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## **Scientific Intermediate Report on State of Progress**

### **EURASIA-Net Consortium**

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## Introduction

The Scientific intermediate report on state of progress (Deliverable No.25) addresses the developments and the scientific achievements in the state-of-the-art, regarding the topics tackled by EURASIA-Net in its first 24 months of activity. EURASIA-Net aims to explore regional and supranational cooperation in the field of human and minority rights in Europe and South Asia, with the ultimate goal of exchanging knowledge and research between the two regions, as well as promoting an increased role for the South Asian Association for Regional Cooperation (SAARC) on minority issues. As underlined in the EURASIA-Net Stock-taking report (Deliverable No.1), a number of topics are to be taken into account while dealing with human and minority rights at supranational level in Europe and South Asia (*inter alia*, regional cooperation, autonomy issues and minority accommodations, and indigenous communities). Analyzing regional cooperation and the role of SAARC, as well as the National Human Rights Commissions, national legal frameworks and their applications, and religious minorities' and indigenous peoples' rights, are perceived as relevant cross-cutting topics and fundamental challenges when fostering regional cooperation on human and minority rights in South Asia. Moreover, various autonomy arrangements have been recently established to accommodate minority claims, especially in Europe. The analysis of such case studies in Europe and South Asia (particularly India), have, to date, not been given proper attention in the literature.

Therefore, these above-mentioned topics have been given particular attention within the EURASIA-Net research and activities, and the main scientific achievements and findings of the first two years of the project are briefly illustrated in this report.

## EURASIA-Net deliverables and scientific reports in the first two years of activity

EURASIA-Net deliverables and scientific reports submitted in its first 24 months of activity are summarized in the table below. <sup>1</sup> Dissemination of all EURASIA-net public deliverables has been ensured throughout.<sup>2</sup> Deliverables Nos.8 and 9 have received particular attention from the wider public in both Europe and South Asia, and have therefore been widely distributed.

Del. No	Deliverable name	Brief description
1	Stock-taking report	This report assesses the current state-of-the-art on human and minority rights' issues, and establishes the research focus of the EURASIA-Net project.
2	Conclusions and recommendations from Kick-off seminar	This report summarizes the main issues and findings discussed at the EURASIA-Net Kick-off meeting and Conference, advancing concrete proposals to address the EURASIA-Net challenges.
8	Set of educational material for stakeholders (for the First Trans-regional Summer School), Thomas Benedikter edited book, <i>Europe's Ethnic Mosaic</i> , plus <i>ad hoc</i> material	This deliverable, which has been published in the form of a booklet, illustrates concisely the recent history of Europe and the creation of minority groups, as well as the European system for the protection of minority rights. This deliverable has served as the main educational material for the First Trans-regional Summer School, complemented by <i>ad hoc</i> material (abstracts, power point presentations, and scientific articles) distributed to the participants both in hard copies and electronic format.

<sup>1</sup> All these deliverables and reports (apart Del. No.2 "Conclusions and recommendations from Kick-off seminar", restricted to the Consortium and Commission Services) have been distributed at various seminars, conferences and *ad hoc* project presentations, as well as published on the project website where they are available for free download (see at <http://www.eurac.edu/Org/Minorities/eurasia-net/PROJECT+DELIVERABLES.htm>).

<sup>2</sup> All the Deliverables falling under Management activities (WP5), and the operational reports (e.g., Deliverable No.12 "Overall programme of events"), have not been inserted in the table since they do not address EURASIA-Net research and its state-of-the-art.

9	Update of the Set of educational material for stakeholders (for the Second Trans-regional Summer School), Thomas Benedikter edited book, <i>Solving Ethnic Conflict through Self-Government. A Short Guide to Autonomy in Europe and South Asia</i> , plus <i>ad hoc</i> material	This deliverable has been published in a similar format as Deliverable No.8, given the success of this previous version. Deliverable No.9 tackles the topic of autonomy and minority accommodation in Europe and South Asia, analysing the role played by forms of self-government in conflict resolution. As with the previous edition, this deliverable has been complemented by <i>ad hoc</i> material for the Second Trans-regional Summer School in the same modalities as the previous summer school (see above for Deliverable No.8).
10	Material for specialised media	This report offers general information, suggestions and guiding principles to media practitioners dealing with minority issues and cultural diversity (European edition).
11	Updated version of material for specialised media	The structure and the aims of this deliverable reflect the previous edition, focusing on South Asian minority issues.
16	Assessment of research policies and resources, "Ways of Power, Minorities, and Knowledge on Minorities. An Assessment of Research Policies and Practices"	This deliverable deals with the main challenges of South Asian minorities, as tackled by the relevant research policies and practices in the region.
17	Set of materials on South Asia and regional cooperation for higher education institutions, "Protection of Minorities: A South Asian Discourse"	This deliverable is intended for use in higher education settings, both at undergraduate and postgraduate level.
18	Set of materials for South Asian NGOs, "New Challenges to Minority Rights in South Asia & New Aspects of Minority Agency "	The aim of this deliverable is to provide, to NGO activists, academics, students, and other human rights practitioners, an overview of the main challenges surrounding minority issues in South Asia.

## **EURASIA-Net scientific achievements**

As mentioned, during the EURASIA-Net research, the following issues were particularly highlighted within four key topics:

- 1. Regional supranational cooperation and dimension for fostering human and minority rights in South Asia looking at the European Experience**
- 2. Cases of autonomy and minority accommodation**
- 3. Religious minorities**
- 4. Indigenous peoples in South Asia**

### **1. Regional supranational cooperation and dimension for fostering human and minority rights in South Asia looking at the European experience**

#### ***The need for regional supranational cooperation***

Majority / minority conflicts in South Asia generally have a trans-border dimension, with the region's mosaic ethno-religious make-up meaning that a minority community in one state frequently shares kinship with the majority in another. As pointed out in the EURASIA-Net research, 'minority problems quickly cross national frontiers';<sup>3</sup> the persecution of a minority in one state fuels communal tensions within its neighbours' territories and may produce refugee flows which neighbouring states are required to absorb; with these adverse consequences harming bilateral, and subsequently intra-regional relations. As such, a regional supranational approach is not only essential in effectively addressing the issue, but is in the best interests both of individual states and the South Asian region as a whole.

Two levels of regional supranational cooperation which can work concurrently to promote and protect minority rights have been identified; governmental and non-governmental. The foremost existing regional organisation at the governmental level is the South Asian Association for Regional Cooperation (SAARC), established in 1985, and comprising the eight states of South Asia (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka). SAARC has traditionally concentrated on

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<sup>3</sup> Khan, Borhan Uddin and Rahman, Muhammad Mahbubur, 2009: *Protection of Minorities: A South*

*Asian Discourse*. Dhaka: EURASIA-Net. p. 91

economics and development, although the last decade has seen tentative movement towards an increased focus on human rights issues. In 2002, human rights instruments were adopted concerning child welfare and the prevention of trafficking, while 2004 saw member states ratify the SAARC Social Charter, which contains principles of clear relevance to minority rights; pluralism and non-discrimination, assurance of societal inclusion of disadvantaged or marginalised persons or groups, respect for fundamental freedoms, recognition and support of people with diverse cultures, beliefs and traditions in their pursuit of economic and social development, and respect for diverse identities. Another positive step has been the organisation of a SAARC workshop on the conditions of minorities, which concluded that minority rights should be adopted as a priority amongst member states, recognising that minorities frequently lack an adequate stake in decision making and share of political power, and are threatened by majoritarian nationalism.

