



RIGHT TO NATIONALITY
& CITIZENSHIP NETWORK

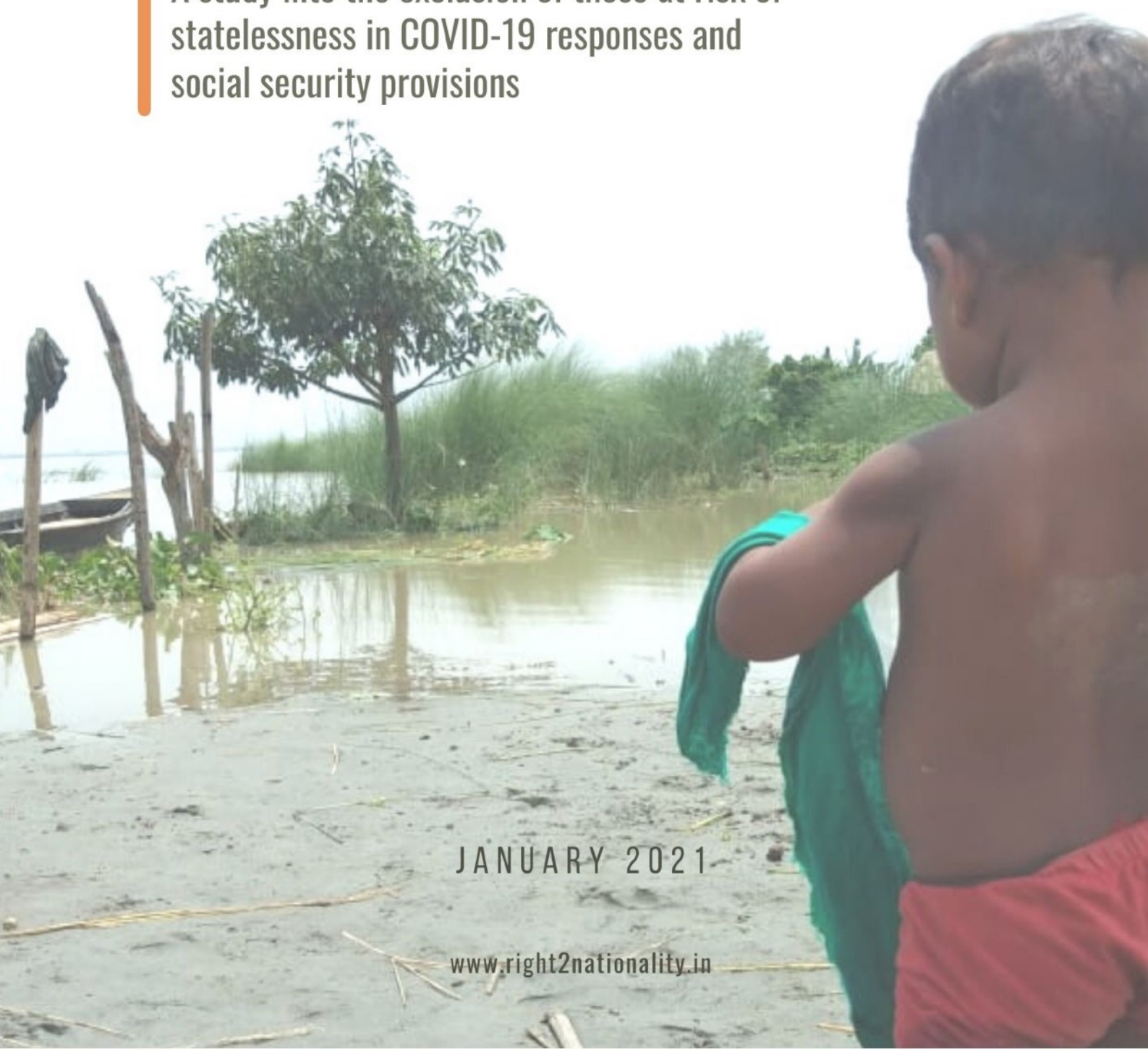
REPORT

Marginalised and Impoverished in Assam

A study into the exclusion of those at risk of statelessness in COVID-19 responses and social security provisions

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Acronyms

FTs	Foreigner Tribunals
MGNREGA	The Mahatma Gandhi National Rural Employment Guarantee Act 2005
NRC	National Register of Citizens
PM-KISAN	Pradhan Mantri Kisan Samman Nidhi (a scheme where each farmer family gets Rs. 6000 per year)
PPE	Personal Protective Equipment
UNHCR	United Nations High Commissioner for Refugees

Acknowledgments

We feel some satisfaction in sharing this report with all those concerned with the risk of statelessness faced by millions in Assam. Close to 2 million are excluded from the NRC published in August 2020. Currently India is trying to initiate a process to review the list of included, even though such a proposal was rejected by the Supreme Court in 2019. The intention, clearly, is to exclude many more than currently excluded. Thus, the number of excluded, and at risk of statelessness, could be a much higher number.

At the same time those declared foreigners are detained in badly built and maintained jails turned into detention centres. They are excluded from access to subsidized food distribution systems. The Assam Land Policy, 2019, prescribes land allotment and continuation of possession for 'indigenous cultivators' without there being any definition of 'indigenous', thus setting stage for excluding those seen as 'non-indigenous'. Such exclusionary policies are being already practiced in Assam. It is in this context that this report tries to document the hardships and exclusions suffered during the COVID-19 pandemic by the people at risk of statelessness.

This report would not have been possible without the hard work done by researcher Padmini Baruah, who planned the data collection, coordinated with field enumerators, compiled the data and wrote the report. Contributions to developing the concept and data collection formats and commenting on the draft report was done by members of the network, especially Angshuman Choudhury, Anjuman Begum, Bidhayak Das, Oliullah Laskar, and Ravi Hemadri. The draft report was reviewed by Amal de Chickera, Co-Director of Institute on Statelessness and Inclusion. It has benefited immensely from the comments received.

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We hope this report will add to our knowledge of the deprivations people at risk of statelessness in Assam face and how these formally and informally ordered exclusions can be addressed.

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Summary

What are the fallouts of a global health crisis on those who occupy the margins of society? This report presents the findings of the Right to Nationality Network's investigation into the impact of the coronavirus on the lives of those who have been rendered, or are in the process of being rendered, stateless in Assam. Through qualitative data collection across seven districts, we attempted to uncover the adversities and hardships faced by the affected population and identify the extent to which they were able to access government COVID19 response, welfare and emergency relief provided by the state.

The report begins with an introduction to the pandemic in the context of close to 2 million people facing the risk of statelessness and discrimination they might likely face. The pandemic has arrived soon after these 2 million were excluded from the National Register of Citizens published in August 2019. Close to 1000 declared foreigners in detention were released in view of the pandemic. This study tries to document their hardships and exclusions they faced.

The methodology section explains how primary data was collected from 67 respondents that belonged to families facing the risk of statelessness in eight districts of Assam. COVID19 indeed contributed to the design of the methodology as face-to-face interview and travel to locations of the respondents was not possible. Most interviews were held remotely with assistance from enumerators who lived in the same areas as the respondents. Confidentiality of the data collected from respondents was important and was handled with utmost care.

This is followed by a section on the crisis of citizenship in Assam that entailed the NRC and the Foreigner Tribunals. We also review the impact of the exclusions arising from NRC and the functioning of FTs during the pandemic. This section also deals with how the government tried to address the health and economic problems faced by the people due to the pandemic and how the humanitarian crisis of floods further pushed people to deprivation.

The section of findings analyses the data collected through interviews with respondents. Documentation of the legal, socio-economic and COVID19 related challenges faced by respondents is documented in this section and individual case experiences are described.

Recommendations emerge from review of the situations as found from the study of secondary sources as well as from the primary data collected. Our recommendations are in the context of the deprivations faced by people at risk of statelessness as well as others in the remote areas of Assam.

Our Findings

1. In the wake of the crisis, the population at risk of statelessness - which overwhelmingly works in the informal sector - have encountered significant difficulties on account of losing sources of income. This was exacerbated by seasonal flooding in multiple instances.
2. Respondents indicated challenges in being able to procure essential goods and services.
3. Respondents encountered significant financial and information challenges while navigating the legal journey of citizenship verification. Lack of information about legal procedure, difficulties in procuring payments for lawyers, and lack of proper documentation emerged as barriers.
4. During the lockdown, those who had been released from detention centres found it difficult to meet the requirements of bail
5. Respondents almost universally reported that they were uninformed about government schemes.
6. The assistance received, in the form of ration provisions as well as financial aid was reported as being insufficient.

Our Recommendations

1. The State must use multiple channels for widespread and effective dissemination of information.
2. The state must not discriminate against people at risk of statelessness in the provision of humanitarian relief and social security.
3. The state must not discriminate while ensuring implementation of cash transfer schemes.
4. The state must relax reporting requirements of periodic reporting to police for released detainees.
5. The state must undo the damage done due to citizenship verification processes through the Foreigner Tribunal and NRC process.

6. The state must take cogent steps to ensure gender equality in the provision of COVID19 response and social security.
7. Foreigner Tribunal cases should be suspended until the pandemic is completely overcome.
8. The state must provide targeted interventions for farmers.
9. The state must extend support to informal sector workers.
10. The State must facilitate easy access to masks and PPE, and increase its own expenditure on masks.
11. The state must build partnerships with civil society organizations, which are rooted in the communities that are most disadvantaged and excluded.



Introduction

The coronavirus pandemic has been unprecedented in many ways – it has not only gravely affected human lives, but has also brought the global economy to a near-standstill. While the entire world has felt the shockwaves of the pandemic, it is not surprising that the most adverse effects have been felt by those who occupy the fringes of society. The trauma endured by this section of the population is often rendered invisible, despite the fact that they constitute the majority of the global population. It is of critical importance that these vulnerabilities be highlighted and addressed through policy initiatives.

