APBO conducts survey in the so called infiltration prone districts, identify suspected foreigners and register case called 'Reference Case' and forward the same to the foreigners tribunal. It is alleged that constables who were

superintendent of Police (Border). Each border police works in around 15-20 villages, which it surveys for suspected illegal immigrants, who they ask to produce citizenship documents in 15 days. If they fail to do so, they refer the case to the FRRO (Foreigner Regional Registration Office), which sends the case to Foreigners Tribunal for trial. The Tribunal again issues notice, served by the police. If the person does not show up, the Tribunal passes ex-parte orders. Since the commencement of NRC, the Border Police has not been investigating and referring new cases to the Tribunal.

5. Some civilians alleged that the Border Police was driven by targets, and some made allegations of intimidation, bias and extortion as well. It was not possible for the Mission to independently verify these allegations. However, even the officials admitted that many times the person is not found at home, and notices are then served to relatives. They also said that people are unlikely to evade receiving notices, because they know that this will limit their chances further of proving their citizenship.

RECOMMENDATIONS

Recommendations for Central Government

Establish Clear Legal Regime in Conformity with Article 21 and International Law

Both the Constitution of India and international law govern the conditions in the detention centres. Procedural due process under Article 21 is directly applicable to the treatment of declared foreigners since the provision is agnostic to the citizenship status of the detainees. Consequently, the whole plethora of rights both explicit and implicit in the provision is relevant. The state under Article 21 must provide a transparent procedure and respect the right to life and liberty of detainees. Their right of dignity, even in detention, cannot be compromised. Thus, it can be argued that the detention of detainees as common criminals, within the jail compounds, without due facilities like legal representation or communication with their families is a violation of their right to live with dignity and the right to procedural due process.

International law explicitly lays down that detention of immigrants cannot be done in jails. The status of immigrants is not that of criminals. According to UNHRC Guidelines, detention can happen only in officially recognized places of

serving at the watch posts were given monthly target register case against certain number of suspected Bangladeshis and send the same to their higher authorities as well as Foreigners Tribunal.

The APBO has been also armed with discretionary power to suspect anyone, take his/her finger prints and photographs vide Govt. of Assam letter No. PLB.149/2008/Pt/8 dated 21/10/09. There are allegations that those finger-prints and photographs are used to register 'reference case' against the suspects.

detention.¹⁰⁹ Prisons and jails should be avoided for such purposes.¹¹⁰ States are obligated to ‘place asylum-seekers or immigrants in premises separate from those persons imprisoned under criminal law’.¹¹¹ Principle 9 of an earlier report states ‘Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law’.¹¹²

The UNHCR lays down that detention should not be punitive in nature. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. The CPT agrees that ‘A prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence’. It prescribes that ‘persons detained under aliens’ legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Female detainees should be held in an area which is separated from that accommodating male detainees, and their privacy should be guaranteed’.¹¹³ This principle has also been pronounced by the Inter-American Commission on Human Rights.¹¹⁴

Do Not Separate Families

Humanitarian considerations and international law obligations require that families should not be separated under any circumstances. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, for instance, lays down that ‘If members of the same family are detained under aliens legislation, every effort should be made to avoid splitting up the family’¹¹⁵.

¹⁰⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018].

¹¹⁰ WGAD *Report to the Seventh Session of the Human Rights Council, A/HRC/7/4/*, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

¹¹¹ WGAD *Report to the Seventh Session of the Human Rights Council, A/HRC/7/4/*, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>, para 53.

¹¹² Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, annex II available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/165/70/PDF/G9916570.pdf?OpenElement>, last accessed 04 March 2018.

¹¹³ CPT, ‘Factsheet on Immigration Detention’, available at <https://rm.coe.int/16806bf12> last accessed 04 March 2018.

¹¹⁴ ‘As international law establishes, migrants may not be held in prison facilities. The holding of asylum seekers and persons charged with civil immigration violations in a prison environment is incompatible with basic human rights guarantees’.

¹¹⁵ 19th General Report on the CPT’s activities, paragraph 87, available at <http://hudoc.cpt.coe.int/eng/?i=p-standards-inf-2009-27-part-en-7> last accessed 04 March 2018.

This would require opening of open family detention centres not housed within jails.

Ensure Due Process

Overall, with regard to process, the Mission was able to conclude that for a process that can result in the disenfranchisement, indefinite detention or expulsion of a person, the state government needs to ensure due process, and with it compassion and an understanding of the predicament of persons who have poor education, economic resources and social or political capital. It needs to ensure that people actually are served their notices, and given legal advice and support, with much higher transparency.

It is also important to task the NRC to also verify the status of D-voters, because in the absence of this the civil and political rights of an estimated 1.25 lakh D-voters lie suspended for more than two decades.

Ensure Policies for Early Deportation/ Repatriation of Foreigners Who Don't Contest

Clear policies should be adopted for those detainees who agree with the state that they are foreigners. Their applications for deportation should be expedited. Also their rights under the Vienna Convention of Consular Relations—a treaty binding on India under international law – must be ensured.

Apply Juvenile Justice Laws

The Indian juvenile justice laws are applicable to detainees, and to all children of foreigners and those deemed to be foreigners, whether or not they are deemed to be foreigners. These are all children in care of need and protection (CNCs) under the JJ Act. All of these children must be taken cognisance of by the CWCs, including both the children who are detained.

and those who are free while their parents are detained. Arrangements must be made to ensure that all these children are treated as children in need of care and protection under the JJ Act. In the spirit of the JJ Act, the state must show that it has plans for all of these children in diverse situations in which they or their parents are deemed to be foreigners.

Special Care of Patients with Mental Health Issues and Older Patients

Detainees who suffer from any mental disability must be given due support under the Indian mental disability laws. The obligations of the Indian state in relation to mental disability also flow from Article 21, which is applicable irrespective of nationality. Detainees above a certain age should be allowed to not be in detention.

The UNHCR prescribes that ‘Many detainees suffer psychological and physical effects as a result of their detention, and thus periodic assessments should also be undertaken even where they presented no such symptoms upon arrival. Where medical or mental health concerns are

presented or develop in detention, those affected need to be provided with appropriate care and treatment, including consideration for release'.¹¹⁶

Detention Should Be the Last Resort and Cannot Be Indefinite

Indefinite detention violates Article 21 of the Constitution, which also applies to foreigners. Indefinite detention of detainees clearly amounts to a violation of international human rights standards. The UN Working Group on Arbitrary Detention has noted that detention 'must not be for a potentially indefinite period of time'.¹¹⁷ The CPT is of the view that the prolonged detention of persons under aliens legislation, without a time limit and with unclear prospects for release, could easily be considered as amounting to inhuman treatment¹¹⁸. Guideline 4.2 of the UNHRC lays down that detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose. The authorities must not take any action beyond the extent strictly necessary to achieve the pursued purpose in the individual case. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case. The Inter-American Commission on Human Rights also specifies that detention should not be punitive in nature.¹¹⁹ The UN Working Group on Arbitrary Detention also lays down that 'In all cases detention must not be for a potentially indefinite period of time'.¹²⁰

According to the UNHCR, the test of proportionality applies in relation to both the initial order of detention as well as any extensions. Indefinite detention for immigration purposes is arbitrary as a matter of international human rights law. To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite.

The Indian state must, therefore, formulate and announce a clear long-term policy about how it will treat, and what will be the consequences, of a person being declared a 'foreigner'? This is more crucial than ever, because it is possible that the NRC may declare lakhs as foreigners. In such a case, does the state want to detain lakhs of people indefinitely?

¹¹⁶UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018]

¹¹⁷ WGAD Report to the Seventh Session of the Human Rights Council, A/HRC/7/4/, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

¹¹⁸ CPT, 'Factsheet on Immigration Detention', available at <https://rm.coe.int/16806fbf12> last accessed 04 March 2018.

¹¹⁹ Inter-American Commission on Human Rights, *Human Rights of Migrants, International Standards and the Return Directive of the EU*, resolution 03/08, 25 July 2008, available at: <http://www.unhcr.org/refworld/docid/488ed6522.html>.

¹²⁰ WGAD Report to the Seventh Session of the Human Rights Council, A/HRC/7/4/, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

The policy must also clarify what happens to those whose appeals are rejected? Bangladesh isn't willing to take them. Are there then to be in these camps for life? They face incarceration with no relief. Is this lawful, constitutional and just?

Clarifying Respective Jurisdictions of Foreigners' Tribunals and the NRC

The central government must clarify what are the respective jurisdictions of the foreigners' tribunals and the NRC? If the NRC is supposed to be the definitive definition of citizenship, how can the foreigners' tribunals continue to adjudicate on citizenship? Someone may be on the NRC list of citizens, but the tribunals may come to a different finding

Recommendations for State Government.

Even before the central government establishes a more humane system for detaining foreigners outside jails, there are some steps that the state government can take up at their level right away. The state government officials agreed that most of these steps are feasible at their level.

1. Provide legal aid to the detainees within the detention centres

The International Covenant on Civil and Political Rights also under Article 14 (3)(d) guarantees to everyone: 'Right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.' The UNHCR Detention Guidelines make it abundantly clear that: Detainees are entitled 'to be informed of the right to legal counsel. Free legal assistance should be provided where it is also available to nationals similarly situated, and should be available as soon as possible after arrest or detention to help the detainee understand his/her rights. Communication between legal counsel and the asylum-seeker must be subject to lawyer-client confidentiality principles. Lawyers need to have access to their client, to records held on their client, and be able to meet with their client in a secure, private setting'.¹²¹

This requirement is repeated by CPT. One of its general reports notes that, 'The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid.'¹²² Moreover, CPT notes that 'detained irregular

¹²¹UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018].

¹²² 19th General Report on the CPT's activities, paragraph 82, available at <<http://hudoc.cpt.coe.int/eng/?i=p-standards-inf-2009-27-part-en-7>> last accessed 04 March 2018.

migrants should be expressly informed of this legal remedy. The need for continued detention should be reviewed periodically by an independent authority'.¹²³

While listening to the stories of the detainees, the Mission felt that there are many detainees whose cases were either decided ex-parte or didn't get a fair chance to prove their Indian nationality. The Mission observed that as a country we provide legal aid even to the people accused of heinous crimes like rape and murder, but in this case without even committing any crime these people are languishing in detention centres as they can't afford legal service.

In accordance, it is recommended that legal aid should be provided in the detention centres, also at the tribunals' level and in appeals. Legal Aid could be organised by the National or State Legal Services Authority, in collaboration with nationally reputed civil liberties groups like the PUCL. Legal aid is needed especially for those who may have been detained ex parte and thus did not get an opportunity to present their documents to the Tribunal. Legal aid is also needed for those detainees who agree with the state's allegation that they are foreigners.

It is also recommended that the DLSA examine the citizenship documents of all declared foreign nationals (DFN) lodged in the detention centres and those who have sufficient documents to prove their Indian nationality should be provided with legal aid in the higher courts so that they secure their release from the detention centre. This will not only give a huge relief to many genuine Indian citizens but also cut down the unnecessary cost of looking after the detainees in these centres.

2. Detainees must be housed in the same district as their families and have rights to meet and communicate with them

The state government authorities should give detainees rights and free facilities to communicate with and meet their families regularly. International practice among democratic countries requires that states establish formal and free systems for regular communication of detainees with their families (and also lawyers, human rights workers and others) laid out in a transparent manner. The UNHCR requires that detainees should be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives, friends, as well as religious, international and or non-governmental organisations, if they so desire. Facilities should be made available to enable such visits. Such visits should normally take place in private unless there are compelling reasons relevant to safety and security to warrant otherwise.