However, despite these welcome developments there remain severe limitations on SAARC's effectiveness in promoting and protecting the rights of minorities, most notably the organisation's lack of legislative powers; 'there are no effective enforcement procedures for the legal issues addressed by SAARC; enforcement is largely dependent on the goodwill of member States'.<sup>4</sup> Additionally SAARC is criticised as lacking influence amongst its member states, remaining 'a minor player'<sup>5</sup> in regional conflict resolution. But notwithstanding these shortcomings; 'SAARC is the only available regional mechanism in South Asia that can provide some form of stability and forum for dialogue',<sup>6</sup> providing rare opportunities to 'debate and examine key issues relevant to human rights and minority rights of the region'.<sup>7</sup>

As well as initiatives at governmental level, South Asian NGOs and civil society organisations play an important role in promoting and protecting minority rights, which while well-established within national spheres, is 'passing an elementary stage of development'<sup>8</sup> at a regional level. The South Asian Forum for Human Rights (SAFHR) is identified as a trailblazer in this regard, with its earliest attempt (1998) at a regional minority rights consultation resulting in substantive recommendations to SAARC, and the establishment of a

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<sup>4</sup> Rehman, Javaid and Hoffler, Harriet, (EYMI EURASIA-Net Focus forthcoming): *Regional/International*

*Frameworks of Minority Protection in Europe and South Asia*. London: EURASIA-Net. p. 18

<sup>5</sup> *Ibid.*, p. 18

<sup>6</sup> Khan and Rahman, *op. cit.*, p. 96

<sup>7</sup> Rehman and Hoffler, *op. cit.*, p. 17

<sup>8</sup> Khan and Rahman, *op. cit.*, p. 95

monitoring reporting process. Another important development has been the drafting of *A South Asian Regional Charter for Minority and Group Rights* by the International Centre for Ethnic Studies (ICES), in conjunction with South Asian NGOs.<sup>9</sup> The Charter aims to strengthen regional NGO and civil society networks, and influence the enhancement of protection and promotion at a regional level by building on existing instruments, such as the SAARC Social Charter, and various international mechanisms (ICCPR, ICESCR, CERD, CEDAW) adapted to the South Asian context.

### ***Ways forward in South Asia: The Regional Charter and the National Human Rights Commissions***

Analysis of the European experience and its applicability to the South Asian context and the region's particular challenges, informed the drafting of *A South Asian Regional Charter for Minority and Group Rights*. As previously mentioned, the Charter proposes building on the institutional framework and principles of SAARC with the establishment of a South Asian Human Rights Committee, composed of 'persons of high moral character and recognised competence in the field of human rights and or legal matters'.<sup>10</sup> In attempting to address the key issue of enforceability, the Charter suggests that 'enforcement at the national level must be continuously reviewed through agreed regional arrangements and mechanisms',<sup>11</sup> with Article 2 setting out states' obligations to ensure 'effective remedy' for 'any person whose rights or freedoms as herein recognised are violated',<sup>12</sup> while Article 21 holds that individuals whose rights have been violated 'and who have exhausted all available domestic remedies'<sup>13</sup> may submit a complaint to the regional Committee. Addressing the problematic focus on 'nationals' found within some UN mechanisms, which is highly relevant to the South Asian context given the large numbers of refugees, migrant workers, and stateless persons in the region, Article 5 holds that nothing in the Charter shall be interpreted 'as applying to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens or between residents and non-residents';<sup>14</sup> while Article 6 affirms the group dimension of

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<sup>9</sup> Centre for Alternative, Human Rights and Democratic Forum (FOHRID), Mahairban Calcutta Research Group

(MCRG), and Human Rights Commission of Pakistan (HRCP)

<sup>10</sup> International Centre for Ethnic Studies (ICES), 2008: *A South Asian Regional Charter on Minority*

*and Group Rights*. Kandy: The Minority Rights Programme. p. 5

<sup>11</sup> *Ibid.*, p. 5

<sup>12</sup> *Ibid.*, p. 8-9

<sup>13</sup> *Ibid.*, p. 21

<sup>14</sup> *Ibid.*, p. 10

minority rights, asserting that persons belonging to minorities may 'enjoy and promote their own culture individually as well as in community with other members of their group'.<sup>15</sup>

However, whilst the Charter undoubtedly represents a positive step in exploring the applicability of minority rights mechanisms to the South Asian context and strengthening coherence and advocacy within the non-governmental sphere, it remains a non-binding document, and as such, is of limited efficacy. In order for real political progress to be made, SAARC must move beyond its current position as an under-utilised resource for regional cooperation and dialogue on minority rights issues. The organisation 'should initiate drafting of a legally binding instrument that would deal with minority rights and establish a strong implementation mechanism',<sup>16</sup> drawing influence from both the European model of regional supranational cooperation, but also, and most importantly, from the 'indigenous method / approach best suited in South Asian realities'<sup>17</sup>, as expressed in NGO-produced documents such as the Charter.

Another relevant development in South Asia has been the formation of National Human Rights Commissions. In 2009, 66 National Human Rights Institutions (NHRI) globally have been found to be in accordance with the Paris Principles (defined October 1991) on the status and functioning of NHRIs. According to these principles, such institutions must be independent (established by law, in financial terms, and with regard to its members), the institutions' membership should reflect the diversity of their country, and the mandate of the institution should be as broad as possible. In South Asia, only NHRIs in India and Nepal have compliance status with the Paris Principles. Sri Lanka and the Maldives have an observer status, meaning that their institutions are not fully in compliance, or that insufficient information has been provided to make a determination.

The National Human Rights Commission in India is based on the Human Rights Act of 1993, while Nepal's Commission is a constitutional body founded in 2007. Both have the mandate to inquire, *suo motu* or on a petition of an individual or an organization, into a complaint of violation of human rights. Secondly, they have the task of giving advice to the governments by reviewing legislation concerning the protection of human rights, and studying international treaties in order to provide recommendations to the

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<sup>15</sup> Ibid., p. 10

<sup>16</sup> Khan and Rahman, op. cit., p. 96

<sup>17</sup> Ibid., p. 96



government for their effective implementation. Finally they undertake research and spread human rights literacy amongst the population. The Commissions are chaired by a former Chief Justice of the Supreme Court in the case of India, and a former judge in the case of Nepal. Other members also have a high public profile. Both Commissions are facing numerous challenges: the composition of the Commissions as well as their appointment procedures could be reconsidered in order to ensure that independent human rights experts are sitting in the Commissions, inefficient complaint handling procedures lead to a huge backlog of cases, and furthermore, there is a lack of investigation capacities. The states are reluctant to implement the recommendations of the Commissions, and the outreach work of the NHRC in both countries is quite limited, as is their interaction with civil society. As such, while the Commissions have had a positive influence in a number of cases, their overall functioning could still be improved.