It cannot be denied that these problems are exacerbated for persons who are stateless as well as those at risk of statelessness. As set out in a joint civil society statement¹:

As governments across the world confront the COVID-19 pandemic, facing deeply challenging decisions on protecting public health while averting starvation and warding off economic disaster, it is increasingly evident that in times of crisis, states are largely embracing a “citizens first” approach. Denied nationality and deprived basic rights and welfare, the stateless were already marginalised before the crisis. They now face even greater, life-threatening marginalisation, with potentially disastrous consequences.²

Statelessness shuts down access to employment, healthcare and other social services, endangers job security, infringes on one’s liberty through the threat of detention, and limits engagement with any level of government. It leads to the blatant erasure of one’s identity and is arguably one of the worst fates a person can suffer. During this time of the pandemic, the stateless face the risk of being excluded from state responses to COVID-19. Given that

For Jubeda Begum (name changed), her village has always been her entire world. Born and raised within the same district, she has built a life with her husband, children and grandchildren. There is not much to distinguish her from her neighbours at first - she relies on irregular daily wage income, and has . However, in reality, Jubeda lives with a heavy burden. She is among India’s stateless population. A court verdict in 2017 stripped her of her citizenship. Detained for three years, she was released on bail this year in a process fraught with difficulty for her illiterate husband. She soon found out that a new crisis was looming over the horizon. Like the rest of the world, Jubeda’s life came to a grinding halt in 2020.

¹ ‘Stateless in a Global Pandemic’ (Institute on Statelessness and Inclusion 2020): https://files.institutesi.org/Covid19_Stateless_Impact_Report.pdf

² Joint civil society statement of 83 organisations, ‘In solidarity with the stateless: an urgent call to states, donors and other stakeholders to promote and protect the rights of stateless persons in their COVID-19 responses’, available at: https://files.institutesi.org/Joint_Statement_in_Solidarity_with_the_Stateless.pdf.

statelessness, in effect cuts off access to a wide range of rights and services, it follows that these populations are likely to face insurmountable challenges during a public health crisis. In the words of the UNHCR, “Nobody can be protected unless everybody is included, and that means including often invisible, stateless populations.”³

In Assam the proceedings against people arbitrarily deprived of nationality and treated as foreigners through trials in FTs and the NRC have put more than 1.9 million people at risk of statelessness. There have been bureaucratic actions to deprive the people at risk of statelessness from social security provisions. Societal attitudes also lead to discrimination against people perceived as foreigners. Such perceptions usually target people belonging to minority communities, or of migrant heritage.

It is this context in which informs this report. Like Jubeda, many others have been navigating the treacherous journey from citizenship to statelessness in the state of Assam. We seek to understand the impact of the coronavirus crisis on this population. Through participatory qualitative investigation, we seek to uncover the specific nature of the legal and socio-economic challenges faced by those who have either been excluded already or are at risk of being excluded from citizenship. We also explore the access state aid, and the issues that people have faced in terms of negotiating bureaucracy and accessing state support. The aim of this research is to provide a reflection of the realities of how this marginalized section of society face compounded difficulties and multiple discrimination in these times of the pandemic.



³ United Nations High Commissioner for Refugees, 'UNHCR Warns Stateless People Risk Being Left behind in Coronavirus Response' (UNHCR) <<https://www.unhcr.org/news/press/2020/5/5eb95222ec/unhcr-warns-stateless-people-risk-behind-coronavirus-response.html>> accessed 28 December 2020.

Methodology and Limitations

This report relies on two kinds of sources. First, we have used secondary reporting from books, journals and news reports to provide an overview of the historical and legal framework around the 'foreigners' issue in Assam and the realities of the COVID-19 crisis on the ground. Second, we have collected data through semi-structured interviews conducted with respondents from seven districts of Assam. We identified seven field researchers who had an in-depth understanding of the issue and had been working closely with affected populations on the ground. They were trained in conducting qualitative interviews. An electronic questionnaire was prepared and translated into Assamese and circulated among the interviewers. They were asked to identify 5-10 respondents in their respective districts who belonged to one of four categories (elaborated later in the report) – persons who had a legal process initiated against them for the determination of their citizenship, persons who had been declared foreigners, persons who had been released from detention centres, and persons whose names had been excluded from the National Register of Citizens. Interviewers were asked to ensure that they took care to interview a representative sample in terms of age and gender. Considering the sensitive issue of citizenship and a climate antagonistic to minorities, interviewers were strictly instructed to keep confidential the data they had collected.

Once the interview process was carried out, the qualitative data collected was closely analysed. We focused on collecting information around three questions – the respondents' experiences with the legal system, the socio-economic challenges they were undergoing due to the lockdown, and their lived reality in terms of accessing relief from state and non-state actors during the COVID-19 lockdown. We captured the reality of their lived experiences, the contexts in which they live, and the ways in which they navigated the challenges they were recently faced with, given their disadvantages and the structural discrimination they endure. We were able to draw on broad themes that appeared across the data set, and find patterned responses to the different questions.

The research was limited by the realities of the ongoing pandemic. The interviewers were able to collect data only from a select few villages in the district as they faced difficulties in travel. The primary researcher was able to conduct a few interviews but these were mostly telephonic. A few of the interviewers were able to record the interviews in an audio format, but this was not possible for all of the interviews. There were frequent issues around connectivity that cropped up during the course of the research. Finally, the responses were recorded in Assamese; as a result, it is possible that certain nuances of language and expression have been lost in translation despite our best efforts.

The Social and Political Context

Crisis of Citizenship

Assam has had a brewing citizenship crisis that is traceable to migration of cultivators and tea plantation workers during the colonial rule, the Partition in 1947 and refugee flows during the Bangladesh war of independence in 1971. Faced with a long history of political movements against 'illegal immigrants' from Bangladesh, Assam is a site of tension between indigenous communities and those with a heritage of migration. This has manifested in multiple ways over the years (see Annexure), culminating in the controversial finalization of

*One of the respondents, **Rahela** (name changed), faced the tragic impact of the NRC process first-hand. As an 80-year-old woman with no education, acquiring documentary evidence posed a huge challenge for her. She was completely reliant on her sons, stating that she could not make sense of any of the logistics of the NRC process. Her elder son gathered the relevant documents - voter lists from 1966 and 1970, voter ID card, etc. Her name appeared in the draft NRC, but not in the final NRC, unlike the rest of her family. During the NRC hearings in 2019, an officer approached her husband and took his fingerprints, alluding to him as a 'Bangladeshi'. The subsequent stress and fear induced him to commit suicide. Later it was found that his name was included in the NRC. In the wake of this tragedy, she does not believe that she can approach the government for assistance. She ponders over her fate as an excluded person, and is living in uncertainty. She is not clear on the NRC appeal process, and has not received any notification.*

the National Register of Citizens (NRC) in 2019. The NRC process is discriminatory, arbitrary and overly bureaucratic, placing an undue burden on individuals to prove they are citizens, with excessive evidentiary requirements. Minorities, those of migrant heritage and women have been disproportionately impacted through this process which in effect, creates an unjust and illogical boundary of citizenship in Assam, based on a lengthy process of historical documentation.

In August 2019, 1.9 million people were deemed to be 'non-citizens', arbitrarily deprived of their nationality and pushed to the brink of statelessness.⁴ These people, who

have already strained – and in many cases exhausted – their resources to establish their citizenship to begin with, now face the prospect of trial before the Foreigners Tribunals (FT) in Assam. These are quasi-judicial bodies tasked with identifying non-citizens, and have faced

⁴ 'The Biggest Mass-Disenfranchisement of the 21st Century: Joint Statement: 125 Civil Society Organisations Condemn the Exclusion of 1.9 Million People from the Assam NRC and Call for Urgent Action to Protect Everyone's Right to a Nationality' (Institute on Statelessness and Inclusion 2019) <<https://files.institutesi.org/cso-joint-statement-on-assam-nrc.pdf>>

multiple accusations of bias, executive interference, and procedural arbitrariness (see Annexure). Even at the end of November 2020 when this report was finalized for publication, those excluded had not been provided with the opportunity to defend their citizenship, leaving their lives hanging in the balance.

The NRC process, which has resulted in the ‘biggest mass-disenfranchisement of the 21st century’⁵ fails to comply with basic standards and principles of international law, which prohibit the arbitrary deprivation of nationality and discrimination in decisions related to nationality deprivation, obligated avoidance of statelessness where nationality deprivation is pursued, impose various procedural safeguards and require that the nationality deprivation will not result in other rights violations including the liberty and security of the person, freedom of movement, right to family and private life, and the prohibition of *non refoulement*.⁶



As such, the NRC process has received international attention. The UNHCR has issued critiques of the foreigner identification process in the state, and has urged the Indian government to take steps to prevent the loss of nationality of its population.⁷ Special Rapporteurs of the United Nations have also expressed their concerns about the targeting of minorities, stating in a letter to the Minister of External Affairs that

“...Bengali Muslims continue to be disproportionately affected and targeted by Foreigners’ Tribunals as most persons asked to prove their citizenship before Tribunals reportedly lack the necessary means to do so. Even in cases when individuals produce the required documentation to prove their citizenship, many Bengali Muslims appear to be declared as foreigners based on technical reasons... It is alleged that the Tribunals have been declaring large numbers of Bengali Muslims in Assam as foreigners, resulting in statelessness and risk of detention.

⁵ Ibid.

⁶ For the international law principles related to nationality deprivation, see Institute on Statelessness and Inclusion et al, ‘Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at: <https://files.institutesi.org/PRINCIPLES.pdf>; and the Commentary to the Principles, available at: https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

⁷ ‘UN Refugee Chief Urges India to Ensure Due Process so None Left Stateless’ (The Week) <<https://www.theweek.in/news/india/2019/09/01/un-refugee-chief-urges-india-to-ensure-due-process-so-none-left-stateless.html>> accessed 18 September 2020

Finally, it is alleged that the potential discriminatory effects of the updated NRC should be seen in light of the history of discrimination and violence faced by Muslims of Bengali origin due to their status as ethnic, religious and linguistic minority and their perceived foreignness. Although the Bengali origin Muslims in Assam descend from peasant workers brought from the former Bengal and East Bengal starting in the 19th century under colonial rule, they have long been portrayed as irregular migrants. As a result of this rhetoric, Bengali Muslims have historically been the target of various human rights violations, including forced displacement, arbitrary expulsions and killings.

