

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; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights of internally displaced persons

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 34/9, 33/12 and 32/11.

In this connection, we would like to call the attention of your Excellency's Government to allegations of **impending forced evictions that are poised to affect millions of peoples, mostly from the scheduled tribes and forest-dwelling peoples, in 21 States across India. This follows a Supreme Court Order dated 13 February 2019 directing States to carry out eviction orders resulting from the rejection of some 1.2 million forest rights claims filed by these indigenous peoples under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006.**

Concerns over the failure to ensure adequate implementation of the India Forest Rights Act has been subject to previous communications on 28 April 2017 (IND 9/2017) and 8 July 2013 (IND 9/2013). Unfortunately, to date no Government replies have been received to these communications. The Special Rapporteur on the right to adequate housing has raised in her recent report on her visit to India (A/HRC/34/51/Add.1) concerns about forced evictions, displacement in rural areas and housing discrimination of tribes. She called for a national moratorium on forced evictions (A/HRC/34/51/Add.1, paragraph 85).

According to the information received:

Scheduled tribes and forest dwelling peoples are indigenous peoples protected by the Constitution. They have distinct spiritual and traditional customs and an ancestral relationship to the land and forests resources on which they have depended for many generations. Indigenous peoples are also integral to the survival and sustainability of the forest ecosystem in India. Some sixty per cent of all forests in India are located within tribal territories. While scheduled tribes and forest dwellers have historically faced evictions and displacements as a result

of non-recognition of their rights to their lands and territories, the Forest Rights Act, enacted in 2006 provided an opportunity for these tribes to secure their rights to cultivate and occupy on the forest lands they have customarily used.

Courts proceedings:

On 13 February 2019, the Supreme Court of India ordered 21 States to implement eviction orders issued after the rejection of an estimated 1,2 million claims filed since 2006 by Scheduled Tribes and Other Traditional Forest Dwelling Tribes under the Forest Rights Act. In its 13 February Order, the Court further specified that the evictions were to be carried out before its next hearing scheduled to take place on 24 July 2019. The Supreme Court decision followed a petition filed by a number of national conservation associations, including the Wildlife First, Nature Conservation Society and Tiger Research and Conservation Trust who claimed that the affected peoples are encroaching on forests and adversely impacting on the conservation of forests. The petition relied on the numerous rejections of claims made by the forest dwellers under the Forest Rights Act in concluding that people are illegally occupying forest lands.

The 21 States concerned are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Odisha, Rajasthan, Tamil Nadu, Telangana, Tripura, Uttarakhand, Uttar Pradesh and West Bengal.

On 28 February 2019, concluding that States had not provided enough details regarding the claim determination process, and in the context of a growing number of protests against what was perceived as a flawed claim determination process, the Supreme Court stayed its order of evictions and directed all States to submit an affidavit by 12 July 2019, in which they shall provide information on the procedure adopted for rejecting the claims, including which competent authority has rejected the claims and under which provision of law the evictions orders were made. The Court also asked States to clarify whether the process established by the Forest Rights Act was duly respected and requested States to indicate the process to be followed for eviction after the rejection orders have been passed.

The Supreme Court set a deadline for this process to 12 July 2019 and scheduled the next hearing to 24 July 2019.

Forest Rights Act claim decision process:

A significant number of Forest rights claims prepared under the Forest Rights Act of 2006 have reportedly been summarily rejected without following due process.

First, the rejection rate is very high and raises some concerns in itself. According to a status report of the Ministry of Tribal Affairs, only 45% of individual claims and 50% of community claims were approved as of April 2018. The statistics found in the Supreme Court Order of 13 February 2019 show in a number of States some high rejection rate, reaching 75% for example in Uttar Pradesh. Second, indigenous peoples face challenges in preparing and submitting their claims, as the process was not designed in a manner that would make it accessible to the extremely poor and sometimes illiterate populations affected. The populations are, in addition, not well informed of their rights and of the applicable procedures. For example, gathering proof of living on the land for three generations, which is required for Other Traditional Forest Dwellers, may prove extremely difficult.

For those claimants who have managed to submit a claim, it is reported that they were not systematically informed of the status of their claims, and often were not notified when their claims were rejected, thus denying them the opportunity for appeal. A 2014 report¹ by the High Level Committee on Socio-Economic Health and Education Status of Tribal Communities highlighted that claims filed under the Forest Rights Act were being rejected without assigning any reasons, or based on wrong interpretation of the definition of “Other Traditional Forest Dwellers”. The same report indicates claimants are not being informed of their rights to file an appeal and do not receive any kind of assistance to support them in doing so.

Orders of eviction:

As noted by the Supreme Court in its 28 February Order, States supervising the forest rights claim processes have not shared information regarding the procedures and motivations, which resulted in the eviction notice to claimants. While the Forest Rights Act provides for exceptional cases where relocation outside critical wildlife habitats may be the only remaining option, the Act generally provides for protection of indigenous peoples from eviction and forced relocation and requests States to conclude that no other reasonable option, such as co-existence, are available, and to prepare and communicate in advance a resettlement package, which provides for secure livelihood for the affected individuals.

