

Joint Submission by Indigenous Rights Advocacy Center (IRAC) and Indigenous Peoples Rights International (IPRI)

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## INDIA



The Indigenous Rights Advocacy Centre (IRAC) is a not-for-profit organization that advocates for the rights of indigenous peoples in India. IRAC seeks to combine practice, research, advocacy and collaboration as an effective method to promote and protect the individual and collective rights of indigenous peoples.

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**Indigenous Peoples Rights International (IPRI)** is a global indigenous non-for-profit organization established in 2019 and legally registered in the Philippines. IPRI works in the protection of Indigenous Peoples rights coordinating and implementing the Global Initiative to Address and Prevent Criminalization, Violence, and Impunity Against Indigenous Peoples and the Legal and Sanctuary Fund among other activities.

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## 1. Introduction

1. There are 104.3 million Scheduled Tribes (STs), also called tribal or Adivasi<sup>1</sup>, who are the Indigenous Peoples of India, constituting 8.6% of the country's total population.<sup>2</sup> 705 communities are recognized as STs by the Government of India,<sup>3</sup> although there are several other tribes who have been excluded from the official list of STs. Broadly the STs inhabit two distinct geographical areas – the Central India<sup>4</sup> and the North-Eastern region.<sup>5</sup> The Indigenous Peoples are socially and economically marginalised; with about 90% of their population living in rural areas without access to basic facilities. As per the census in 2011, only 59 percent of the STs are literate (68.50% males, 49.40% female). India has several laws<sup>6</sup> and constitutional provisions such as the Fifth Schedule (in mainland India)<sup>7</sup> and the Sixth Schedule (in Northeast region)<sup>8</sup> which recognize the Scheduled Tribes' right to land and autonomy.<sup>9</sup> Yet, protection of land and resources have become a life and death struggle for the Indigenous Peoples.
2. In the recent years, particularly following the COVID-19 pandemic in India since early 2020, the Indigenous Peoples suffered further marginalization and pauperization. While the Coronavirus disease broke their economic backbone, the State has continued to further aggravate their condition through forced eviction, encroachment upon their land, territories and resources, criminalization, neglect and deprivation.

## 2. Assessment of implementation or non-implementation of the recommendations of UPR III

3. In the 3<sup>rd</sup> UPR cycle, India received five specific recommendations - Nos. **161.72** (A/HRC/36/10/Add.1; United States of America), **161.83** (A/HRC/36/10/Add.1; France), **161.152** (A/HRC/36/10/Add.1; Australia), **161.155** (A/HRC/36/10/Add.1; Namibia) and **161.189** (A/HRC/36/10/Add.1; Ethiopia) directly related to the Indigenous Peoples, out of which four were accepted and one (recommendation no. 161.152) was noted by India. Most of these recommendations have not been implemented.

### 2.1. Laws to protect Scheduled Tribes

4. India accepted both the recommendations (161.72 & 161.83) relating to full and effective implementation of the laws including the Scheduled Castes and Scheduled Tribes (Protection of Atrocities) Act, 1989 (PoA Act)<sup>10</sup> and protection of the members of the religious minorities, scheduled castes, tribes and other vulnerable populations. In a judgement delivered on March 20, 2018, the Supreme Court had diluted the PoA Act by allowing anticipatory bail<sup>11</sup> to those booked for committing atrocities against Scheduled Caste (SC) and Scheduled Tribe (ST) members. The Government of India acted swiftly by enacting the SC/ST (Prevention of Atrocities) Amendment Act of 2018, which nullified the apex court's controversial judgment. On February 10, 2020, the Supreme Court upheld the PoA Amendment Act of 2018.<sup>12</sup> However, due to marginalization, poverty and social stigma, it has become extremely difficult for SCs and STs to get justice, due to lack of proper enforcement of the PoA Act.
5. Official data indicated that crimes against the Scheduled Tribes have increased since 2018. According to National Crime Records Bureau (NCRB) under Ministry of Home Affairs, the number of crime/atrocities committed against the Scheduled Tribes was 6,528 cases in 2018, 7,570 cases in 2019 and 8,272 cases in 2020.<sup>13</sup> Despite provision for speedy trial in Exclusive Special Courts/Special Courts to try offences under the PoA Act, the trials have been

excruciatingly slow and the conviction rate for crimes against the Scheduled Tribes is very low such as 28.5% during 2020<sup>14</sup> due to lack of proper investigation by the police. As of July 2019, over 0.118 million cases were pending before the Special Courts.<sup>15</sup>

## **2.2. Remove barriers to registration of births and obtaining birth certificates**

6. India had noted the recommendation (161.152) calling for removal of barriers prohibiting scheduled castes and schedule tribes from registering their children's births and obtaining birth certificates. A birth certificate is still denied to tribal children living in remote areas. Examples included denial of birth certificates to at least 84 tribal children in Visakhapatnam district of Andhra Pradesh;<sup>16</sup> and to hundreds of Chakma tribal children in Arunachal Pradesh.<sup>17</sup>

## **2.3. Adequate housing, water and sanitation**

7. India had accepted the recommendation (161.155) to implement a human rights-based, holistic approach to ensure access to adequate housing as well as to adequate water and sanitation, including for Scheduled Tribes. India has made some progress in providing housing to the poor,<sup>18</sup> water<sup>19</sup> and sanitation to citizens including STs. However, India has also carried out ruthless evictions of tribal families without making alternative arrangement for shelter, food, water and sanitation during the COVID-19 pandemic.<sup>20</sup>