“...We express further alarm and concern at allegations that Foreigners’ Tribunals disproportionately target Bengali Muslims, often resulting in arbitrary deprivation of citizenship, statelessness and the risk of numerous human rights violations, including arbitrary detention and deportations.”⁸ (emphasis supplied)

The COVID-19 crisis and FTs

The outbreak of the coronavirus pandemic in 2020 continues to take its toll in India, with a total of 9 million cases and over 148,000 deaths at the end of December 2020.⁹ Amidst this crisis, the FTs have continued to issue notices to people charged as foreigners to appear for trials. One report describes a letter signed by twelve members of various FTs, stating that their contributions to Assam Arogya Nidhi (a fund established to sponsor access to healthcare for financially challenged families) could not be extended to members of the Tablighi Jamaat – an Islamic missionary sect who were targeted by hate speech after a mass congregation in February in Delhi, which media and state authorities alleged was a vector for the disease. Several foreign delegates at this congregation were detained for visa violations under the Foreigners Act, 1946. The FT members in their communication referred to the members of the Jamaat as ‘Jahil’ and ‘Jihadi’, which has been considered a reflection of their discriminatory communal attitude.¹⁰

⁸ OHCHR, ‘Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief’, OL IND13/2018, (11 June, 2018) <https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Racism/SR/Communications/OL_IND13_2018_Jun18.pdf&action=default&DefaultItemOpen=1> accessed 18 September 2020

⁹ The New York Times, ‘India Coronavirus Map and Case Count’ The New York Times (22 April 2020) <<https://www.nytimes.com/interactive/2020/world/asia/india-coronavirus-cases.html>> accessed 29 December 2020.

¹⁰ Saha, Abhishek, ‘Our COVID Aid Not for Tablighis, Jihadis, Write Assam Foreigners’ Tribunals’ Members’ (The Indian Express, 12 April 2020) <<https://indianexpress.com/article/coronavirus/our-covid-aid-not-for-tablighis-jihadis-write-assam-ft-members-6358438/>> accessed 29 December 2020.

In another instance, seven Muslim assistant government pleaders were replaced in Dhubri district with Hindu pleaders.¹¹ No explanation or reasons were provided for the same, which to many were indications of clear communal bias on the part of the executive which was responsible for making these decisions.

¹¹ Gaurav Das, 'Assam Govt Replaces 7 Muslim Foreigners' Tribunal Pleaders With Hindus in Border District' <<https://thewire.in/communalism/nrc-foreigners-tribunal-government-pleader-muslim-hindu-dhubri>> accessed 29 December 2020.

Overview of COVID-19 Measures in India

Since the first coronavirus case was reported in India in January, the disease has seen exponential spread throughout the country. Beginning with the general curfew in March, the Indian government has taken a series of measures to manage the crisis. The government ordered a nationwide lockdown in the third week of March, imposing a total restriction of movement outside people's residences for 1.3 billion people for three weeks. A second lockdown was implemented until May with the aim of restricting the spread of coronavirus cases in the country. Contrary to expectations, this did not slow down the spread of the virus, leading to two more phases of lockdown in the month of May.¹² Following ten weeks of lockdown, India began a phased reopening of its economy in June.¹³ Experts suggest that there is a long way to go before the outbreak reaches its peak and there is a need for improved responses from the state. Due to India's poorly funded public health care system and existing social inequity, the country has had challenges in implementing a successful containment strategy. Testing remains low, the number of new cases per day continues to rise, the economy stands in a precarious place and the healthcare sector has been completely disrupted as a result of the pandemic.¹⁴ The government has attempted to respond with a slew of legal and socio-economic measures.

Government responses

The unplanned imposition of the general curfew in the first phase of the lockdown caught the population unawares, and impacted vulnerable populations, notably migrant workers.¹⁵ The policies of the Indian government have disadvantaged populations that were already marginalized, especially people who are dependent on the informal sector.

¹² 'Covid-19 Lockdown 3.0: India's National Lockdown Extended Again. All You Need to Know' (Hindustan Times, 1 May 2020) <<https://www.hindustantimes.com/india-news/covid-19-lockdown-3-0-india-s-national-lockdown-extended-again-all-you-need-to-know/story-4MI5zMngYijQCSwVQ0ExoM.html>> accessed 14 August 2020

¹³ PV Iyer, 'Explained: Breaking down Centre's Atmanirbhar Package' (The Indian Express, 20 May 2020) <<https://indianexpress.com/article/explained/atmanirbhar-package-full-break-up-of-rs-20-lakh-crore-nirmala-sitharaman-lockdown-6414044/>> accessed 16 August 2020.

¹⁴ Bharali I and others, 'India's Policy Response to COVID-19' (The Center for Policy Impact in Global Health 2020) <<http://centerforpolicyimpact.org/our-work/the-4ds/indias-policy-response-to-covid-19/>> accessed 14 August 2020

¹⁵ 'Death and Despair as Covid Migrants Flee Cities' BBC News <<https://www.bbc.com/news/av/world-asia-52776442>> accessed 29 December 2020.

Legal Responses

The government enacted an Ordinance amending the Epidemic Diseases Act, 1897. Per this ordinance, protections were extended for healthcare workers, and the centre was vested with additional powers to prevent the spread of dangerous epidemic diseases. State governments were given the power to implement measures for safeguarding the public at large.¹⁶ Notifications have thus been issued by the governments of Delhi, Maharashtra, Punjab, Gujarat and other states.¹⁷

The Supreme Court of India has issued several judgments around COVID-19, on different matters of public interest. In response to the migrant labour crisis, the Supreme Court took suo-moto cognizance of the issue, and laid out an interim order in *In Re: Problems and Miseries of Migrant Labourers*¹⁸, calling for free transport and food for migrant workers, easy registration for migrant workers at nearby places, and facilitating their arrival in their home states. The Supreme Court also looked into the dangers of the spread of coronavirus in India's overcrowded prisons, and called for states to provide measures for dealing with COVID-19 in prisons. The court issued directions for states to set up panels for the release of undertrials in offences with a maximum sentence of seven years and convicts who have been in jail for up to 7 years on parole. The Supreme Court also issued an order granting the release of persons declared as foreigners who have been in detention centers in Assam for more than two years. The Court has been proactive in trying to ensure equitable treatment, directing the centre to use its powers under the Disaster Management Act in order to direct States to regulate the exorbitant cost of treatment of COVID-19 at private hospitals.

Some states responded with extreme measures – for instance, in Uttar Pradesh, an ordinance was passed which codified life imprisonment for the offence of causing death by 'intentional affliction' of COVID-19. Heavy penalties and fines were also prescribed for concealing the disease and traveling, spreading the infection in the community and attacking healthcare workers. The ordinance has come under criticism for being 'capricious' and 'arbitrary'.

¹⁶ Pushkraj Deshpande, 'The Epidemic Act Of India 1897: An Analysis Vis-À-Vis The Covid-19 Pandemic - Coronavirus (COVID-19) - India' (Mondaq, 6 May 2020) <<https://www.mondaq.com/india/government-measures/928706/the-epidemic-act-of-india-1897-an-analysis-vis-vis-the-covid-19-pandemic>> accessed 16 August 2020.

¹⁷ 'The Epidemic Diseases (Amendment) Ordinance, 2020' (PRSIIndia, 23 April 2020) <<https://www.prsindia.org/billtrack/epidemic-diseases-amendment-ordinance-2020>> accessed 16 August 2020.
In Re: Problems and Miseries of Migrant Labourers [2020] Suo Moto Writ Petition (Civil) No(s) 6/2020 (Supreme Court of India).

¹⁸ In Re: Problems and Miseries of Migrant Labourers [2020] Suo Moto Writ Petition (Civil) No(s) 6/2020 (Supreme Court of India).

Socio-economic Responses

To deal with the economic exigencies of the pandemic, the Prime Minister announced the creation of the 'COVID-19 Economic Response Task Force' in March under the aegis of the Finance Minister.¹⁹ The following measures, inter alia, were announced in March to support the people:

Under the Pradhan Mantri Garib Kalyan Anna Yojana, 5 kg of wheat and rice, as well as 1 kg of pulses would be distributed for free to each household under this Food scheme for the next three months. This would be done through the public distribution system.

- a) Farmers would receive installments under the PM-KISAN scheme upfront.
- b) Senior citizens, disabled persons and widows would receive Rs. 1000 over 3 months.
- c) Jan Dhan account holders (women) would be given Rs. 500 per month for 3 months.
- d) In March, the government announced an economic relief package – the 'Atmanirbhar' (or self-sufficient) Package – worth Rs. 20 lakh crore. Measures under this package included free food supply to migrants for two months, credit for farmers, funding various forms of industry, and additional funding for MGNREGA.

Assam

The state of Assam had seen around 216,000 COVID cases as of December 2020, with over 1000 deaths.²⁰ Most cases have been confined to Kamrup (Metro and Rural), Dibrugarh, Nagaon, Tinsukia, Jorhat and Cachar Districts.²¹ Assam's economy has been hit extensively as a result of the pandemic, leading to a total loss of nearly Rs. 33,000 crore in potential contributions to the state GDP.²² Of these, the lion's share has been in the tertiary sector. Between 1.5-2.7 million people could potentially be rendered unemployed. The state's

¹⁹ 'Government and Institution Measures in Response to COVID-19' (KPMG, 8 July 2020) <<https://home.kpmg/xx/en/home/insights/2020/04/india-government-and-institution-measures-in-response-to-covid.html>> accessed 16 August 2020

²⁰ 'Coronavirus (COVID-19)' (Google News) <<https://news.google.com/covid19/map?hl=en-US&gl=US&ceid=US:en>> accessed 29 December 2020.