If relocation is the only possible avenue, the Forest Rights Act provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation until the

¹ Report retrieved at <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>

recognition and verification procedure is complete. The Court did not, in its 28 February Order, request States to provide any details regarding the verification procedure prescribed by the Act.

In her country visit report to India the Special Rapporteur on the right to adequate housing noted that forced evictions are often implemented without any consultation with residents, without sufficient notice and commonly result in homelessness. Furthermore access to legal remedies for forced evictions appears to be scant, despite the protections offered by the Forest Rights Act. She also expressed concern that while persons belonging to scheduled tribes account only for 8 percent of the population, a disproportionate number of displacements appear to involve such individuals who frequently face discrimination in relation to adequate housing and land (A/HRC34/51/Add.1, paragraphs 42, 44, 48, 67-70).

Proposed amendments to the 1927 India Forest Act:

A draft law proposing amendments to the 1927 India Forest Act is currently circulating with states for comments by 7 June 2019. The draft law would significantly increase the policing and discretionary powers of Forest-officers against local communities. The proposed amendments provide for indemnity of Forest-officers using fire arms to prevent any forest offence and specifically protects Forest-officers against prosecution, unless they were previously sanctioned by the state government². The amendments also propose that anyone believed to have attempted to contravene or abet the contravention of the law will be deemed to be in violation of the law.³ In addition, the amendments provide that any person in possession, custody or control of forest lands or forest produce shall be presumed guilty of encroachment until they can prove they are in lawful possession of the said forest land or forest produce.⁴

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned with the serious impact on the lives, culture, lands, territories and security of the millions of tribal persons affected by the pending Supreme Court's order to implement the eviction notices, which would cause massive displacement. We are equally concerned about the risk of violence that may result if such order is implemented. It is noted that massive evictions in India, also by virtue of a Supreme Court order, took place between 2002 and 2004 affecting some 300,000 households and resulted in numerous cases of violence, deaths and protests in forested areas.

² Proposed Amendments to the Indian Forest Act of 1927. Power to prevent commission of offence – section 66.2

³ Section 66 (B)

⁴ Section 66 (D)

We acknowledge that the Supreme Court suspended the implementation of its order for a period of 4 months commencing on 28 February 2019. While this is a reprieve for the affected peoples who have already been issued a notice of eviction, we are gravely concerned at the prospect that millions of forest dwellers may lose access to their habitat, livelihoods and spiritual culture as a result of the failure to adequately implement the forest rights claim process.

We believe that passing the Forest Rights Act was a significant step forward by your Excellency's Government in recognizing the rights of scheduled tribes and other traditional forest dwelling peoples and safeguarding them from any more displacements or evictions. Our concern, which was already raised in previous communications (UA IND 9/2017 and IND 9/2013), lies however in the lack of implementation of the Forest Rights Act, including with regards the necessity for transparency of the process and for free prior informed consent before displacement or eviction, and the necessity for adequate redress and compensation. Gaps in implementation of the Forest Rights Act are also leading to an alienation of tribal peoples and their village assemblies (Gram Sabha) in decisions that are directly affecting them, as the procedure set out in the Act is reportedly not respected. We therefore urge your Excellency's Government to take the necessary actions to protect these scheduled tribes and traditional forest dwellers, and uphold the spirit of the Forest Rights Act.

In addition, this situation causes alarm when set in the wider context of the proposed amendments to the Indian Forest Act of 1927, which, if endorsed and adopted, would significantly increase the power and discretion vested in forest officials to govern areas declared as forest lands, and reinforce a trend of summary arrests and prosecution and eviction of forest dwellers. We are concerned that such increased discretionary powers for forest officials would indeed represent a threat to individual's right to physical integrity and further reduce any prospect for tribal communities to fully use and enjoy the ancestral lands they are rightfully entitled to.

We recognize the efforts of your Excellency's Government to address the historical injustice suffered by these tribes, and welcome the recognition that Scheduled Tribes and other traditional forest dwellers are effectively integral to the very survival and sustainability of the forest ecosystem, as stated in the Forest Rights Act in 2006. Indeed the Forest Rights Act recognizes the role of tribal communities in maintaining the sustainable use, conserving the biodiversity and maintaining ecological balance in the forests, "thereby strengthening the conservation regime of the forests while ensuring livelihood and food security". The Act also acknowledges that "the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest

dwellers who are integral to the very survival and sustainability of the forest ecosystem”⁵. These statements, embedded in national law, reflect clear commitments of your Excellency’s government to the protection and promotion of indigenous peoples rights, especially those espoused in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

In this regard, we wish to recall that the previous communication of the Special Rapporteur on the rights of indigenous peoples underlined that ‘the international conservation community has recognized that in order to assure a sustainable and effective protection of sensitive ecosystems, it is key to involve indigenous peoples inhabiting and dependent on these ecosystems as legally empowered rights holders’ (IND 9/2017).

We also appreciate that the role of the State authorities is to ensure that any industrialists or any non-indigenous people do not illegally occupy protected forests. We are however deeply concerned that the Forest Rights claim process - as currently implemented- is having a discriminatory effect on the very population the Act seeks to protect and may lead to irreparable damage for the affected communities as well as for forest conservation, as these peoples play a major role in maintaining biodiversity and sustainability in the forests.

