HOUSING AND LAND RIGHTS NETWORK

Submission from Housing and Land Rights Network, India

to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

The Human Right to Adequate Housing of Indigenous Peoples

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1. Introduction

In this submission to the Special Rapporteur on Adequate Housing, Housing and Land Rights Network India (HLRN)[1] provides an overview of indigenous peoples in India; a summary of important legal provisions to safeguard their rights; information on their housing and land rights; and, major challenges and some positive initiatives related to the realization of these rights.

Indigenous peoples in India—referred to as *adivasis* (original inhabitants)/tribal people in parts of the country, or as Scheduled Tribes in the Constitution of India—constitute an integral part of the socio-economic and cultural fabric of the country.

According to the Census of India 2011, over 104 million people (8.6 per cent of the total population of India) belong to Scheduled Tribes.[2] Across 30 states and Union Territories in India, 705 indigenous/tribal groups have been listed as Scheduled Tribes, of which 70 groups have been identified as 'Particularly Vulnerable Tribal Groups' owing to their pre-agricultural level of technology, decreasing population, and low levels of subsistence.

The British, during their colonization of India, declared certain forest-dwelling communities as 'criminal by birth' under the Criminal Tribes Act 1871. More than 200 tribal communities were

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[1] Housing and Land Rights Network India (HLRN) is a Delhi-based human rights organization working to promote the realization of the human rights to adequate housing, land, and related human rights, especially of the most marginalized. For more information, see: www.hlrn.org.in or write to: contact@hlrn.org.in
Third parties using any information from this submission should adequately cite this document. For more information, also see, forthcoming publication of HLRN on the status of housing and land rights in India, to be available later in 2019 at: www.hlrn.org.in

[2] 'ST Statistical Profile - at a glance,' Ministry of Tribal Affairs, Government of India. Available at: https://tribal.nic.in/ST/Statistics8518.pdf

subjected to institutionalized, state-sponsored harassment, and denied access to forest-based resources in order to reduce their inherently 'criminal nature.'[3] In 1952, these communities were 'denotified' as criminals. The Criminal Tribes Act 1871, however, was replaced by the Habitual Offenders Act 1952, which continues to discriminate against them. These tribal communities, thus, continue to be stigmatized by state authorities, which has not only resulted in the violation of their human rights to adequate housing, land, food, water, sanitation, education, health, and work/livelihood, but also deprived them of provisions for affirmative action guaranteed in the Constitution of India.

Scheduled Tribes are among the most marginalized communities in the country and have low rates of literacy (59 per cent). About 46 per cent of India's rural tribal population and 24 per cent of the urban tribal population lives below the poverty line.[4] In rural India, only 10.5 per cent of people belonging to Scheduled Tribes own a house,[5] while 40.6 per cent of houses of Scheduled Tribe communities are characterized as 'good,' 53 per cent are considered 'liveable,' and 6.4 per cent are classified as 'dilapidated.'[6] Of the rural Scheduled Tribe households, 35.65 per cent are landless and depend on manual casual labour for their livelihoods.[7] Furthermore, only 13.06 per cent of the total land in rural areas is owned by Scheduled Tribes, with the average size of each land-holding being 0.65 hectares.[8]

Nomadic and semi-nomadic communities also suffer from extreme deprivation and marginalization, including with regard to accessing their livelihoods as well as land and housing. According to the report of the Renke Commission (2008) to the National Commission for Denotified, Semi-nomadic and Nomadic Tribes, about 89 per cent of denotified tribes and 98 per cent of nomadic/semi-nomadic communities do not own land while only 11 per cent of nomadic communities and eight per cent of de-notified tribes have habitations on public land. Fifty-seven per cent of families live in tents/temporary structures. The overwhelming majority are deprived of basic amenities, such as water, sanitation, and electricity.[9]

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[3] Report by the National Commission for Denotified, Nomadic, and Semi-nomadic Tribes, Ministry of Social Justice and Empowerment, Government of India, 2008. Available at: http://socialjustice.nic.in/writereaddata/UploadFile/NCDNT2008-v1%20(1).pdf

[4] 'ST Statistical Profile - at a glance,' Ministry of Tribal Affairs, Government of India. Available at: https://tribal.nic.in/ST/Statistics8518.pdf

[5] Socio-economic and Caste Census 2011, Ministry of Rural Development, Government of India. Available at: https://secc.gov.in//reportlistContent

[6] Annual Report 2017–18, Ministry of Tribal Affairs, Government of India. Available at: https://tribal.nic.in/writereaddata/AnnualReport/AR2017-18.pdf