²¹ National Informatics Centre, 'List Of Districts – Covid 19 Dashboard' <<https://covid19.assam.gov.in/all-districts/>> accessed 29 December 2020.

²² Utpal Parashar, 'First Two Lockdowns Cost Assam's Economy Rs 33,000 Cr, Says Govt Panel' (Hindustan Times, 4 June 2020) <<https://www.hindustantimes.com/india-news/first-two-lockdowns-cost-assam-s-economy-rs-33-000-cr-says-govt-panel/story-SJL8vP4KMWRzbUbTxMa05N.html>> accessed 18 August 2020.

poverty ratio is expected to rise to 51%. It has been estimated that the quarantine alone would cost the state exchequer Rs. 300 crore.²³

In the first wave of the crisis, migrant labourers from the state were stranded in different parts of the country, and were facing a crisis of food and shelter. This number was estimated at 50,000-400,000. As migrant workers returned, the number of positive cases in Assam surged, increasing the stress on the state's health resources.²⁴

The crisis of floods

Assam is no stranger to perennial flooding crises. This year, torrential rains led to floods which affected over 7 million people across 30 districts. This aggravated the COVID-19 outbreak, given the lack of social distancing protocols in relief camps and the cramped spaces where flood-affected people have been confined. COVID-relief and flood-relief have had to proceed hand-in-hand in the state, whose resources and infrastructure are already at breaking point.

COVID-19 and declared foreigners

While a significant number of persons have been released from detention centers, the COVID-19 crisis has exacerbated the challenges faced by those arbitrarily deprived of their nationality and declared to be foreigners. Given that most D-voters and declared foreigners occupy the socio-economic fringes of Assamese society, the pandemic has

*The case of **Rashid Ali** (name changed) highlights these issues. He tells the story of a day he was sitting at home, when a man deposited a notice in his hands, and stated that he was under suspicion of being a foreigner and would have to appear before court. He presented himself before the court on the designated date and found an advocate to represent him. He states that he struggled to understand the court proceeding. He did not have financial resources and had to sell his cow to pay the advocate. Despite submitting proof of citizenship, they declared him a foreigner. He put forward his grandfather's name on the 1966 voter list, his father's name on a voter list, and his own school documents. He now lives in perpetual fear and sleeps in someone else's home at night.*

He has described the lockdown as one of the biggest challenges in his life. As a daily wage labourer, he has struggled to find work, and support his family. His daughter fell ill one day, and when he took her to the hospital, he was assaulted by the police. He was also treated badly by the doctor. He states that he does not have money and is finding it difficult to make ends meet. The lockdown severely reduced opportunity for work, and he has undergone great economic hardship. He has not been able to travel to a hospital on account of the lockdown. The amount of ration he has received is not enough to sustain a household of that size. He has also not received any financial support from the government.

²³ Ibid.

²⁴ Ratnadip Choudhury, 'Virus Spike In Assam As Migrants Return, New Cases In Quarantine Centres' (NDTV.com, 20 May 2020) <<https://www.ndtv.com/india-news/coronavirus-assam-covid-19-cases-rise-in-assam-as-migrants-return-new-cases-in-quarantine-centres-2231982>> accessed 18 August 2020.

increased the trials they face in survival. Finding a means of livelihood has become difficult, given that most of them work as daily wage labourers. Once a person is categorized as a declared foreigner, their ration cards are cancelled. (See Annexure) The absence of ration cards becomes a hurdle in procuring food aid from the government. Reports have suggested that many people have not received the promised Rs. 1000 meant for people without ration cards.

Government Responses

The Assam government adopted the following measures:

- 1) **Movement Restrictions:** A Statewide lockdown was imposed between 24 March 2020 and 31 March 2020, banning transport, closing commercial establishments and putting a halt on gatherings.²⁵ The nationwide lockdown was followed in Assam as well.
- 2) **Health Measures:** The government of Assam issued the 2020 COVID-19 Regulations in March, which introduced measures around screening and directions for district administrations to contain the spread of the disease. It introduced steps for quarantining patients as well.²⁶ The government also introduced the Assam Covid-19 Containment Regulations, 2020, which dealt with measures to be taken for preventing community transmission in a specific geographical area.²⁷ All hospitals and medical colleges were directed to set up isolation wards. The government has also worked to ensure that “all citizens have access to testing and treatment facilities absolutely free of cost.” (emphasis supplied).
- 3) **Welfare Schemes:** The government of Assam issued a series of orders to support people during the pandemic. The government ordered the provision of relief in the form of food supplies to vulnerable populations such as wage earners, slum dwellers, rickshaw pullers, the homeless, and migrant labourers living in municipal towns for seven days. The government took a decision to provide free rice to 58 lakh families registered under the National Food Security Act. Moreover, the government declared a scheme to provide 5kg of rice per member per month to families without ration cards.²⁸ The government

²⁵ ‘Assam Lockdown Notification’ <<https://assam.gov.in/sites/default/files/2020-03/Assam%20Lockdown%20Notification.pdf>> accessed 16 August 2020.

²⁶ NR Akhil, ‘Assam Government’s Response to COVID-19 | PRSIndia’ (6 May 2020) <<https://www.prsindia.org/theprsblog/assam-government%E2%80%99s-response-covid-19>> accessed 16 August 2020.

²⁷ Health and Family Welfare Department, Government of Assam, ‘The Assam COVID-19 Regulations, 2020’ (2020) <<https://assam.gov.in/sites/default/files/2020-03/The%20Assam%20COVID-19%20Regulations%2C2020.pdf>> accessed 16 August 2020.

²⁸ ‘Assam to Provide Free Rice, Financial Assistance to Poor during Covid-19 Lockdown’ (Hindustan Times, 31 March 2020) <<https://www.hindustantimes.com/india-news/assam-to-provide-free-rice-financial-assistance-to-poor-during-covid-19-lockdown/story-ygw9ZYTZ32FL54s42pHCqN.html>> accessed 16 August 2020.

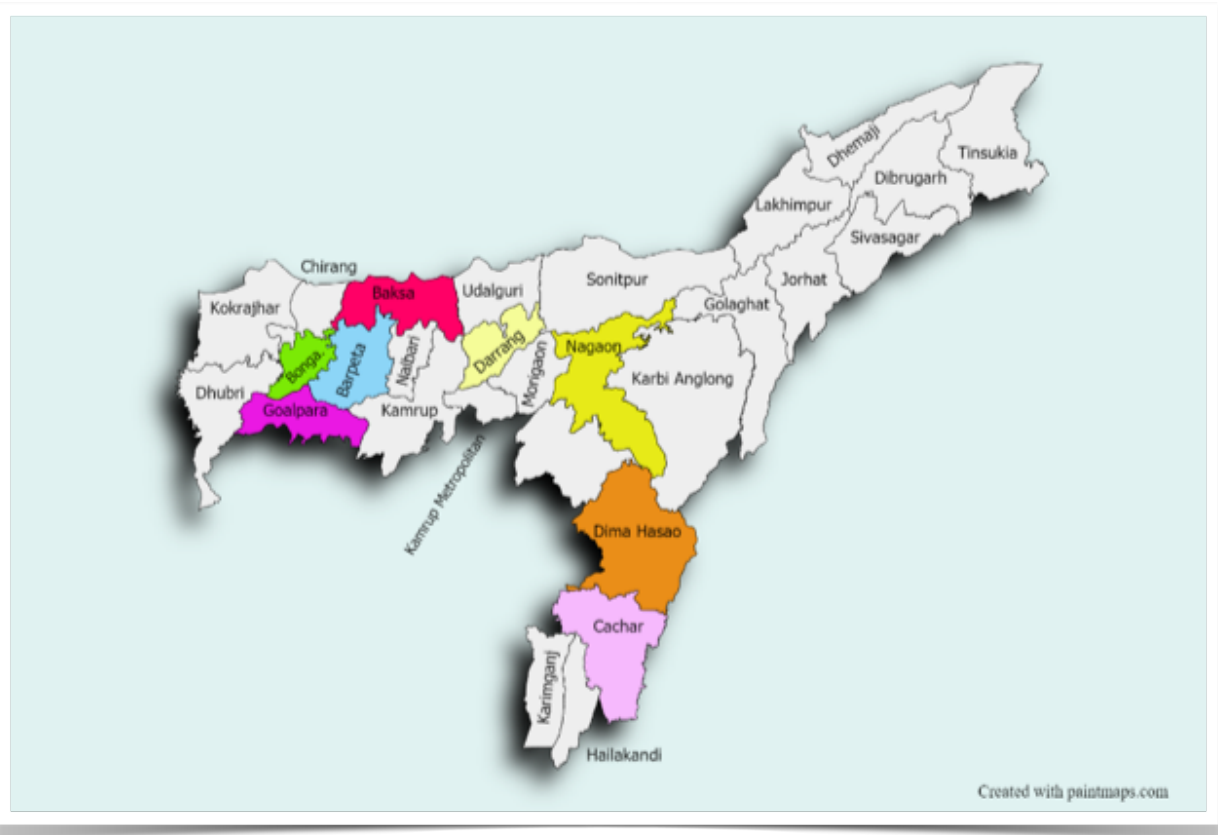
extended around \$2000 in financial assistance to residents of Assam who had been stranded outside the country. The government also provided Rs. 2000 to the accounts of 86,000 people from Assam who had been stranded across the country. The state provided for essential items of up to Rs 2000 each to 1.2 lakh families living across the state. This was later confined to persons from the BPL category only. The government of Assam also decided to provide mid-day meals to 40 lakh students below the age of 14 at home.²⁹



²⁹ Ibid.

Findings

The 67 respondents we interviewed hailed from eight districts – Hojai, Goalpara, Barpeta, Baksa, Bongaigaon, Kamrup (rural), Darrang, Dima Hasao and Cachar. There was a near-equal split between male and female respondents. We did not come across trans respondents in our preliminary survey. All of our respondents were in a low-income bracket, with the majority of them relying on daily wage labour or cultivation for income.