### ***The European experience***

As a region with well-established supranational mechanisms for promoting and protecting the rights of minorities, Europe can be looked to as a model for South Asia. The European Union (EU) holds similarities to SAARC, being in its early years a political organisation concerned with economic cooperation between member states, with recent decades seeing an encompassment of human rights issues, including minority rights.<sup>18</sup> Other relevant European bodies include the Council of Europe (CoE), whose Framework European Convention for the Protection of National Minorities (FCNM) was the first binding European instrument with an exclusive focus on minorities (operational 1998), and the Organisation for Security and Cooperation in Europe (OSCE) whose agenda foregrounds minority rights in recognition of 'the importance of such rights in order to ensure peace and prevent future conflicts'.<sup>19</sup>

In 2009 The Council of Europe (CoE) celebrated its 60<sup>th</sup> anniversary. Founded in 1949 by 10 states, it now has 47 member countries and covers the entire European continent. The core values of the organization are Human Rights, Democracy and Rule of Law, and its main objectives include the promotion and development of Europe's cultural identity and diversity, cooperation between all member states in finding common solutions to the challenges facing European society, and consolidation of democratic stability in Europe. The decision-making body of the CoE is the Committee of

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<sup>18</sup> Rehman and Hoffler, op. cit., p. 17

<sup>19</sup> Rehman and Hoffler, op. cit., p. 15

Ministers, which is made up of the ministers of foreign affairs of each member state, or their permanent diplomatic representatives in Strasbourg. The Parliamentary Assembly of the Council of Europe (PACE) is the deliberative body that has initiated many international treaties, helping to create a Europe-wide system of legislation. Its members are appointed by the national parliaments of each member state. Europe's 200,000 regions and municipalities are represented in the CoE by the Congress of Local and Regional Authorities, which provides a forum where elected representatives can discuss common problems, pool their experiences, and develop policies. Among the institutions of the CoE, the European Court of Human Rights plays an essential role in the protection of human rights, pluralist democracy and the rule of law. The Court is the permanent judicial body which guarantees for all Europeans the rights safeguarded by the European Convention on Human Rights, and is open to states and individuals regardless of nationality. As an independent body, the Commissioner for Human Rights is responsible for promoting education, awareness and respect for human rights in member states. The CoE benefits extensively from the expertise of international Non Governmental Organisations (INGOs) through its Conference of INGOs, which ensures links between politicians and civil society.

The Organisation for Security and Cooperation in Europe (OSCE) is the world's largest regional security organization. Its 56 participating states cover a vast geographical area in the Northern hemisphere, including Europe. The OSCE is the continuation of the "Conference on Security and Co-operation in Europe" established in 1975 in Helsinki as a forum of collaboration between West and East during the Cold War, and at the Budapest summit of 1994 it was decided to change the name of the organisation to OSCE. Its primary tasks are early warning, conflict prevention, crisis management and post-conflict rehabilitation under Chapter VIII of the UN Charter. In a comprehensive approach it addresses a wide range of security-related issues, including those related to national minorities and the linguistic rights of members of these groups. The OSCE has adopted a number of documents relevant for the rights of national minorities, and in 1992 established the office of the High Commissioner on National Minorities (HCNM). Its main tasks are to provide early warning on the tensions involving national minorities, and to take early action whenever such tension may develop into a potential conflict in the OSCE area. The mandate of the HCNM excludes individual cases concerning persons belonging to national minorities, and it does not permit him/her to deal with national minority issues in situations involving organized acts of terrorism. Apart from the case-to-case activities, the office of HCNM has contributed to general standard setting in the area of minority

protection, and has published various general sets of recommendations on issues crucial to minorities such as education (The Hague Recommendations 1993), language (Oslo Recommendations 1998), effective participation (Lund Recommendations 1999) or, most recently, the relationship between minorities and their kin-state (Bozen/Bolzano Recommendations 2008).

Finally, in Europe cross-border cooperation is backed by various instruments adopted both by the CoE and the EU. The CoE's main instrument for the promotion of cross-border cooperation is the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities, which was opened for signature in May 1980 and entered into force in December 1981. Since then, the Outline Convention has been extended by three additional protocols, each of them being dedicated to a specific aspect of cross-border cooperation. The latest additional protocol (No.3), which was opened for signature in November 2009, sets the legal base for creating cross-border cooperation units with legal personality, called Euroregional Cooperation Groupings. Additionally, in 2006 the EU adopted a regulation, which creates the legal basis for establishing European Groupings of Territorial Cooperation (EGTC), also representing cross-border associations with legal personality.

***In summary:***

- Given the trans-border dimension affecting most minority / majority conflicts in South Asia, a regional supranational approach towards the issue is essential.
- At present, regional supranational cooperation at the governmental level in South Asia is lacking, and while SAARC offers a potentially effective forum and infrastructure, its engagement with minority rights issues is currently under-developed.
- NGOs and civil society organisations have a central role to play in the development of South Asian regional cooperation, as shown by positive initiatives such as the elaboration of the draft Regional Charter.
- Europe represents the most advanced example of supranational regional cooperation on minority rights issues globally, and may serve as inspiration for South Asia, with the essential caveat that special attention be paid to the contextual specificities of the South Asian region.

## **2. Cases of autonomy and minority accommodation**

### ***Defining autonomy***

While the 'shape' of autonomy arrangements may differ on the basis of the political, historical and cultural context of the concerned region, shared features can be identified. Autonomy may be defined as follows;

'a special device designed to accommodate a particular part of a state if its population differs from the majority population of that state...allow[ing] ethnic or other groups that claim a distinct identity to exercise direct control over affairs of special concern to them while allowing the larger entity to exercise those powers that cover common interest'.<sup>20</sup>

It is an arrangement distinct from federalism, and 'usually established to solve an ethnic conflict',<sup>21</sup> with elements essential to the effective function of an autonomy including the delineation of a precise territory with accepted boundaries; sufficient scope of powers vested in the autonomous authorities for determining cultural and socio-economic development; legislative and executive powers without interference from central government; entrenchment of such powers in national law and preferably the state's constitution; and assurance of equal rights and non-discrimination against citizens living in the region. Additionally, appropriate finance structures should be in place, taking one of two models; either transfer of necessary finances from central government funds, or the sharing of tax revenues collected in the autonomous territory.<sup>22</sup>

### ***The European experience***

Europe is home to the majority of the world's regional autonomies which, while having developed in different ways based on the national context, share key characteristics. Commonly Europe's autonomous regions are

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<sup>20</sup> Benedikter, Thomas, 2009: 'Regional Territorial Autonomy in South Asia - An Overview', in Benedikter, Thomas (Ed.): *Solving Ethnic Conflict Through Self-Government: A Short Guide to*

*Autonomy in Europe and South Asia*. Bozen/Bolzano: EURASIA-Net. p. 64

<sup>21</sup> Benedikter, Thomas, 2009: 'Give Regional Autonomy a Chance', in Benedikter, op. cit., p. 124

<sup>22</sup> Benedikter, Thomas, 2009: *Europe's Working Regional Autonomies: A Comparative Analysis*. Bozen/Bolzano: EURASIA-Net., p. 5

governed democratically by an elected legislative body, with the executive body being elected directly from the region, and operating distinctly from central government. The inhabitants of autonomies enjoy full rights as citizens of the state as a whole, and so are represented at the national level, 'forming one or more constituencies for the election of members of the national parliament',<sup>23</sup> while in some cases autonomies also possess direct representation within supranational bodies; for example the Ålands Islands, Faroe and Greenland (autonomous regions of Finland and Denmark), are represented on the Nordic Council. Generally the issue of minority languages has been key to the formation of autonomous territories in Europe, with the protection and promotion of minority language and culture functioning as a central objective. Education and public services are a crucial sphere to this, with various models of mandatory bi or multi-lingualism being followed; for example in the Autonomous Province of South Tyrol within Italy, public servants must be bilingual in Italian and German.