[7] Socio-economic and Caste Census 2011, Ministry of Rural Development, Government of India. Available at: https://secc.gov.in//reportlistContent

[8] 'Household Ownership and Land Holdings in India,' National Sample Service Office, Ministry of Statistics and Programme Implementation, Government of India, 2013. Available at: http://mospi.nic.in/sites/default/files/publication_reports/Report_571_15dec15_2.pdf

[9] Report by the National Commission for Denotified, Nomadic, and Semi-nomadic Tribes, Ministry of Social Justice and Empowerment, Government of India, June 2008. Available at: http://socialjustice.nic.in/writereaddata/UploadFile/NCDNT2008-v1%20(1).pdf
See, *The Human Rights to Adequate Housing and Land in India: Report to the United Nations Human Rights Council for India's Third Universal Periodic Review*, Housing and Land Rights Network, New Delhi, 2016; reprinted in 2018. Available at: https://www.hlrn.org.in/documents/Housing_Land_Rights_India_UPR3_2018.pdf

2. Legal Provisions and Protection of Indigenous Peoples/Scheduled Tribes/*Adivasis* in India

a) The Constitution of India – Schedules V and VI

The Constitution of India provides special protection to Scheduled Tribes and specifically includes those tribes or tribal communities that are notified under Article 342.[10] The Fifth and Sixth Schedules of the Constitution lay down provisions for the administration, including land governance and regulation of customary tenure practices, of tribal-dominated areas in the country.

The Sixth Schedule applies to protection of tribal lands in northeast India, specifically the states of Assam, Meghalaya, Tripura, and Mizoram.[11] It provides relative autonomy to tribal communities in land governance and management. It empowers the District Council, an elected body, to make laws with respect to the allotment, use, or setting apart of land for the purposes of agriculture, grazing, residence, other non-agricultural purposes, or any other purpose likely to promote the interests of the inhabitants of the village or town.[12] The District Council also has the authority to make laws for the management of any forest other than a reserved forest, regulating forms of agriculture such as shifting cultivation or *jhum*, inheritance of property, and regulating social customs.

The Fifth Schedule is applicable to Scheduled Tribes and the administration of Scheduled Areas, other than those where the Sixth Schedule applies.[13] It authorizes the governor of an Indian state to regulate or prohibit the transfer of land belonging to Scheduled Tribes to non-tribals, and also to regulate the allotment of land to members of Scheduled Tribes in Scheduled Areas.[14]

Although the Schedules provide autonomy to tribal communities in land governance, they also inadvertently protect customary tenure practices, some of which are not favourable to women, leaving little scope for the recognition and protection of women's land rights under traditional systems of inheritance and land transfer.[15]

[10] Article 366 (25), Constitution of India: "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution."
[11] Article 244 (2), Constitution of India: "The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram."
[12] 3 (a), Sixth Schedule, Constitution of India.
[13] Article 244 (1), Constitution of India: "The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram."
[14] 5 (2), Fifth Schedule, Constitution of India.
[15] See, 'Land Ownership among the Khasis of Meghalaya: A Gender Perspective,' Patricia Mukhim, in Walter Fernandes and Sanjay Barbora (ed.), *Land, People and Politics: Contest Over Tribal Land in Northeast India*, Guwahati, 2009.

b) Laws

The **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006**[16] (Forest Rights Act) recognizes the rights of Scheduled Tribes and other traditional forest-dwellers who have been residing in forests for generations, and provides a framework for recording their rights with respect to forestland. The Act acknowledges the historical injustice suffered by tribal and other forest-dwelling communities in India who are integral to the survival and sustainability of the forest ecosystem, but many of whom have been displaced and forced to relocate, as a result of the state's purported development interventions.

Section 3 of the Forest Rights Act lists individual and community rights, which vest in Scheduled Tribes and traditional forest-dwellers. These include, *inter alia*, rights of ownership, holding and occupation of land for livelihood, access to biodiversity, intellectual property, traditional knowledge, management and protection of forest resources, and community rights over natural resources. Moreover, in the case of forced evictions, Scheduled Tribes and other traditional forest-dwellers are given specific rights to claim rehabilitation and 'land compensation' under Sections 3 (1) (m), 4 (2), and 4 (8) of the Act.