In this, the practice of the United States is worthy of emulation. Detainees are provided with staff escorted trips into the community for the purpose of visiting critically ill members of the detainee's immediate family, or for attending their funerals (Local trips – 10 hours or less, extended trips – 10 hours or more).¹²⁴ Detainees are permitted to make direct calls 'in a

¹²³ 19th General Report on the CPT's activities, paragraph 86, available at <<http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-7>> last accessed 04 March 2018.

¹²⁴ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/escort.pdf>, last accessed 03 March 2018.

personal or family emergency, or when the detainee can demonstrate a compelling need'¹²⁵. 'Upon a detainee's request, the facility shall make special arrangements permitting the detainee to speak by telephone with an immediate family member detained in another facility. (Immediate family members include the detainee's spouse, mother, father, step-parents, foster parents, brothers and sisters, and natural or adopted children.) Reasonable limitations may be placed on the frequency and duration of such calls.'¹²⁶'The facility shall liberally grant requests for inter-facility family calls to discuss legal matters. For such calls, the detainee's conversation shall be afforded privacy to the extent possible, while maintaining adequate security.'¹²⁷'The facility shall liberally grant requests for inter-facility family calls to discuss legal matters. For such calls, the detainee's conversation shall be afforded privacy to the extent possible, while maintaining adequate security.'¹²⁸'To maintain detainee morale and family relationships, encourages visits from family and friends'¹²⁹, including immediate family (whether detained at the same facility or not), friends, associated and minors.¹³⁰

3. Facilities for recreation and work, parole etc.

Facilities for recreation and work, parole etc. must be made, at least comparable to those that are available to prison detainees.

UNHCR prescribes that the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities needs to be available; as well as access to suitable outside space, including fresh air and natural light. Activities tailored to women and children, and which take account of cultural factors, are also needed. Similarly, according to the CPT, 'Detained irregular migrants should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day) and outdoor exercise areas should be appropriately equipped (benches, shelters, etc.).The longer the period for which persons are held, the more developed should be the activities which are offered to them. Purposeful activities, in an immigration detention context, can include, *inter alia*, language classes, IT/computer classes, gardening, arts and crafts, cookery skills and so-called 'cultural kitchens'. Immigration detention centres should include access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. boardgames, table tennis, sports), a library and a prayer room. All multiple

¹²⁵ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

¹²⁶ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

¹²⁷ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

¹²⁸ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

¹²⁹ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/visit.pdf>, last accessed 03 March 2018.

¹³⁰ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/visit.pdf>, last accessed 03 March 2018.

occupancy rooms should be equipped with tables and chairs commensurate with the number of persons detained'.¹³¹

4. Ensure Due Process and Rights During Investigation and Trial Rights

It is recommended that the state government must ensure that its officials inform the detainees of their rights when they are taken into custody by the border police force. It appears many of the detainees were not very clear about why they were in detention. Given the wide concerns about failures of many persons to receive notices, especially migrant workers, children, single women, older people, persons with mental health issues and others, a more humane and legally sound system of actually ensuring notices may be ensured.

State should consider creating more proximate, less expensive procedures for review/revision of FT orders. In the current scheme, the only way of challenging FT order is appealing to the High Court – a procedure that is expensive and difficult for most detainees. State should consider the possibility of opening review mechanisms inside detention centres since many detainees appear to have all the requisite documents on them.

¹³¹ CPT, 'Factsheet on Immigration Detention', available at <https://rm.coe.int/16806fbf12> last accessed 04 March 2018.

Annexure 1

Detail Note on NHRC's Mission to Assam's Detention Centre

A mission from National Human Rights Commission headed by Special Monitor Harsh Mander and accompanied by two senior officials Dr. Mahesh Bhardwaj, SSP, NHRC and Indrajeet Kumar, Assistant Registrar (Law), NHRC visited two detention centres and met the detainees. The Special Monitor also drew upon the assistance of two scholars to assist me in the research for this Mission, Dr. MohsinAlam who teaches at the Jindal Law School, and Abdul Kalam Azad, who is independent researcher formerly with the Tata Institute of Social Sciences, Guwahati. The Mission had meeting with jail and police authorities, district magistrates and senior officials in the state secretariat. The team also had a series of meetings with civil society groups in Goalpara, Kokrajhar and Guwahati. Detail notes of such meeting, discussion and observations are outlined here:

Day 1 (22/01/2018) – Goalpara

The Mission reached Lokpriaya Gopinath Bordoloi International Airport, Guwahati at around 12 pm in the noon and directly moved towards Goalpara around 130 kilometres. The Mission was welcomed to Goalpara district by the Banti Talukdar, Circle Officer of Balijan Revenue Circle, designated as protocol officer for the Mission in Goalapara district. The team checked into Additional Circuit House in Goalpara town and had lunch. The Mission reached District Jail Goalpara at around 5:30 pm.

Meeting at Goalpara District Jail cum Detention Centre

In the district jail the Mission had a meeting with senior officials from district administration including Deputy Commissioner GhanshyamDass (IAS), Deputy Superintendent of Police (Border) Anowar Hussain (APS), Jail Superintendent RanjitBaishya and Circle Officers among others.

- Process of Identifying Suspected Foreigner

The Mission inquired about the status of D voters and reference cases in Goalpara district as well as the due process of identifying doubtful citizen and the functioning of border police unit of Assam police.

The deputy commissioner informed the Mission that the doubtful citizens both D voters and reference cases, declared by the foreigners' tribunals are kept in

detention centre. In every police station there is a separate police unit called ‘border police’. Though there is provision for separate Superintendent of Police (Border) to supervise the work of border police but normally the SP of the district takes additional responsibility of the border unit as well. However, there is one dedicated Deputy Superintendent of Police (Border) to assist the SP. Deputy Superintendent of Police Anowar Hussain submitted before the Mission about the sanctioned strength and the normally available strength of the each border police unit or watch post.

Table: Strength of Border Police Unit

SI Number	Sanctioned Strength		Normally Available	
	Designation	No	Designation	No
1	Sub Inspector	2	Sub Inspector	1
2	Assistant Sub Inspector	2	Assistant Sub Inspector	1
3	Constable	4	Constable	2

The Mission asked the Deputy Superintendent of Police (Border) Anowar Hussain about the procedure how the cases of suspected illegal foreigners are instituted is there any process of filing FIR by police or anyone else or is there any procedure equivalent to an FIR. The DySP told the Mission that each border police unit has a demarcated area of operation which consists of roughly 15-20 villages. The border police unit conducts survey in each and every village within their jurisdiction if they find someone suspected to illegal immigrant they serve a notice to produce citizenship documents. The DySP showed a template which is used for serving notice to the suspected illegal immigrant. The notice asks to produce one or more documents out of thirteen documents enlisted in the notice. He also informed that they provide 15 days¹³² to produce the document. If the person fails to provide the documents in the stipulated time frame, border police refer the case to FRRO (Foreigner Regional Registration Offices), the office is headed by Superintendent of Police (SP) of the respective district. FRRO registers the reference case and sends the case to Foreigners Tribunal for trial. He also informed that before registering the reference case, FRRO conducts an inquiry and if the prima-facie is not found against the suspect, the case is dropped at FRRO itself.

¹³² Though the DySP said that the border police provide 15 days to submit the document/s but the notice template doesn't mention the time frame of 15 days. It keeps the option blank.

Copy of the template used by border police to serve notice

NOTICE

..... Police Station,

Notice No. date

To,

Name -

S/O -

Village -

Post Office P.S. :-

Dist - State -

Subject - Direction to produce documents for citizenship.

You are hereby directed to produce one or more documents as per list given below within a period of _____ days from the date of receipt of this notice with the provisions Foreigners Act, 1946 and Foreigners (Tribunal) Order 1964. Otherwise, actions will be taken against you as per law.

Witness :-

1. Enquiry officer,

2.

.....

List of documents -

1. Land records including tenancy records of relevant period (upto 24th Mar 1971).
2. Citizenship certificate issued by competent authority
3. Citizenship certificate issued from outside the State (which all should be got verified from the issuing authority by the Registering authority)
4. Refugee registration certificate issued upto 24th Mar 1971
5. Passport issued by the Government of India upto 24th Mar 1971
6. Insurance policy (L/C) of relevant period (upto 24th Mar 1971)
7. Any licence / certificate issued by any Government authority (other than Ration cards) of relevant period (upto 24th Mar 1971)
8. Documents showing service / employment under Government/Public sector undertaking.
9. Bank/Post Office Accounts of relevant period (upto 24th March 1971).
10. Birth certificate issued by the competent authority.
11. Certificate issued by the Secretary of the Village Panchayat countersigned by the local Revenue official in respect of females who have migrated to other village after marriage. However, this would be a supporting documents only.
12. Extract of NRC, 1951 and extract/certified copy of Electoral Rolls upto the midnight of 24th March 1971 and their linkage with the persons under investigation.
13. Any other documents as considered by the State Government for determination of nationality of a person.

- **Role of Foreigners Tribunal**

Once the reference case is referred to Foreigners Tribunal, the tribunal sends notice to the suspect to appear before the tribunal to prove his/her Indian citizenship. The cases are heard and disposed of in the Foreigners Tribunal.¹³³ The notice is served through the police department. The DySP informed that, in some cases, the notices are served to the relatives or neighbours if the person is not available in his/her home. Often those suspected people go to other places to work. The Mission asked whether the suspects try to evade the notice. The DySP informed that normally they don't because that will increase the doubt of the police and the case will be decided expatriate.

- **Role of District Magistrate**

The Mission also wanted to know the role of the district magistrate in the whole process of the identifying the illegal immigrants. District Magistrate Ghanshyam Dass (IAS) informed that once the person is declared as illegal immigrant, the District Magistrate's office processes the cancellation and revoking of all the entitlements and privileges enjoyed by the declared foreigner like ration cards, voter ID card etc.

- **Arrest of Declared Foreigner**

Once the person is declared as foreigner by the Foreigners Tribunal, the border police arrest the person and send him to the detention centre. If the foreigner is male, he is kept in Goalpara District jail designated as detention centre and in case of women and children the foreigner is sent to Kokrajhar detention centre.¹³⁴

- **Categories of Detainees and their process of repatriation**

The Mission asked the district administration about the processes once the declared foreigner is kept in the detention centre. Initially, the DM and DySP gave conflicting narrative however, the Jailer's intervention made the process clear. DM told that the declared foreigner is awarded a jail term normally starts from six months and once the term is over the process of sending them back to original country starts. The DySP gave a different account and said that till there is no formal agreement with Bangladesh the declared foreigners will remain in the detention centres. The Mission asked that since the declared foreigners are detained for non-criminal offence, does the Foreigners Tribunal award them jail term as punishment. The Jail Superintendent Ranjit Baishya intervened to clear the confusion. He said that for those who are 'actual foreigners', their cases are

¹³³ Currently there are 100 Foreigners Tribunal across the state. Before 2014, the number was 36.

¹³⁴ In Assam there are six detention centres across the state. Before 2014, Goalpara and Kokrajhar were the only two detention centres.

tried in judicial court and awarded punishment based on the crime they committed. They do not contest their nationality, whereas the cases of suspected illegal immigrant both D voters and reference cases, the suspects claim to be Indian national are tried in Foreigners Tribunal.

The district magistrate informed the Mission that there are those ‘actual foreigners’ who are in detention for even nine years. Their repatriation has not been possible for such long years. Their jail term has ended long back. There are such detainees from Bangladesh, Pakistan, Nigeria and Afghanistan in Goalpara detention centres.

- Process initiated by Bangladesh to Repatriate ‘Actual Bangladeshi’

The District Magistrate and the Jailer informed the Mission that recently the Deputy High Commissioner of Bangladesh visited the Goalpara detention centre and examine the claims of 54 convicted illegal immigrants from Bangladesh who have completed their term of conviction.