The European example provides a broad spectrum of 'levels' of autonomy in terms of the amount of power transferred from central government to the autonomous regions; from the 'quasi-statehood'<sup>24</sup> of the Ålands Islands, Faroe Islands and Greenland, to the largely nominal autonomy afforded to Corsica by the French state, and a range of points in between. Nonetheless, whilst varied in their scope, these 'powers attributed to the autonomous regions are precisely enumerated in a closed list',<sup>25</sup> with autonomy regulations, in most cases, being entrenched in the state's law or at constitutional level; a welcome step given the lack of a 'general mechanism of monitoring, controlling and guaranteeing autonomy regulations in positive international law'.<sup>26</sup>

A challenge affecting autonomy situations generally, and which has been felt in Europe, is the presence of multiple groups with overlapping claims to territory, for example the Basque region where under 30% of the population are Basque speakers, and South Tyrol where as well as German speakers, the population comprises 26% Italians, and 4% Ladins. In such cases a consociational approach to power sharing is essential, with guaranteed minimum representation through the electoral process ensuring that

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<sup>23</sup> Ibid., p. 3

<sup>24</sup> Ibid., p. 8

<sup>25</sup> Ibid., p. 3

<sup>26</sup> Ibid., p.4

'autonomy should benefit a whole regional community, not one group of the population only'.<sup>27</sup>

In general, autonomy has been accepted by European states as an effective solution to majority / minority conflict.<sup>28</sup> One lesson to be learned from the European experience is that 'autonomy solutions should be envisaged before low-level violence escalates into a full-blown ethnic war'<sup>29</sup> as has unfortunately occurred in Chechnya, while it will be instructive to monitor the success of relatively new autonomous territories in the Balkan and Caucasian states; regions of Europe which in recent decades have seen 'rising new nationalism, state centralism and widespread hostility towards autonomy solutions'.<sup>30</sup>

### ***South Asia: experiences so far and challenges ahead***

Many South Asian states view autonomy with suspicion, considering it 'a threat to the unity of the nation and a step towards secession',<sup>31</sup> meaning that 'autonomy has not yet been given the chance to really unfold its potential for the settlement of minority and ethnic conflicts'<sup>32</sup> in the South Asian context.

India is the sole South Asian state whose Constitution enshrines recognition of the autonomy solution (the 5<sup>th</sup> and 6<sup>th</sup> Schedules), with its Autonomous District Councils (ADCs) being unique in South Asia in largely meeting the definition of a functioning autonomy proposed by Benedikter within the EURASIA-Net research.<sup>33</sup> In contrast, Sri Lanka and Nepal have historically functioned as unitary states; although in the case of the former, autonomy has been mooted as part of the solution to the island's ethnic conflict; while in Nepal issues of autonomy and federalism have been at the forefront of political debate following the success of the People's Movement and the end of the Maoist war, with the state's current Interim Constitution obliging the Constituent Assembly to 'eliminate the centralised and unitary state system to avoid discrimination on the basis of class, caste, language, gender,

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<sup>27</sup> Ibid., p.12

<sup>28</sup> Ibid., p. 11

<sup>29</sup> Ibid., p. 11

<sup>30</sup> Ibid., p.11-2

<sup>31</sup> Benedikter, Thomas, 2009: 'Give Regional Autonomy a Chance', op. cit., p. 125

<sup>32</sup> Ibid., p. 125

<sup>33</sup> Benedikter, Thomas, 2009: 'Regional Territorial Autonomy in South Asia - An Overview', op. cit., p.

culture and religion'.<sup>34</sup> Meanwhile, whilst other South Asian states have established regional autonomies in name, in reality these fall short of expectations; Pakistan's Federally Administered Tribal Areas (FATA) and Northern Areas lack internal democracy and representation at a national level,<sup>35</sup> while in Bangladesh the autonomy afforded to the Chittagong Hill Tracts (CHT) by the 1997 Peace Accord lacks legislative or constitutional protection, so is 'open to revocation by the government at any time'.<sup>36</sup>

Returning to the Indian example, the majority of its thirteen ADCs are located in the historic homelands of indigenous peoples, and were established as attempts to quell separatist demands and thus the further division of State territories. Whilst this has not always been successful; violent agitation resulted in the creation of a new State of Nagaland in 1963 for instance, in some cases, such as the creation of the Bodoland Territorial Council within the State of Assam, the development of autonomous governance bodies has led to the inclusion of former separatists within the democratic process. However, despite the relative advancement of autonomy solutions in India, serious challenges remain. The provisions enshrined in the 6<sup>th</sup> Schedule are employed inconsistently, with some ADCs such as Bodoland, Karbi Anglong and North Cachar within Assam, obtaining significantly greater powers than others; for example the Darjeeling Gorkha Hill Council (DGHC) within West Bengal, which is 'widely defined as a total failure'<sup>37</sup> as a result of being denied key legislative responsibilities which, in combination with ineffective leadership, severely hampered its operational capabilities. Language has also proved a thorny issue, with representatives of the Ladhaki community arguing that the powers afforded to the Leh Autonomous Hill Council (LAHC) within Jammu and Kashmir, do not go far enough in countering domination of the education system and public services by the official State language of Urdu.<sup>38</sup> Additionally the system of financing whereby central funds are routed through State governments 'provides a leverage which is being often used to bring the ADC in line with

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<sup>34</sup> Niroula, Som Prasad, 2009: 'Autonomy and Federalism in Nepal's Current Constitutional Debate', in

Benedikter, op. cit., p. 75

<sup>35</sup> Shaikh, Murtaza .H, 2009: 'The Federally Administered Tribal and Northern Areas: Fundamental

Rights, Effective Representation and Political Autonomy', in Benedikter, op. cit., p. 96

<sup>36</sup> Rahman, Muhammad Mahbubur, 'Autonomy for Indigenous People of CHT: Aftermath of the 1997

Peace Accord', in Benedikter, op. cit., p. 102

<sup>37</sup> Benedikter, Thomas, 2009: 'Gorkhaland: Autonomy is no Longer the Issue', in Benedikter, op. cit., p.

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<sup>38</sup> Benedikter, Thomas, 2009: 'Ladakh: Union Territory?', in Benedikter, op. cit., p. 90

State policies',<sup>39</sup> and is a frequent source of tension between ADC and State authorities.

Perhaps the most significant challenge facing both India's existing ADCs and those areas aspiring to ADC status, is the necessity of including those people living within the territory who belong to groups other than the local majority. In the case of Bodoland, the territory is also home to smaller indigenous groups as well as descendents of indentured plantation labourers, with the violent agitations of some Bodo militias prior to the ADC agreement disturbingly resembling 'a campaign of ethnic cleansing'.<sup>40</sup>

The necessity of realising a solution to this issue which is satisfactory to all parties is also a major challenge facing those regions both within India and in other South Asian states, where the process of formulating effective autonomy solutions remains in its infancy. In West Bengal, calls for effective autonomy for the Darjeeling Hills following the failure of the DGHC are divided between demands by the Nepali-speaking local majority for a new State of Gorkhaland, subsequent resistance from the Bengali population, and indecision from the indigenous Dooars, who appear unsure whether their best interests are served by 'support[ing] the calls for statehood or pursu[ing] some other forms of tribal autonomy'.<sup>41</sup> Similarly, in Bangladesh's semi-autonomous CHT region, Bengali-speaking residents have launched an 'Equal Rights Movement', 'alleging that the accord [1997 Peace Accord] has made them second class citizens',<sup>42</sup> a problem attributed to a lack of 'debate and deliberation in appropriate forums that could foster nationwide support'<sup>43</sup> for the autonomous solution; while in Nepal, the ethno-linguistic mosaic and sheer scale of diversity (the Census of 2001 recorded 102 caste and ethnic groups, and 92 spoken languages), has led to difficulties in reaching political consensus about 'how minority groups will be accommodated in the framework of a federal state'.<sup>44</sup>