The **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989** aims to prevent atrocities against members of Scheduled Castes and Scheduled Tribes, and to provide relief and rehabilitation to victims of such offences. The Act criminalizes the wrongful occupation or cultivation of any land, owned by, in the possession of, or allotted to members of a Scheduled Tribe; wrongful dispossession of members of a Scheduled Tribe from their land or premises, or interference with the enjoyment of their rights, including forest rights; and, forcing or causing members of a Scheduled Tribe to leave their place of residence.

The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act** 2013[17] (LARR Act), which governs the process of land acquisition in India, enumerates special provisions for the acquisition of land belonging to Scheduled Tribes. In general, the Act provides that, as far as possible, land should not be acquired in Scheduled Areas and acquisition should only be carried out as a demonstrable last resort.[18] The Act provides that in all cases of land acquisition in Scheduled Areas, prior informed consent of the appropriate elected local bodies or the autonomous District Councils must be obtained.[19] The LARR Act also lays down provisions for the adequate rehabilitation and resettlement of Scheduled Tribe families who are displaced by land acquisition, and to ensure the preservation of their livelihoods and cultural identity.

[16] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Available at: https://ncsk.nic.in/sites/default/files/PoA%20Act%20as%20amended-Nov2017.pdf
[17] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Available at: https://dolr.gov.in/sites/default/files/Right%20to%20Fair%20Compensation%20and%20Transparency%20in%20Land%20Acquisition%2C%20Rehabilitation%20and%20Resettlement%20Act%2C%202013.pdf
[18] Section 41, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
[19] Ibid.

c) Judicial Decisions

Several judgments of Indian courts have upheld the rights of indigenous/tribal communities to their lands and homes. For instance, in the landmark judgment of *Samatha* v. *State of Andhra Pradesh* (1997),[20] the Supreme Court of India prohibited the transfer of tribal land to non-tribals and observed that:

> Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands.

In *Sudama Singh* v. *Government of Delhi* (2010),[21] an important case on the human right to adequate housing in India, many of the petitioners belonged to marginalized nomadic and Scheduled Tribe communities. The High Court of Delhi recognized the right to housing for all and held that in the case of forced eviction, each member loses a "bundle of rights," including the rights to livelihood, shelter, health, education, access to civic amenities, public transport, and above all, the right to live with dignity.

In *Mala Pentamma* v. *Nizamabad Municipality* (2005),[22] a case involving the demolition of homes of members of a Scheduled Tribe, the High Court at Hyderabad held that:

> It is admitted case of the Respondents that the Petitioners herein belong to Scheduled Tribes and they were allotted sites in which they constructed the houses. In such circumstances, it becomes all the more necessary for the Government or its Local Bodies to preserve the interests of the Scheduled Castes, Scheduled Tribes and other Weaker Sections. A passing reference can be had to Article 46 of the Constitution of India, which mandates that the State shall promote with special care the educational and economic interests of the weaker Sections of the people, ... and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. It is not out of place to mention here that the first Respondent has resorted to follow this Article more by way of breach, for the reasons hereinbefore stated.

The Court made specific reference to the special right of tribals to socio-economic empowerment, and the duty of states to ensure that lands in Scheduled Areas are preserved for social empowerment:

> (...) It is further observed by the Apex Court that the tribals have fundamental right to social and economic empowerment. As a part of right to development to enjoy full freedom, democracy offered to them through the States regulated power of good Government that the lands in scheduled areas are preserved for social economic empowerment of the tribals.

[20] AIR 1997 SC 3297.
[21] 168 (2010) DLT 218.
[22] 2005 (6) ALD 488.

3. Violations of Housing and Land Rights of Indigenous Peoples in India

a) Inadequate Implementation and Violation of Existing Laws, Orders, and the Constitution

Despite legal protection for Scheduled Tribes under the Constitution of India, the government can compulsorily acquire land—occupied or unoccupied—in Schedule V and Schedule VI areas for 'public purpose' projects, and in accordance with the law. This has led to numerous hydro-electric and mining projects in tribal areas across India, resulting in land alienation, forced evictions, and displacement.

The implementation of the Forests Rights Act 2006 has been inadequate, and in some areas, almost non-existent. The February 2019 report of the Ministry of Tribal Affairs assessing the implementation of the Forest Rights Act reveals that over 41 per cent of the forest rights claims (including both individual and community claims) were rejected by the state.[23] Reportedly, many of these rejections are arbitrary and/or illegal. For example, in Chhattisgarh, where Scheduled Tribes constitute a third of the population, the state government allegedly included village-level revenue officials and forest guards in the forests rights committees, which are supposed to be elected bodies, thereby impairing the credibility of its decision-making process.[24] The requirement of consultation with indigenous communities and obtaining their free, prior, and informed consent is also not always implemented.