## **2.4. Access to Education**

8. India had accepted the recommendation (161.189) to ensure access to education for all, especially children of Scheduled Castes and Tribes. This recommendation has not been implemented. As per official data released by the Education Ministry recently,<sup>21</sup> the indigenous children have the highest drop-out rates in primary level (Class I-IV), upper primary level (Class V-VIII) and secondary level (Class IX-X) during 2019-20.<sup>22</sup> This was pre-COVID-19 situation. The closure of schools and introduction of online classes during the COVID-19 lockdown has further increased the gaps.<sup>23</sup>

## **3. Major developments since UPR-III**

### **3.1. Right to Life, Liberty and Security**

9. India had accepted the recommendation 161.7 of UPR III to ratify, before the next universal periodic review cycle, the UNCAT. But India has failed to ratify the UNCAT or enact a national law against torture. In fact, the Ministry of Home Affairs told the Parliament on September 15, 2020 that there is no proposal to bring a legislation to prevent torture.<sup>24</sup>
10. Custodial torture and violence are endemic across India and used as a regular law-enforcement strategy. As per information tabled in the Parliament, at least 7,142 custodial deaths have been recorded including 480 cases in police custody and 6,662 cases in judicial custody, during 2017 up to February 28, 2021.<sup>25</sup> There is no disaggregated data maintained by the Government of India on the number of Scheduled Tribes who died in custody. During the year 2021, the Indigenous Rights Advocacy Centre (IRAC) has documented at least six cases of

custodial death of Indigenous Peoples due to alleged torture in police custody. The six custodial death victims are Bhajan Lal Meena (55 years) who died at the Barwada police station in Sawai Madhopur district of Rajasthan on May 29, 2021; Pala Manjhi (45 years) who died at Bhandaria Police station in Garhwa district, Jharkhand on May 30, 2021; Sunil Pawar and Ravi Jadav (both 19 years) who died at the Chikhli police station in Navsari district of Gujarat on July 21, 2021; Bisan (35 years) who died following torture at Bistan Police Station in Khargone district, Madhya Pradesh on September 6, 2021; Bhim Kale (35 years) who died at Vijapur Naka police station in Solapur district, Maharashtra on October 3, 2021; and Bhavesh Meghlabhai Dhrangi (18 years) who died at Hadad police station in Banaskantha district of Gujarat on November 24, 2021.

11. Extrajudicial killings remain widespread in areas affected by the Maoist insurgency.<sup>26</sup> In recent months, many innocent tribals have been killed by the security forces in alleged fake encounters in insurgency affected states, including Bramhadev Singh (24 years) in Latehar district of Jharkhand on June 12, 2021;<sup>27</sup> Santosh Markam (35 years) in Dantewada district of Chhattisgarh on June 27, 2021;<sup>28</sup> and Manu Ram Nureti (23 years) in Narayanpur district in Chhattisgarh on 24 January 2022.<sup>29</sup> Police often do not register First Information Reports (FIRs) in such killings.
12. The Armed Forces (Special Powers) Act continues to be imposed in several areas of the Northeast India predominantly inhabited by Indigenous Peoples, despite recommendations for its revision or repeal in UPR III (recommendations no. 161.97 & 161.248). There have been popular demands to withdraw the AFSPA following the killings of 13 innocent Naga tribal labourers in Mon district of Nagaland on December 4, 2021;<sup>30</sup> and killing of another tribal, namely Mangboilal Lhouvum (29 years) by Assam Rifles in Kangpokpi district of Manipur on June 4, 2021.<sup>31</sup> The security forces are provided impunity under the AFSPA and Section 197 of the Criminal Procedure Code (Cr.P.C). Under Section 19 of the Protection of Human Rights Act, 1993, the NHRC does not have the power to investigate the Central security forces accused of human rights violations.
13. Arbitrary arrest and criminalization: A large number of Indigenous Peoples have been arbitrarily arrested on false/fabricated charges and languishing in jails.<sup>32</sup> For example, in Jharkhand, 73.9% of the 20,040 currently jailed inmates are undertrials as of March 8, 2022 and most of them are Adivasis, Dalits, backward communities or elderly.<sup>33</sup> Many innocent tribals are facing harassment on false charges of being Maoists.
14. Excessive powers, use of force and sexual violence: Disproportionate force is routinely used to suppress protests.<sup>34</sup> Indigenous women also faced sexual violence perpetrated by the security forces in conflict zones and these cases are rarely investigated.<sup>35</sup>
15. Denotified, Nomadic and Semi-Nomadic Tribes: During the British period, some 191 tribes were officially termed as “criminal tribes” under the Criminal Tribes Act, 1871.<sup>36</sup> In 1952, the Government of India repealed the Criminal Tribes Act and replaced it with Habitual Offenders Act, 1952 to categorise about 150 million Indians as Denotified, Nomadic and Semi-Nomadic Tribes (DNTs) who continue to face stigmatisation and violence as criminals due to decades of social ostracization, neglect and discrimination.<sup>37</sup> These so called DNT communities are still harassed by the police, jailed under false pretext and beaten up. Most of the community people don't use their community's name if they admit their children to school due to fear of discrimination.<sup>38</sup>

**Recommendations:**

- Ratify the UNCAT and enact a national law against torture in compliance with the UNCAT.
- The National Crime Records Bureau (NCRB) should collect/compile disaggregated data on custodial deaths and torture of Scheduled Tribes including men, women and children in police and judicial custody.
- Immediately withdraw the Armed Forces (Special Powers) Act from the Northeast, repeal the Act and ensure that violations against Indigenous Peoples are repaired through transparent and effective process, involving judicial and other remedies if necessary.
- All cases of suspected extrajudicial killings, torture and sexual violence committed by the security forces must be investigated through judicial commissions and transparent actions should be initiated against the members of the security forces who are found guilty of rights abuses.
- Set up a judicial commission to review all cases of arrest and detention of tribals on false charges and release them.
- Repeal the Habitual Offenders Act 1952 and ensure enumeration of the DNTs in Census 2021, and further make necessary policy for socio-economic and educational uplift of the DNTs including affirmative action by providing reservation in education and government employment.

