

(IV) Regional Strategies and Potentials for the Protection of Minorities

Annika Malinowski, Daria Napieraj, Maike Holzmüller

“Minorities in all regions of the world continue to face serious threats, discrimination and racism, and are frequently excluded fully from taking part in the economic, political, social and cultural life available to the majorities in the countries or societies where they live.”

Navanethem Pillay, UN High Commissioner for Human Rights
(Statement on Human Rights Day, December 10, 2009)¹

Introduction

In order to find out which strategies can be used to protect minorities, it is crucial to know their legal status as well as the real situation of minorities and which obstacles they face. To examine potential ways to protect them, possible threats and risks must be identified. This chapter focuses on access on natural resources and its impact on minority groups. Geographically, it will concentrate on Northeast India, Yunnan province and the Tibetan Autonomous Region (TAR) in China as bordering regions with a huge percentage of minorities. The chapter is structured as follows: First, a brief overview about definitions of “minority” used and its legal aspects will be given. Secondly, three case studies will describe the negative and positive impact of resource exploitation and development projects on minorities; NGO protests against these negative impacts will be examined. The focus will be on mining, dam construction and tourism. Finally, on the basis of these case studies, options for action to strengthen the position of minority groups in the Eastern Himalaya Region are described and potentials for further action are filtered out.

Resource exploitation projects and tourism very often destroy the livelihood as well as the cultural foundation of minorities, which have in many cases a specific identity-related meaning. Through the construction of a dam, neither their land is accessible any more nor their cultural sites. A special type of the destruction of culture can be found in certain forms of ecotourism which includes so called minority parks or minority villages. They are built with the argument that they support minority group’s lives. Unfortunately, in many cases, the people who work there are exploited, and the villages are causing alienation of the cultural tradition through exaggeration. But there are some examples where these villages and ecotourism can also help minorities to earn their living and to overcome prejudices. These villages are organised by minorities themselves. One of such projects will be described.

1 Definitions and legal background

Since the term “minority” has not yet been defined under international law, a definition by Francesco Capotorti, former UN special rapporteur of the minority subgroup, has been chosen for this chapter because it is substantially recognized. According to Capotorti a minority is a group that is characterized by four elements: numerical inferiority in comparison to the overall population, a non-dominant position in the state, religious, ethnical or linguistic similarities and the citizenship of the residential state.² This definition is broad and can be applied to Indian as well as Chinese minority groups.

Both India and China are huge countries with an immense population that is highly diverse. Officially, India’s population consists of 16.6 percent Scheduled Castes and 8.6 percent Scheduled Tribes, according to the census of 2011.³ The Constitution Orders of 1950 list 1,108 castes and 744 tribes in its First Schedule.⁴ China, by comparison, consists of 56 “nationalities”, including the Han Chinese people and 55 minority groups.⁵ It is important to stress that neither the Han Chinese nor the minorities in India

1 UN 2009.

2 Capotorti 1979.

3 Census India 2011.

4 Indian Constitution .1950.

5 Senz 2010.

and China are homogeneous groups. In many cases, these categories are external ascriptions, while the minorities themselves have a different self-perception and might feel they belong to different groups. Furthermore, ethnic identity does not stop at national borders. Often, minorities are located on both sides of a border.

India and China have some similarities regarding the legal status of minorities in their countries: both countries guarantee mutual rights for minorities, they prohibit any oppression and discrimination and have created some additional laws specifically in supporting minorities. Besides fundamental human rights, the Indian Constitution provides a three-pronged strategy to improve the life of minorities under the section “Cultural and Educational Rights” in its Constitution. In addition to this special protection, a National Commission to the Scheduled Tribes was set up to further secure minority interests and ensures that these specific rights are guaranteed.⁶ Furthermore, The Sixth Schedule of the Constitution includes concepts of district and regional autonomy in the tribal area.⁷ This clause and other constitutional provisions related to the Northeast offer different degrees of autonomy and self-management (including natural resource management) to indigenous communities. That is to say according to the Indian Constitution, minorities are well protected and secure.