According to the Forest Rights Act, communities belonging to the Scheduled Tribe category or the Other Traditional Forest Dwellers category can file claims for different activities, including residence, agriculture, and collection of minor forest produce. As a result of the lacunae in documenting the number and nature of rejections in each category of claims, the notion of these communities being 'illegal encroachers' on forestland often dominates the current state discourse. In many places, forest-dwelling communities have not been issued Schedule Tribe certificates, thereby making it difficult for them to get their rights recognized under the Forest Rights Act.[25]

In an effort to divert community forestland in Wakha Village in the state of Manipur, the Manipur University of Culture applied for clearance from the Ministry of Environment, Forest and Climate Change in June 2018 without consulting with or informing the Meitei indigenous community, which relies on community forestland for its livelihood, thereby constituting a violation of the Forest Rights Act.[26]

In February 2019, the Supreme Court of India ordered the eviction of over 1.9 million tribal and other forest-dwelling families—in 21 states across the country—whose forest claims had been rejected by the state.[27] The apex court had been examining the validity of claims made by forest-dwellers under the

[23] 'Monthly Update on the Status of Implementation of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006,' Ministry of Tribal Affairs, Government of India, February 2019. Available at: https://tribal.nic.in/FRA/data/MPRFeb2019.pdf
[24] 'In Rajasthan, Forest Rights Act was wantonly flouted to reject Adivasis' claims to their land,' *Scroll*, 5 March 2019. Available at: https://scroll.in/article/915227/in-rajasthan-forest-rights-act-was-wantonly-flouted-to-reject-adivasis-claims-to-their-land
[25] 'Forest Rights Act: Evicting the gaps,' *Down to Earth*, 21 March 2019. Available at: https://www.downtoearth.org.in/news/india/forest-rights-act-evicting-the-gaps-63665
[26] Information provided by the Centre for Research and Advocacy, Manipur.
[27] *Wildlife First* v. *Ministry of Environment, Forest and Climate Change* [W.P. (C) 109/2008], order dated 13 February 2019.

Forest Rights Act 2006, on the basis of a case filed by wildlife and nature conservation organizations. According to the Court's order, the claims of at least 726,739 Scheduled Tribe families were rejected in the states of Andhra Pradesh, Assam, Bihar, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh, and West Bengal. The Court eventually stayed the eviction until 10 July 2019, before which all state governments are required to file petitions related to the status of approval of forest claims.[28]

Despite the existence of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, incidents of atrocities against Scheduled Tribes have been reported, often as a response to their demand for legal recognition of their rights under the Forest Rights Act, or where they have asserted their rights in the absence of such recognition.[29] In Protected Areas such as the Sundarbans, Dudhwa Tiger Reserve, Kaziranga National Park and Tiger Reserve, and Buxa Tiger Reserve, various forms of harassment have been reported against local tribal residents. These include physical torture, violence, filing of spurious cases, and accusing them of being 'Maoists.'[30] Reportedly, indigenous/tribal peoples suspected of being poachers have been killed in the Protected Areas of Kaziranga and Buxa.[31]

b) Forced Evictions and Displacement

India is estimated to have the highest number of people displaced as a result of ostensible 'development' projects – between 65 and 75 million since the country's independence (1947). Of those displaced, 40 per cent, reportedly, are indigenous/tribal peoples.[32]

The acquisition of tribal land by non-tribals has continued despite the constitutional provisions of the Fifth Schedule and Sixth Schedule and the Supreme Court order in the 1997 Samatha case,[33] which prohibits transfer of tribal land to non-tribals.

The report of the high-level committee (Xaxa Committee) on the status of tribal communities in India, highlights the prevalence of armed conflict that affects tribal habitations spanning from central to northeast India. Conflicts in the northeast resulting from land alienation, influx of outsiders, and the

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[28] *Forced Evictions in India in 2018: An Unabating National Crisis*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf

[29] 'The Status of the Forest Rights Act (FRA) in Protected Areas of India: A Draft Report Summary,' Eleonora Fenari and Neema Pathak, 2017. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/Summary-Final-Implementation-of-FRA-in-PAs.-Final-14.11.2017-as-printed.pdf

[30] Ibid.

[31] Ibid.

