

## Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE:  
UA IND 9/2017

24 August 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolution 33/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **failure to ensure free, prior and informed consent in the States of Jharkhand, Madhya Pradesh, Chhattisgarh and Telangana in the context of logging, mining and conservation projects affecting indigenous lands and resources. These projects have resulted in additional violations inter alia forced evictions and physical violence against indigenous Adivasi communities as well as the failure to provide them with compensation and redress. The allegations indicate a pattern of non-compliance with India's Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act of 2006.**

According to the information received:

### *Applicable national legislation*

India's Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act of 2006 (henceforth referred to as the Forest Rights Act) recognises the rights of Scheduled Tribes, known as Adivasis, to the lands they have traditionally used for homestead and cultivation purposes. In specific, the forest rights of the Adivasi communities are articulated in Section 3(a), (b) and (c). Section 3(a) stipulates the 'right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers'.

Section 3(c) provides for the 'right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries'. Section 3(m) furthers this by providing the 'right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation'.

Furthermore, the Forest Rights Act (2006) affirms the authority of the respective village assembly, the Gram Sabha, to protect these forestlands from activities that

could have a negative impact on their natural and cultural heritage, as well as halt any activities that could hamper the forests, wildlife and biodiversity of forestlands. Section 6(1) provides that the Gram Sabha initiate the process for determining the nature and extent of individual or community forest rights by 'receiving claims, consolidating and verifying them, and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect'.

In the context of the wildlife conservation of critical wildlife habitats in national parks and sanctuaries, the Forest Rights Act (2006) stipulates in Section 4(2) that no forest rights holders shall be resettled or have their rights affected in any manner for the purposes of creating inviolate areas for wildlife conservation except in cases where all the following conditions are satisfied: the process of recognition and vesting of rights by the Gram Sabha is complete; the activities and impact of the presence of right holders upon wild animals is sufficient to cause irreversible damage and threaten the existence of the said species and their habitat; the State government has established that other reasonable options, including co-existence, are not available; a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities; the free informed consent of the Gram Sabhas has been received in writing to the proposed resettlement and package; and, no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package. In the case where the rights holders are relocated for purposes of wildlife conservation, the critical wildlife habitats shall not be subsequently diverted for other uses by the State or central government or any other entity.

Indigenous communities in India are endowed with further rights under the Panchayats (Extension to Scheduled Areas) Act (1996) that empowers the Gram Sabha to safeguard and preserve its community resources. Section 4(i) of the Panchayats (Extension to Scheduled Areas) Act, 1996 stipulates that every Gram Sabha shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 was enacted to address violence against Adivasi communities. Amendments to the Act that came into force in January 2016 criminalise a range of new offences, including the wrongful dispossession of land.

*Logging*

Between 20 and 24th of December 2016, the Jharkhand Forest Department, local police, and wood smuggling members, known as the “forest mafia”, allegedly destroyed 47 houses owned by members of the Adivasi community, including members of the Korwa, Nayak, Chero, and Oraon indigenous communities. The two affected villages, Sinjo and Gadiya, are located in the forest region of the Bhandaria administrative block in the Garhwa District of Jharkhand State.

On 20 December 2016, 18 houses in the Sinjo village were allegedly destroyed using earth-mover machines. According to the information received, approximately 25 people arrived at the village to destroy the houses without giving prior information to the affected indigenous communities. The owners of the houses were prevented from shifting their food-grains, clothes, utensils and other belongings from their households.

Similarly, on 24 December 2016, 29 additional houses in the Gadiya village were allegedly destroyed. These events affected some 220 villagers, including 48 women and 119 children and forced them to take shelter in temporary wooden and plastic sheet huts. The destruction of food-grains, as well as the lack of new food produce ready for harvest on the fields, has forced the Adivasi communities to shift their lifestyle by attempting to earn a living as daily wage labourers. In accordance with the rights and protection guaranteed within the Forest Rights Act (2006), the affected individuals submitted a claim form, along with a recommendation of the Gram Sabha, to the Sub-Divisional Committee on Forest Rights through the Circle Office in Bhandaria. However, there has reportedly been no response to their claim. A complaint was also presented to the National Human Rights Commission in India on 20 February 2017.