**3.2. Repression against indigenous human rights defenders**

16. India continues to criminalise human rights work. Several human rights defenders (HRDs) are still in detention under the draconian Unlawful Activities (Prevention) Act, 1967 (UAPA) and other national security laws. Human rights defenders including Indigenous Peoples HRDs are targeted and harassed in various ways.

**Recommendations:**

- Stop criminalisation and violence against human rights defenders.
- Invite UN Special Rapporteur on the rights of Indigenous Peoples, and the UN Special Rapporteur on Human Rights Defenders to visit India.

**3.3. Denial of right to land, territories and resources**

17. It is ironic that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is being used to evict Indigenous Peoples from forest land. On February 13, 2019, the Supreme Court ordered 21 states to evict around one million indigenous families whose applications under the FRA had been rejected. Although the Supreme Court temporarily stayed its order on February 28, 2019, the Indigenous Peoples have faced ruthless evictions from forest land as a large number of their claims were arbitrarily rejected by the authorities at district and state level despite submission of relevant documents by the tribals.<sup>39</sup> As per the Ministry of Tribal Affairs, as of October 31, 2021, a total of 1.64 million claims over forest land out of total 3.77 million processed claims were rejected, a 43% rejection rate nationwide. Another 0.52 million claims were pending for disposal.<sup>40</sup> Indigenous Rights Advocacy Centre (IRAC) has documented eviction of over 2,400 persons belonging to indigenous communities in 20 separate incidents of forced eviction (including 18 evictions by the Government's Forest Department) reported from 10 states and one Union Territory during the period of April 2020 and up to February 2022.<sup>41</sup>

18. Further, the Indian Government told the Parliament that 82,893 hectares of forest area have been diverted for developmental activities such as mining, thermal power plants, dams, road, railways and irrigation projects, defence etc between April 2016 to March 2021<sup>42</sup>, without taking participation of the Indigenous Peoples in the decision making process and without their FPIC. The Compensatory Afforestation Fund (CAF) Act, 2016 and CAF Rules, 2018 came into force with effect from September 30, 2019 under which ‘compensatory afforestation’ is mandatory in case of use of forest areas for non-forest activities such as mining and infrastructure projects etc. The Ministry of Environment, Forest and Climate Change has disbursed INR 486.36 billion to 33 States/UTs for compulsory afforestation programmes under Compensatory Afforestation Fund (CAF) as of March 2022.<sup>43</sup> Ironically, these CAFs have been used to carry out plantation activities, displacing Indigenous Peoples from their homes and lands and affecting their livelihoods across the country.<sup>44</sup>

#### **Recommendations:**

- Review all the claims that have been rejected under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to ensure that the claims had not been rejected arbitrarily and illegally by the concerned authority.
- Stop eviction of Indigenous Peoples from their land or territories without their Free Prior and Informed Consent, and without providing acceptable and culturally appropriate rehabilitation and resettlement in accordance with international standards, e.g., UNDRIP, Art. 10.
- Compensatory afforestation funds under the Compensatory Afforestation Fund (CAF) Act, 2016 and CAF Rules, 2018 should not be used to further displace the Indigenous Peoples or affect their livelihood.
- Ensure respect for Indigenous Peoples’ right to their lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, in accordance with UNDRIP, Articles 26, 27, 28, 29 & 30.

### **3.4. Condition of internally displaced Indigenous Peoples**

19. Indigenous Peoples continue to be displaced due to conflicts, development and conservation projects initiated or supported by the State, and majority of them have not been provided proper rehabilitation or resettlement.<sup>45</sup> The Government of India does not maintain separate data on number of Indigenous Peoples displaced as a result of various development projects or conflicts.<sup>46</sup>

#### **Recommendations:**

- Maintain data centrally relating to land acquisition from tribals and displacement/eviction of tribals due to such land acquisition.
- Maintain data centrally relating to displacement/eviction of tribals due to conflicts.
- Provide full and proper rehabilitation and resettlement to all the indigenous IDPs.

### **3.5. Business and human rights**

20. India has no formal mechanism to fully comply with the United Nations Guiding Principles (UNGPs) on Business and Human Rights and related human rights law.<sup>47</sup> In December 2018, India released a ‘Zero Draft’ of National Action Plan (NAP) on business and human rights<sup>48</sup> but there has been no progress. The Indigenous Peoples and environment activists have faced criminalization and violence by the State for defending “jal jameen jungle” (water, land and

forests) across India. As of 2020, the Land Conflict Watch has documented 703 ongoing land conflicts in India directly impacting over 6.5 million people and 2.1 million hectares of land, and involving investments amounting to over INR 13 trillion (US\$172 billion). 26% of these land conflicts and 60% of all mining related conflicts are occurring in the Fifth Schedule districts which are predominantly inhabited by Indigenous Peoples. Further, 75% percent of all conservation and forestry related conflicts and 51.4% of mining related conflicts involved the violation or non-implementation of the Forest Rights Act, 2006 which means that victims are mostly Indigenous Peoples.<sup>49</sup>