In cases of declared foreigner (‘D voters’ and ‘reference cases’) haven’t been examined by the Deputy High Commissioner. Many of them are languishing in the detention centre since 2009/10. While examining the data of detainees in the centre, the Mission observed that the number of detainees have exponentially increased since 2016.

- How the Detention Centres are Administered

Mission wanted to know under which rule detention centre is administered, did the government has framed any rule or given any instruction/circular to the authorities administer the activities of the detention centre. The Jail Superintendent RanjitBaishya informed that there is neither any special rule regarding the administration of detention centre nor there are any guidelines or instruction from the higher authorities. The detention centres are administered under Assam Jail Manual and the detainees are treated as normal convicted prisoners.

- Rights of the Detainees

The detainees are allowed to meet their family members and relatives from 11 am to 3 pm. The Mission wanted to know is there any provision of parole for the detainees especially in emergency and humanitarian situations like death of family members. The authority concerned informed that parole is not allowed in case of detainees, it is only applicable to convicted prisoners i.e. for Indian citizen. The detainees are also treated as non-labouring inmates which barred the jail authority to engage them in any work thus they also don’t get any wage.

- Over-crowded Detention Centre

The prison has capacity of 370 after accommodating the declared foreigners’ now total number of inmates in 439. The jail authority informed that in case of health issues the detainees are treated by the resident doctor, considering the seriousness of the health condition the patients are also transferred to district civil hospital in Goalpara. Two detainees

have died in the detention centre. The jailer informed the Mission that both the cases have been intimated to National Human Rights Commission.

Table: Prison Population

SI No.	Category of Prisoner	Total Population		
		Male	Female	Total
1	UA (P) Act	03	00	03
2	Remands	75	03	78
3	Sessions UTP	17	00	17
4	NDPS Act	05	00	05
5	R.I.	85	02	87
6	S.I.	02	00	02
7	<u>Declared Foreign National</u>	247	00	247
	Total Prisoners	434	05	439
	Capacity	355	15	370

The jail authority also provided the details of physical capacity (area) of the Goalpara district jail. The detail is tabled below:

Table: Physical Capacity of Goalpara District Jail

SI No	Ward No	Length	Breadth
1	01	70ft. 2'	21ft. 11'
2	02	70ft. 2'	21ft. 11'
3	03	80ft. 7'	21ft. 11'
4	04	30ft. 11'	21ft. 11'
5	05	71ft. 11'	21ft. 11'
6	06	70ft. 10''	21ft. 11'
7	07	69ft.	20ft
8	08	63ft. 7'	20ft.
09	09	23ft. 5'	22ft.
10	10	100ft.	22ft.
11	11	85ft.	22ft
12	Hospital	43ft.	20ft. 5'
13	Female Room 1	20ft.	18ft.
14	Female Room 2	20ft	14ft. 6'

15	Female Room 3	20ft	15ft. 6'
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The Jail Superintendent informed that right now the detention centres are set-up in the jail premise as ad-hoc measure. Government has identified land and started other formalities to set-up separate detention centre in Goalpara district.

- Is Identification still on?

The Mission wanted to know whether the process of identifying suspected foreigners and registering ‘Reference Cases’ by border police is still continuing. The DySP Anowar Hussain informed that the process of surveying the villages and identifying suspected illegal immigrant is on hold since the NRC updating process has started. The District Magistrate informed that the process of arresting the declared foreigners was hold since September last year. There was a huge public outcry among the people so he has verbally instructed not carry out further apprehension drive.¹³⁵ However, the process arresting the declared foreigners have resumed again.

- The Number – Registered, Disposed of, Declared Foreigner and Arrested

In response to Mission’s query on the statistic of foreigner cases in Goalpara district, the DySP said that there are 21947 cases registered against the suspected foreigners. Out of which around 12000 were marked as D voter by Election commission during revision of voters list in 1997 and remaining cases (approx. 10000) were registered as ‘reference case’ through border police. The cases are being disposed of at the Foreigners Tribunal. There are 9600 cases are still pending with the Foreigners Tribunal. In other words 11347 cases has been disposed of by the Foreigners Tribunal, out of which 8747 suspected citizens have been able to defend their Indian nationality and 2600 were declared as foreigners. The data provided by jail authority indicates majority of the cases were decided uncontested or expatriate. A little over hundred declared foreigners have been arrested by the police and kept in detention centre. Out of the 100+ detainees 60 have been released from detention centre by higher courts though either holding them Indian national or by set-aside of the expatriate judgement of foreigners’ tribunal. To challenge the judgement of Foreigners Tribunal, the detainee has to approach High Court which requires huge amount of money and often the detainees can’t afford. The Mission asked the DySP,

¹³⁵ Youths and students from Bengal origin Muslim community organized processions and protest marches against the arbitrary cases of suspected illegal Bangladeshi in different parts of the state. In one of such protest marches, police brutally crack down on the protesters and open fired. One protester by the name of Yaqub Ali (22) was killed and several were injured in Goalpara on June 30th 2017. In another case, a Muslim students’ leader Lafiqul Islam Ahmed who was very vocal on the issues of harassing Muslims in the name of illegal Bangladeshi was assassinated by unidentified gunman on 1st August 2017. After these two incidences, there was huge public outcry among the members of Bengal origin Muslim community.

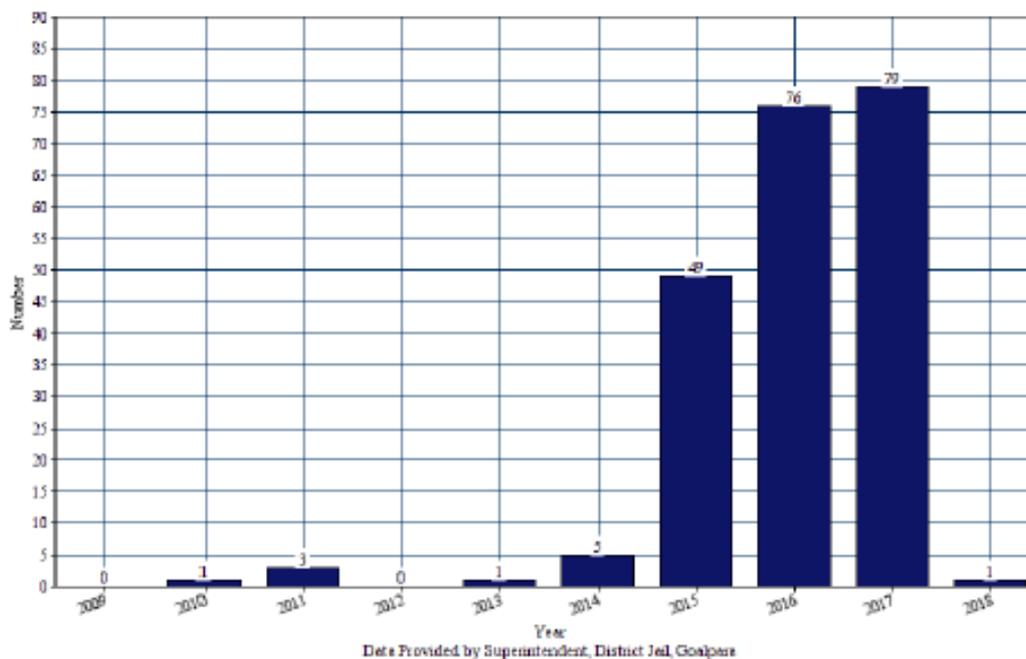
what the major causes in cases of 44 detainees of being still in detention – is it because they are too poor to approach the high court. The DySP declined to answer the question and said ‘For us they are declared foreigners, until and unless their original country accepts them they will remain in the detention centre’. The jail superintendent told that till last year some of the declared foreigners were pushed back to Bangladesh.

Break up Suspected Citizen of Goalpara District

SI No	Category	Number	Remarks
1	Total Suspects	21947	Approx. 12000 D Voters and 10000 Reference Case
2	Case Disposed of	11347	9600 cases are still pending
3	Declared as Foreigner	2600	8747 were declared as Indian national
4	Arrested	104	
5	Released from Detention Centre	60	
6	Current Detainee	44	

The year wise number of detainee lodged in detention centre shows a trend of huge increase after 2014. Below table shows the year-wise number of detainee lodged in Goalpara Detention Centre. In case of 2018, it includes the detainee lodged till January.

Year wise break up of DFN Detainees in Goalpara



Meeting with Declared Foreigners (D Voters and Reference Cases) in Detention Centre

The members of the Mission sat together with the detainees inside the detention centre and listened to their version of the story. Some of their stories are highlighted below:

- **AnantaSarma (77)**

Seventy seven years old AnantaSarma migrated from Tripura to work as a cook in one of the roadside eateries or commonly known as line hotel in Nalbari district of Assam. His family including his children remained in Tripura. Eventually, he did his second marriage in Assam and raised another family. More than six years ago, AnantaSarma and his wife were picked up by police because they were declared in an expatriate decree by the Foreigners Tribunal as Bangladeshi nationals who illegally entered India after 25th March 1971. Poor and elderly AnantaSarma didn't have any idea how and when the foreigner's case was instituted and tried against him. He didn't receive any notice neither from the police nor the concerned Foreigners Tribunal. After arresting the couple, police took them to Indo-Bangla border in Mancachar in Dhubri district of western Assam. Police tried to push them inside the territory of Bangladesh. However, the border guards of Bangladesh foiled the attempt. Then they were

drove back, separated and lodged into detention centre. His wife was detained in Kokrajhar detention centre and he was in Goalpara. In the last six year for just one day he got special permission from the detention authority to meet his wife in Kokrajhar detention centre just for few minutes. When they were arrested, the spouse had two minor children – 14 years old boy and 17 years old adolescent girl. Ever since the spouse got detained in two different detention centres, they have never met their children, even they don't know where their children are, what they are doing.

- **Nur Mohammad (63)**

Elderly, weak and hearing impaired Nur Mohammad is the first detainee in the category of declared foreign national (DFN) in Goalpara detention centre. He was lodged into detention centre in 14th January 2010. He was too weak to speak properly with the team members of the Mission. His inmates assisted him in communicating with the team. Somewhat similar to the story of AnantaSarma, Nur Mohammad did second marriage after the death of his first wife. He used to work as a daily wage earner to feed his family. However, unlike AnantaSarma, he was served notice in his address at Kumripara in Goalpara district. Though he has sufficient document to prove his Indian nationality but couldn't defend his Indian citizenship in the Foreigners Tribunal because of his abject poverty and lack of access to proper legal service. Ever since he has been lodged in the detention centre, he has not been able to meet his family members and also not been able to approach the higher court for his release.

- **Subhash Chandra Roy (45)**

Subhash Chandra Roy is locked in the detention centre for last two years. He claims that he was born and brought up in Tamulpur area in Baksa district of Assam. His father Lt. Rajani Kanta Roy's name featured in 1951 NRC. He studied in government school and passed lower primary in 1969 (Even before the cut-off date of 25th March 1971), passed his matriculation and higher secondary course under Assam boards and also took admission in a government college but couldn't complete his graduation. His name was enlisted in voters list, he got land patta an heir of his father, government provided him the permanent residential certificate (PRC) but he alleged that SP Nalbari wrote in his report that he came from Bangladesh in 1995. His two brothers, his wife and children are still Indian citizen but he was suspected to be illegal Bangladeshi which lands him in detention centre. Mr. Roy is the most educated among all his detainee inmates. When he learnt that a Mission from NHRC is scheduled to visit the detainees, he drafted a letter addressing the Commissioner of NHRC

and the same is signed by his detainee inmates. The letter put forwarded the following questions before the NHRC Chairman:

- i) The first point in the letter, questions the process of ex-parte judgement in the Foreigners Cases¹³⁶. The letter asks - under which section of the constitution they are detained without giving them fair chance of proving their Indian citizenship? How on mere suspicion as doubtful citizen someone can be detained for 7-8 years? Why there is no provision for bail in their cases?
- ii) The second point the letter raised is the segregation of family members. Once two or more members from same family are arrested, the male members are lodged in Goalpara detention centre and while female and children are lodged in Kokrajahr detention centre. Through the letter, the detainees ask the NHRC Chairman 'which country's constitution in the earth separates husband from wife and children from their parents?'
- iii) Finally the letter questions the process of the constituting the foreigners case as well as the process of conducting the trial. When the police secretly register cases on genuine Indian citizen of being illegal foreigner and the court decides without hearing to the accused and dump them into detention centre for indefinite time; why the authorities are not punished for their wrong doing? Which human rights is being protected by dumping own citizen into detention centre?