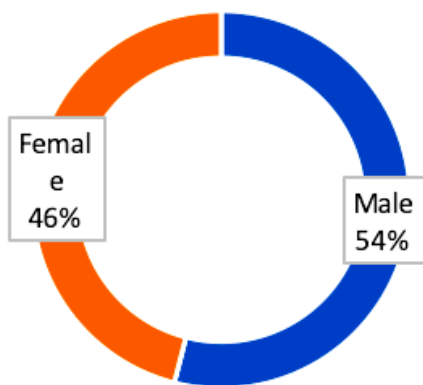


We interviewed four categories of people:

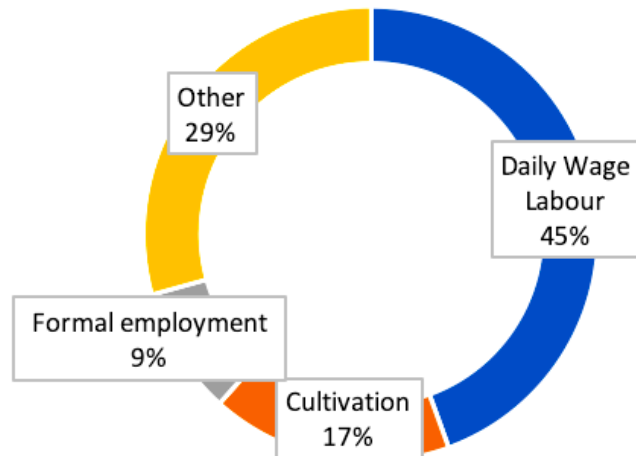
- 1) **FT Process Initiated:** Persons who have charges against them, and whose trial is pending before the FT. These include D-voters, i.e. persons whose citizenship is under suspicion according to the Election Commission of India, and have the letter 'D' designated next to their names in the electoral roll.
- 2) **Declared Foreigners:** Persons who have been declared foreigners by the FT mechanism but have not been sent to the detention centres

- 3) **Released detainees:** Declared foreigners who were in the detention centres and are now released.
- 4) **NRC-excluded:** Respondents who are none of the above, but whose names have been left out from the NRC

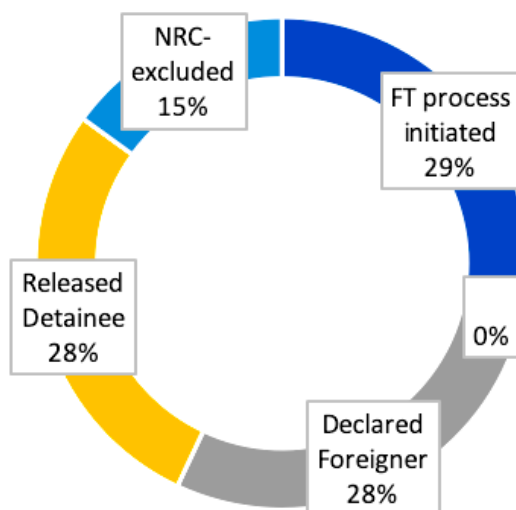
Respondents by gender



Respondents by sources of income



Categories of respondents



Challenges under the legal process

We asked them questions around three broad categories which will be examined in greater detail below. First, we wanted to know the kind of legal challenges which people faced in the process of their citizenship coming under scrutiny at different stages. Second, we sought to understand the impact that this has had on their daily lives. Third, we explored the question of how the coronavirus crisis and the ensuing lockdown affected each category of respondents we interviewed – whether they were able to access relief, who they rely on for assistance, and what repercussions they faced, if any.

- 1) **FT process initiated:** In some cases, the respondents came to know of their ‘D’ status when they attempted to vote. They were barred from doing so, and were told that their right had been suspended. A few of the respondents came to know about their status during the NRC process in 2019, when they were informed that a notice had previously been issued against them, informing them that they were required to face trial before the FT. Respondents also reported receiving notices directly from the Border Police informing them that they would have to appear before the FT. Two of the respondents received notices after their names were included in the NRC; they expressed surprise and dismay.

“I was accosted by the Border Police”

“One evening, as I was returning from the market, I was accosted by the Border Police. They produced a list, and asked me if I knew anyone on it. On scanning the list, I found my own name there. I was terrified, and told them that I did not recognize any of the names. I returned home immediately. The border police eventually found out my address, and left a notice there calling for me to present documents and evidence.”

Respondents reported struggles on three counts – finding a lawyer to represent them, making sense of the legal process, and collecting finances for the legal journey ahead. The respondents were all from low socio-economic backgrounds, and found it difficult to find the means to finance their legal journeys. “I have never seen a Bangladeshi in my life”, one of them rued, “this is really unfortunate.”

- 2) **Declared Foreigners:** Those respondents who have been declared foreigners echo similar concerns. Most of them received notices, often in improper ways. “The notice was never delivered in my hands,” says one respondent, “it was left at a shop in my village, and the shopkeeper only informed me one day before my hearing.” In one of the cases, the respondent, being illiterate, was unable to understand the requirements specified in the

notice and had an ex-parte ruling against him.

Most respondents relied on their kinship or friendship networks in order to acquire legal assistance. Educated relatives or neighbours were reported as persons who were able to

connect them to lawyers to fight their case before the FT. Some of the respondents found lawyers only after arriving at the FT – presumably lawyers who had set up office outside.

Meeting the legal fees of the advocate was also difficult for all the respondents. They had to sell assets in some form or the other – overwhelmingly

land and livestock. Especially for respondents who were considering filing a challenge before the high court, the prospect of fees was especially daunting.

- 3) **Released detainees:** In addition to the challenges described above, released detainees faced certain specific issues. Many of the respondents who had been in detention centres had orders issued against them ex-parte, and only came to know about their status when they were sent to the detention centre. “The police picked me up from Halflong and sent me to the detention centre in Silchar” said one respondent, “I only came to know that I had been declared as a foreigner on my way to the detention centre.” A few of the respondents mentioned that their cases were dismissed on account of discrepancies in the spellings in their documents. Upon release, the detainees struggled to find sureties for their release and bail.

“Declared a foreigner without my knowledge”

“My younger son went to procure rations one day, and was informed by the shopkeeper that he would no longer be able to provide us with ration supplies. This was because I had apparently been declared a foreigner without my knowledge. I found an advocate and tried to argue against this decision before the High Court. The High Court set aside the decision, and sent my case back to the Tribunal. I had to sell my cow, goats and spend my entire pool of savings to pay my lawyer.”

“The police sent me to the detention centre”

“Notices were issued in the past against my mother and my brother but they were both declared as Indian. When it was my turn to face the Tribunal, I was able to attend two hearings. In the meantime my son became afflicted with cancer, and I had to focus on his treatment. I missed the hearings. After a few days, the police came and sent me to the detention centre. After a long legal battle in the High Court, I was able to secure my release this year. I have lost my son. I hope that I will be declared as an Indian.”

Upon release, they have to now present themselves before the police every week, which

they have reported as being challenging in terms of having to travel long distances, especially during the lockdown.

- 4) **NRC-excluded:** The respondents who had been excluded from the NRC mentioned access to documents as a challenge. Many of them reported that they were the only one in the family whose name had been left out. “My name was in the draft NRC, but was left out of the final list” states one respondent.

Impact of COVID-19

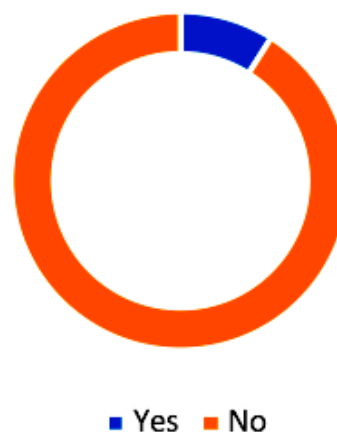
Barring one of the respondents, all of them had heard about the COVID-19 crisis in some form or the other. An overwhelming majority of the respondents reported not being tested so far. Around 65% of the respondents had access to a mask and reported using it, while 35% did not. Those who were using masks had purchased the masks themselves.

Socio-economic challenges during the lockdown

Most of the respondents struggled with finding sources of income during the lockdown since their earnings were largely based on informal work that is neither steady nor reliable. The socio-economic challenges that the respondents faced were largely the same across categories, and have been enumerated below:

- 1) **Sources of income drying up:** All respondents reported significant struggles in terms of their household income. Almost 91% of the respondents reported not being able to find

Were you able to find any work during the lockdown?



“The lockdown has been a curse”

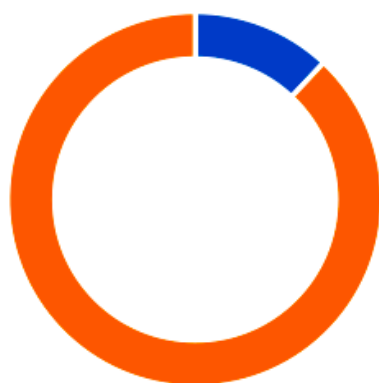
“We have already had to sell our cows, land and jewelry to meet the legal expenses of the Foreigners case against me. After my husband died, I used to eke out a living by selling betel leaves and areca nuts from my garden. I also work as a sharecropper on someone else’s land. I have to beg and borrow to find enough food to eat. My daughter used to work in people’s houses. The lockdown has been a curse on our existence. We have not been able to work anywhere, or step out to beg for food. We have often had to pass our days in hunger.”

any work during the lockdown. Given that the vast majority of the respondents rely on daily wage labour, cultivation and other informal work, the lockdown has had extremely adverse consequences. A few respondents specified that the proceedings before the Foreigners Tribunals and NRC had already stripped their family of whatever meagre assets

they used to possess. The lockdown therefore multiplied their economic challenges manifold. For those respondents who relied on cultivation, the fact that they could no longer sell their produce in the markets due to the lockdown was a huge source of discontent. The respondents who reported having some source of income either sold produce or worked as domestic servants. They reported these sources of income as not being enough. All the respondents struggled with finding the necessary resources to carry out their work.