21. The Indigenous Peoples are virtually under siege as the Government of India (GOI) implements its COVID-19 economic recovery plans which invariably involve acquisition of land and natural resources in the territory inhabited by the Indigenous Peoples. As part of the Atma Nirbhar Bharat Abhiyan (Self-Reliant India Mission), the GOI launched the online auction of 41 coal blocks for commercial mining on 18 June 2020.<sup>50</sup> By August 2021, 20 coal mines have been successfully auctioned for sale.<sup>51</sup> More than 80 per cent of the country's coal reserves are in Adivasi areas. Despite stiff resistance from the Indigenous Peoples, the Government is determined to go ahead with several extractive industries without obtaining the FPIC of the local Gram Sabhas (Village Councils). In April 2021, the Odisha Government extended Hindalco Industries Ltd (part of Aditya Birla Group) company's lease by 50 years to mine bauxite in Mali Parbat (hill), which is considered sacred by the Adivasis in Koraput district, Odisha. In September 2021, the police and paramilitary forces prevented the Adivasi villagers from attending the public hearing to grant an Environment Clearance (EC) permit to the Hindalco company and 22 tribal youths, including a minor Adivasi student were arrested and booked under serious criminal charges including attempt-to-murder, criminal intimidation, rioting and "obscene acts and songs", etc.<sup>52</sup> In October 2021, thousands of Adivasis took out a 300-km walk to the state capital Raipur in protest against the plan to allow coal mining in the forests of Hasdeo Arand which are known as the "lungs of Chhattisgarh".<sup>53</sup>
22. The GOI has taken several actions to dilute the existing forest and environmental safeguards to make land acquisition easier for companies. For example, to facilitate ease of doing business, GOI has drafted the Coal Bearing Areas (Acquisition and Amendment) Bill 2021 to make provisions for leasing of land and coal mining rights to private companies; on April 11, 2020, the GOI also released the Draft Environment Impact Assessment Notification 2020 which is widely considered as pro-industry; and on October 2, 2021, the GOI released a "Consultation Paper on Proposed amendments in the Forest (Conservation) Act, 1980" which did not mention anything on rights of tribal communities. On February 16, 2021, the GOI came out with an order so that the mining industry can avoid public hearing for projects which had been granted environment clearance (EC) under the EIA Notification, 1994. The exemption of public hearing will make it easier for companies to get EC and forest clearance and acquire land for projects.

#### **Recommendations:**

- Adopt National Action Plan (NAP) on business and human rights in compliance with the United Nations Guiding Principles (UNGPs) on Business and Human Rights and the UN Declaration on the Rights of Indigenous Peoples and other connected human rights law.
- Ensure free, prior and informed consent (FPIC) of the Indigenous Peoples in all cases of proposed land acquisition.
- The Protection of Human Rights Act, 1993 should be suitably amended to empower the National Human Rights Commission (NHRC) of India with the powers and functions to investigate human rights abuses committed by the Corporates/business enterprises.



### 3.6. Violations against women and children

23. Indigenous women and children face societal discrimination and violence. According to official data, 1,137 cases of rape of tribal women and children and another 885 cases of assault with intent to outrage her modesty were recorded during 2020.<sup>54</sup> Tribal children have also faced sexual abuse in government-run shelter homes.<sup>55</sup> Witch-hunting<sup>56</sup> practice continues to be a major social evil, mostly prevalent in 12 states of India namely Jharkhand, Bihar, West Bengal, Odisha, Haryana, Gujarat, Rajasthan, Madhya Pradesh, Uttar Pradesh, Assam, Chhattisgarh and Maharashtra. Although males are also targeted but it is particularly the women who are targeted for “witch-hunting”. Many state governments have enacted laws against witch-hunting,<sup>57</sup> but the Government of India failed to enact a Central legislation.<sup>58</sup> Due to the lack of basic healthcare facilities in rural areas, pregnant women have to be carried on *dolis* (makeshift stretcher made with clothes) to reach the nearest health centre.<sup>59</sup> An estimated 4.7 million tribal children suffer from chronic nutrition deprivation.<sup>60</sup>

#### Recommendations:

- Increase efforts to eradicate societal discrimination and sexual violence against indigenous women and children.
- Enact a national law to prevent and punish witch-hunting after due consultation with the Indigenous Peoples.
- Improve primary healthcare facilities in tribal-inhabited rural areas.

### 3.7. Food insecurity among Indigenous Peoples

24. Food insecurity has considerably increased especially among the Indigenous Peoples during the COVID-19 pandemic, although the GOI provided free ration under Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY). Thousands of Indigenous Peoples were left starving due to the disruption of Targeted Public Distribution System (TPDS) and/or apathy of the local authorities.<sup>61</sup> Starvation/malnutrition deaths have been reported among tribal children.<sup>62</sup> The TPDS is operated as per the provisions of the National Food Security Act, 2013 (NFSA) which provides coverage for up to 75% of rural population and up to 50% of urban population across the country. NFSA provides coverage for about 813.5 million persons as per Census 2011. It is reported that over 100 million people have been excluded from the TPDS because outdated Census 2011 data is being used to calculate State-wise coverage under NFSA.<sup>63</sup> Further, 42.8 million alleged “ineligible/duplicate/fake” ration cards have been cancelled,<sup>64</sup> after the GOI made it mandatory to link ration cards with Aadhaar in 2017. But it is alleged that many genuine ration cards have been cancelled. For example, a study conducted by the Abdul Latif Jameel Poverty Action Lab (better known as J-PAL) in 2020 found that nearly 88% of ration cards that were cancelled belonged to genuine households in Jharkhand.<sup>65</sup>

#### Recommendations:

- Extend the Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY) to provide additional food grains to the nearly 813.5 million persons till such time that the COVID-19 pandemic continues.
- Universalise the Public Distribution System to avoid starvation and malnutrition.
- Ensure that no ration card is cancelled due to lack of seeding with Aadhaar or due to any other biometric issues

### 3.8. Dysfunctional National Commission for Scheduled Tribes

25. The National Commission on Scheduled Tribes (NCST),<sup>66</sup> a constitutional body created under Article 338A of the Constitution, is functioning with only the Chairperson and one member, although the Commission, by law, shall consist of a Chairperson, Vice-Chairperson and three other Members. The Parliamentary Standing Committee on Social Justice and Empowerment in a recent report stated that reports of the NCST, including three annual reports dating back to 2018 are still pending consideration in the Ministry of Tribal Affairs and have not been presented to the Parliament to-date. The Committee stated that several key posts are vacant in the NCST and that the Commission is almost dysfunctional in the absence of adequate personnel.<sup>67</sup>

#### Recommendations:

- Appoint members to the vacant seats the NCST and increase supporting staff.
- Place all the pending reports of the NCST before the Parliament, including those dating back to 2018.