[32] Report of the Standing Committee on Rural Development (2011–2012), Department of Land Resources, Ministry of Rural Development, Government of India. Available at: https://www.prsindia.org/uploads/media/Land%20Acquisition/SCR%20%20Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011.pdf
See, *The Human Rights to Adequate Housing and Land in India: Report to the United Nations Human Rights Council for India's Third Universal Periodic Review*, Housing and Land Rights Network, New Delhi, 2016; reprinted in 2018. Available at: https://www.hlrn.org.in/documents/Housing_Land_Rights_India_UPR3_2018.pdf

[33] *Samatha* v. *State of Andhra Pradesh and Ors*. (AIR 1997 SC 3297).
For more information, see, *Housing and Land Rights in India: Status Report for Habitat IIII*, Housing and Land Rights Network, New Delhi, 2016. Available at: https://www.hlrn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf

struggle for natural resources, have also resulted in widespread displacement of indigenous/tribal communities.[34]

The construction of Mapithel Dam on the Thoubal River in Manipur has resulted in violations of the affected communities' housing and land rights. The blocking of Thoubal River has led to the inundation of 2,000 hectares of agricultural land and 595 hectares of forestland across Chadong, Louphong, Lamlai Khunou, Ramrei, Riha, and Thoyee villages, amongst others; resulted in the loss of livelihoods; and, also claimed the lives of Dam-affected communities and visitors to the area.[35] The Dam has failed to generate electricity and the submergence of large tracts of land has led to changes in climatic conditions and soil fertility as well as loss of harvest, leading to a food crisis in the region. A joint communication to the Government of India by the Special Rapporteur on adequate housing and the Special Rapporteur on the rights of indigenous peoples in 2012, highlighted that the construction of Mapithel Dam violated the rights of indigenous peoples and resulted in evictions, displacement, inadequate resettlement, and the destruction of over 700 hectares of agricultural land in six villages.[36]

Indigenous communities and Scheduled Tribes are also severely affected by forced evictions in the garb of environmental protection. For instance, in 2014, about 450 families from the indigenous Baiga and Gond communities, who had carefully managed tiger habitats over generations, were evicted under the pretext of tiger protection in the Kanha Tiger Reserve.[37] In 2015, indigenous/tribal peoples living in Umravan Village, Madhya Pradesh were evicted from their homes, allegedly with the use of force and in contravention of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Though the purported reason for the eviction was 'tiger/wildlife conservation,' civil society organizations and activists working in the region believe that people were evicted to also facilitate diamond mining in the area.[38]

Data compiled by Housing and Land Rights Network's 'National Eviction and Displacement Observatory'[39] reveals that in 2017, a large number of indigenous/tribal peoples were evicted from

[34] 'Report of the High Level Committee on Socio-economic, Health and Educational Status of Tribal Communities of India,' Ministry of Tribal Affairs, Government of India, May 2014. Available at: http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf

[35] Information from the Centre for Research and Advocacy, Manipur. Also see, *Housing and Land Rights in India: Status Report for Habitat IIII*, Housing and Land Rights Network, New Delhi, 2016. Available at: https://www.hlrn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf

[36] Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and, the Special Rapporteur on the rights of indigenous peoples, AL IND 4/2015, Report: A/HRC/30/27.

[37] 'Tribal communities suffer when evicted in the name of conservation,' *Down To Earth*, 10 May 2019. Available at: https://www.downtoearth.org.in/blog/forests/tribal-communities-suffer-when-evicted-in-the-name-of-conservation-64376

[38] 'As tribals are being forcibly evicted, Panna Tiger Reserve in Madhya Pradesh becomes heaven for diamond contractors,' *CounterView*, 6 August 2015. Available at: https://www.counterview.net/2015/08/as-tribals-are-being-forcibly-evicted.html

[39] Housing and Land Rights Network (HLRN), through its 'National Eviction and Displacement Observatory has been documenting forced evictions across India since 2015. The Observatory compiles data on incidents of forced evictions in urban and rural areas—through primary and secondary research—and also aims to assist affected communities with relief, redress, restitution, and access to justice, where possible.

their dwelling areas, including forests, under the guise of forest protection and wildlife conservation.[40] Authorities carried out evictions of indigenous/tribal peoples in the states of Assam, Karnataka, Odisha, and Tamil Nadu, rendering almost 18,349 people homeless.