- 2) **Inability to procure essential goods and services:** A consequence of the loss of livelihoods has been a huge struggle to procure basic necessities. Multiple respondents reported food shortages for their families. For those with health problems, there were difficulties in accessing healthcare and medicines – 88% of the respondents stated that

Have you had access to health services over the last few months?



■ Yes ■ No

they had not had access to any health services during the lockdown. This manifested due to two reasons – inability to pay doctors' fees, and distance from the government hospital, which made traveling difficult, especially during the lockdown. A few respondents reported relying on their local pharmacy for medical attention. Families reported struggles in continuing education for their children due to the financial crisis.

- 3) **Challenges due to flooding:** Around half the respondents reported additional challenges resulting from the floods that happened in July-August, 2020. Respondents shared that floodwaters entered their homes, and their crops were destroyed by the floods. They were unable to find food and struggled to buy and sell produce.

- 4) **Other personal challenges:** The respondents were eloquent in describing an array of personal challenges and mental health issues that they underwent on account of the lockdown. In one case, the respondent lost her house due to a monsoon storm, and struggled to piece

"A state of emergency"

"You know as well as I do that ever since the COVID-19 crisis began, hospitals have been in a state of emergency. We used to go to the nearby primary health care centre for health checkups – even that has stopped now."

“The police sent me to the detention centre”

“I tried to get food for my six month old infant, but was beaten by the police. My child is sick, but I cannot treat him because of the lockdown.”

together funds in order to reconstruct her home. Respondents expressed discontent with the reality of them not being able to take care of their family members. A few respondents mentioned being harassed at the hands of the police when they attempted to leave their homes, even for urgent reasons. Respondents who had been released from detention centres reported facing challenges in having to present themselves before the police every week as a requirement for their release.

COVID-19 relief

In terms of access to aid and relief, we asked the respondents whether they were aware of the various government schemes that had been declared in the wake of the crisis, and whether they were able to access the different kinds of assistance. Their responses have been enumerated below.

78% of the respondents claimed to be unaware of the various government schemes that had been instituted for relief.

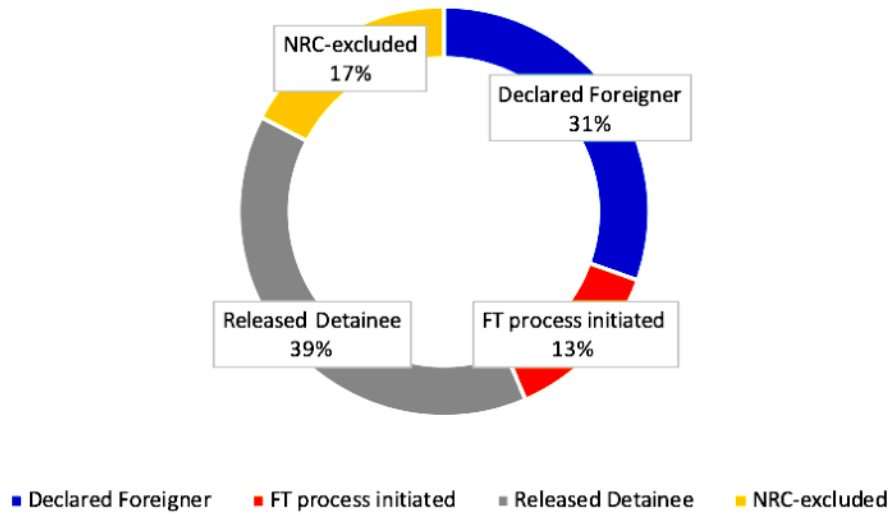
1) Access to rations

In terms of access to ration cards for government subsidized food, around 30% of the respondents we interviewed did not have a ration card available to them. Of these, the vast majority consisted of people who were released detainees. Only a few had access to the rations through cards in the names of their family members.

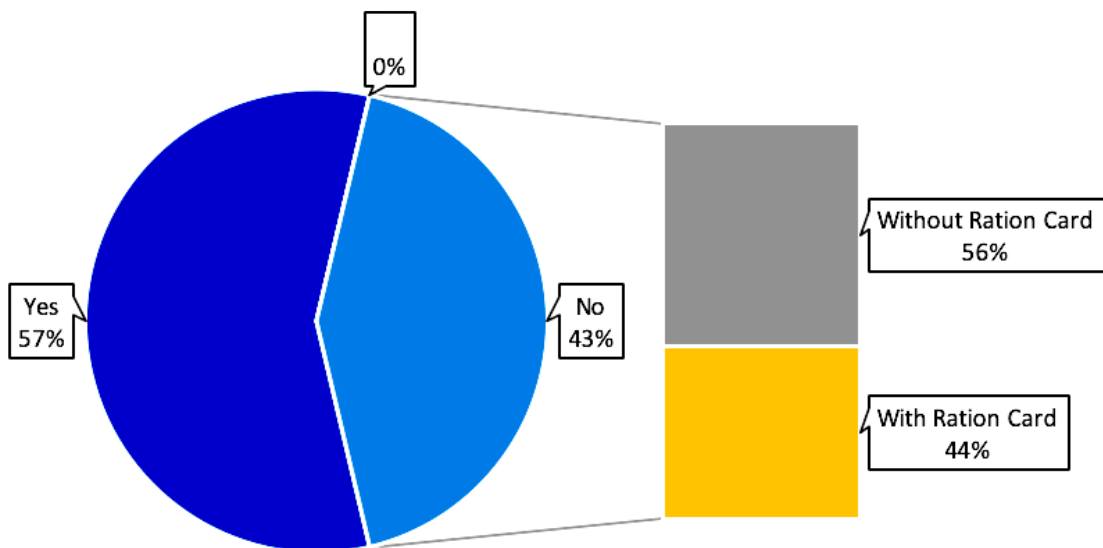
Nearly half the people we interviewed reported not receiving any ration at all during the course of the lockdown. Of these, the majority belonged to the categories of declared foreigner and released detainees. Around half of the people who did not receive any ration were excluded despite having a ration card.

Most of the respondents who did receive rations across categories reported receiving rice and dal on a monthly basis. There was a near unanimous assertion that the quantity of rations they received was not enough to meet the needs of their family. The strict lockdown-imposed challenges as they had to make the journey to the PDS to procure their rations.

Respondents who did not receive ration

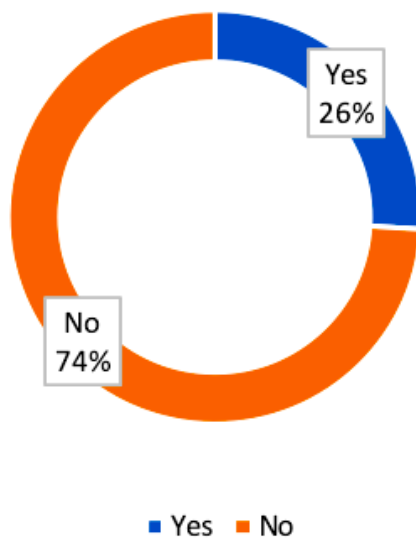


Percentage of respondents of who received ration during the lockdown



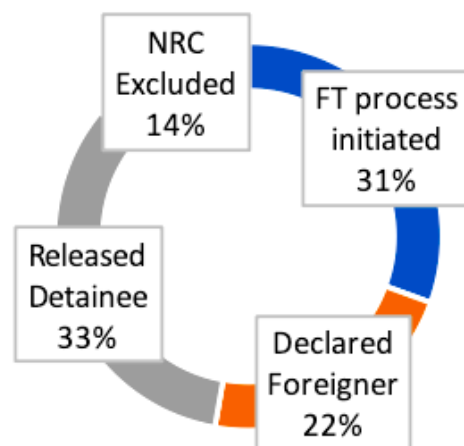
2) Financial support

We asked the respondents about the kind of direct financial assistance they received from the government in the form of cash transfers. Two-thirds of the respondents reported not receiving any form of financial assistance. Of these, most were persons who had been declared foreigners or were released detainees. For those who did receive cash transfers, the amount ranged between 500-1500 rupees in aggregate. An overwhelming majority of the respondents who did receive cash transfers were women. About half of the women who reported receiving cash transfers also reported being beneficiaries of the Pradhan Mantri Jan Dhan Yojana. Relatives of a few female respondents such as their daughters or daughters-in-law received cash transfers. All respondents who received cash transfers received it in their bank accounts, implying that they had been able to open bank accounts in their names or the names of their family members.



Did you receive a cash transfer from the government?

People from different categories who did not receive cash transfers



■ FT process initiated ■ Declared Foreigner
■ Released Detainee ■ NRC Excluded

3) Other sources of aid

Apart from the state, other sources of aid included assistance from local activists, NGOs and kinship networks.

Overall, the respondents reported being worried about their future. Those who had been excluded from the NRC ruminated on the uncertainty of their future. There were concerns expressed across all categories about the future of people's families. For instance, as a cultivator, Hakim Ahmed (name changed) reports facing grave economic challenges on account of the lockdown. He has been unable to sell his crops, and the produce has gone to waste. There are no primary health centres in his village, and therefore meeting his medical needs has been challenging during the lockdown. He has had to travel to the nearest city even for small health concerns. Barring rice, he has not received any rations, and the amount of rice has not been enough for his family. He has received no financial assistance from the state. On account of the floods, his crops have been destroyed. "We are people who live beside the river. The same river has devastated our crops and fertile lands." He had taken out loans to the tune of around ₹1,00,000 and sees no way to repay it.

We returned to Jubeda Begum, for whom the crisis has exacerbated her already precarious situation. Her husband has been unable to find work, both due to the lockdown as well as due to health concerns. She does not have a ration card herself. She is not a Jan Dhan account holder, and so did not receive the sum of money promised. Given her status as a released detainee, she is required to travel to the police station once a week, a journey of 26 km that she undertakes on foot. This takes her around 5 hours every single time. Her health condition makes this exceedingly challenging. Further, the floods displaced her from her home. Her husband is also a D voter, and her entire family has been excluded from the NRC. She quotes, "*Amaar poriyaltuk nagorikotvor kola meghe dhaki dhorise*" ("Citizenship has become a dark cloud over our family").