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<sup>1</sup> In Central India, the tribals are also known as 'Adivasi'. The term 'Adivasi' is derived from the Hindi words 'adi' which means of earliest times or from the beginning and 'vasi' meaning inhabitant.

<sup>2</sup> Ministry of Tribal Affairs, Statistical Profile of Scheduled Tribes In India 2013, p.1, <https://tribal.nic.in/downloads/statistics/StatisticalProfileofSTs2013.pdf>

<sup>3</sup> Ministry of Tribal Affairs, Statistical Profile of Scheduled Tribes In India 2013, p.1.

<sup>4</sup> More than half of the Scheduled Tribe population is concentrated in Central India, i.e., Madhya Pradesh (14.69%), Chhattisgarh (7.5%), Jharkhand (8.29%), Andhra Pradesh (5.7%), Maharashtra (10.08%), Orissa (9.2%), Gujarat (8.55%) and Rajasthan (8.86%).

<sup>5</sup> The North East region comprises of Assam, Nagaland, Mizoram, Manipur, Meghalaya, Tripura, Sikkim and Arunachal Pradesh.

<sup>6</sup> For example, the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) applicable in the Fifth Schedule Areas, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Forest Rights Act of 2006, and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which are applicable throughout the country which protect the rights of the indigenous peoples.

<sup>7</sup> At present, Scheduled Areas have been declared in 10 States namely Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. No Act of Parliament or of the State Legislature shall apply to a Scheduled Area unless the Governor may by public notification direct so. The Governor can make regulations to prohibit or restrict the transfer of land to non-tribals.

<sup>8</sup> At present, under the Sixth Schedule to the Constitution of India, 10 Autonomous District Councils (ADCs) have been created in the Northeast which provide for self-governance namely in 3 ADCs in Assam, 3 ADCs in Meghalaya, one ADC in Tripura and 3 ADCs in Mizoram. These ADCs exercise executive, legislative and judicial functions.

<sup>9</sup> Ministry of Tribal Affairs, Annual Report 2020-21, p. 50, <https://tribal.nic.in/downloads/statistics/AnnualReport/AREnglish2021.pdf>

<sup>10</sup> In 1989, the Government of India enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in order to prevent caste-based atrocities against SC/ST members by persons who do not belong to SC/ST. The Act provides for punishment for offences of atrocities committed against SCs and STs. No anticipatory bail is granted in cases under the Act. The Rules under the Act were notified in 1995, which inter-alia provides norms for relief and rehabilitation of the victims.

<sup>11</sup> Anticipatory bail is bail granted to a person in anticipation and apprehending arrest. When a person has reason to believe that he may be arrested on the accusation of committing a non-bailable offence then he can move to High Court or the Court of Session under section 438 of Code of Criminal Procedure, 1973 for anticipatory bail.

<sup>12</sup> Krishnadas Rajagopal, "Supreme Court upholds amendments made to nullify own judgment diluting provisions of SC/ST Act", The Hindu, February 10, 2020, <https://www.thehindu.com/news/national/supreme-court-upholds-constitutional-validity-of-scst-amendment-act-2018/article30780857.ece>

<sup>13</sup> National Crime Records Bureau (NCRB), "Crime in India 2020", page 613, available at <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%202.pdf>

<sup>14</sup> National Crime Records Bureau (NCRB), “Crime in India 2020”, page 654, available at <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%202.pdf>

<sup>15</sup> Response of Minister Of Law & Justice, Communications and Electronics & Information Technology, Shri Ravi Shankar Prasad to Unstarred Question No.5177 answered in the Lok Sabha on July 24 2019.

<sup>16</sup> “No Aadhaar, no Anganwadi benefit for tribal kids”, The New Indian Express, November 12, 2021 , <https://www.newindianexpress.com/states/andhra-pradesh/2021/nov/12/no-aadhaar-no-anganwadi-benefit-for-tribal-kids-2382599.html>

<sup>17</sup> Currently a case is being adjudicated by the NHRC (Case No. 13/2/0/2021) in relation to denial of birth certificates to the Chakma tribal children in Arunachal Pradesh.

<sup>18</sup> To achieve the vision for providing “Housing for All”, the Government of India has sanctioned 11.5 million houses to the urban poor (Reply in Lok Sabha to Starred Question No. 302, answered on March 24, 2022) and another 26.2 million houses to the rural poor across the country from 2016-17 till 2021-22 (Reply in Lok Sabha to Unstarred Question No. 3014, answered on March 22, 2022).

<sup>19</sup> For example, India launched Jal Jeevan Mission (JJM) in August 2019 to provide potable tap water supply to every rural household of the country by 2024. As per official data, 59.9 million rural households have been provided with tap water connections (Response in Lok Sabha to Starred Question No. 307, answered on March 24, 2022).

<sup>20</sup> For example, on 8 November 2021, a total of 205 Chakma and Garo tribal families were evicted from Lumding reserve forest in Hojai district of Assam and these families still continue to live in makeshift tents, without basic facilities such as adequate food, clothing, water and sanitation.