In the Chinese case, Article 4 of the Constitution from 1982 prohibits any discrimination against minorities and ensures that all Chinese people are equal before the law.⁸ Furthermore, apart from Chinese provinces, there are five “autonomous regions”, which are legally recognized by the Autonomy Law of 1984. This law ensures a certain degree of autonomy for some regions with a significant number of minority groups, including TAR. In addition, the state guarantees certain advantages for members of minority groups: they have e. g. a preferential access to the educational system and the one-child policy does not apply to minorities with less than 10,000 members.⁹

It can be seen that the Constitution and additional laws formally protect the rights of minority groups in China and India.¹⁰ However, these rights are above all formal rights, which are not fully implemented in reality. Each country has somehow restricted these rights: in the Indian case, the Armed Forces Special Powers Act (AFSPA) was introduced in 1958 to prevent riots. It authorizes the military with extensive powers,¹¹ which override basic human rights and can be misused to suppress minorities. In the Chinese case, article 52 of the constitution prohibits any position challenging the unity of China – a clause that can be used against those groups seeking autonomy or self-determination. Furthermore, China is not a state governed by the rule of law, wherefore rights can be asserted before the court.

Therefore, even though India’s and China’s laws formally protect minorities, those minorities face many restrictions with regard to their rights.

2 Three case studies

Three case studies will describe how cultural and environmental safety of minorities is affected by dam construction, a mining project and by tourism. Some insights will be provided into effective ways of strengthening minority rights. NGOs played an important role in expressing and achieving the rights of minorities.

2.1 Northeast India: Hydroelectric power projects at the river Teesta

Despite their guaranteed special rights by the Indian constitution there are many examples of resource exploitation projects that gravely affect minorities and their resources. Minorities are especially jeopardized because of a lack of information, political power and representatives of their particular rights and

6 Indian Constitution 1949.

7 Indian Constitution/Schedules 1949.

8 Chinese Constitution 1982.

9 Ibid.

10 Senz 2010.

11 Indian Government 1958.

interests. When considering the impacts on these population groups in Northeast India and on their use of resources, it becomes clear that dam construction and hydropower projects play a major role.

One example which will be addressed in greater detail is the influence of hydropower station and embankment construction at the river Teesta and the arising risks for the livelihood of many local minorities. Northeast India, which is referred to as the “future power house”¹² of the country by the government, offers many possibilities for large hydropower projects. The government, only in the district of Sikkim, has planned twenty-six hydropower projects concerning the river Teesta, and contracts with private operators are already signed.¹³ Mostly affected by these projects is the Dzongu province and the local Bhutia-Lepcha minority. The Teesta-IV project, which is one of seven projects in a cascade on the Teesta, endangers a variety of animal species. Furthermore it also threatens the resources of the region, the cultural and religious background of the Bhutia-Lepcha and all together their livelihood.¹⁴ Various researches showed that fourteen villages with a population of more than 14,000 inhabitants would be affected directly by the land acquisition process.¹⁵ Considering also other impacts of the project, the aggregated number of affected persons would be even higher.

A site inspection report, initiated by the National Board of Wildlife (NBWL), states that “extensive tunnelling in geologically fragile areas, dumping of excavated debris into the surrounding landscape and unevaluated social and environmental impacts, apart from the loss of culturally significant ecologies, make them [the dams and hydroelectric power projects] a threat to the local communities and their way of life.”¹⁶ The report, which was finalized in August 2013, advised the Ministry of Environment and Forest to freeze the on-going construction of the hydroelectric power projects. Consequently, the project was stopped following the recommendation.¹⁷

The extensive work of various NGOs and indigenous communities of Sikkim also contributed to the successful protection of the resources and livelihood of the Bhutia-Lepcha minority. Especially “Affected Citizens of Teesta”¹⁸, “The Sikkim Bhutia Lepcha Apex Committee”¹⁹ and “International Rivers”²⁰ played a significant role in the protest against the construction by various ways and means, for instance through (online) petition, environmental assessments and campaigns or even a hunger strike to generate attention.

2.2 Tibetan Autonomous Region (TAR) and Yunnan: Mining project at the sacred mountain Kawagebo

The Tibetan plateau is rich in natural resources, especially minerals, including copper and gold. Mining projects of Chinese or foreign mining companies are criticized in many ways, such as not being legitimized due to the Tibetan plateau’s state as an occupied territory, the weak enforcement of law in the area and the general opposition by local Tibetans.²¹ Moreover, workers in the mines are often brought in from outside, giving Tibetan workers only slight chances for employment.²² After the construction of a railway line to Tibet in 2006, mining activities primarily by Chinese, but also by overseas mining companies, mainly from Canada and Great Britain have been steadily increasing.²³

To exemplify the negative impact of mining activities, the case of Mount Kawagebo in the border area of Tibetan Autonomous Region (TAR) and Yunnan was chosen to show how minorities react to mining in sacred areas and how action against mining is possible, especially with the support of NGOs, even