As in the European example, the only means of defusing such tensions and avoiding autonomous regions' mutation into 'local fiefdoms',<sup>45</sup> is the

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<sup>39</sup> Benedikter, Thomas, 2009: 'India's "Autonomous District Councils"', in Benedikter, op. cit., p. 78

<sup>40</sup> Barbora, Sanjay, 2009: 'Autonomy in India's Northeast: The Frontiers of Centralised Politics', in

Benedikter, op. cit., p. 83

<sup>41</sup> Benedikter, Thomas, 2009: 'Gorkhaland: Autonomy is no Longer the Issue', op. cit., 104

<sup>42</sup> Rahman, op. cit., p. 102

<sup>43</sup> Ibid., p. 102

<sup>44</sup> Niroula, op. cit., p. 75

<sup>45</sup> Benedikter, Thomas, 2009: 'Regional Autonomous Democracies: New "Ethnic Spaces"?', in



adoption of consociational power sharing mechanisms which empower whole regional communities. As Benedikter acknowledges, whilst there are cases to be made for enhanced 'regional rights' for some groups within autonomous territories (restrictions on settlement and land transfer in those areas where land alienation has historically threatened the very existence of indigenous peoples for example), such measures should not be confused with 'internal discrimination'; with the challenge lying 'in making arrangements to ensure that full civil rights are granted to all legally resident citizens irrespective of ethnic affiliation as well as arrangements for protecting internal minorities'.<sup>46</sup>

***In summary:***

- A number of essential criteria must be met in order for a region to be considered a meaningful and effectively functioning autonomy.
- In Europe, autonomy is a well-established, accepted, and largely successful means of resolving minority / majority conflict, and guaranteeing to a large extent minority political representation and cultural rights.
- In South Asia, autonomy solutions are at a more developmental stage. India incorporates the most advanced examples (although serious challenges remain), while in other states, autonomous regions do not currently function effectively, or the possibility of autonomy solutions to minority / majority conflict is either in its infancy or has not yet been seriously considered.

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Benedikter, op. cit., p. 88

<sup>46</sup> Ibid., p. 87-8

### 3. Religious minorities

#### ***Communalisation of inter-state relations***

In South Asian states the situation of religious minorities is strongly influenced by interstate relations and regional geo-politics, with a minority in one state commonly forming the majority in another and vice versa. A number of consequences for minorities stem from this situation, particularly given the frequent hostility (overt or tacit) present in interstate relations throughout the region.

Religious minorities in South Asia are treated as proxy citizens of the state where they are a majority rather than as full citizens of their own state, and can consequently be branded 'outsiders' or 'enemies', required to prove their loyalty in a manner far exceeding that expected of the majority. As such discrimination against minorities can be presented as 'part of a nationalist caretaking exercise',<sup>47</sup> with subsequent abuses including electoral disenfranchise, property grabbing, and failure to effectively address political under-representation and lower than average performance in socio-economic development indicators, being justified through incitements of religious hatred and evocation of a minority's 'enemy' status.

Turning to the case studies analysed within the EURASIA-Net research, the minority Hindu community in Bangladesh have been inexorably linked with India in the majority consciousness; at times of inter-state tensions 'simplified into becoming the face of the enemy'<sup>48</sup> and characterised as 'secret Indians'.<sup>49</sup> This intra-state communalisation of inter-state relations has similarly affected the Hindu minority in Pakistan, where 'inter-community relationships have been severely distorted by the acrimonious Indo-Pakistani relationship',<sup>50</sup> with Hindus figured as Indian fifth-columnists; and in India itself, where Muslims' loyalty to the state has been cast into doubt by political elements of the Hindutva movement. Interestingly, in some cases this tendency extends extra-regionally; in Pakistan, anger at the involvement of

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<sup>47</sup> Chowdhury, Asfan, 2009: 'Hindus in a Polarised Political Environment: Bangladesh's Minorities', in

Manchanda, Rita (Ed): *New Challenges to Minority Rights in South Asia and New Aspects of Minority*

Agency. Kathmandu: EURASIA-Net. p. 36

<sup>48</sup> Ibid., p. 45

<sup>49</sup> Ibid., p. 43

<sup>50</sup> Hussain, Ishtiaq, 2009: 'Religious Minorities in Pakistan: Mapping Sindh and Baluchistan', in Manchanda, op. cit., p. 59

U.S and European forces in Afghanistan finds brute expression in attacks on Christians, whose loyalties it is presumed, lie more with a global Christian community than with the Pakistani state, while Muslims in India are increasingly rhetorically associated with transnational terror networks.<sup>51</sup>

Central to this process of 'demonization' of minorities and subsequent cases of state-endorsed persecution and disenfranchisement, lays a process of nation-building centred on the construction of included and excluded identities. Nation-building narratives commonly deny plurality, dealing with the troubling presence of 'outsiders within' by turning them into cameos, 'homogenised into an evil or wicked oneness',<sup>52</sup> and denying any historical shared experience with the majority population. As such, Pakistani nationalist discourse presents Hindus as ambitious to usurp and destroy Muslims, while depictions of the Partition atrocities cast Hindus and Sikhs as sole perpetrators and Muslims as sole victims, distorting widely accepted historical accounts of shared culpability amongst all affected communities. This construction of 'exclusionary nationhood'<sup>53</sup> persists in Pakistan, with the Islamification of the state acting to further disenfranchise both non-Muslims, and those who practice forms of Islam distinct from the state-endorsed Sunni orthodoxy such as Ahmadiyahs; a tendency which is mirrored in India through the attempts of the Hindutva movement to de-secularise the polity.

Even those religious minorities considered extraneous to binary narratives of nation-building may find themselves figured in terms of the 'outsider' or 'enemy'. As previously mentioned, Christian communities are targeted notwithstanding their detachment from the Muslim / Hindu conflict expounded in Pakistani nationalist discourses, while despite their largely peripheral position in the island's Sinhalese / Tamil animosity, Sri Lanka's small Muslim community have suffered from the Rajapaksa government's recasting of the conflict as a 'war on terror', and increasingly chauvinistic, anti-minority stance.<sup>54</sup>

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<sup>51</sup> Alam, Javeed, 2009: 'A Long-Term View of Contemporary Muslim Situation in India', in Manchanda, op. cit., p. 24

<sup>52</sup> Saigol, Rubina, 2009: 'Strangers in the House: Minorities in Pakistani Textbooks', in Manchanda, op. cit., p. 73

<sup>53</sup> Hussain, op. cit., p. 66

<sup>54</sup> Haniffa, Farzana, 2009: 'Muslims in Sri Lanka: Political Choices of a Smaller Minority', in Manchanda, op. cit., p. 94-5

## ***A state of 'otherhood'***

All of this may engender an acute sense of alienation and 'otherness' from the state on the part of religious minorities. Returning to the example of Muslims in India, the collective memory of suffering in communal riots plays a powerful role in feeding a common consciousness of exclusion from the state; 'the feeling of being 'outsiders'...the unwanted 'other' in Indian society'.<sup>55</sup> Similarly, Hindus' long-standing exclusion from the politico-economic life of the Bangladeshi state has left them 'half-hearted Bangladeshis',<sup>56</sup> with consequently, those who can afford to do so migrating to India in pursuit of increased educational and employment opportunities. Unfortunately a minority's sense of insecurity within the state can function as a self-fulfilling prophecy. The understandable desire to migrate to India amongst Bangladeshi Hindus acts to reinforce justification of their marginalisation by confirming their 'disloyalty' to the state; "...they are leaving anyway. They don't care what happens to Bangladesh",<sup>57</sup> while the lack of leadership amongst some minority communities following large-scale elite migration to a 'friendlier' state, impedes the ability of the remaining oppressed population to organise and seek redress for their grievances.