The copy of the letter

¹³⁶ In majority of the cases, the suspected or doubtful citizens don't receive the notice neither from police nor from Foreigners Tribunal. Close examination of the available data shows this trend very clearly.

প্রতি
 মানব অধিকার আন্দোলন অর্থাৎ মনোহর
 গোস্বামী নামে কাছাকাছ আয়ক হৈ মকী
 সালেও মকী বিদেশী (ডি ডেটাৰ) পক্ষের
 উদ্ভবত চৰকাৰে কৰা অবিচাৰৰ ক্ষতিমাৰ

২। বিনা বিচাৰে আমাৰ দেশেও মকী নাগৰিক
 কৰ্মই ৭-৮ বছৰ জমিৰি অৱলম্ব কৰি বৰাণী
 পৰ বিবাহৰ বেগম বীৰাত পল্লি বিহাৰ আছা

৩। অধিকাৰীক কোন দেশৰ পৰ বিবাহত প্ৰাৰ্থনা
 প্ৰীত পক্ষা পক্ষানক নিতু প্ৰাৰ্থনা পক্ষা বিহাৰ
 কৰিব লাগে

৪। ১৯৫৩ আৰু ১৯৫৪/২(২) বীৰাত নাগৰিক
 অধিকাৰ অধিকাৰ মকীৰ জিৰণে চাৰিবিংশ নাগৰিক
 ক হোৱাৰ ক্ষেত্ৰে প্ৰাৰ্থনা মকীৰ জিৰণে হোৱাৰ
 বিদেশী কৰ্ম জাৰি হৈ দেশত আৰম্ভ কৰি
 আন্দোলন পক্ষের বিৰুদ্ধে জাৰি হৈ আৰম্ভ কৰা
 হোৱা আৰম্ভ কৰি ২ নাগৰিকৰ
 বিচাৰ জিৰণে মকীৰ নিৰ্দিষ্ট বিদেশী কৰ্ম
 বন্ধ কৰি জৰুৰীক বিনা বিচাৰে মকীৰ
 অনুপস্থিতিত একজনী মকীৰ বিদেশী কৰ্ম
 আমদান কৰা হৈ আৰম্ভ কৰি বৰাণী
 মকীৰ অধিকাৰৰ কোন প্ৰীত বীৰাত হৈ
 কৰি মানব অধিকাৰে হৈ ১।
 প্ৰাৰ্থনা হৈ কোন দেশ আৰু জৰিক মত
 মকী বিদেশী দেশৰ নাগৰিকক বিনা দেশত

- Ruhi Das Mallick (52)

Ruhi Das Mallick came to Guwahati as a migrant worker in his early youth from neighbouring West Bengal's Jalpaiguri district. He earned the reputation of a skilled carpenter and worked in many well-known people's house in Guwahati including political leaders like Himanta Biswa Sarma and Prafulla Kumar Mahanta. When he was arrested, he was working in the same police station. When the police officer first time said 'Mallick we have a warrant against you', he thought the officer was bursting a joke on him and he lough out loud and asked what warrant, did he commit some crime? But within a moment he realized that police officer was serious and was doing arrangement to send him to detention centre. Mallick didn't have any idea when the foreigner's case was registered against him,

when the Foreigners Tribunal decided his nationality, he had no clue. Police told him that the case was decided expatriate in his absence. The person who was fixing the furniture in police station lands in detention centre within few hours. Ever since he is in detention, no one has visited him neither his family back in West Bengal has any information about his detention.

- Payroll, Daily Routine, Visit by Family Members and Relatives

As discussed earlier, there are detainees in Goalpara detention centre who hasn't seen their family members for years. Since the detainees are not treated as citizen, the provision of payroll doesn't apply to them. In most of the cases, from one family, one or two members are declared as foreigners whereas remaining others are Indian nationals. There are many cases, where the parent is declared as foreigner while children are Indian and on the other hand children are declared as foreigner whereas parents are Indian citizen. Hence, their remaining family members are living in Assam (in few cases states like West Bengal and Tripura). In cases of family emergencies like death of any family members or marriage and other social functions, the detainees are not allowed to visit their family members. On the other hand, Goalpara detention centre has detainees from 8 districts of the state. Even if the family members wish to visit the detainees they often fail to make it because of time required for travel as well as for the financial constraint. The Mission observed that since the district jails are designated as detention centre why the detainees are not kept in jails of the district concerned. That will at least make it less challenging for the family members to visit the detainees. The Mission also observed that the detainees spend their entire time idly, they are not allowed to work. In the early morning they wake up, stand up for the counting, have breakfast, then lunch and go inside ward after having early dinner at 4 pm. The entire day they do nothing, even the detention centre doesn't have a television or access to newspaper and library. One of the detainees broke- down while narrating their stories. He said 'either you take us out of this hell or kill us'. For years they are not doing anything. Some of the detainees show their interest to work inside the detention centre which may enable them to spend their time a bit easily as well as get some wage against the work.

- Role of District Legal Service Authority

While listening to the stories of the detainees, the Mission felt that there are many detainees whose cases were either decided expatriate or didn't get a fair chance defend their Indian nationality. The Mission observed that as a country we provide legal aid even to the people accused of heinous crimes like rape and murder, but in this case without even committing any crime these people are languishing in detention centre as they can't afford legal service. The Mission said that they would recommend the DLSA to examine the citizenship documents of all declared foreign national (DFN) lodged in the detention

centres and who have sufficient documents to prove their Indian nationality should be provided with legal aid in the higher courts so that they can get out of the detention centre. This will not only give a huge relief to many genuine Indian citizens but also cut down the unnecessary cost of looking after the detainees in these centres.

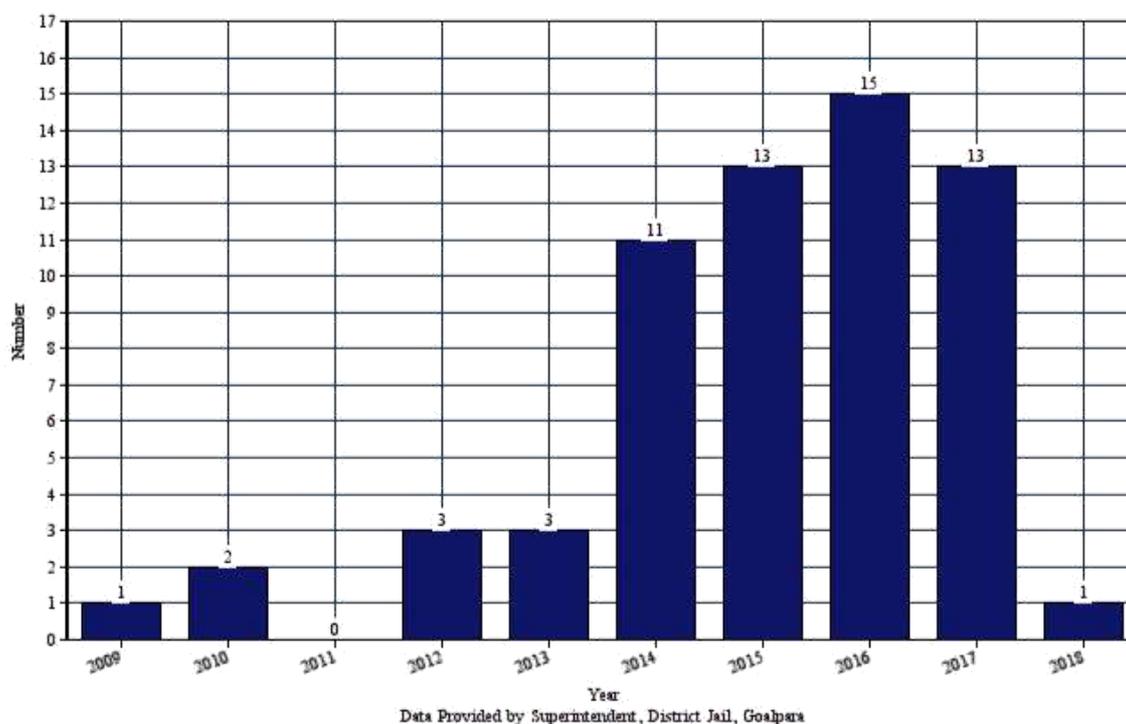
Meeting with Convicted Foreign National or ‘the Actual Bangladeshi’

The jail authority took the members of the Mission to another ward where the convicted foreigners were detained. One of the jail official announced ‘*okolBangladeshi khiniaguwai aha*’ (only Bangladeshis come forward). There are 54 Bangladeshis who illegally entered Assam for various reasons ranging from in search of work, for treatment, smuggling, or even trafficked. The members of the Mission sat with them and listen to their stories as well.

Thirty two years old Md. Habibullah from Chittagong district of Bangladesh was arrested in Karimganj district of southern Assam when he entered India without papers in search of livelihood. He was caught by police and his case was tried in Karimganj court. He was awarded six months jail term. When his jail term finished, police tried to push him back to Bangladesh but failed. Later he was transferred to Goalpara detention centre. Police promised that he would be sent to Bangladesh in a week. But it has been more than eight years he is languishing in detention centre. He along with other 53 Bangladeshi nationals has sat on hunger strikes on three occasions demanding expedition of their repatriation process. But nothing has happened so far. Recently, the Deputy High Commissioner of Bangladesh met them and collected their details.

Another detainee Abdus Samad from Gaibanda district of Bangladesh was trafficked to Bangalore by an organized racket of human traffickers. He was promised good job with handsome salary. But he was engaged in cleaning job. He tried to flee but the agent confined him for six months. Later on he came in touch with some Assamese workers and heard that Assam shares its boundary with Bangladesh. He fled and reached Assam. On his second day in Assam, Abdus Samad was arrested in Bongaigaon. He was tried in judicial court and awarded two months jail term and Rs. 10000/- fine. He completed his punishment term but now detained in Goalpara detention centre.

Year wise break up of Convicted DFN Detainees in Goalpara



There are total 62 convicted foreign nationals detained in Goalpara detention centre. Out of which 54 are from Bangladesh. All the 54 Bangladeshi national including 4 four Hindus have completed their term of punishment and all of them are willing to go back to their country but due to unknown reason none of their repatriation is happening. Unlike the declared foreigners who at least have option to be visited by the family members, these detainees don't have that option as well. For years, neither they know anything about their family members back in Bangladesh nor their family member know that they are detained in Indian detention centre. One of the detainees showed a Bangladeshi phone number which he memorized 5 years back and now written on a piece of torn paper and keeping the hope alive that someday he will get the opportunity to call the number and inform his where about to his family members.

The Mission observed that unlike other states where civil liberties organization like PUCL has been working with the jail authorities and concerned ministries to release the foreigners who have completed their jail term in Indian jail, there is no such organization working in Assam.