Recommendations

It is evident from the above analysis that the state's measures in order to battle the coronavirus pandemic are either not reaching many of the intended beneficiaries or are proving insufficient. Most deprived are people that have been recently released from detentions and others struggling to prove their citizenship. We recommend that the state take the following steps on the basis of our observations:

1) The state must use multiple channels for widespread dissemination of information:

The government must ensure that there are proper channels for the systematic dissemination of information regarding health protection measures and welfare schemes. It is clear from our research that people in many cases were not aware that there were multiple welfare schemes available for their benefit. The state must ensure that it is broadcasting information on multiple platforms to ensure that even people living in extremely remote areas are not deprived of knowledge regarding state support mechanisms.

2) The state must not discriminate in the provision of essentials:

Given the global public health emergency, the requirement that affected persons produce documentary evidence to access essential supplies is disproportionate and unjustified, with discriminatory impact. The right to life is enshrined as a fundamental constitutional principle, and it is imperative that it be upheld. The government ought to provide essential food supplies to all households, even those without a valid ration card. Some states in the country have directed the authorities not to cancel ration cards during the pandemic even if beneficiaries were found to be ineligible. The same standard must be extended to Assam. From our study on the ground, it is clear, that families of detainees and declared foreigners have suffered disproportionately on the ground. The 5kg of rice and 1kg of pulses promised to each household per month has been reported to not be enough to cover the basic needs of the households in almost every case we interviewed. It is urged that the amount of food provided through the PDS be increased to twice the current amount per month.

3) The state must not discriminate while ensuring implementation of cash transfer scheme:

Despite the promise made by the government in order to implement a cash transfer programme, it is seen that people have not received this benefit. It is suggested that the government take measures to ensure that the amount of money it has promised reaches the bank accounts of the intended beneficiaries.

4) The state must relax reporting requirements for released detainees

There is an unprecedented challenge around transport, which acts as a barrier for the affected population even in normal circumstances. Therefore, the requirement that released detainees appear before the police every week should be relaxed. For many of our respondents, the journey to the police station has caused great difficulty, and we recommend that this requirement be waived during the pandemic. Respondents have expressed concerns that irregularity in reporting to the police may result in them being detained again; we recommend that this uncertainty be averted through clear guidelines allowing for relaxation of the reporting rule during the lockdown. Moreover, for women and the elderly who have been released from the detention centre, we recommend that this requirement be waived altogether.

5) The state must undo the damage done due to citizenship verification processes

By pursuing an agenda of excluding people from citizenship through the FTs and NRC, the government has further marginalized the already poor and deepened their vulnerabilities. Such precarious status situations are intangible with goals of disaster mitigation, development, peace and justice. A population deprived of citizenship and left to feel they are outsiders cannot be expected to deal with a humanitarian crisis situation such as the COVID19 pandemic. The pandemic doesn't differentiate between people perceived as citizens and those as 'outsiders'. The entire NRC-FT architecture therefore should be immediately suspended, thoroughly reviewed and dismantled.

6) The state must take cogent steps to ensure gender equality

Due to the challenges of proving identity for women, it is recommended that the state relax the burden of documentary proof required for women to avail of relief in the state. The state must take additional steps to ensure that women receive adequate benefits, given that they are rendered especially vulnerable during the time of the pandemic.

7) The state must provide targeted interventions for farmers

The government has announced support for farmers under the Atmanirbhar scheme, but

this has not translated on the ground for any of the cultivators we interviewed. This needs to be remedied

8) The state must extend support to informal sector workers

Since informal sector workers are suffering the impact of the pandemic the most, it is recommended that the extent of benefits they have been provided be scaled up. This not only includes providing an increased amount of cash transfers, but also providing employment opportunities through participation in public works projects, etc.

9) The state must extend support to informal workers

The state should ensure that information around the transmission of the disease be made available even in the remote char areas, as there currently seems to be an acute lack of awareness around measures to contain it. The state can provide masks for free to those belonging to socio-economic minorities in order to prevent transmission.

10) The state must build partnerships with civil society

District administrations must work closely with local civil society organisations and civil society workers who have been working in these areas for a long time. This will help to ensure closer networking between district governance institutions and local bodies. It could also potentially generate ideas for an integrated monitoring mechanism, which is extremely important in Assam, specifically when it comes to find a plausible solution to the citizenship issue. Using the COVID-19 crisis to begin this networking would have significant impact as we move forward.

| Annexures |

The Foreigners Tribunal

Assam has had a long and contentious history of ethnic tension around the issue of migration. Given its geographical location, there has historically been frequent waves of migration into the state – be it during the colonial times; the tumultuous era of the Partition, or in the aftermath of the Bangladesh war of 1971. This has been a focal point of politics in the region, and has led to multiple instances of protest, culminating in the Assam Agitation of the late 1970s. This was a period of six years which saw significant unrest, until the implementation of the negotiated settlement titled the Assam Accord.

There have been multiple attempts by the government to regulate the entry and exit of foreigners. This included the creation of a National Register of Citizens in 1951, which was a document drawn from the census. It was meant as a list to identify who was a citizen at the time. In the decade that followed, there were multiple drives to identify, detect and deport foreigners from Assam. Notably, in 1962, the government introduced the Prevention of Infiltration into India of Pakistani Nationals (PIP) Scheme, under which the Border Police was created to physically screen out ‘infiltrators’ coming into the state.



The central government in the early 1960s decided that it was paramount to subject individual cases to judicial scrutiny before evicting people from India. This executive decision was what spurred the creation of the Foreigners Tribunal architecture. Initially they were under the Illegal Migrants (Determination by Tribunal) (IMDT) Act, 1983, that required the law enforcement agencies to establish that an accused was a foreigner. The law was held unconstitutional by the Supreme Court in 2005 after which the Foreigners Act, 1946, became applicable. This law places the burden of proving Indian citizenship on the accused.

The Foreigners Act, 1946 defines a foreigner as “a person who is not a citizen of India”. This is augmented by the provisions of Section 6A of the Citizenship Act, 1955, which reads as follows:

“all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

...every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner, shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (thereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.”

This section established 25 March 1971 as the cutoff date – anyone found to have entered Assam following this date would be deemed an illegal immigrant, and deported. The Foreigners Act establishes a reverse burden of proof as noted above – the onus of proving that one is not a foreigner lies on the person themselves. The 1946 act authorizes the government to “by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein”. Using these powers, the government in 1964 passed the Foreigners (Tribunals) Order, establishing the Foreigners Tribunal. This is a quasi-judicial

body, which performs the task of scrutinizing cases to determine whether or not a person is a foreigner.

The members of the FT are required to have 'judicial experience' per the Order. According to the government's latest iteration, members have to meet the following criteria:

- 1) Citizen of India
- 2) Retired Judicial officers of Assam Judicial Service, or
- 3) Retired Civil Servants with judicial experience, or
- 4) Advocates above 35 years of age with 7 years of practice at the least
- 5) Fair knowledge of Assamese and this historical background of foreigners issues in the state

There have been several issues raised with the creation and administration of the FT regime. One of the strongest criticisms offered has been that the members of the FT are often not well trained, and carry pre-existing bias. There is also executive interference – it is the government that makes appointments to the FT, and the government that has the power to review the members' performance. It has been found that members of the FT are incentivized according to the number of people they declare as foreigners. This clearly implies a dilution of the principles of judicial independence.

The FT process

The FT process can be broken down into four stages. Each of these has been explained below.



1) Reference

The first step in the Foreigners Tribunal process is the preliminary identification of a suspect. This happens in two ways.

- a) **Border Police:** The Assam Border Police, established as a Special Branch Organization of the Assam Police, may identify a person as a foreigner. The concerned Superintendent of the Police then forwards the reference to the Foreigners Tribunal
- b) **Election Commission of India:** The Election Commission, if it suspects that a person is not a citizen, can strike them off the voter lists. The Electoral Registration Officer may, upon verification, declare reasonable doubt that a person is not a citizen, and make a reference to the Foreigners Tribunal.

The reference must specify whether a person is a foreigner who entered India between 01.01.1966 and 25.03.1971, or after 25.03.1971. The scope of the FT is restricted to what is specified in the reference – for instance, the FT cannot declare a person as a foreigner who entered Assam after 1971 if the reference does not so specify.

2) Notice

Once a reference has been made, a notice is issued to the person who is suspected of being a foreigner. The notice informs the person that they are suspected of having entered Assam illegally from Bangladesh, and would now have to present themselves before the concerned FT on a specified date. They are instructed to present documents and evidence to establish that they are not a foreigner. The Foreigners (Tribunals) Order specifies that the notice must contain the main grounds on which the person is alleged to be a foreigner.

3) Hearing

Following the notice process, a reasonable opportunity is to be given to the person to make a representation and provide evidence in the case. The Foreigners Tribunal gives the proceedee 10 days' time to submit a written statement, and 10 days further to produce evidence in support of the case.³⁰ The written statement has been called the 'basic statement of defence of the proceedee', and is to contain the relevant facts which may help strengthen the person's claim on citizenship. These claims must be substantiated through 'cogent and reliable' evidence.

4) Order

Finally, upon examining all the evidence, the Foreigners Tribunal issues an order where it rules whether or not a person is a citizen of India.

These processes have been found to be riddled with flaws. There are no guidelines which regulate the basis on which the Border Police or the Election Commission may raise doubts. Notices, which are the first step in initiating proceedings, often do not provide the main grounds on the basis of which suspicion has been cast on the person. Moreover, in multiple cases, the notice is not served in a proper manner – people are often not aware of the fact that there is a notice against them. This has resulted in a multiplicity of ex-parte orders, i.e. orders in the absence of the suspected party. Almost 64,000 people have been declared as foreigners ex parte since 1985, denied an opportunity to argue their case.