## ***Ways forward: pitfalls and potential***

It is perhaps inevitable that this sense of alienation from the state on the part of religious minorities fosters a propensity towards separatism; 'the disadvantaged majority / minority state of 'otherhood' can be ended only by becoming the majority / powerful in a freshly constructed state'.<sup>58</sup> However, in the EURASIA-Net research, the authors counsel against this approach arguing that the interests of religious minorities are best served by asserting their position within the state, rather than their separateness from it. Having previously outlined the function of a shared experience of suffering in generating a negative paradigm of Indian Muslims' 'otherness', Alam presents an alternative and favourable model based on belonging, which he terms citizen politics; the assertion for equal inclusion and rights as citizens of the state and a shift in consciousness from a politics solely concerned with survival towards demands for an honoured and dignified position within the nation. As well as engaging constructively with a discourse of national belonging, Alam argues that citizen politics has played a central role in the

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<sup>55</sup> Alam, op. cit., p. 24-5

<sup>56</sup> Chowdhury, op. cit., p. 43-4

<sup>57</sup> Ibid., p. 43

<sup>58</sup> Ibid., p. 35

ascendance of a positive Pan-Indian Muslim political consciousness, whereas historically movements had been highly regionalised and context specific.<sup>59</sup>

This ability to subsume difference and division, and acquire legitimacy in the eyes of the entire community, is identified as an important attribute of successful minority political movements. The trajectory followed by Muslims' political development in Sri Lanka may highlight the dangers of failure in this regard, with the Sri Lankan Muslim Congress' Eastern Province-centric perspective on the island's ethnic conflict harming its credibility amongst Muslims from the Northern and Southern regions, whose particular circumstances and distinct relationships with the areas' Tamil and Sinhalese populations, the party has failed to take into account in its policy formation. As such, Muslims find themselves in a precarious position within the state's post-conflict reconstruction process, having 'much to gain',<sup>60</sup> but lacking the meaningful political representation necessary to realise these gains.

The need for religious minorities to articulate their political demands with care, in order to avoid fuelling the chauvinist rhetoric of opposing majority forces has also been highlighted in the EURASIA-Net research. Returning to the case of Muslims in India, Alam predicts that Hindutva forces will 'raise hell' in response to proposals to create special welfare schemes or affirmative action for Muslims,<sup>61</sup> and identifies the politics of citizenship's engagement with secularism as a crucial tool in avoiding an outcome whereby chauvinism is strengthened and democracy weakened, to the clear detriment of the whole populace, but particularly minorities.<sup>62</sup> The secular stance adopted in response to Hindutva allows Muslim political movements to progress beyond the bounds of communalism, and into alignment with a range of secular forces. Furthermore, the issues concerning current Indian Muslim political agitation; equality and recognition, can 'provide a common basis to the politics of the oppressed', being equally applicable to Dalits, Scheduled Tribes and Castes, and members of OBC communities.<sup>63</sup> The potential for greater political efficacy offered by joining forces with other oppressed groups is also recognised by Hussain, who recommends that organisations representing Hindus in Pakistan should build alliances with other marginalised communities if their situation is to improve; especially in light of the author's earlier points about the difficulties faced by Hindus in agitating for their rights

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<sup>59</sup> Alam, *op. cit.*, p. 21

<sup>60</sup> Haniffa, *op. cit.*, p. 96

<sup>61</sup> Alam, *op. cit.*, p. 32

<sup>62</sup> *Ibid.*, p. 32

<sup>63</sup> *Ibid.*, p. 25

given the community's high levels of illiteracy, and feudal relationship with land owners. In addition, the adoption of a secular ideology and formation of alliances with other oppressed groups can serve to shelter religious minorities from the aforementioned likely chauvinist backlash against their assertions. Hindutvadi claims that concession to Muslim demands strengthens separatism and threatens national unity may be countered through secular, cross-community alliances; traits which Hussain hopes may also alleviate the risk of intercommunal violence against Pakistan's Hindus.<sup>64</sup>

***In summary:***

- In South Asia, inter-state tensions impact negatively upon intra-state and inter-communal relations. Religious minorities are frequently figured as proxy citizens of 'enemy' states, which is used by majoritarian elites to justify discrimination and disenfranchisement.
- As such religious minorities may feel alienated from the state, with this disaffection growing into separatist sentiments which only serve to reinforce majority chauvinism.
- Engagement with secular, 'citizenship' politics offers a more effective means of gaining representation and redress for grievances, through cross-community cooperation with other minorities within the state who face similar issues and challenges.

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<sup>64</sup> Hussain, op. cit., p. 55

## 4. Indigenous peoples in South Asia

### *Indigenous peoples and the rights agenda*

The rights of indigenous peoples first featured as a matter of concern on the international agenda following reports of the mistreatment of minorities in Europe and the colonial territories by the opposing armies of the First World War, with The Covenant of the League of Nations containing the first recognition of 'indigenouness' as a concept. Wider acceptance of the term occurred through the International Labour Organisation's 1957 Indigenous and Tribal Peoples Convention (ILO Convention no. 107), while the 1960s saw the formation of some of the most outstanding NGOs, like the International Work Group for Indigenous Affairs (IWGIA). In 1972, the UN, under the auspices of the sub-commission on the Prevention of Discrimination and Protection of Minority Rights within the Commission of Human Rights, authorised a study focusing on the special problems facing indigenous peoples, although the work of the appointed Special Rapporteur, José Martínez Cobo, was hampered by 'inadequate staffing and lack of funds'.<sup>65</sup> 1982 saw the setting up of the UN Working Group on Indigenous Populations which was established with a dual task; 'first, to develop a criterion for determining the concept of 'indigenous' and, second, to develop standards to guide member states of the UN in relation to the rights of the indigenous minorities in their jurisdictions',<sup>66</sup> and whose deliberations resulted in the 1995 Draft Universal Declaration on the Rights of Indigenous Peoples and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which although non-binding documents, have 'a moral force' and do 'exert some amount of restraint on states'.<sup>67</sup>

NGO and civil society agitation towards this international recognition of indigenous rights stemmed mainly from Europe and America; the positive developments of the mid-century followed decades of campaigning by groups representing the indigenous peoples of North America, who defined themselves as the 'First Nation' 'colonised by outsiders from Europe',<sup>68</sup> while lobbying of the UN and Western governments was led by European NGOs concerned with the ethnocide of indigenous peoples in South America. This is not to say that the indigenous rights movement was inactive in South Asia;

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<sup>65</sup> Bose, Tapan Kumar, 2009: 'The Indigenous Peoples: Victims of the Politics of Denial', in Manchanda, op. cit., p. 161