Meeting with Members of Civil Society Organizations

In the evening the district administration organized a meeting with the members of civil society organization. The meeting was attended by representatives of

students' organization, civil society groups and senior citizen and the officials of civil and police administration including the Superintendent of Police of Goalpara district Amitabh Sinha.

All the representatives of the students organization and civil society groups as well as the senior citizen shared their concerned about the process of the identifying the suspected illegal immigrants.

Former Member of Assam Legislative Assembly and retired professor of Goalpara College Prof. Joynal Abedin spoke very explicitly in the meeting about faulty process of investigation and unnecessary harassment of impoverish villagers in the name of identifying illegal immigrants. He alleged that the police don't investigate the identity of the so called illegal immigrants properly before sending the cases to Foreigners Tribunal. Many of the genuine Indian citizens are tagged as suspected foreigners which force those poor people to go through a heavy financial turmoil to prove their Indian nationality.

The representative of JamiatUlema-e-Hind Mr. Abdul Hai gave a written representation before the Mission. In his memorandum, he said that most of the D Voters and the suspected illegal immigrants (Reference Cases) are from the most marginalized section of the society, mostly from *char* and *chaponi* areas (river island and river bank areas). Every year tens of thousands of people are affected by flood and river erosion in Assam. In last 50 years more than 7 percent of Assam's land has been eroded by river Brahmaputra which has uprooted lakhs of people and forced them to move to upper Assam and other urban areas. Once they go to majority dominated areas in search of livelihood, because of the identity, culture and language they are often doubted as illegal immigrant from Bangladesh. The members of local chauvinist groups detain them and hand-over to police as suspected illegal immigrant. Abdul Hai alleged that police do not investigate the claims of those chauvinist groups seriously and registers foreigners' cases against inter-district migrant workers. He appealed that the flood and erosion affected people should get rehabilitation and compensation from the government not arbitrary cases against them suspecting them to be Bangladeshi.

All Assam Minority Students' Union (AAMSU)'s Goalpara district president Anisur Alom brought similar allegation against the government. He said that the people who are tagged as D voter or registered reference cases against belong to one of the most marginalized section of the society. They often don't get access to require legal services due to the abject poverty and thus often land in detention centre. He appealed to the Mission to take necessary steps to provide free legal services to the D voters and suspected illegal immigrants so that they don't have to loss their life-long savings including immovable properties to defend their Indian citizenship. The students' leader also alleged that often the authorities do not accept documents with minor discrepancies and declare the

person as foreigner on ridiculous grounds. Many of them have been held as Indian citizen by High court, why the authority concerned is not held responsible for causing such harassment to the poor and impoverished families only because of their identity. He also highlighted one of the major problem faced by the D voters and suspected illegal immigrants while facing the trial in Foreigners Tribunal. He alleged that the Foreigners Tribunal normally gives 15-20 days to submit documents whereas the district administration takes to two three months to provide the documents after applying for the same. If the person has to collect it from another district (due to inter-district migration) it takes much longer time. In the meantime the Tribunal declares him as foreigner. He informed the Mission that his organization has submitted memorandum to the district administration to expedite the process to proving documents against such application.

Another students' leader Hussain Ahmed Madani, representing the Satra Mukti Sangram Samiti, alleged that the border police has been very casual in their approach of identifying suspected foreigners. He said that same person has been served notice twice even after Foreigners Tribunal declared him as Indian national in the first case Though the Superintendent of Police Amitabh Sinha refuted his allegation; however when the community members presented in the meeting gave examples of such cases, the SP said that in such cases they should submit the earlier order before Foreigners Tribunal.

Day 2 (23/01/2018) – Kokrajhar

After the breakfast the team started for Kokrajhar and reached Kokrajhar Circuit house where Deputy Commissioner/District Magistrate of Kokrajhar received the members of the Mission.

Meeting with Police Officers

The Mission had a brief meeting with the police officers who handle the cases of D Voters and reference cases. The police officers gave the details of the number of the cases registered, disposed of and number of declared foreign national detained.

Table: Details of Foreigners Cases in Kokrajhar District

Sl No	Category	Number (Approx.)
1	Total Cases	4442

2	Reference Case	2800
3	Disposed of	3606
4	Declared Foreigner	1299
5	Ex-Partite	400+
5	Arrested	42

Meeting with Women and Children Detainees in Kokrajhar

After the brief meeting, the Mission went to Kokrajhar detention camp and met the women and children detainees. The Mission was accompanied by Deputy Commissioner, Additional Deputy Commissioner, Additional Superintendent of Police, District Jailer and other officials. Women and children detainees are kept in a separate ward within Kokrajhar district jail. The jail authority arranged a meeting with the detainees. Similar to the male detainees in Goalpara detention centre, the women and children detainees of Kokrajhar detention also shared many issues and concerns with the Mission. The situation in the camp was very disturbing. The detainees were crying and whipping, hardly anyone could speak properly. The stories shared by few detainees are described below:

- Halima Khatun

Halima Khatun, a middle-aged woman has been detained for the last ten years. Initial two years she was kept in Nagaon jail then transferred to Kokrajhar detention centre. Her entire family lives in Potiachapori under Dhing police station in Nagaon district of Assam. Four of her children stay with her husband. Her husband works in a government school as chowkidar. All her children and other family members are Indian citizen, her parents and six siblings are also Indian citizen but she was doubted as illegal immigrant and declared as a Bangladeshi. When she was detained her eldest son was 16 years old. One of her children was suffering from long term health issues during the trial of her case in Foreigners Tribunal. She couldn't defend her case properly and subsequently she lost the case. The youngest child was with her for sometimes in the detention centre. Later on the detention centre authorities have handed over the child to father. Her family has been trying to get her out from the detention centre. The family members has engaged lawyer and approached Guwahati High Court.

- HalimanBewa

HalimanBewa, an elderly widow was doubted as an illegal immigrant and marked as D voter by Election Commission in 1997. She contested the case but till she could produce the required documents, the tribunal decided the case and sent her to detention centre. She has already lost everything to fight the case,

including her only house. Her only son has not been able to move the case to higher court due to abject poverty.

- **Arati Das**

Arati Das is another elderly woman from Nagaon district has been lodged in the detention centre for the last three years. Her husband is also detained in Tezpur detention centre. Two of her sons are Indian citizen and staying in a rented house in Nagaon. She also complains that she didn't get proper legal representation as they couldn't afford lawyer.

- **Khudeja Begum**

She is a young widow at her late twenties. Two of minor children including four years old son are being looked after her brother in law (Husband's younger brother). For the last one and half years she hasn't been able to see her children. Unlike other Bengali (Muslim and Hindu) detainees, she belongs to ethnic Assamese Muslim community.

- **Jamila Khatun**

Thirty two years old Jalima Khatun is also from ethnic Assamese community. When she was detained, her son was just 14 days old. It has been four years. Her son hasn't seen the outside world.

Meeting Actual Foreigners

The Mission met the women and children detainees who are actual/uncontested foreigners in Kokrajhar detention centre and spoke to them. There are detainees from foreign nationals from Bangladesh and Myanmar who accept that they are from the respective country and want to go back to their country. But they are not being expatriated.

- **Hamida Begum**

The Mission talked to one of the women detainee from Bangladesh who came to India without papers allegedly for medical treatment. She along with her husband and two young children came to Guwahati seven years ago. Police caught them next day in Guwahati railway station. Her husband has been lodged in Goalpara camp and she and her daughter is in Goalpara. For the last seven years, she hasn't been able to contact with her family back in Cox's Bazaar district of Bangladesh. She met her husband just once in last seven years.

- **Saleha Begum**

Saleha Begum is a mentally ill. The detention authorities say that her mental health existed since she was sent to detention by court. Detention authority provides mental health treatment with the help of a local NGO. If her condition deteriorates, she is sent to Gopinath Bordoloi Mental Hospital in Tezpur, one day distance from Kokrajhar.

- **Sushi Thapa @ Sushi Yasmin Begum (Myanmar)**

Among the women and children detainees, the Mission met the Myanmar national Sushi Thapa @ Sushi Yasmin Begum and her child. The young woman from Myanmar married an Indian man in Singapore. She came to Assam with her husband with Myanmar's passport. She started living with her husband's family. One day border police picked her up and sent to detention her along with her child. It has been more than four years. Initially her husband tried to release her from the detention centre. Now she has no contact with husband. Detention authority informed that her case has been referred to ministry for repatriation. But she alleged that the authority has been promising the same for couple of years.

Meeting with Deputy Commissioner and Detention Camp Authority

The Mission expressed their concern about the issues of children, mental health patient, elderly detainee, pay roll/outing, administration of detention centres and other details to the district and jail authorities. The jailer informed that as per the rule, the children above 6 years who are not declared as foreigner shouldn't be detained with along with their declared foreigner mother. There is provision for handing over the child to the family members or any other NGOs if they get order from the competent judicial authority. In case of mental health patient, the Assam Jail Manual doesn't have any specific guideline for the mental health patient. The Assam Jail Manual hasn't been revised or updated since 1986. The Jail authority informed that they didn't receive any guidelines from government regarding the mental health patients. They also haven't received the Supreme Court guidelines on mental health patients. There are numbers of elderly women detainee who complains about cold, illness, food etc. The jail officials informed that there detainees as old as ninety two years. After the meeting the district authorities and the members of Mission agreed up certain recommendations within the existing legal frame from a humanitarian perspective. Here are those recommendations:

- **Provision of Legal Aid**

Most of the declared foreigners claimed that they are Indian citizen but due to lack of access to proper legal aid either they have been declared as foreigner through ex-parte decree or they couldn't produce the documents before the

Tribunal because of their inability to afford good lawyers. The Deputy Commissioner said that every time he visits the detention centre, the detainees complain that they didn't get proper legal service. It was recommended that the detainees should provide legal aid through either District Legal Service Authority or NGOs. Also the participant felt that in case of ex-parte decree, the DFN should get the opportunity to get heard in the Foreigners Tribunal itself.

- **Detain within the same district**

Both the detention centres in Goalpara and Kokrajhar are set up on ad-hoc basis within the jail premise and detainees from several districts are detained. It was observed that due to distance, the family members can't visit the detainees in the detention centres. Currently, women and children are put in detention centre and male detainees are put in another, which causes separation of family and it makes it much harder to meet the family members. The members present in the meeting felt that the detainees can be put up in the district jails within the same district.

- **Formal System of Communication**

Currently, the detainees can't communicate with their family members. Occasionally the jail authorities facilitate the communication on humanitarian ground. A formal communication system in place will help minimize the mental stress of the detainees.

- **A Manual for Administration of DFN**

Currently the detention centres are administered under Assam Jail Manual. Though the declared foreigners are administered under Assam Jail Manual but they don't get positive provisions like payroll, wage against the work etc. The issues of mental health patient, children and elderly are grossly overlooked by the Assam Jail Manual. A manual addressing the existing legal framework like enforcement of JJ Act, RTE Act etc along with human rights of the detainees should be prepared.

- **Indefinite Detention**

Since there is no provision for deportation, the declared foreigners are detained for indefinite time. There are elderly men and women who need care and humanitarian support. In the meeting, both the members from administration and members of the Mission felt that there should be an age limit (60 years of age) after that the detainees should be released.

Meeting with Civil Society Members in Kokrajhar

A meeting was convened by district administration with the members of civil society organization and senior citizen of the district. Deputy Commissioner, Superintendent of Police and other senior officials from district administration also attended the meeting. The members of the Mission shared the situation they had seen in the detention centre and wanted to know the response from civil society members and as well as the officials from district administration. RajuNarzary, Director of an NGO called NERSWN highlighted the issue of mental health among the detainees. His organization provides mental health services to the jail inmates including the detainee. He suggested that the intervention should be enhanced and scaled up. Shahkamal Khandakar, president of All BTC Minority Students' Union alleged that the police didn't investigate the cases of reference case and randomly sends name to the Foreigners Tribunal. When the issues of legal aid to the detainees were discussed the Superintendent of Police informed the service of District Legal Service Authority is not extended to the declared foreign nationals (DFN).