12 International Rivers (no date).

13 Ibid.

14 International Rivers 2013.

15 Ibid.

16 Safe the Teesta (no date).

17 International Rivers 2013.

18 Affected Citizens of Teesta 2013.

19 The Sikkim Bhutia Lepcha Apex Committee 2012.

20 International Rivers 2013.

21 Free Tibet 2007.

22 The Economist 2013.

23 Central Tibetan Administration 2009.

in the contemporary TAR. In February 2011, a Chinese mining company started mining for gold at the Western side of the Mount Kawagebo. The company had not sought for consent by or even informed the local communities, consisting of several Tibetan villages.²⁴ In Tibetan culture, Mount Kawagebo is perceived as the home of the God of War named Kawagebo and constitutes one of nine mountains in Tibet that are considered sacred. The eastern side of the mountain is part of the “Three Parallel Rivers of Yunnan Protected Areas UNESCO World Heritage site”.²⁵

In the eyes of the Tibetan villagers, mining the mountain meant defilement of a sacred area, the God’s spiritual home, as well as the pilgrimage route and the sacred caves and scenic areas at the side of the mountain. Hence protest arose with several hundreds of villagers involved. Due to constantly mounting tensions, the local government finally gave up and closed the mine on January 23, 2012. The case became internationally known due to public relations work of the Chinese environmental NGO Green Earth Volunteers, of which one member had been on the scene, a noteworthy anomaly, considering that reports about protests in Tibet are usually suppressed. However, an embankment project in the UNESCO Heritage site on the Eastern side of the mountain, that was first stopped after protests in 2004, but illegally activated again in 2011, poses a consistent threat of defilement to the Kawagebo Mountain.²⁶ Thus, the local Tibetan groups were able to achieve their rights, in which they were supported by a national NGO. However, securing their rights on the long run seems to be a difficult task to achieve.

2.3 Yunnan (China): The Lashihai watershed ecotourism project

To exemplify the positive usage of tourism as an economical resource, we chose the case of the Lashihai Watershed nature reserve in Yunnan province, in which ecotourism is being promoted.

In the Chinese media, minorities are often presented as “traditional” in contrast to the Han Chinese as “modern”, creating stereotypes and an image of backwardness in the eyes of the audience. This picture is being supported by the creation of so-called “minority parks”, in which minorities’ traditional ways of living are being presented and parts of their material culture are being commercialized and sold.²⁷ This is especially the case in Yunnan province, where local governments promote a “Great Ethnic Culture Province” since the late 1990s, promoting minority culture as a renewable resource, turn traditions into marketable commodities in order to foster economic growth and regional development.²⁸ However, often rather Han Chinese hotels and tour guides benefit from tourism in the area and negative effects including the so-called “disneyfication” can be observed, leading to an erosion of minority culture.²⁹

The Lashihai watershed is a provincial-level nature reserve, initiated in 2001 by the “The Nature Conservancy (TNC)”, which is a US-based international environmental NGO. It aims at a positive usage of ecotourism to local economic benefit and as means for long-term biodiversity protection. The Lashi Lake wetlands encompass a highly diverse flora and fauna; the area around the lake is inhabited by people from the Naxi and Yi minority. However, tourism in combination with inappropriate local farming and fishing endangered the Lashihai watershed and therefore the livelihood of the local communities. To counter this development, environmental education, ecotourism and alternative energy projects were organized. To foster the involvement of the local minorities in the ecotourism project, TNC initiated the “Lashihai Watershed Ecotourism Working Group”, in which members of the local government, the local tourism bureau, the TNC, and the local community met to discuss the project. This led to the creation of ecotourism guidelines and the training of local ecotourism guides. Moreover, through the creation of the “Northwest Yunnan Ecotourism Association” and its website, tourists are being informed about the nature and culture of the area, as well as about the ecotour guidelines. Thus, the local community

24 Minority Rights Group International 2012.

25 Ibid.

26 Ibid.

27 Senz 2010.

28 Wilkes (no date).

29 Sydenstricker, Pearl 2014.

is directly involved in the profits of tourism and the cultural and environmental education of visitors. Through the guidelines, the scope of tourists entering the reserve is being controlled and therefore their influence on the minorities' environment can be limited.³⁰

3 Options of action

There are three basic options for a more effective protest work: (1) public relations, (2) participation, and (3) empowerment.