<sup>66</sup> Ibid., p. 162

<sup>67</sup> Ibid., p. 169

<sup>68</sup> Ibid., p. 159

indeed in India, although armed struggles amongst oppressed communities were crushed by the military; 'the sixties generation of India's radical left re-emerged as the supporters of the rights of the tribal peoples over 'water-forest and land' ...join[ing] the movement of the tribal peoples for the establishment of their homelands'.<sup>69</sup> However, as South Asian NGOs were not permitted by their governments to take part in UN discourses, 'the Asian tribal peoples and their organisations were unable to participate in the process that led to the incorporation of the indigenous issue on the UN agenda'.<sup>70</sup>

### **Conceptual ambiguities**

Both globally and in South Asia, ambiguous conceptualisation of 'indigenoussness' has proved a barrier to the implementation of mechanisms designed to protect indigenous peoples. The 1995 Declaration contains no formal definition, while the definition proposed by Cobo and accepted by the Working Group is problematic in its chronological axis, which limits 'the applicability of the definition mainly to pre-colonial populations',<sup>71</sup> thus privileging the experience of the indigenous peoples of the Americas, Australia and New Zealand over those of Africa and Asia, where populations as a whole were colonised and 'where migration has continued for thousands of years, [and] it is impossible to identify any group as indigenous on a chronological basis'.<sup>72</sup> Such ambiguities have been utilised by South Asian governments to exclude groups from the indigenous definition, by arguing that these peoples are no longer colonised by overseas powers; 'ignor[ing] the phenomenon of internal colonialism by the non-tribal dominant groups within the state structures'.<sup>73</sup> Additionally, official discourse around indigenous peoples provides a direct line of continuity with the rhetoric of tribal primitiveness and inferiority propagated under colonialism. In India for instance, as well as usage of the term 'tribe' which has survived despite its colonial connotations of 'racist hegemonic ideology',<sup>74</sup> indigenous peoples are commonly described as 'Adivasis', which literally means 'original inhabitants' but has been used 'in a cultural and a social context to refer to people who were outside the folds of the Hindu social system',<sup>75</sup> with derogatory connotations of uncleanness and barbarity.

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<sup>69</sup> Ibid., p. 160-1

<sup>70</sup> Ibid., p. 161-2

<sup>71</sup> Ibid., p. 163

<sup>72</sup> Ibid., p. 164

<sup>73</sup> Ibid., p. 164-5

<sup>74</sup> Ibid., p. 165

<sup>75</sup> Ibid., p. 165



However, while the conceptual debate may remain inconclusive, 'what is important to note is that the real reason for excluding the tribal peoples of Asia is not lack of conceptual clarity, but a political one',<sup>76</sup> with the harsh realities facing indigenous peoples in South Asia; land alienation, inadequate political representation, forced assimilation, and poor socio-economic development indicators, illustrating the need for a political debate which 'focus[es] on the reality of powerlessness of the tribal peoples and their struggle for justice and the removal of the imbalances inherent in the present national and international power structures'.<sup>77</sup>

### ***Indigenous peoples and the law***

Turning again to the Indian case; indicative of this 'imbalance' of power is the general failure of the law to provide redress to indigenous peoples' grievances.<sup>78</sup> Taking the illustrative example of land reform in the State of Maharashtra; in the immediate post-independence period, 'rather than correcting feudal distortions in land relations which had intensified during British rule, the post colonial state accepted these crucial elements as an 'a priori' condition of land reform and the legal framework for implementation of policies and programs in the tribal areas';<sup>79</sup> with such measures as the Bombay Tenancy and Agricultural Lands Act (1948), although intended to protect tenant cultivators and allow them to become legal owners of their lands, actually functioning to the reverse by placing an emphasis on documentary evidence that inherently disadvantaged indigenous peoples. Meanwhile, sections of 'the lower revenue administration actively colluded or connived with the landlords in their efforts to protect their interests in land',<sup>80</sup> with the result that tenants' names were deleted from records, and absentee landlords were able to fraudulently claim to be personally cultivating land despite living many miles away.

More recent attempts to provide legal redress for the land-alienated have experienced similar failures. The implementation records of the Maharashtra Land Revenue Code and the Tenancy Laws (Amendment) Act (1974), and the Maharashtra Restoration of Land to the Scheduled Tribes Act (1975) are dismal; with data from Thane District showing that, up to 1992, over 50% of the six thousand cases filed were dropped for 'unverifiable reasons', while 22%

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<sup>76</sup> Ibid., p. 167

<sup>77</sup> Ibid., p. 167

<sup>78</sup> Prabhu, Padip, 2009: 'Tribal Land Alienation in Maharashtra: Legality, Illegality and Praxis', in Manchanda, op. cit., p. 183

<sup>79</sup> Ibid., p. 173

<sup>80</sup> Ibid., p. 175

remained pending for up to thirty years on 'unstated grounds'. Of the 24% of cases which were investigated and decided in favour of indigenous parties all were challenged through the courts, and while 'the authorities claim that possession was handed over to 1,566 persons on Court orders,...no verification of actual physical possession is available'.<sup>81</sup> In many instances, indigenous claimants were left uninformed of the progress of their case and the court's requirements of them, and were subjected to intimidation, while the legislation was 'compromised further as the legislators introduced loopholes in the law under the pressure of the landed elites'.<sup>82</sup> This process of 'work[ing] and rework[ing], the contours of legality'<sup>83</sup> can be seen in relation to other legislation of relevance to indigenous populations; for instance, the repeated 'dilution'<sup>84</sup> by the courts of the requirement that people displaced by the Narmada Dam project, (90%, 100% and 30% of whom in Gujarat, Maharashtra and Madhya Pradesh respectively are indigenous people), be rehabilitated before construction commences.<sup>85</sup> Similarly, the 2001 Census found that of India's 42.6 million urban slums dwellers one million belonged to Scheduled Tribes, with court endorsement of slum clearance thus leaving the constitutional obligation of the state to protect this group 'in neglect, while one version of legality paves the path to demolition'.<sup>86</sup>

The rise of public interest litigation (PIL) in the 1970s and 80s, may be seen as a potential remedy to these limitations, through PIL's focus on Constitutional rights and the re-introduction of 'the idea of the Constitution as an inclusive document in the context of the many who had been forgotten and excluded'.<sup>87</sup> However, recent developments have seen a growing pragmatist tendency, whereby 'having identified the end sought to be achieved, ways may be devised to reach that end...involv[ing] the prioritising of rights, interests and claims...[and] a decision on how the law will be used, interpreted, marginalised or stepped past',<sup>88</sup> with often disastrous consequences for the rights of indigenous peoples. This process can be seen clearly in the Narmada Dam example; 'pragmatism required a retreat from a position where rehabilitation was a necessary condition for continued construction of the dam'.<sup>89</sup> Returning to the example of land reform, despite the prevention of continued land-alienation and ethnocide being the stated

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<sup>81</sup> Ibid., p. 178

<sup>82</sup> Ibid., p.182-3

<sup>83</sup> Ramanathan, Usha, 2009: 'Legality and Pragmatism', in Manchanda, op. cit., p. 187

<sup>84</sup> Ibid., p. 196

<sup>85</sup> Ibid., p. 195-8

<sup>86</sup> Ibid., p. 195

<sup>87</sup> Ibid., p. 191

<sup>88</sup> Ibid., p. 188

<sup>89</sup> Ibid., p. 198

aim of each piece of new legislation, 'every recommendation appears to have been made to be forgotten, every law made to be subverted, by design or default',<sup>90</sup> with the unhappy consequence that 'the call of the ultra left Maoist party resonates in the hearts of the tribals and large tracts of their homelands are the staging grounds for the party guerrillas who wage a war against the state'.<sup>91</sup> PIL was devised 'in express recognition of the chasm that had come to exist between masses of people and their rights',<sup>92</sup> and in the case of the indigenous peoples of South Asia, this chasm must be closed or at least narrowed, if the trend of indigenous alienation from the state and subsequent violent conflict is to be abated.

***In summary:***

- The rights of indigenous peoples has been a growing concern of the international community, with recent UN mechanisms such as UNDRIP representing a positive development.
- But the effectiveness of indigenous rights mechanisms is frequently hampered by conceptual ambiguities over indigenesness, and the privileging of a colonial / pre-colonial dichotomy which, in the South Asian context, is evoked by States to exclude peoples from the indigenous definition.
- The reality for many indigenous peoples of South Asia remains powerlessness and alienation, with this being clearly illustrated through the failure of states' laws to redress their many grievances.

## **Conclusions**

The European case provides an example of the development of effective forms of bi and multi-lateralism based on shared security interests, and with a primary objective of promoting peace and confidence building measures between European states post-World War II. This represents a new concept of multi-level sovereignty, expressed through the functioning of regional supranational bodies such as OSCE, CoE and the EU whose legally binding and soft-law mechanisms address a range of economic, political and social issues; while power shifting to Europe's regions enables the promotion of cultural and language rights, and minority protection.

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<sup>90</sup> Prabhu, op. cit., p. 183

<sup>91</sup> Ibid., p. 183

<sup>92</sup> Ramanathan, op. cit., p. 191

Conversely, the South Asian Subcontinent's de-colonisation experience was of bloody fragmentation along linguistic and religious lines, leaving India the only truly multinational, multi-lingual, and multi-religious society in the region. Additionally, South Asian states continue to operate within traditional conceptions of sovereignty; a strong central state with only certain concessions to internal power-sharing, and as such, regional supranational cooperation is a largely undeveloped process, with SAARC, the most promising existing forum for regional collaboration, occupying a weak, marginal role and only exceptionally addressing minority rights issues.

The EURASIA-Net research has firstly entailed a review of European best practice for the integration of states, people and minorities at the national and supranational level, followed by analysis of which of these instruments hold potential for implementation in the South Asian context. As well as this focus on the European experience, EURASIA-Net researchers have looked to other global examples of regional cooperation, for instance the Association of South-East Asian Nations (ASEAN) which in 2009 established a monitoring mechanism to promote and protect the human rights of the peoples of South-East Asia. Significantly, the project team found that in many ways, South Asian states are better positioned than their Easterly neighbours to successfully achieve regional cooperation, given the higher instance of state's ratification of human rights treaties at the UN level and greater engagement with the international treaty system, and the presence within five SAARC member states of recognised national human rights institutions. Indeed, the existence of these independent institutions which through collaboration with the National Human Rights Institutions and NGOs are themselves establishing supranational regional links, can be seen as an important incremental step, which is an option (and seems less threatening) to state's territorial sovereignty, representing a willingness to translate human rights discourse into practice.

Secondly, the EURASIA-Net research identifies autonomy as a prolific instrument for power-sharing and minority / majority conflict resolution, exploring the European experience where autonomy solutions are established and accepted to a large extent. Despite the very different regional histories (the peaceful integration of European states following World War II in contrast to the bloody Partition of South Asia), autonomy is also a familiar notion in some South Asian states, particularly in India where numerous regional autonomies are established within the federal system. Elsewhere in the region: some forms of autonomy, albeit within a very weak democratic framework, are in force in Pakistan; in Bangladesh an autonomy

solution was a central edict of the Chittagong Hill Tracts Peace Accord, although this has not yet been fully realised; and discussions around the new Constitution have shown that a federal system and autonomy arrangements are the most supported instruments to meaningfully accommodate the multi-ethnic, linguistic and religious population of Nepal.

Thirdly, the research found the depiction of security threats in terms of ethnicity, religion or nationalism to be prevalent in both Europe and South Asia; with religious extremism, weak or fragmented states, terrorism, and political and economic imbalances in neighbouring states or regions, being challenges faced in both regional contexts. The injustices and inequality frequently faced by minorities, including diasporic populations, can be viewed as a root cause of extremism, separatism, and subsequently state chauvinism, sometimes resulting in violence at the inter-state or communal level. Steps to address these issues in South Asia have varied, with India, an officially secular state, striving to achieve justice through a personal law legal system rather than through the enforcement of a uniform civil rights framework. Meanwhile, Pakistan has moved further towards becoming an Islamic Republic after some attempts at secular plurality in the past; while both the Maldives and Bhutan position themselves as unitary Islamic and Buddhist states respectively, in the process denying the presence of numerous minorities within their borders. In Nepal the abolition of the monarchy following the People's War signalled the secularisation of the polity, with the drafting of the state's new Constitution aiming to represent religious minorities; while there has been a brutal military 'resolution' of the long-running minority / majority conflict in Sri Lanka.

A comparable range of approaches have been followed in Europe, with some states such as the United Kingdom recognising diversity predominantly on the basis of race or ethnicity, while others such as Sweden and the Netherlands have also included religion as a basis for community rights provision. Conversely, the establishment of such rights has been resisted in France, where a strong emphasis on the Republican values of individualism, universalism and 'laicite' (secularism) prevail; a trajectory that has been followed to a lesser extent in Denmark. Yet another different model has been followed in Germany, where religious questions have recently become an issue following years of minority communities being categorised as 'guest workers' with social rather than political rights. Despite these differences in institutional approaches, the results have been strikingly similar in socio-economic terms, with Muslim minorities in particular forming a significant

under-class throughout Europe, with unemployment ranging from two and a half times to five times that of the majority population.

Finally, the EURASIA-Net research highlights the situation of indigenous peoples, with the lack of conceptual clarity and consensus over defining 'indigenoussness', and the failure of states to recognise indigenous peoples and their rights remaining crucial issues. South Asian states appear reluctant to ratify and implement international indigenous rights treaties, with only Nepal ratifying the 1989 ILO Convention No.169 (Convention Concerning Indigenous and Tribal Peoples in Independent Countries), the sole binding convention on indigenous peoples' rights adopted at international level to date. Although with the exception of the Russian context, indigenous rights are less of a pressing and politically contentious issue in Europe than in South Asia, it must nonetheless be noted that only Norway has ratified the ILO Convention No.169 in relation to the Sami, one of Europe's largest indigenous communities.<sup>93</sup>

## **Final remarks**

Within the context described above, the EURASIA-Net project and its consortium are contributing to scientific and academic debates, through combining training activities and informative sessions for a number of stakeholders (scholars and experts through the study visits programme (WP1), young academics and activists in the summer schools (WP2), EU officials and policy-makers (WP3)), with the creation of a trans-regional platform for further applied research in Europe and South Asia. The topics highlighted in this report have proved to be the fundamental issues when dealing with regional instruments and cooperation to foster human and minority rights in Europe and South Asia, and have therefore been the focus of the EURASIA-Net research and analysis.

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<sup>93</sup> Excluding the indigenous peoples recognized or unrecognized in Russia.