Meeting with Civil Society Members in Guwahati

At evening the Mission reached Guwahati and conducted the last meeting with civil society groups. The meeting was also attended by senior government officials from district administration and police department. Similar to two other meetings, in this meeting also the members of civil society group showed their concern about the violation of civil, political and human rights of the detainees. They complained about the biasness and arbitrary registration of reference cases without conducting proper investigation.

AmanWadud, a human lawyer alleged that even the Foreigners Tribunal registers cases without doing proper scrutiny of the credentials of such case. In one of such case one Tufajjal Islam S/O Shohidur Islam, aged about 30 years of age, permanent resident of village Baramara under Barpeta Police Station, in the Barpeta district of Assam. He was sent a notice to appear before the Foreigners Tribunal No. 2, Kamrup (Metro) No.- 2 in FT Case No. 1481/2015. In the 'Enquiry Officer's final findings' of the Reference Case that was sent by the Superintendent of Police(B) Kamrup, it has been specifically mentioned that, during enquiry in premature manner it appears that the suspected Md. Tafazul Islam is not an illegal immigrant. Moreover in the Final Interrogation Report On Suspected Foreign National, under the column 'Address in Bangladesh' it has been mentioned as 'Not Applicable'. In another column at No. 10 'Since when he/she is staying continuously in India?' the answer written by Enquiry officer as 'Since Birth'. But despite this Reference Case to Foreigners Tribunal for opinion of the Tribunal. Tufajjal Islam was finally held an Indian citizen by the Tribunal. But in the process he lost his lifetime earnings to defend his citizenship AmanWadud also alleged that in many cases, reference case is registered more than once against one person. He referred the case of one Fajar Ali, son of late Samad Ali, Vill- Tukrapara, PS- Chaygaon Dist- Kamrup (Assam) was issued notice Foreigner's Tribunal No.1 Kamrup(Rural) in GFT(R), Case No.- 866/08 Corresponding to IM(D)T Case No.1620/2003, Police Case No. 435/2006. After receiving the notice he duly appeared before Learned Tribunal with all relevant documents. After perusing exhibited documents and cross-examining the Fajar Ali the Tribunal vide Judgement and Order dated 02/07/2010 held him as not a foreigner. But in the year 2017 the same tribunal registered a case against him vide F.T. Case No. 408/2017 and he was sent notice again to prove his citizenship. On

both the occasion he was not investigated by any investigation agency. On 25/10/2017 the Foreigner's Tribunal No.1 Kamrup(Rural) held that Fazar Ali is not a foreigner.

AmanWadud said that these sort gross injustice is happening not because of the fault of any individual police officer or members of Foreigners Tribunal but because of government policy. He alleged that each border police unit is given monthly target to register certain numbers of reference cases, if that unit fails to do so the police constable and officers are subjected to face consequences. Senior police officer Louis Aind, DCP Crime, Guwahati who was earlier in charge of border police unit admitted that a monthly target of 6 reference cases from each border police unit was given to the police.

After the meeting another group of civil society members met the Mission (who were not invited by the district administration) and shared their concerns. Abdul BatenKhandakar, president of Brahmaputra Valley Civil Society deposed before the Mission and stated that as per the current modalities of the NRC, the D voters are being excluded from the list. The D voters can apply for the NRC updation process but their names will be included only after clearance from the Tribunal. Mr.Khandakar said that there are 1,25,333 D voters in the state, many of them are still waiting to get their notice from Foreigners Tribunal. In this process, their civil and political rights have been withdrawn for more than two decades. Khandakar draws the attention of the Mission and suggested that NRC authority should examine the application and process the same which will accelerate in disposing of the cases in a time bound manner. He said that NRC updating authority has a huge infrastructure of 2500 NRC Sewa Kendra, a three tire process scrutiny and supervision as well as provision of field verification. Moreover, the district magistrate is entrusted to supervise the entire process. Compare to the process of Foreigners Tribunal, NRC process will be way faster and accurate to settle the cases of D Voters. This will cut short a huge amount of public money as well as unnecessary harassment in the process of Foreigner Tribunal.

Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
OL IND 13/2018

11 June 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/6, 34/35, 34/18 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the National Register of Citizens (NRC), which was due to be updated by 31 May 2018.

According to the information received:

The National Register of Citizens is the register containing the names of Indian citizens in the northeastern state of Assam. The NRC was originally prepared based on data collected in the 1951 census and has not been updated since. In 2015, the process of updating the NRC was initiated in accordance with the Citizenship Act of 1955 and the Citizenship (Registration of Citizens and Issue of National Identity cards) Rules of 2003 (as amended in 2009 and 2010). The ongoing exercise of updating the NRC is monitored by the Supreme Court. In an order dated 27 March 2018, the Supreme Court directed the Office of the State Coordinator of National Registration to complete the verification process by 31 May 2018 and to publish the complete draft of the updated NRC by 30 June 2018. Following the publication of the complete draft NRC, individuals who are not listed may file a claim requesting their inclusion. The final updated NRC will

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Her Excellency
Ms. Sushma Swaraj
Minister for External Affairs

be published once all claims have been processed. A deadline for the publication of the final NRC has not yet been announced.

There is no official policy outlining the implications for those who will be excluded from the final NRC. It is reported that they will be treated as foreigners and that their citizenship rights may be revoked in the absence of a prior trial. They may subsequently be asked to prove their citizenship before so-called Foreigners' Tribunals. In December 2017, a local government minister in Assam was quoted as stating that "the NRC is being done to identify illegal Bangladeshis residing in Assam" and that "all those whose names do not figure in the NRC will have to be deported."

In this context, the NRC update has generated increased anxiety and concerns among the Bengali Muslim minority in Assam, who have long been discriminated against due to their perceived status as foreigners, despite possessing the necessary documents to prove their citizenship. While it is acknowledged that the updating process is generally committed to retaining Indian citizens on the NRC, concerns have been raised that local authorities in Assam, which are deemed to be particularly hostile towards Muslims and people of Bengali descent, may manipulate the verification system in an attempt to exclude many genuine Indian citizens from the updated NRC.

These concerns have been heightened by the alleged misinterpretation of a High Court judgement of 2 May 2017 (Gauhati High Court, WP(C) 360/2017). In this judgement, the Court directs the Assam Border Police to open inquiries concerning the relatives of persons declared as foreigners and to subsequently refer them to the so-called Foreigners' Tribunals. Based on this judgement, the State Coordinator of the NRC reportedly issued two orders dated 2 May 2018 (memo No. SPMU/NRC/HF-FT/537/2018/15-A) and 25 May 2018 (memo no.SPMU/NRC/HC-FT/537/2018/23). Pursuant to the orders, border police authorities are required to refer family members of "declared foreigners" to the Foreigners' Tribunals. The duty to conduct a prior inquiry is not mentioned in the orders. Once relevant NRC authorities have been informed about the referral of a case, the concerned family member will automatically be excluded from the NRC. Their status will be recorded as "pending" until their citizenship has been determined by a Foreigners' Tribunal.

It is therefore alleged that these orders may lead to the wrongful exclusion of close to two million names from the NRC, without a prior investigation and trial. In addition, it is alleged that the orders contravene a High Court judgement of 3 January 2013 (Guwahati High Court, State of Assam vs. Moslem Mondal and Others), which stipulates that automatic referrals to Foreigners' Tribunals are not permissible as a fair and proper investigation is required prior to the referral of a case. The orders may also contravene section 3 (1) (a) of the Citizenship Act 1955, which grants citizenship at birth to anyone born in India on/after 26 January 1950, but prior to 1 July 1987. Concerns about the implementation of the

NRC update have also been heightened by the increasing number of persons declared to be foreigners by Foreigners' Tribunals. Out of a total of 468,934 referrals to the Tribunals between 1985 and 2016, 80,194 people were declared foreigners. This figure increased drastically in 2017, reaching 13,434 in just eleven months. In this context, it is reported that members of Foreigners' Tribunals in Assam experience increasing pressure from State authorities to declare more persons as foreigners. On 21st June 2017, 19 members of the Foreigners' Tribunals in Assam were dismissed on ground of their under-performance over the last two years. More than 15 additional Tribunal members were issued with a strict warning to increase their efficiency. Considering that tribunal members serve on a contractual basis for two years, which may be extended on a needs and performance basis, these actions were perceived to be a thinly veiled threat to other Tribunal members.

Bengali Muslims continue to be disproportionately affected and targeted by Foreigners' Tribunals as most persons asked to prove their citizenship before Tribunals reportedly lack the necessary means to do so. Even in cases when individuals produce the required documentation to prove their citizenship, many Bengali Muslims appear to be declared as foreigners based on technical reasons. The Tribunals are governed by the Foreigners Act 1946, which places the burden of proof on the accused to demonstrate his or her citizenship status. Officials of these Tribunals are empowered to find persons to be foreigners, on the basis of minor technical discrepancies in their citizenship documents, such as misspelling of names and age inconsistencies. In this regard, it is also alleged that there has been a notable and significant increase in the Tribunals' findings of foreigner status as a result of the new Government coming into power. It is alleged that the Tribunals have been declaring large numbers of Bengali Muslims in Assam as foreigners, resulting in statelessness and risk of detention.

Finally, it is alleged that the potential discriminatory effects of the updated NRC should be seen in light of the history of discrimination and violence faced by Muslims of Bengali origin due to their status as ethnic, religious and linguistic minority and their perceived foreignness. Although the Bengali origin Muslims in Assam descend from peasant workers brought from the former Bengal and East Bengal starting in the 19th century under colonial rule, they have long been portrayed as irregular migrants. As a result of this rhetoric, Bengali Muslims have historically been the target of various human rights violations, including forced displacement, arbitrary expulsions and killings. In addition, since 1997, the Election Commission has arbitrarily identified a large number of Bengali people as so-called 'doubtful or disputed voters', resulting in their further disenfranchisement and the loss of entitlements to social protection as Indian citizens. More recently, the Citizenship (Amendment) Bill 2016 was introduced with the aim of making members of certain minority communities eligible for Indian citizenship, noting that they shall not be treated as illegal immigrants. While the bill applies to six minority communities – namely Hindus, Sikhs,

Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan - Bengali Muslims and other religious minorities are not included. The proposed amendment suggests a broader context of vulnerability of Bengali Muslims to unlawful exclusion from Indian citizenship.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concern that members of the Bengali Muslim minority in Assam have experienced discrimination in access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status. We are particularly concerned that this discrimination is predicted to escalate as a result of the NRC. The way this update has been conducted potentially affects a great number of Muslims and persons of Bengali descent who may be wrongfully excluded from the updated NRC because of their historical and continuing treatment as foreigners and illegal immigrants in Assam. If these allegations are founded, the updated register poses a dire risk to thousands of Indian citizens who may wrongfully be declared as "foreigners" and consequently rendered stateless. We express further alarm and concern at allegations that Foreigners' Tribunals disproportionately target Bengali Muslims, often resulting in arbitrary deprivation of citizenship, statelessness and the risk of numerous human rights violations, including arbitrary detention and deportations. Finally, we express concern at the continued practice of the Election Commission of identifying a large number of Bengali people as "doubtful or disputed voters", effectively depriving them of the right to political participation and representation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek clarification regarding all cases brought to our attention, we would appreciate your responses to the above allegations, and to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns and allegations.
2. Please provide detailed information on any steps your Excellency's Government may have taken to ensure that the substance and implementation of the NRC update complies with India's obligations under international human rights law and standards. In particular, please provide details on steps taken to ensure that the NRC update does not result in statelessness or human rights violations, including arbitrary deprivation of citizenship, mass expulsions, and arbitrary detention.
3. Please provide details on safeguards ensuring that members of ethnic, religious and linguistic minorities are not discriminated against in the framework of the NRC update and the determination of their citizenship status. In this context, please provide disaggregated data on the race

ethnicity and religion of individuals who have been excluded from the draft NRC as well as individuals who have been declared as foreigners by Foreigners' Tribunals. If unavailable, please explain why.