<sup>21</sup> Atul Krishna “Over 33% of SC, ST, OBC students drop out in Class 10: UDISE+ Report”, *Careers360*, July 2, 2021, <https://news.careers360.com/udise-plus-education-minister-ramesh-pokhriyal-nishank-school-dropout-sc-st-obc-class-10>

<sup>22</sup> According to the annual Unified District Information on School Education (UDISE+) 2019-20 report released by the Education Ministry, the Scheduled Tribes recorded the highest dropout rate of 3.69% against the dropout rate of 1.82% for Scheduled Castes and 0.6% for the general category at primary level (Class I-IV). Similarly at upper primary level (Class V-VIII), the Scheduled Tribes recorded the highest dropout rate of 5.9% against 3.75% for Scheduled Castes and 0% for general category. The report showed that the dropout rates hit alarming levels at the secondary level (Class IX-X) with 24.03% drop out among Scheduled Tribes, followed by 18.64% for Scheduled Castes and 10.94% for general category.

<sup>23</sup> According to report “Locked Out: Emergency Report on School Education” (September 6, 2021) which studied educational condition of marginalised sections in rural areas, the Dalit and Adivasi children are worst affected by introduction of online classes. Only 4% of rural SC/ST children were studying online regularly, compared with 15% among other rural children. Similarly, the proportion of “Not studying at all” among SC/ST was 43% against 25% in the case of other children in rural areas. Details available at <https://roadscholarz.net/wp-content/uploads/2021/09/English.pdf>

<sup>24</sup> Response of Minister of State in the Ministry of Home Affairs, Shri G. Kishan Reddy to Unstarred Question No. 290 in the Lok Sabha, answered on September 15, 2020.

<sup>25</sup> Reply of Minister of State in the Ministry of Home Affairs, Mr G. Kishan Reddy, in the Lok Sabha, Unstarred Question No. 3253 answered on March 16, 2021.

<sup>26</sup> The Ministry of Home Affairs, Government of India states, “The States of Chhattisgarh, Jharkhand, Odisha, Bihar, West Bengal, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh, Uttar Pradesh and Kerala are considered LWE affected, although in varying degrees” ([https://www.mha.gov.in/division\\_of\\_mha/left-wing-extremism-division](https://www.mha.gov.in/division_of_mha/left-wing-extremism-division) , accessed on December 7, 2021).

<sup>27</sup> Vallari Sanzgiri, “100 days on, Piri villagers still await justice for Brahmadev Singh”, *Sabrang*, October 7, 2021, <https://www.sabrangindia.in/article/100-days-piri-villagers-still-await-justice-brahmadev-singh>

<sup>28</sup> Prateek Goyal, “How Chhattisgarh police hunted an Adivasi farmer”, *NewsLaundry*, July 1, 2021, <https://www.newslaundry.com/2021/07/01/how-chhattisgarh-police-hunted-an-adviasi-farmer>

<sup>29</sup> Ritesh Mishra, “Chhattisgarh tribal killed in encounter not linked to Maoists, says cop after probe”, *The Hindustan Times*, February 1, 2022, <https://www.hindustantimes.com/india-news/chhattisgarh-tribal-killed-in-encounter-not-linked-to-maoists-says-cop-after-probe-101643656953491.html#:~:text=RAIPUR%3A%20A%2023%2Dyear%2D,a%20Maoist%20by%20the%20police>

<sup>30</sup> The AFSPA has been widely considered as draconian. In a 2008 report, the Human Rights Watch stated, “The AFSPA gives the armed forces wide powers to shoot to kill, arrest on flimsy pretext, conduct warrantless searches, and demolish structures in the name of “aiding civil power.” Equipped with these special powers, soldiers have raped, tortured, “disappeared,” and killed Indian citizens for five decades without fear of being held accountable. The Act violates provisions of international human rights law, including the right to life, the right to be protected from arbitrary arrest and detention, and the right to be free from torture and cruel, inhuman, or degrading treatment. It also denies the victims of the abuses the right to a remedy.” (Human Rights Watch, “Getting Away With Murder: 50 years of the Armed Forces Special Powers Act,” August 2008, <https://www.hrw.org/legacy/background/2008/india0808/>)

<sup>31</sup> Kimi Colney, “Assam Rifles major accused of killing civilian in Manipur; reopens debate on AFSPA”, *The Caravan*, July 10, 2020, <https://caravanmagazine.in/crime/assam-rifles-major-accused-of-killing-civilian-manipur-reopens-debate-afspa>. The Indigenous Rights Advocacy Centre (IRAC) has spoken to journalist Kimi Colney to verify the facts.

<sup>32</sup> For example, on November 2, 2021, eight tribal villagers were arrested as alleged Maoists in Chhattisgarh's Sukma district while they were returning home from a protest against establishment of a security forces camp at Silger village.

<sup>33</sup> Reply from the Department of Home, Jail & Disaster Management, Government of Jharkhand in response to Starred Question No. Ga-43 asked by Nalin Soren in Legislative Assembly on March 21, 2022.

<sup>34</sup> For example, on May 17, 2021, three tribal protestors from the Gond tribe identified as Kawasi Vaga, Ursam Bhima and Uika Pandu, a minor, were killed in police firing when hundreds of tribals were protesting against establishing of a camp of the Central Reserved Police Force (CRPF) at Silger, a small Adivasi village in Sukma district of Chhattisgarh which is 5<sup>th</sup> Schedule area, without consent of the local Gram Sabha. The police were quick to dub those three killed in firing as "Maoists". But a fact-finding investigation by the Bastar Adhikar Shala (BAS) has confirmed that the three deceased were innocent Adivasi protesters.

<sup>35</sup> For examples, on February 23, 2021, Pandey Kawasi (20 years) died in police custody after he was picked up from home on the charges of being a Maoist in Dantewada district of Chhattisgarh. Similarly, on May 30, 2021 Payke Veko (24 years) was allegedly abducted from her house and killed in police custody in Dantewada district. Her mother Sukki Veko alleged her daughter's body had injuries on her breasts, thighs and her hand. But no FIR has been lodged.

<sup>36</sup> In 1871, the British government enforced Criminal Tribes Act (CTA) that branded many nomadic and tribal communities as criminals. The subsequent amendments in the CTA in 1911 and 1924 subsumed many communities under its purview. The CTA 1924 was applied across India listing 191 communities under it. Under the Act, the local government was empowered to notify any tribe, gang, or class of people as criminal tribe and to make reformatory settlements.

<sup>37</sup> A.P. Jithender Reddy, "End this long trauma", *The Hindu*, December 8, 2018, <https://www.thehindu.com/opinion/op-ed/end-this-long-trauma/article25692853.ece>

<sup>38</sup> "Criminal Act repealed 69 years ago, but communities continue to be looked upon suspiciously by society", *The Times of India*, August 31, 2021, <https://timesofindia.indiatimes.com/city/jaipur/criminal-act-repealed-69-years-ago-but-communities-continue-to-be-looked-upon-suspiciously-by-society/articleshowprint/85781106.cms>

<sup>39</sup> Nihar Gokhale, "As Supreme Court Stays Eviction Of 9.5 Million Forest Dwellers, Here's How States Illegally Rejected Land Claims", *India Spend*, March 2, 2019, <https://www.indiaspend.com/as-supreme-court-stays-eviction-of-9-5-million-forest-dwellers-heres-how-states-illegally-rejected-land-claims/>

<sup>40</sup> Ministry of Tribal Affairs, "Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31.10.2021]" available at [https://tribal.nic.in/downloads/FRA/MPR/2021/\(A\)%20MPR%20Oct%202021.pdf](https://tribal.nic.in/downloads/FRA/MPR/2021/(A)%20MPR%20Oct%202021.pdf)

<sup>41</sup> These 20 cases of forced eviction were reported from Madhya Pradesh (4 cases), Tamil Nadu (3 cases), Assam (2 cases), Chhattisgarh (2 cases), Jammu and Kashmir (UT - 2 cases), Odisha (2 cases), Gujarat (1 case), Manipur (1 case), Telangana (1 case), Kerala (1 case), Maharashtra (1 case)

<sup>42</sup> Statement of Minister of State in the Ministry of Environment, Forest and Climate Change, Mr Ashwini Kumar Choubey placed in the Lok Sabha, in response to Unstarred Question No. 2496, answered on 13.12.2021, available at <http://164.100.24.220/loksabhaquestions/annex/177/AU2496.pdf>

<sup>43</sup> Response of Minister of State in the Ministry of Environment, Forest and Climate Change, Shri Ashwini Kumar Choubey to Unstarred Question No. 1967 in the Lok Sabha, answered on March 14, 2022

<sup>44</sup> Anuradha Nagaraj, "India's reforestation drive leaves indigenous tribes battling to survive", *BusinessDay*, February 2, 2022, <https://www.businesslive.co.za/bd/world/asia/2022-02-02-indias-reforestation-drive-leaves-indigenous-tribes-battling-to-survive/>

<sup>45</sup> For example, about 5,000 tribal families consisting of around 30,000 people who had fled their homes in Chhattisgarh due to Maoist insurgency between 2005 and 2011, continued to live in deplorable condition without basic facilities in about 248 settlements in forests of Telangana, Andhra Pradesh, Odisha and Maharashtra. The host governments have refused to recognize them as Scheduled Tribes and therefore enjoy no rights over the forest land and remained excluded from the social security benefits. They are living without ration cards or voter cards and cannot prove their citizenship. They have faced frequent evictions by the host states, particularly Telangana.

<sup>46</sup> Response of the Minister of State for Tribal Affairs, Government of India, Mr Bishweswar Tudu to Unstarred Question No. 49 in the Lok Sabha on July 19, 2021 relating to "Displacement of Tribal Population".

<sup>47</sup> In 2011, the Ministry of Corporate Affairs (MCA), Government of India, released a set of guidelines called the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs) which was expected to provide guidance to businesses on what constitutes responsible business conduct. This NVGs was upgraded into National Guidelines on Responsible Business Conduct (NGRBC) in December 2018.

<sup>48</sup> India's National Action Plan on Business and Human Rights (Zero Draft) is available at [https://www.mca.gov.in/Ministry/pdf/ZeroDraft\\_11032020.pdf](https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf)

<sup>49</sup> Land Conflict Watch, "Locating The Breach: Mapping The Nature Of Land Conflicts In India", February 2020, [https://global-uploads.webflow.com/5d70c9269b8d7bd25d8b1696/5ecd20dd626f166d67f67461\\_Locating\\_the\\_Breach\\_Feb\\_2020.pdf](https://global-uploads.webflow.com/5d70c9269b8d7bd25d8b1696/5ecd20dd626f166d67f67461_Locating_the_Breach_Feb_2020.pdf)

<sup>50</sup> Unleashing Coal: New Hopes for Atmanirbhar Bharat, PIB, 11 June 2020, [https://coal.nic.in/sites/upload\\_files/coal/files/curentnotices/PIBCoal-11062020.pdf](https://coal.nic.in/sites/upload_files/coal/files/curentnotices/PIBCoal-11062020.pdf)

<sup>51</sup> Reply of Minister of Coal, Mines & Parliamentary Affairs Shri Pralhad Joshi in response to Unstarred Question No. 2553 in the Lok Sabha on 4 August 2021

<sup>52</sup> Complaint of the Indigenous Rights Advocacy Centre, New Delhi with the National Human Rights Commission, 28 November 2021

<sup>53</sup> Chitrangada Choudhury, Chhattisgarh's Adivasis Are On 300-Km March To Save The Hasdeo Forests, Latest In A Decade-Long Protest Against Coal Mining, Article14.com, 7 October 2021, <https://article-14.com/post/chhattisgarh-s-adivasis-are-on-300-km-march-to-save-the-hasdeo-forests-latest-in-a-decade-long-protest-against-coal-mining--615e7394bbf8b>

<sup>54</sup> National Crime Records Bureau, "Crime In India 2020", Vol. II, <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%202.pdf>

<sup>55</sup> Rashmi Drolia, "Minor deaf-mute girls chased naked, sexually assaulted in Chhattisgarh", *Times of India*, September 26, 2021, <https://timesofindia.indiatimes.com/city/raipur/deaf-mute-girl-raped-at-chhattisgarh-government-shelter/articleshow/86522299.cms>

"Deaf and Mute Minor Inmate at Govt-Funded Shelter Raped, 5 Others Molested", *The Wire*, September 26, 2021, <https://thewire.in/rights/chhattisgarh-minor-inmate-at-govt-funded-residential-centre-raped-5-others-molested>

<sup>56</sup> "Witch" means any person who has been supposedly identified, called, stigmatized, defamed or accused as some who has the power to harm anyone or society at large, in any manner. "Witch-hunting" means the identifying, calling, stigmatising, defaming or accusing any person a "witch" by any other person thereby causing or abetting physical and/or mental harm or execution of a witch which may involve mass hysteria, lynching or any other activities.

<sup>57</sup> The Prevention of Witch (Daain) Practices Act, 1999 in Bihar, the Prevention of Witch (Daain) Practices Act, 2001 in Jharkhand, Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, the Odisha Prevention of Witch Hunting Act, 2013, the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and black magic Act, 2013, the Karnataka Prevention and Eradication of Inhuman Evil practices and black magic Act, 2017, the Rajasthan Prevention of Witch Hunting Act, 2015 and the Assam Witch Hunting (Prohibition, Prevention and Protection Act) 2015.

<sup>58</sup> "Orissa High Court push for Central law to check witch-hunting", *The New Indian Express*, August 14, 2020, <https://www.newindianexpress.com/states/odisha/2020/aug/14/orissa-high-court-push-for-central-law-to-check-witch-hunting-2183291.html>, Priya Ranjan Sahu, "Witch hunting: 83% of Odisha's cases in six districts, says report", *Down To Earth*, December 21, 2021, <https://www.downtoearth.org.in/news/governance/witch-hunting-83-of-odisha-s-cases-in-six-districts-says-report-80779>, "62-year-old Tribal Woman Beheaded Over 'Witchcraft Suspicion' in Odisha", *News 18*, July 4, 2021, <https://www.news18.com/news/india/62-year-old-tribal-woman-beheaded-over-witchcraft-suspicion-in-odisha-3925292.html>

<sup>59</sup> Tribal people carry pregnant woman in 'doli' for 10 km", *The Hindu*, June 10, 2021, <https://www.thehindu.com/news/national/andhra-pradesh/tribal-people-carry-pregnant-woman-in-doli-for-10-km/article34780969.ece>

<sup>60</sup> "Tribal nutrition UNICEF's efforts to support the tribal population, especially children who suffer from malnourishment", <https://www.unicef.org/india/what-we-do/tribal-nutrition>

<sup>61</sup> For example, in October 2021, media reports stated that 8,000 tribals belonging to Particularly Vulnerable Tribal Groups (PVTGs) were starving due to denial of ration under Public Distribution System (PDS) in 15 blocks in Garhwa district of Jharkhand.

<sup>62</sup> For example, from April 2020 to March 2021, there were 296 deaths of children, mainly tribals, due to malnutrition in Palghar district, Maharashtra. On 6 July 2021, the Palghar district administration confirmed that there were as many as 40 deaths of tribal children in the district in the months of April and May 2021 due to malnutrition.

<sup>63</sup> "Outdated census data deprives over 10 crore of PDS: economists", *The Hindu*, April 16, 2020, <https://www.thehindu.com/news/national/outdated-census-data-deprives-over-10-crore-of-pds-economists/article31350648.ece>

<sup>64</sup> Reply of the Minister of State for Consumer Affairs, Food and Public Distribution, Mr Ashwini Kumar Choubey in Unstarred Question No. 393, answered in the Rajya Sabha on February 4, 2022.

<sup>65</sup> Nearly 88% of Cancelled Ration Cards in Jharkhand Were Genuine, Says Study, NewsClick, February 21, 2020, <https://www.newsclick.in/nearly-88-per-cancelled-ration-cards-jharkhand-genuine-study>

<sup>66</sup> Article 338A of the Constitution of India provides that there shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes to, among others, investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards, to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes. The NCST has powers of a civil court to investigate cases of rights violations.

<sup>67</sup> Standing Committee on Social Justice and Empowerment (2021-22), 13<sup>th</sup> Report on 'Demands For Grants (2022-23)' of the Ministry Of Tribal Affairs, p.69, presented to Lok Sabha on 14.03.2022 and laid in Rajya Sabha on 14.03.2022, available at [http://164.100.47.193/lssccommittee/Social%20Justice%20&%20Empowerment/17\\_Social\\_Justice\\_And\\_Empowerment\\_30.pdf](http://164.100.47.193/lssccommittee/Social%20Justice%20&%20Empowerment/17_Social_Justice_And_Empowerment_30.pdf)