FTs are given the power to regulate their own procedure per the Order. The Order bestows upon FTs the same power that civil courts are accorded in specific matters, namely in terms of summoning and enforcing the attendance of any person, examining them under oath, discovery and production of documents, and the examination of witnesses. The Supreme Court has held that "...Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only

GOVT. OF ASSAM
OFFICE OF THE SUB-DIVISIONAL OFFICER(C), NORTH SALMARA, ABHAYAPURI
(FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS BRANCH)
Dated, Abhayapuri the 12th February, 2019

To
The Inspectors/ Sub-Inspectors,
Food, Civil Supplies & Consumer Affairs,
North Salmara, Abhayapuri.

Sub:- Regarding cancellation/delation of Ration Cards of declared foreigners from ERCMS data.

With reference to the subject cited above, you are hereby directed to check & verify the Ration cards of the following foreigners declared by the Foreigners' Tribunal of Bongaigaon District. You are directed to cancel / delete from ERCMS data if name of any declared foreigners found possess or found as member of any ration card under your jurisdiction and report compliance.

Matter may be treated as most urgent.

List of declared foreigners under North Salmara Sub-Division

Sl. No.	Name of declared foreigners	Name of Father/ Husband/ Wife/	Address (Name of Village)	Remarks
1	[REDACTED]	[REDACTED]	Santoshpur Pt.II	
2	[REDACTED]	[REDACTED]	Jharpara	
3	[REDACTED]	[REDACTED]	Jharpara	
4	[REDACTED]	[REDACTED]	Tilapara	
5	[REDACTED]	[REDACTED]	Mohanpur Reserve	
6	[REDACTED]	[REDACTED]	Pahartoli	
7	[REDACTED]	[REDACTED]	Kalikura	
8	[REDACTED]	[REDACTED]	Salbari	
9	[REDACTED]	[REDACTED]	Matraghola	
10	[REDACTED]	[REDACTED]	Balarchar Pt.II	
11	[REDACTED]	[REDACTED]	Chalantapara Pt.IV	
12	[REDACTED]	[REDACTED]	Chalakura	
13	[REDACTED]	[REDACTED]	Latibari	
14	[REDACTED]	[REDACTED]	Mowamari	
15	[REDACTED]	[REDACTED]	Ambari	

i/c Asstt. Director, FCS&CA,
North Salmara: Abhayapuri.

³⁰ Rashminara Begum v. Union of India, WP(C) No.7102 of 2016, Gauhati High Court (2017).

where it is required, and without being restricted by the strict rules of the Evidence Act.” However, in reality, FTs impose extraordinarily high evidentiary burdens on the persons suspected of being foreigners. The applicable provisions of the Indian Evidence Act, 1872 are administered in a stringent and selective manner. This results in the replication of the standards of a criminal trial. Documentation, for instance, forms the heart of the FT proceeding. Documentation has to prove lineage – the alleged foreigner has to show documents which prove that she or her forefathers came to India before 1966. There are two different kinds of documents that may be examined by the FT – public and private. Public documents are those which form records of acts of sovereign authority, official bodies, and public officers. Private documents are documents apart from these. In case of citizenship cases, public documents such as voter lists must be submitted as certified copies. Sections 61–65 of the Evidence Act are applied to private documents. Documents such as residence certificate issued by the village Gaonburah, marriage certificates, Panchayat certificates which can be used to establish a clear lineage with a forefather must be proven through the testimony of the person who issues the document. This effectively means that the accused person must not only work to gather papers, but also find and convince the issuing authority to testify before the Tribunal. Further, Tribunals rule against people on extremely arbitrary grounds such as minor aberrations in spelling, and discrepancies in dates.

Moreover, Tribunals are quick to disregard oral evidence. Often, the suspected foreigner produces family members, whose citizenship is not under doubt, to attest to their relationship. The court often dismisses oral evidence as not being substantial. According to section 50 of the Indian Evidence Act, the opinion of a family member who has knowledge of the relationship can be used to establish the existence of such a relationship. However, the FT, given its power to regulate its own procedure, sidelines this provision completely.

Women, in particular, are severely disadvantaged by this system. Proof of citizenship is contingent on patrilineal descent in India. Therefore, any document that a woman submits must show that she is a daughter of an Indian citizen. This can be enormously difficult to prove – in reality, many women are married off at a young age, and their names appear in the voters lists as ‘wife of’ a particular individual, which is not enough to prove citizenship. It is doubly difficult for women to produce authorities such as the Gaonburah to attest to her lineage. Given that it has empirically found that most of the affected population is likely to be illiterate, they often do not possess educational documents which could be used to bolster their claims.

Further, there is no appellate procedure prescribed under the FT regime. The only way to challenge a decision made by an FT is by filing a writ petition before the Gauhati High Court, a process which is both expensive and time consuming. Thus, there is effectively no accessible means for persons to contest the decisions of the FT.

Following the outcome of the FT process, the person is stripped of their citizenship. Their names are removed from electoral roles, and they lose the benefits bestowed upon citizens; for instance, their ration card may be cancelled (see photo of a letter cancelling the ration cards of declared foreigners). Once a person is declared as a foreigner, s/he is brought face to face with the prospect of being sent to a detention centre. There are currently six detention centres in Assam – in Goalpara, Kokrajhar, Dibrugarh, Silchar, Jorhat and Tezpur. As of last count, there were 425 prisoners in these detention centres.

Detention Centre	Number of detainees
Goalpara	98
Kokrajhar	47
Dibrugarh	14
SilcharD	43
Jorhat	83
Tezpur	140

Table 1: Source - Times of India, Sep. 1, 2020

The Kokrajhar detention centre houses women, whereas the others are earmarked for men. Detainees suffer a fate worse than those who have been convicted of actual crimes. They are not given access to work, appropriate healthcare or recreation, and are kept in cramped quarters. Visitors barring family members are not permitted. Detainees cannot leave, and children are separated from their mothers. While indefinite detention was the norm earlier, in 2019, the Supreme Court allowed for the release of declared foreigners who had been inside detention centres for over three years. Such a release was conditional on the detainee being able to provide two sureties of Rs. 1 lakh each, and a verifiable address. This was further amended during the coronavirus crisis, and has been elaborated upon below.

National Register of Citizens and Citizenship Amendment Act, 2019

As discussed above, Assam has a National Register of Citizens, which is a list of all Indian citizens in Assam, originally created in 1951 to cull out illegal immigrants. In 2009, a case was filed before the Supreme Court demanding the updation of the National Register of citizens. This resulted in the ruling in *Assam Public Works v. Union of India*, where the Supreme Court ordered for the NRC to be updated and took it upon itself to ensure that the NRC was published according to the terms of the Assam Accord.

Inclusion in the NRC was a matter of being able to trace one's lineage to an ancestor who resided in Assam prior to the cutoff date of 25.03.1971. A database called 'Legacy Data' was developed, which contained the names of those found in the 1951 NRC as well as electoral rolls prior to the cut off date. A person seeking inclusion in the NRC would have to be able to prove that their names or those of their ancestors appear in the Legacy data. This proof would take the form of submitting relevant documents from a pre-specified list. There were two kinds of documentary evidence that could be submitted – 'List A' documents and 'List B' documents (which had to be submitted as proof of lineage if the List A document was in the name of the person's ancestor)

List A	List B
1) 1951 NRC OR (2) Electoral Roll(s) up to 24th March 1971 (midnight) OR (3) Land & Tenancy Records OR (4) Citizenship Certificate OR (5) Permanent Residential Certificate OR (6) Refugee Registration Certificate OR (7) Passport OR (8) LIC OR	(1) Birth Certificate OR (2) Land document OR (3) Board/University Certificate OR (4) Bank/LIC/Post Office records OR (5) Circle Officer/GP Secretary Certificate in case of married women OR (6) Electoral Roll OR (7) Ration Card OR (8) Any other legally acceptable document

(9) Any Govt. issued License/Certificate OR (10) Govt. Service/ Employment Certificate OR (11) Bank/Post Office Accounts OR (12) Birth Certificate OR (13) Board/University Educational Certificate OR (14) Court Records/Processes.	
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This was followed by a verification exercise on the field, after which the draft NRC was published in July 2018. Anyone who did not find their name in the draft was allowed to file claims and objections, and resubmit documents to prove their lineage. The final list was published on 31 August, 2019. The outcome of the NRC process is well known - 1.9 million people were left out of the final NRC list, and now face the prospect of appeals before the Foreigners Tribunals in the state. One year on, this process is yet to begin, and there is no certainty as of the time when this report was being written as to when the appeals process would begin.

The discussion around the NRC is not complete without referring to the controversial Citizenship Amendment Act, 2019. The Parliament passed the Citizenship (Amendment) Act, 2019 on 11 December 2019 and it soon received the assent of the President and became a law. The law mandates that the government award citizenship to immigrants belonging to six specified communities from Afghanistan, Bangladesh and Pakistan that entered India before 31 December 2014. The law excludes Muslim immigrants and is therefore discriminatory.

The law is undoubtedly linked to the National Register of Citizens (NRC) in Assam. The CAA is an attempt by the government to grant citizenship to those excluded from the NRC except Muslims and thus render them stateless. While several sections of the Indian opinion see the law as discriminatory against Muslims and a step towards creating a 'Hindu Rashtra' (Hindu Nation), in Assam and other parts of India's northeast it was seen as an attempt to undermine the NRC and grant citizenship to non-Muslims immigrants and refugees from Bangladesh.

Widespread protests against the law happened all over the country in the early months of 2020 that saw shutdowns and several deaths.

The amendment further restricts access to citizenship in the country. Two earlier amendments made to the Indian citizenship law in 1987 and 2003 already restricted citizenship to only those born of Indian parents. The 2019 amendment takes it one step further, mandating religion as a condition for awarding citizenship.

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Right to Nationality and Citizenship Network is a collective of lawyers, researchers, academics, and activists concerned about attempts to strip millions of Indians of their citizenship and render them stateless. We aim to create awareness, campaign, and advocate for the right to nationality as a human right. This is an inalienable right of all those born within the territory of India and those with intergenerational links to the country. We believe statelessness is counterproductive to the goals of social justice, peace, and development.

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