4. Please provide detailed information on the implications for those individuals who will be excluded from the final NRC. In particular, please elaborate whether they will face detention or deportation.
5. Please provide details on measures taken to ensure access to effective remedies for individuals excluded from the NRC.
6. Please provide information on the current status of the Citizenship (Amendment) Bill 2016. In this connection, please explain why the Bill does not include Bengali Muslims.
7. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.
8. Please provide information on steps taken to ensure adequate training of members of Foreigners' Tribunals, police and NRC authorities on relevant human rights norms and standards, particularly those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.

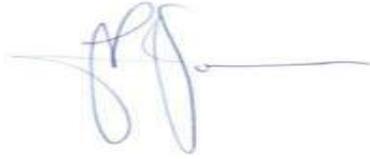
We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to kindly request your Excellency's Government to share the content of this communication with the relevant judicial authorities in charge of overseeing the process of updating the NRC.

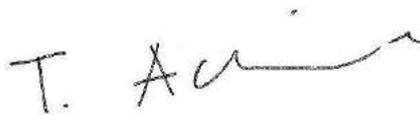
While awaiting your response, we would like to call on your Government to take all steps necessary to conduct a comprehensive review of the NRC update, ensuring that its implementation process is compliant with relevant international human rights standards.

In addition, we would like to inform your Excellency's Government that this communication, and any reply received to it, will be made available to the public and posted on the website page of the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at <http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/IndexSRRacism.aspx>.

Please accept, Excellency, the assurances of our highest consideration.



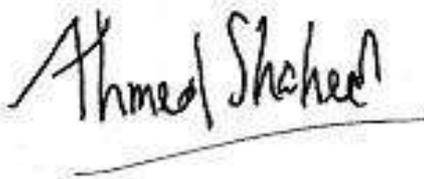
Fernand de Varennes
Special Rapporteur on minority issues



E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance



David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression



Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

With regards to the potential discriminatory impact of the NRC update, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by India on 3 Dec 1968. Article 1 (1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Committee on the Elimination of Racial Discrimination has frequently reiterated that discrimination based on religious grounds is covered by ICERD in cases where it intersects with other forms of discrimination prohibited under article 1(1).

We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to draw the attention of your Excellency's Government to the right to nationality as enshrined in various international legal instruments ratified by India. The right to nationality entails the right of each individual to acquire, change and retain a nationality. Article 5 (d) (iii) of ICERD is particularly relevant as it explicitly obliges States parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin violates States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality (see e.g. General Recommendations No. 30, para. 14).

With respect to the potential disenfranchisement of those excluded from the updated NRC, we would like to reiterate that Article 5(c) of ICERD requires States to ensure non-discrimination and equality before the law in the enjoyment of political rights. This includes the right to participate in elections, to take part in Government and public affairs, and to have equal access to public services.

We equally wish to refer to UN General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief of 1981, its articles 2(1), 3 and 4(1), which notably states "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life."

Finally, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979, and the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 13 December 2018

A/TO: His Excellency
Mr. Rajiv Kumar Chander
Ambassador Extraordinary and
Plenipotentiary Permanent Representative
Permanent Mission of India to the United Nations Office and other
international organizations in Geneva

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REF: OL IND 29/2018

PAGES: 10 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: JOINT COMMUNICATION FROM SPECIALPROCEDURES

Please find attached a joint communication sent by the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

I would be grateful if this letter could be transmitted at your earliest convenience to Her Excellency Ms. Sushma Swaraj, Minister for External Affairs.



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Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE
OL IND29/2018

13 December 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on minority issues and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 33/30, 31/16, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam. A number of concerns are raised with regards to the compilation of the draft NRC, which resulted in a high number of exclusions, predominately of members of minority groups, as well as the objections procedure. Concerns are further raised in relation to the uncertainty regarding the status of those who may be finally excluded from the NRC once the final determinations are made.**

The National Register of Citizens was subject to a previous joint communication by several Special Procedures mandates dated 11 June 2018 (case no. OL IND 13/2018). We regret that, to date, we have not received a response from your Excellency's Government regarding this communication.

In that communication, concern was noted with regard to the State of Assam's ongoing compilation and updating of the National Register of Citizens (NRC). Since that communication, on 30 July 2018, the Office of the State Coordinator of National Registration in Assam published the draft of the NRC. Out of the total registered population of 32.9 million, it has been reported that 4.7 million names were excluded from the draft NRC, of which 3.76 million were rejected, and 248,000 were "kept on

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Her Excellency Ms.
Sushma Swaraj
Minister for External Affairs

hold.” Those having “on hold status” appear to be relatives of declared foreigners and so called ‘Doubtful Voters’ who were given this status by the Election Commission of India, in a review of the Assam electoral rolls in 1997.

While there is no specific data regarding those excluded from the list, as well as those “on hold”, it appears that many are from ethnic, religious and linguistic minorities, including Bengali speakers, including both Muslims and Hindus of Bengali descent, Nepali and Hindi linguistic minorities, as well as tribal groups.

A deadline was set by the Supreme Court of India of 15 December 2018, which was extended on 12 December 2018 to 31 December 2018, for all persons who wish to challenge their exclusion from the Draft NRC to lodge so-called “claims and objections”. Verification of the claims has also been extended by 15 days from 1 to 15 February 2019. To date, it remains unclear when the publication of the final NRC will take place.

In this context we would like to raise some serious concerns regarding both the procedure for establishing the draft NRC, as well as with regards to the “claims and objections” procedure.

1. Concerns with the draft NRC Verification Procedure

a. *Required documentation – disproportionate impact on minorities, women and children*

According to the established procedure, an exhaustive list of admissible documents were prescribed by the Court for applicants to demonstrate proof of the citizenship for registration in the draft NRC. It is alleged, however, that a large number of people were excluded because of lack of access to the required documentation. This appears to have had a disproportionate impact on those from poor and illiterate and marginalised communities, who often belong to minorities. Many of those excluded reportedly reside in geographically remote areas, making it difficult for them to obtain the documentation required by NRC authorities.

Moreover, it is reported that historic records are often poorly created and maintained, and thus may contain errors and inconsistencies. It is alleged that these errors would also have disproportionately impacted upon poor marginalised, remote and illiterate individuals, often coming from minority communities, as they would have had less opportunities to rectify defects in these records.

In this context, it is reported that many of those excluded are women and children, who were even further disproportionately impacted due to their lack of access to the necessary documentation. For example, married women – especially those with limited or no schooling and those married early – have been especially vulnerable to the process, as many do not have documents linking them to their paternal house. If residing in their husband’s village, many do not have identification documents such as marriage certificates or voter IDs, with many marriages not being registered.

b. Procedural and technological issues

There also may have been a number of procedural shortfalls occurring during the registration process which may have contributed to the high number of exclusions. For example, there are allegations of mismatch in the Application Receipt Numbers (ARN) whereby names of people are lodged under families they do not belong to.

Furthermore, it is alleged that in some cases documents submitted reportedly in accordance with the required procedures were not accepted by the verifying authorities, even in cases where these documents were issued by government authorities.

c. Bias in the determination procedure

Determinations of eligibility were made by local authorities, with reports of discriminatory practices by key actors, with negative outcomes for the applicants from minority groups. For example, it has been reported that different verification standards regarding documentation were applied to members of minority groups, with suspected ‘non-original’ inhabitants, usually minorities, processed separately, with more stringent verification standards applied.

For example, it has been reported that many minorities, and notably women, submitted Gram Panchayat (village council, hereinafter ‘GP’) certificates as proof of residence, a document which was on the list of eight admissible List B documents. Reportedly, of the total 32.9 million applications, 4.7 million were made using GP certificates. However, a special two-step verification process was put in place for 2.25 million applications identified as eligible ‘non-original inhabitants’. This de facto appears to have instated a more rigorous process of verification for members of minorities, including the Bengali-speaking Muslims and Hindu minority as well as the Nepali speaking minority. Married women considered ‘original inhabitants’ who used GP - certificates – numbering 1.74 million in all - were not required to go through this additional check. This has led to complaints from amongst Bengali-speaking applicants that they were discriminated against.

Furthermore, given the long-standing historic dynamics of the region, including in light of the history of discrimination and violence faced in particular by Muslims of Bengali origin due to their status as ethnic, religious and linguistic minority and their perceived “foreignness”, inherent bias may have played a part in this process, given that those assessing the documentation were largely drawn from the majority community, and received little if any training about the process, including on standards of fairness and overcoming bias.

2. Appeals process: Concerns with the “Claims and Objections” procedure

It is understood that those who have been excluded from the Draft NRC have been given an opportunity to file claims and objections, with the impending deadline imposed by the Supreme Court of India of 31 December 2018. By the present date, and just one week before the deadline, it appears that approximately 70,000 claims have been filed – just over 10% of all persons excluded from the list. A number of concerns are raised regarding this process of Claims and Objection

a. Lack of awareness, of exclusion, and lack of information about grounds for exclusion

It appears that those excluded from the draft NRC were not notified individually. Rather applicants were required to check the status of their applications on a centralised online database. For those excluded, reasons were not provided, rather those individuals had to make an application, using a prescribed form, to request the grounds for rejection, as only once the reason is known can an individual take steps to remedy any deficiencies.

This cumbersome procedure appears to have had a disproportionate impact on poor, illiterate and individuals living in remote and marginalised regions, many of whom may be members of minorities.

It also remains unclear if those “on hold” will be able to participate in the “claims and objections” process, as their cases may be pending under the Foreigners Tribunals

b. Complex modalities to lodge “claims and objections”

The modalities for the claims and objections process have been prescribed by the Supreme Court of India authorised in its judgement of 1 November 2018. In that judgment a new Standard Operating Procedure (SOP) was established. Whilst similar to the original, special measures were prescribed for vulnerable applicants, such as children excluded despite parents’ inclusion and destitute and homeless applicants, for whom rules have been relaxed.

It also appears that since the SOP has been put in place, efforts have been made to make the process more accessible, including through better public awareness; capacity building and sensitising the NRC bureaucracy to better engage with applicants; and introducing measures for oversight of the process.

Despite these attempts by the Supreme Court to better clarify and improve the system, it is alleged that the Claims and Objections process remains overly complex, including the new SOP, which has reportedly further complicated the issue. Firstly, although the objections period opened on 25 September 2018, the SOP was only published one month later, on 1 November 2018. It has also been alleged that there is further confusion on what are acceptable documents and what are not, with the SOP new distinction calling for strict verification standards for weak documents raising the fear of mass rejections.

3. The role of the Foreigners Tribunals and detention practices

It is alleged that the NRC process has been facilitated by special designated Foreigner’s Tribunals set up in various districts of Assam, under the Foreigners Tribunal Act (1946), and the Foreigners Tribunal Order (1964). There are currently 100 Foreigners Tribunals in the Assam, 64 of which were set up in 2015.

It appears that after 2016, less stringent standards were imposed regarding the appointment of members of these Foreigners Tribunals, leading to an exponential rise in the number of persons declared as foreigners. Those ‘Declared Foreigners’ by the Tribunals have no voting rights. Moreover, a large

number of Bengali people have also been designated by these tribunals as “doubtful or disputed voters”, effectively depriving them of the right to political participation and representation, and resulting in their “on hold” status in the draft NRCList.

In particular, we note that those designated as Foreigners are systematically detained. There are currently six Detention Camps operational in Assam, which reportedly house more than 900 detainees in prison like conditions with no time limit regarding the detention of “foreigners”. Moreover, there is no system by which the detention of those designated as foreigners is reviewed. Such detention is in detention centres that are typically within prison premises.

Recently, the Assam state government has sanctioned Rs. 4.6 billion for the construction of a new standalone detention centre for persons declared as ‘irregular foreigners’ with a capacity of 3000.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concern regarding the process of developing the draft NRC, the “claims and objections” procedures, and the looming 31 December 2018 deadline for finalisation of the project.

We are particularly concerned that the way in which the NRC update has been conducted potentially affects a great number of Muslims and persons of Bengali descent, as well as other minorities, who may be wrongfully excluded from the updated NRC because of their historical and continuing treatment as foreigners and illegal immigrants in Assam.

Furthermore, given the poor understanding and operationalisation of the “claims and objections” period, as well as the relatively short deadline during which it has been undertaken, it appears that many of those perhaps unduly excluded from the list did not have a fair and adequate opportunity to challenge their exclusion.

Finally, finalisation of the NRC in the current form, has left much uncertainty for those excluded, including fears of losing citizenship, statelessness, as well as fears of indefinite detention, or even deportation.

In a region with very poor record-keeping, the current status of the verification process has the potential to create a massive category of people who are on Indian territory but cannot prove citizenship of either India or Bangladesh, thereby risking becoming stateless.

It is further feared that this entire process is stoking ethnic tensions in a region that has already experienced a tumultuous history of identity-based tensions, and suffered from strained inter-communal relationships, including multiple outbreaks of serious violence.

In connection with the above-alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek clarification regarding all cases brought to our attention, we would appreciate your responses to the above allegations, and to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns and allegations.
2. Please provide detailed information on any steps your Excellency's Government may have taken to ensure that the substance and implementation of the NRC update, including the administration of the claims and objection period, complies with India's obligations under international human rights law and standards. In particular, please provide details on steps taken to ensure that the NRC update does not result in statelessness or human rights violations, in particular, arbitrary deprivation of citizenship, mass expulsions, and arbitrary detention.
3. Please provide details on safeguards ensuring that members of ethnic, religious and linguistic minorities are not discriminated against in the framework of the NRC update and the determination of their citizenship status. In this context, please provide disaggregated data on the race, ethnicity and religion of individuals who have been excluded from the draft NRC as well as individuals who have been declared as foreigners by Foreigners' Tribunals. If unavailable, please explain why.
4. Please provide detailed information on the implications for those individuals who will be excluded from the final NRC. In particular, please elaborate whether they will face detention or deportation.
5. Please provide details on measures taken to ensure access to effective remedies for individuals excluded from the NRC.
6. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.
7. Please provide information on steps taken to ensure adequate training of members of Foreigners' Tribunals, police and NRC authorities on relevant human rights norms and standards, particularly those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.

This communication, as a comment on pending or recently adopted legislation,

regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.



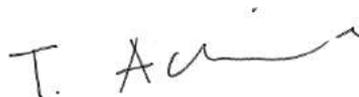
Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention



Ahmed Shaheed
Special Rapporteur on freedom of religion or belief



Fernand de Varennes
Special Rapporteur on minority issues



E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex
Reference to international human rights law

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

Firstly, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979. Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language".

We would furthermore like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

With regards to the potential discriminatory impact of the NRC update, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by India on 3 Dec 1968. Article 1 (1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Committee on the Elimination of Racial Discrimination has frequently reiterated that discrimination based on religious grounds is covered by ICERD in cases where it intersects with other forms of discrimination prohibited under article 1(1).

We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to draw the attention of your Excellency's Government to the right to nationality as enshrined in various international legal instruments ratified by India. The right to nationality entails the right of each individual to acquire, change and retain a nationality. Article 5 (d) (iii) of ICERD is particularly relevant as it explicitly obliges States parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin violates States parties' obligations to ensure non-discriminatory enjoyment of the

right to nationality (see e.g. General Recommendations No. 30, para. 14).

Furthermore, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities), establishes in article 1 the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end. Moreover, States are required to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

We also would like to draw your Excellency's Government attention to the recommendations of the Special Rapporteur on minority issues in his recent report to the General Assembly "Statelessness: A minority issue" (A/73/205),; in particular his conclusions and recommendation in which he recalls that "States must not arbitrarily or discriminatorily deny or deprive minorities of citizenship" and notes that "State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law." (paras 50 and 56)

With respect to the potential disenfranchisement of those excluded from the updated NRC, we would like to reiterate that Article 5(c) of ICERD requires States to ensure non-discrimination and equality before the law in the enjoyment of political rights. This includes the right to participate in elections, to take part in Government and public affairs, and to have equal access to public services.

Finally, we draw attention to the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on freedom of religion or belief

Reference:

OL IND 2/2019

13 February 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/21, 34/6, 34/35 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the adoption, on 8 January 2019, by the *Lok Sabha* (House of the People) of the *Citizenship (Amendment) Bill 2016*.

According to the information received:

The *Citizenship (Amendment) Bill 2016* seeks to amend the *Citizenship Act* of 1955 and it was introduced in *Lok Sabha* (House of the People – lower house) on 19 July 2016. After being approved by the lower house, on 8 January 2019, the bill is to be presented before the *Rajya Sabha* (Council of States – upper house) for further consultation and approval.

The *Citizenship Act* of 1955 provides for the various ways in which citizenship in India can be acquired and it regulates registration of Overseas Citizen of India Cardholders (OCIs). However, the new *Citizenship (Amendment) Bill 2016* amends few of the sections of the 1955 Act and introduces provisions, which appear to be discriminatory against a number of ethnic and religious minorities who may have migrated to India from Afghanistan, Bangladesh and Pakistan. These amendments could also have serious implications for all those persons belonging to minorities, who have failed to prove their citizenship in processes such as for example the National Register of Citizens (NRC) in the State of Assam (cases OL IND 29/2018 and OL IND 13/2018).

In Section 2, subsection 1, clause *b*, the *Citizenship Act* of 1955 provides a definition of “illegal migrant”, as “a foreigner who has entered into India: i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or, ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time”.

The new *Citizenship (Amendment) Bill 2016* introduces a provision under the clause *b* of Section 2, subsection 1, which provides that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan will not be treated as “illegal migrants”, provided also that they have been exempted by the Central Government under relevant provisions of the *Passport (Entry into India) Act* of 1920 and of the *Foreigners Act* of 1946. The bill, therefore, offers the possibility to Hindus and the other five religious minorities, who have entered India without valid travel document, or with an expired travel document, to apply for Indian citizenship through the process of naturalization, thus excluding other minorities.

In addition, the new *Citizenship (Amendment) Bill 2016*, reduces the aggregate period of residence in India or of service to the Government of India, from a minimum of eleven years to six years, and only for Hindus and members of the other five religious minorities mentioned above, from Afghanistan, Bangladesh and Pakistan (additional provision under clause *d* of the Third Schedule of *Citizenship Act*, 1955).

On 3 February, following public protests against the bill, in particular in states of northeastern India, the president of the Bharatiya Janata Party (BJP) and member of the *Rajya Sabha* (upper house), Mr. Amit Shah, publicly declared that his party would bring the bill before the *Rajya Sabha* only if there was a consensus among all political parties.

We wish to express our concern over the recent approval by *Lok Sabha* (lower house) of the *Citizenship (Amendment) Bill 2016*, which amends the *Citizenship Act* of 1955 and which appears to discriminate against a number of ethnic and religious minorities in India.

Although the proposed provisions of the bill provide for an improved framework with regard to the acquisition of Indian citizenship through naturalization, this improvement is reserved exclusively to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, thus excluding members of other minorities who may find themselves in the same situation described in the provisions of the *Citizenship Act* of 1955, the *Passport (Entry into India) Act* of 1920 and of the *Foreigners Act* of 1946. Furthermore, we note with concern that the proposed bill does not seek to substitute the term of “illegal migrant” included in the *Citizenship Act* of 1955, with that of “irregular migrant” or of “migrant in irregular situation”, in order to bring the text closer to the terminology currently used in international law.

We note that a number of public protests against the bill have been reported, mainly in states of northeastern India, due to a widespread belief that the Government’s alleged intention behind the bill is to ultimately provoke demographic changes in these regions, which are heavily populated by Muslim and other ethnic and religious minorities.

The approval of the *Citizenship (Amendment) Bill 2016* can be seen also in the context of the current finalization of the updated National Register of Citizens (NRC) in the State of Assam. We have previously drawn the attention of your Excellency's Government to the issue of the NRC process in Assam and we have raised concerns over its discriminatory character, in particular against Muslims and persons of Bengali descent, as well as other minorities, who are treated as foreigners and "illegal migrants" in Assam (see cases OL IND 29/2018 and OL IND 13/2018). The arbitrary exclusion of these and other minorities from the NRC process and from the proposed provisions of the *Citizenship (Amendment) Bill 2016* would perpetuate discrimination against them, and consolidate a climate of uncertainty, including fears of prolonged statelessness, detention, or even deportation. Prolonged uncertainty and the resulting aggravation of tensions between communities may also increase the risk of violence against minorities. We regret that we have not received, to date, any response to our letters with regard to the National Register of Citizens(NRC).

In connection with the above-alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide clarification on the rationale and the legal basis explaining the provisions of the *Citizenship (Amendment) Bill 2016* amending the *Citizenship Act of 1955*;
3. Please provide detailed information on the implications for those individuals that fall within the category of "illegal migrant", under Section 2, subsection 1, clause b of the *Citizenship Act of 1955*, and who are not Hindus or members of the other five religious minorities mentioned in the *Citizenship (Amendment) Bill 2016*;
4. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. It will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we would also like to invite your Excellency's Government to transmit this letter to the Chairperson of the *Rajya Sabha* (Council of States – upper house) and to the Minister for Home Affairs.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

Firstly, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular the International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party since 10 April 1979. Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language".

With regards to the potential discriminatory impact of the *Citizenship (Amendment) Bill 2016*, we would like to remind your Excellency's Government of its obligation the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), ratified by India on 3 December 1968.

Article 1 (1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Committee on the Elimination of Racial Discrimination has frequently reiterated that discrimination based on religious grounds is covered by ICERD in cases where it intersects with other forms of discrimination prohibited under article 1(1).

We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to draw the attention of your Excellency's Government to the right to nationality as enshrined in various international legal instruments ratified by India. The right to nationality entails the right of each individual to acquire, change and retain a nationality. Article 5 (d) (iii) of ICERD is particularly relevant as it explicitly obliges States parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race,

colour, descent or national or ethnic origin violates States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality (see e.g. General Recommendations No. 30, para. 14).

Furthermore, we draw attention to the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

We would like also to bring the attention of your Excellency's Government to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council (A/HRC/38/52), which identifies and reviews contemporary racist and xenophobic ideologies, and institutionalized laws, policies and practices, which together have a racially discriminatory effect on individuals' and groups' access to citizenship, nationality and immigration status. We would like to draw specific attention to her recommendations and especially to "take specific steps to end statelessness, including by putting an end to the practices and policies identified [in the report] that render persons stateless and in doing so, make them vulnerable to extreme human rights violations" (para.67(c)).

Finally, we also would like to draw your Excellency's Government attention to the recommendations of the Special Rapporteur on minority issues in his recent report to the General Assembly "Statelessness: A minority issue" (A/73/205); in particular his conclusions and recommendation in which he recalls that "States must not arbitrarily or discriminatorily deny or deprive minorities of citizenship" and notes that "State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law." (para. 50 and 56)