In this respect, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with an affirmative vote by India, elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include the right to life and personal integrity, equality and non-discrimination, all rights which are recognized in the human rights treaties ratified by India.

Article 26 of the Declaration states the right of indigenous peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ and for legal recognition of those rights ‘with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned’. Furthermore, Article 19 of the Declaration sets out that ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.’

Article 10 of the Declaration affirms that indigenous peoples ‘shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return’. Article 28 states that ‘indigenous peoples have the right to redress, by means that can include

⁵ Forest Rights Act (2006) preambular paragraph 3

restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent'. It further affirms that 'unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress'.

We wish to remind your Excellency's Government that in accordance with the International Covenant on Economic, Social and Cultural Rights, ratified by India in 1979, stipulates in its article 11.1 that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" and requires them to "take appropriate steps to ensure the realization of this right". We are concerned that the eviction has been implemented in disrespect of Italy's obligations under international human rights standards, in particular General Comments No. 4: and No. 7 of the Committee on Economic, Social and Cultural Rights on the right to adequate housing and on forced evictions.

In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights has stated that the right to housing should not be interpreted in a narrow or restrictive sense by assigning to it a meaning of "merely having a roof over one's head", but it should rather be seen as the right to live somewhere in security, peace and dignity. The Committee has also underscored the State's obligation to ensure security of tenure and legal protection against forced eviction, harassment and other threats, "notwithstanding the type of tenure", including "owner-occupation, emergency housing and informal settlements, including occupation of land or property" (paragraphs 7 and 8).

In its General Comment No.7, the Committee concluded that forced evictions are "prima facie incompatible with the requirements of the Covenant" and are performed "against the will of individuals, families and/or communities" and "without the provision of, and access to, appropriate forms of legal or other protection" (General Comment No. 7, paragraphs 1 and 3). States shall furthermore ensure, prior to carrying out any evictions that all feasible alternatives are explored in consultation with the affected persons (paragraph 13). In addition, it appears to us that required procedural protections, such as an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the eviction; and the provision of alternative land or housing for all affected persons may not be respected (General Comment No. 7, paragraph 15). We are also concerned that the planned evictions would render individuals "homeless or vulnerable to the violation of other human rights" (paragraph 16).

Furthermore, in her country visit report, the Special Rapporteur on the right to adequate housing recommended to the Government of India to institute a national

moratorium on forced evictions and to enact legislation that stipulates that forced evictions can only occur in the most exceptional of circumstances, once all other alternatives have been pursued, in strict compliance with international human rights law. She also stressed that when evictions are required as a result of valid health and safety risks, governments must ensure that resettlement takes place in a time-bound manner, ensuring meaningful consultation with those who are directly affected, that fair compensation is awarded and that resettlement housing is adequate, as prescribed by international human rights law (A/HRC/34/51/Add.1, paragraph 85 c).

Furthermore, we would like to recall the provisions of the 1998 Guiding Principles on Internal Displacement, which establishes that every human being shall have the right to be protected against being arbitrarily displaced from his or her home. Guiding Principle 7 (1), establishes that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether”. Guiding Principle 7 (2) also stipulates that “The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated”; and Guiding Principle 7 (3) states that “ (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) The free and informed consent of those to be displaced shall be sought; (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation; (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected. The Guiding Principles further state under Guiding Principle 9 that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

The full text of the human rights instruments and standards referred to above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to ensure that the rights of those affected by the Supreme Court ruling be safeguarded and protected.

As we continue to monitor and evaluate the developments of this situation, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify the allegations of human rights violations brought to my attention. To this end, we would be grateful for your comments and observation on the following:

1. Are the facts summarised above accurate? Please provide any necessary information or clarifications.
2. Provide information on the measures taken by the Government to secure the tenure rights of the Scheduled Tribes and other Forest dwelling communities to the lands, territories and resources which they have traditionally owned, occupied or otherwise used and, specifically to ensure the legal recognition of those rights with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
3. What actions are being undertaken to investigate the numerous claims of irregularities and illegalities in the processing of claims? How will the Government ensure that the rejected claims are investigated in a transparent, independent and impartial manner?
4. Please describe to what extent consultation with the affected tribes and forest dwellers in the 21 States have taken place to ensure their free, prior and informed consent to any relocation before enforcing any evictions.
5. Please also share details regarding the opportunities provided for public consultations and participation and ways in which public feedback and inputs were taken into consideration in the planning and decision making processes.
6. Please describe if in this context any affordable, adequate and culturally appropriate housing alternatives or compensation have been offered to the affected communities within their ancestral lands ensuring security of tenure and access to livelihoods.
7. What measures are in place to assist scheduled tribes and other traditional forest dwellers wishing to secure ownership of their ancestral land in complying with the procedure for filing claims under the Forest Rights Act?8. Please explain whether the affected tribes and traditional forest dwellers are able to appeal against the Supreme Court Order dated 13 February 2019. Please explain also the avenues available to them to access justice in relation to their right to ancestral land and housing.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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