In April 2017, the Supreme Court of India ordered the removal and rehabilitation of families living in Thatkola and Sargodu Reserve Forests in the state of Karnataka. The state government demolished over 148 houses in Thatkola Reserve Forest and evicted 156 families from Sargodu Reserve Forest.[41] Also in April 2017, more than 2,000 people were evicted from areas around the Orang National Park in Assam, under orders of the Gauhati High Court. In November 2017, also acting on an order of the Gauhati High Court, the Government of Assam forcefully evicted 1,000 families belonging to the Bodo, Rabha, Mishing, and other indigenous/tribal communities from the Amchang Wildlife Sanctuary. In an unprecedented move, state authorities used elephants to demolish homes and also resorted to violence and force, resulting in injury to four people. Schools and places of worship were also demolished. The affected families, who had been previously displaced by floods, were rendered homeless by this eviction.[42]

In August 2017, state authorities demolished about 60 huts belonging to the Irular and Jenu Kurumbar *adivasis* (recognized as Particularly Vulnerable Tribal Groups), situated in Vazhaithottam Village, Nilgiri District, Tamil Nadu. The local administration carried out the demolition under an order from the Madras High Court, dated 4 August 2017 [W.P. No. 19465/2017], ostensibly to protect the 'elephant corridor' identified by the state government. The eviction was carried out in contravention of the objectives of the Forest Rights Act 2006, which provides safeguards against displacement of indigenous/tribal peoples from their traditional homes.[43]

In 2018, HLRN, through its National Eviction and Displacement Observatory, also recorded several incidents of forced eviction of people belonging to Scheduled Tribes without due process, mostly for purported environmental reasons. For instance, in Manipur, state authorities demolished 74 houses and a primary school in Awaching Kshetri Bengoon in Mamang Village, which is part of the Nongmaiching Reserved Forest. In Assam, close to 205 homes of traditional forest-dwelling communities were demolished in the Ripu-Chirang Reserve Forest and in Kumurakati in the Kaziranga National Park.[44]

About 85 per cent of the population displaced by tourism development related to the 'world's tallest statue'—the Sardar Vallabhai Patel statue or 'Statue of Unity'—in Gujarat comprised tribals/*adivasis*, whose lands are protected under the Fifth Schedule of the Constitution of India. During the construction of the Statue, the state government did not comply with the legal requirement of consent of the village council (*gram sabha*) nor did it conduct any environmental impact assessment of the project.[45]

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[40] *Forced Evictions in India in 2017: An Alarming National Crisis*, Housing and Land Rights Network, New Delhi, 2018. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2017.pdf
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] *Forced Evictions in India in 2018: An Unabating National Crisis*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf
[45] Ibid.

Coal mining in India has resulted in widespread displacement and loss of housing and land, including of a large number of indigenous/tribal peoples. About 70 per cent of India's coal reserves are located in the central and eastern states of Chhattisgarh, Jharkhand, and Odisha, where over 26 million members of Scheduled Tribe communities—nearly a quarter of India's tribal/*adivasi* population—live.[46] For coal-mining purposes, land is acquired under the Coal Bearing Areas (Acquisition and Development) Act 1957, which does not provide for consultation with affected communities and does not require the prior and informed consent of indigenous communities.

Threat of Eviction and Displacement

Housing and Land Rights Network has documented that over 11.3 million people in India live under the threat of forced eviction and displacement.[47] These include a large percentage of indigenous/tribal peoples.

As a result of the February 2019 Supreme Court order related to the eviction of forest-dwellers across India, over 9.5 million people live in extreme insecurity and fear of impending displacement, which could result not only in the loss of their homes and habitats, but also of their livelihoods, cultures, customs, and way of life that has been in symbiosis with nature.[48]

Thousands of *adivasis*/tribals living in 18 villages in Chhattisgarh face the threat of eviction and displacement due to the opening of the Hasadeo Arand forest areas to mining, with sanction from the Ministry of Coal and Ministry of Environment, Forest and Climate Change.[49]

Tourism-related projects around the 'Statue of Unity' in Gujarat are likely to result in further displacement of thousands of tribals from their lands and homes.[50]

People belonging to the indigenous Gond and Yadav tribes who have been living in the Panna Tiger Reserve in Madhya Pradesh are likely to be displaced after the creation of 'buffer-zones' in the Reserve. Close to 201 families from indigenous communities across the country, in states like Madhya Pradesh, Jammu and Kashmir, Kerala, and Odisha live under the threat of displacement for reasons related to 'wildlife conservation' and 'forestland clearance.'

The ongoing construction of the Polavaram Dam is expected to displace around 200,000 people in the states of Chhattisgarh, Odisha, and Telangana, the majority of whom belong to Scheduled Tribe and Scheduled Caste communities and depend on local forest produce and agriculture for their survival.[51]

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[46] *'When Land is Lost, Do We Eat Coal?' Coal Mining and Violation of Adivasi Rights in India*, Amnesty International India, Bangalore, 2016. Available at: https://www.amnesty.org/download/Documents/ASA2043922016ENGLISH.PDF

[47] *Forced Evictions in India in 2018: An Unabating National Crisis*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf

[48] Ibid.

[49] 'Chhattisgarh's 'No-Go Area' for coal mining faces the prospect of being opened up,' *The Wire*, 5 October 2018. Available at: https://thewire.in/rights/chhattisgarh-coal-mining-hasdeo-arand

[50] According to information from Narmada Bachao Andolan, Paryavaran Suraksha Samiti, and Paryavaran Mitra, Gujarat. See, *Forced Evictions in India in 2018: An Unabating National Crisis*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf

[51] Information from Andhra Pradesh Vruthidarula Union.

The Mumbai–Ahmedabad High-Speed Rail Project ('bullet train') would require 1,500 hectares of land from 296 villages in the states of Maharashtra and Gujarat.[52] The Resettlement Action Plan of the National High Speed Rail Corporation Limited has identified about 14,900 families who will be displaced by the project as 'Project-Affected Households,' of which 2,097 (14.09 per cent) belong to Scheduled Tribes.[53]

c) Militarization of Indigenous Lands

Militarization of regions inhabited by Scheduled Tribes and other indigenous communities, especially in northeast India, has resulted in occupation of cultural and religious sites for military purposes; loss of prime agriculture land; increased pressure on communities' agricultural land, forestland, and water sources; and threats to the identity and survival of indigenous communities.[54]

The extension of the controversial Armed Forces Special Powers Act 1958 (AFSPA) to various parts of northeast India has facilitated the extensive deployment of Indian armed forces in the region, resulting in various human rights violations, especially of indigenous communities.[55] The extension of the Act, which permits the suspension of non-derogable rights, such as the right to life and the right to judicial remedy, has been "exacerbated by the aggressive push for large infrastructure projects and extractive industries such as mining and oil exploration."[56] Most of the hills in the Imphal Valley, including the Chinga Hills, the Patsoi Hills, Langthabal Hills, and Cheiraoching Hills—revered as sacred, cultural, and religious sites of the Meitei people—are currently occupied by various units of the Indian army.[57]

Increased militarization has also been reported in many Protected Areas inhabited by tribal communities, allegedly to control poaching.[58] In Kaziranga National Park in Assam, a shoot-at-sight policy, reportedly, had been ordered for some time.[59]

For more information, see forthcoming publication by Housing and Land Rights Network on the status of land and housing in India, to be available later in 2019 at: www.hlrn.org.in

[52] 'The bullet train may trigger social conflict and have significant environmental cost,' *Mongabay India*, 5 October 2018. Available at: https://india.mongabay.com/2018/10/the-bullet-train-may-trigger-social-conflict-and-have-significant-environmental-cost/
For more information, see, *Forced Evictions in India in 2018: An Unabating National Crisis*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Forced_Evictions_2018.pdf

[53] 'Resettlement Action Plan: Mumbai–Ahmedabad High-Speed Railway Project,' Final Report, 10 August 2018. Available at: https://www.nhsrcl.in/seia_files/Resettlement-Action-Plan-(RAP).pdf
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[54] 'Armed conflict, militarization and implications in Manipur,' *Kangla Online*, 8 December 2017. Available at: http://kanglaonline.com/2017/12/armed-conflict-militarization-implications-in-manipur/

[55] Information provided by the Centre for Research and Advocacy, Manipur.

[56] 'Armed conflict, militarization and implications in Manipur,' *Kangla Online*, 8 December 2017. Available at: http://kanglaonline.com/2017/12/armed-conflict-militarization-implications-in-manipur/

[57] Ibid.

[58] 'The Status of the Forest Rights Act (FRA) in Protected Areas of India: A Draft Report Summary,' Eleonora Fenari and Neema Pathak, November 2017. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/Summary-Final-Implementation-of-FRA-in-PAs.-Final-14.11.2017-as-printed.pdf

[59] Ibid.

d) Repression and Attacks on Indigenous/Tribal Human Rights Defenders

A large number of land and housing rights defenders from Scheduled Tribes, who suffer disproportionately from development-induced displacement and environmental destruction, face severe onslaught of their human rights.[60] For instance, in March 2017, an *adivasi* community leader from Chhattisgarh, challenging fraudulent acquisition of tribal land, was allegedly poisoned.[61] False 'First Information Reports' were filed against an environmental rights activist from the *adivasi* community, working on human rights violations in Jharkhand, Odisha, and Chhattisgarh.[62] *Adivasi* leaders and members of the Niyamgiri Suraksha Samiti—a tribal group opposed to mining in the ecologically-sensitive Niyamgiri Hills in Odisha—were allegedly intimidated, abducted, and wrongfully incarcerated.[63] In Sonbhadra, Uttar Pradesh, where tribals/*adivasis* comprise 70 per cent of the population, provisions of the Indian Forest Act 1927, Wildlife Protection Act 1972, and Indian Penal Code 1860 have been used to harass and intimidate land right defenders, most of whom are tribal women fighting to reclaim and protect their lands. Many of them have been opposing the Kanhar Dam project and have been arrested and attacked for their resistance.[64] This includes Sokalo Gond, an *adivasi* human rights defender working on land and forest rights of the tribal communities and rural poor in the region, who was arbitrarily arrested in 2015, and then again in June 2018 when she was imprisoned for five months before being released in November 2018.[65]

While cases of violations of forest rights and land rights of indigenous/tribal peoples abound across the country, there are some positive examples of the recognition of their rights. For instance, in four villages of Bhitarkanika Wildlife Sanctuary in Odisha, the district administration has begun the process of granting land rights to people. According to the Forest Rights Act, traditional forest-dwellers living in forests for three generations and tribals settled in the forest before implementation of the Act will be considered eligible for benefits under the Act.[66] Similarly, the Arunachal Pradesh (Land Settlement and Records) (Amendment) Bill 2018 conferred ownership of land for the first time on the state's indigenous population and arguably provides indigenous farmers more bargaining power with regard to land acquisition.[67]

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[60] See, forthcoming publication by Housing and Land Rights Network on the status of land and housing in India, to be available later in 2019 at: www.hlrn.org.in

[61] 'Illegal transfers: Adivasis in Chhattisgarh plan to criminally prosecute firms that hold their land,' *Scroll*, 17 July 2017. Available at: https://scroll.in/article/843427/illegal-transfers-adivasis-in-chhattisgarh-plan-to-criminally-prosecute-firms-that-hold-their-land

[62] Letter written to the National Human Rights Commission, New Delhi, by Human Rights Defenders' Alert – India, 15 June 2017. Available at: http://hrdaindia.org/wp-content/uploads/2017/06/2017-06-15-HRDA-UA-Jharkhand-Gladson.pdf

[63] 'Odisha: Relative of tribal group chief opposing Vedanta mines arrested on charges of being Maoist,' *Scroll*, 3 May 2017. Available at: https://scroll.in/latest/836442/odisha-relative-of-tribal-group-chief-opposing-vedanta-mines-arrested-on-charges-of-being-maoist

[64] See, 'Tribal leaders, activists arrested for opposing land acquisition for Kanhar Dam,' *The Times of India*, 30 June 2015. Available at: http://timesofindia.indiatimes.com/articleshow/47882498.cms

[65] See, 'Sonebhadra's Daughter Sukalo: Human Rights Defender Profile,' *Citizens for Justice and Peace*, 7 December 2017. Available at: https://cjp.org.in/sonebhadras-daughter-sukalo/

[66] 'Forest dwellers set to get land rights,' *The Telegraph*, 26 March 2018. Available at: https://www.telegraphindia.com/states/odisha/forest-dwellers-set-to-get-land-rights-218166

[67] 'Arunachal Pradesh gives individuals ownership of land but will they really benefit from it?,' *Scroll*, 23 March 2019. Available at: https://scroll.in/article/872474/arunachal-pradesh-gives-individuals-ownership-of-land-but-will-they-really-benefit-from-it

4. Recommendations

Given the widespread violations of housing and land rights of indigenous/tribal peoples and communities, measures should be taken to: implement Constitutional provisions, laws, and progressive court judgments related to their protection; implement the United Nations Declaration on the Rights of Indigenous Peoples, which also recognizes their rights to land and adequate housing; call for a moratorium on forced evictions, including in all tribal/indigenous areas; prohibit land alienation and the transfer of land belonging to Scheduled Tribes/indigenous communities to non-tribals; and, carry out comprehensive social, environmental, and human rights impact assessments for all projects affecting tribal/indigenous peoples and communities. It is important to also recognize the special and sacred relationship that tribal/indigenous peoples have with their land and other natural resources, and to prevent the financialization of their housing, land, and other natural resources.

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