3.1 Public relations

The Indian constitution clearly states the rights to freedom of speech and freedom of the press. Therefore, public relations in form of advocacy and presswork are mostly effective and important means of action for the protection of minorities. Public relations can be used on a local, national and international level to protect and promote the rights of minorities. In addition to the general public relations work, lobbying and advocacy work provide supplementary support. Due to the complex threats minorities are exposed to, many organizations aim on a comprehensive protection of social, economic and cultural rights.

There are various Indian and international NGOs as well as local indigenous communities operating in this field in Northeast India. An example of an international organization is the "International Rivers Association",³¹ which works in more than sixty countries, as well as the international network "TEBTEBBA", which "is an indigenous peoples' organization born out of the need for heightened advocacy to have the rights of indigenous peoples respected, protected and fulfilled worldwide".³² The work of some local organizations as "Naga Peoples' Movement for Human Rights"³³ especially focuses on the rights of the Nagas, which include more than thirty ethnic groups, who mainly live in the Northeast Indian states.

In the case of China, public relations inside the country are a difficult task to come by due to strict state supervision. In Yunnan, national and international NGOs, universities and local activists seem to have more freedom in researching and addressing problems, often in collaborations. Inside the TAR, public relation work is limited and NGOs have very limited room for action.³⁴ Public relations inside China have been taken over mainly by non-Tibet based Tibetan activists, such as Wooser³⁵ in Beijing, or Chinese NGOs, such as the "Green Earth Volunteers",³⁶ as in the case of the Kawagebo Mountain. Public relations in an international context are also highly depending on the region. In Yunnan, cooperation between national and international NGOs, especially across its direct borders, is being practiced, for example in the case of the planned embankment of the Salween (Nu) river.³⁷ In the special case of the TAR, public relation in an international context is being done by a vast amounts of human and minority rights organizations, such as "Human Rights Watch"³⁸, as well as pro-Tibet NGOs like "Students for a Free Tibet".³⁹ Also, exile-Tibetan organizations, such as the "Central Tibetan Administration"⁴⁰ or "Free Tibet" and exile-Tibetan individual activists, such as Canada-based Tashi Tsering,⁴¹ inform the public about the negative influences of resource extraction projects in Tibet.

30 Shimizu, N. 2006.

31 International Rivers (no date).

32 TEBTEBBA (no date).

33 The Naga Peoples Movement for Human Rights (no date).

34 Lum 2013.

35 Wooser (no date).

36 Green Earth Volunteers (no date).

37 Salween Watch 2014.

38 Human Rights Watch (no date).

39 Students for a Free Tibet (no date).

40 Central Tibetan Administration 2009.

41 Tashi (no date).

3.2 Participation

The different possibilities of participation are also enabled by the national Indian law – for instance due to the freedom of assembly stated in the constitution. The two most important practices of participation to protect minorities and their rights in Northeast India are petitions and demonstrations. Often and successfully used, they are effective and efficient means for NGOs in this particular field. Examples are the demonstrations and online petitions of the organization “Affected Citizens of Teesta” against various projects concerning the projects on the river Teesta and the Lepcha minority.⁴² The essential rights for these activities are on the one hand stated in the Indian constitution, and on the other hand are restricted by the before mentioned AFSPA in various cases.⁴³ This complicates and disables the work of respective NGOs and does affect the activities of local and national organizations in Northeast India as well as those of international organizations in the country. However, the latter have more flexibility and a wider scope concerning their actions and their engagement in favour of the minorities – especially while working outside of the country.

Just as public relations, the possibilities of participation inside China are limited. Petitions are often not successful, while demonstrations are being suppressed. In Tibet, protests have been increasing and became more violent, especially since 2009.⁴⁴ Self-immolation has been used as a form of general protest against policies of the Chinese government and for Tibetan freedom.⁴⁵ From a Chinese point of view, self-immolation is often perceived as proof of Tibetan barbarity, leading to increasing prejudice against Tibetans. Still, there are positive cases in both Yunnan and Tibet, in which protest was successful, as in the case of Kawagebo Mountain. Agreements with local governments were reached, and extraction of resources was stopped. However, in many cases, agreements were subsequently broken in the years after. Or, just as in the case of Mount Kawagebo, one stopped project endangering minority rights was replaced by another.⁴⁶ Outside of China, participation is mainly focused on Tibetan issues. In general, international NGOs or exile-Tibetan organizations display active participation. The NGO “Students for a Free Tibet” is especially active when it comes to demonstrations.⁴⁷ Petitions include the 2013 Tibet Justice Centre report, in collaboration with Boston University, to the UN Committee on Economic, Social and Cultural Rights in favour of the rights of the Tibetan people in China.⁴⁸ However, they seem to have been without particular success.