### *Mining*

In September 2016, communities affected by the National Thermal Power Corporation’s mining project in the Pankri-Barwadih coal mine in Hazaribagh, Jharkhand State protested to demand adequate consultation and compensation for their land. On 3 October 2016, it is alleged that the police raided the villages and verbally abused the locals. The police forcibly entered the homes of villagers in Darikalan, and allegedly beat women and elderly in the households. The Pankri-Barwadih coal mine is operated by the National Thermal Power Corporation (NTPC) and its private joint-venture partners Thriveni Earthmovers and Sainik Mining. The NTPC mine management reportedly received clearance to use forest land without undertaking adequate consultation with the affected communities whose livelihoods depend on the forests. The Jharkhand authorities allegedly failed to receive consent from the Gram Sabha.

In November 2016, 2’000 people from affected indigenous communities in Jharkhand State allegedly protested in the city of Ranchi against the local

government's lack of recognition, and anticipated plans of expropriating traditional indigenous forests and land. The protestors reportedly marched to the Governor's house to return their new land entitlement papers that are in contradiction to the rights articulated in the Forest Rights Act (2006). The papers reduced the indigenous communities' access to land through the allocation of small plots of land. The police were allegedly violent in their response to the protests.

In June 2017, Adivasis in Raigarh district in Chhattisgarh State claimed that they have been forced to sell their lands through threats, intimidation, coercion and misinformation to agents acting on behalf of two private companies: Mahavir Energy Coal Beneficiation Limited and TRN Energy Private Limited, a subsidiary of ACB (India) Power Limited. On 14 June 2017, 81 Adivasi individuals from four villages in Raigarh district submitted criminal complaints under the SC/ST Prevention of Atrocities Act (PoA) at the district's Scheduled Castes and Scheduled Tribes Welfare (Special) Police station. Villagers alleged that they had not been paid the amount mentioned in the sale deeds, or had only been paid a fraction of it. It is unclear whether the police has initiated investigations following the complaints.

Conservation

In August 2016, members of the Adivasi communities in 39 villages within the Panna District of Madhya Pradesh State were allegedly evicted from their ancestral forests after these were declared as buffer zones for the Panna Tiger Reserve, one of many national parks and wildlife sanctuaries. Numerous forest-dwelling Adivasi communities in Madhya Pradesh have reportedly not given their consent and promises of monetary compensation have not been followed through.

The indigenous communities are no longer permitted to enter their traditional forest land to collect firewood and forest products, as well as allowed to enter to enable their cattle to graze. Furthermore, their farming lands have been taken away from them, disallowing them from cultivating food crops. There are complaints of women facing harassment when found entering the forest to collect firewood and forest produce, as well as physical abuse by forest officials who have reportedly confiscated firewood bundles, requested bribes, and filed false cases of encroachment against them. The eviction of Adivasi communities has destroyed traditional livelihoods, and has forced numerous individuals into becoming seasonal labour migrants.

On 28 March 2017, the National Tiger Conservation Authority (NTCA), a statutory body governing the tiger reserves in India, reportedly stated that no

rights articulated under the Forest Rights Act 2006 are applicable in critical tiger habitats<sup>1</sup>.

In June 2017, communities protested in the Telangana State to guarantee that members of the Chenchu community not be evicted from the Amrabad tiger reserve in the Nallamala Forest, following threats by government officials to evict them from the reserve. Information received indicates that the Government has approved uranium exploration and the same reserve in December 2016.

It is alleged that Indian authorities have justified forced evictions of indigenous peoples on the basis that human presence in the reserves is harmful to tigers, while subsequently allowing large-scale tourism, infrastructure and resource extraction projects in the areas which have been declared protected.