3.3 Empowerment

The last important option of action that will be pointed out in this chapter is empowerment. Some of the most important activities are the promotion of self-organization, the creation and development of networks and also educational work. The latter includes especially the provision of information about their rights and possibilities, how to claim them, but also about sustainable use and management of natural resources to ensure the conservation of the resources and protect biological diversity. Another important activity is the reduction of prejudices regarding other cultures between all the actors involved.

Many organizations in Northeast India concentrate these activities especially on the empowerment of women, as for instance the “Zo Indigenous Forum”.⁴⁹ Another important actor for the empowerment of indigenous people in this region is the previous mentioned international network “TEBTEBBA”, as well as the NGOs the network comprises.⁵⁰

In China, empowerment plays an important role in Yunnan, where national and international governmental and non-governmental organizations cooperate in many projects, such as the Lashihai watershed.

42 Affected Citizens of Teesta 2012.

43 Asian Human Rights Commission (no date).

44 Free Tibet 2007.

45 International Campaign for Tibet 2014.

46 Schertow 2010.

47 Students for a Free Tibet (no date).

48 Tibet Justice Center (no date).

49 Zo Indigenous Forum (no date).

50 TEBTEBBA (no date).

Important national and international NGOs include the Yunnan Natural and Cultural Heritage Conservation Council,⁵¹ Green Watershed,⁵² and the Poverty Alleviation Fund. In the case of the TAR, empowerment is on the agenda of some international NGOs, such as the Mountain Institute,⁵³ and exile-Tibetan NGOs, such as the Tibetan Justice Centre,⁵⁴ that informs about the rights of Tibetans. Inside the TAR, empowerment work appears to be limited due to the governmental restrictions on NGOs and the overall difficult political situation.⁵⁵

4 Perspectives

From the previously described options, as well as the overall knowledge gained in the research process, the following potentials for a more effective NGO work could be derived.

Even though many of the foregoing described options are already in use in Northeast India, there is still potential to improve them in the future. The biggest potential lies in the further development of the main options of action: public relations, participation and empowerment. Especially in the fields of public relations and empowerment, the potential for further improvement and expansion seems to be high. One important way to improve NGOs work is the stronger application of educational work to raise awareness for the specific needs and rights of minority groups. It is crucial to adopt this for both the members of minorities and the other parts of the population. This applies to the local and national as well as the international options of action and to the respective organizations. The NGOs and local indigenous communities should furthermore observe the laws thoroughly and adjust their activities to the legal framework and possibilities. Due to the fact that law and regulations vary between the different states in Northeast India, no single best solution can be formulated.

In China, to further develop options of action, public relations and petitions should focus on existing goals of the Chinese government, such as the goal of achieving a “Harmonious Society”⁵⁶, and of reaching environmental improvement and protection as part of China’s development objectives.⁵⁷ The extensive influence environmental pollution, especially on the Tibetan Plateau, can have on the overall global climate could also be a starting point for international actors to address negative effects of mining and embankment projects. Also, the “New Environmental Impact Assessment Law”, implemented in 2002, could be used to make minorities’ interests public and influence the extraction of resources, an option successfully applied to stop the planned embankment of the Tiger Leaping Gorge in 2005.⁵⁸ However, the implementation of the law is still highly inadequate, as an UNESCO report in 2013 showed.⁵⁹ Moreover, dialogues between Han Chinese and Chinese “national minorities” should be increased in order to reduce prejudice and foster mutual respect, aiming at a peaceful resolution of inter-ethnic conflicts. Empowerment work, especially education, could be used to increase cultural knowledge and intercultural communication capabilities on all sides. Moreover, tourism could be used positively to reduce prejudice on the side of the Han Chinese. In this context, the increasing trend of travelling in China could pose an opportunity.

Thus, there are still opportunities to improve the NGO work in the East Himalayan area. However, cooperation across the borders connecting Northeast India, the Tibetan Autonomous Region, and Yunnan province seems to be difficult to achieve. All in all, there are still extensive limits to the successful use of the options of action presented in this chapter. The successful examples mentioned, however, show that opportunities to strengthen the rights of minorities in the East Himalayan region do exist and should not be missed.

51 Yunnan Natural and Cultural Heritage Conservation Council (no date).

52 The Green Watershed (no date).

53 The Mountain Institute 2014.

54 Tibet Justice Center (no date).

55 Lum 2013.

56 Chan (no date).

57 Ministry of Environmental Protection (2007).

58 Waking The Green Tiger (no date).

59 UNESCO (2013).

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