While I do not wish to prejudge the accuracy of these allegations, serious concern is expressed over the denial of indigenous Adivasi peoples' land rights and the failure to ensure their free prior and informed consent prior to the approval of any project affecting their lands or territories. Subsequent violations include forced evictions of Adivasi communities, physical violence and inadequate redress and compensation. The allegations indicate a pattern of non-compliance with India's Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act of 2006.

These concerns are longstanding as similar concerns have been raised in my predecessor's communication (IND 9/2013) on the issue of inadequate consent before eviction in the context of development projects affecting indigenous forestlands and resources.

India's Schedule Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act (2006) is a significant piece of legislation for the recognition of indigenous people's rights. The lack of implementation of the Forest Rights Act may undermine the protection of Adivasi indigenous peoples. The international conservation community has recognised that in order to assure a sustainable and effective protection of sensitive ecosystems, it is key to involve indigenous peoples inhabiting and dependant on these ecosystems as legally empowered rights holders.

I also wish to note that India's Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013) requires social and environmental impact assessments prior to acquisitions and that rehabilitation and resettlement of affected households are ensured in case of eviction.

I would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. India is a party to the

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<sup>1</sup> <http://timesofindia.indiatimes.com/city/nagpur/no-forest-rights-in-tiger-reserves-ntca/articleshow/57881072.cms>

International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The International Covenant on Economic, Social and Cultural Rights recognises in its Article 11 the right of everyone to an adequate standard of living, including adequate food and housing, and to the continuous improvement of living conditions. General Comment No. 7 on the Covenant provides that the State ‘itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions’.

In its Concluding Observations on India in 2008 (E/C.12/IND/CO/5) the Committee on Economic, Social and Cultural Rights stated deep concern over the displacement and forced evictions occurring in the context of land acquisition by private and state actors for the purpose of development projects, highlighting that members of scheduled tribes are adversely affected by such displacement from their homes, lands and their sources of livelihood. Furthermore, the Committee expressed concern about the lack of effective consultations and legal redress for persons affected by displacement and by forced evictions, and the inadequate measures to provide sufficient compensation or alternative housing to those who have been removed from their homes and/or their ancestral lands.

In addition, I would like to draw your Excellency’s attention the International Convention on the Elimination of All Forms of Racial Discrimination. The General Comment No. 23 calls upon State parties to ‘provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics’. In addition, it recommends for States to ‘ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent’. The Committee especially calls upon States parties to ‘recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories’.

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’. Article 10 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 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’.

The full text of the human rights instruments and standards referred to above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

I would be grateful if your Excellency’s Government could provide information on the steps taken to safeguard the rights of the affected Adivasi peoples in compliance with international standards and in particular the following detail:

1. Are the facts as summarized 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 Adivasi indigenous peoples 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. In particular, please provide information on the implementation of the Forest Rights Act of 2006 and of the measures available to ensure the effective compliance with resolutions of Gram Sabhas on the protection of collective land rights of the Adivasi communities.
3. Please detail how legislation and policies relating to conservation, mining and logging projects respect indigenous peoples’ rights and what guarantees are available to ensure the compliance of such laws and policies with the Forest Rights Act of 2006?

4. Please provide information on measures taken to ensure participatory and good-faith consultations with affected Adivasi communities and their free, prior informed consent ahead of the approval of any project affecting their lands or territories. In particular, please provide information on the specific situations mentioned in this communication.
5. Have social and environmental impact assessments been carried out prior to the approval of projects in the specific situations mentioned in this communication.
6. Please provide information on whether investigations have been carried out in relation to the forced evictions and land dispossession of Adivasis under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 in the specific situations mentioned in this communication.
7. What measures have been taken to ensure the adequate redress and compensation of evicted Adivasi communities in the specific situations mentioned in this communication? How have such measures been implemented?

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency' the assurances of my highest consideration.

Victoria Lucia Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples