

Observations on the State of Indigenous Human Rights in India

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Reporting Organizations:

Cultural Survival

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States.

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Jharkhand Indigenous and Tribal Peoples for Action

Jharkhand Indigenous and Tribal Peoples for Action is Indigenous civil society organization, which aims to strengthen, develop, and unite Indigenous Peoples in Jharkhand state of India. It supports Indigenous knowledge systems and traditional political set up and also supports the call through various peaceful mass demonstrations. ITI Hehal, Ranchi, Jharkhand, Pin-834005, jitpajharkhand@gmail.com

KAT News Channel

KAT News Channel is the first ever local cable television channel based in Karbi Anglong. Launched in September 2016, it aims to promote and strive for advancement of Indigenous cultures, highlighting socio-economic issues through community media channels. Karbi Anglong, Diphu Assam, Pin: 782460, katnews2016@gmail.com

I. Executive Summary

The Indian government continues to promote policies and practices that support land grabbing, eviction of Indigenous Peoples from their lands and territories and targeting of Indigenous rights and land defenders. Militarization of Indigenous territories, policies such as the Armed Forces Special Power Act, and the labeling of Indigenous people as terrorists have served as justifications for extrajudicial killings of Indigenous people. Defenders of Indigenous rights suffer state-inflicted violence. Despite the enactment of the Forest Rights Act in 2006, which aimed to redress historical and ongoing land theft, over half of claims had been rejected as of August 2021. This has resulted in millions of evictions of Indigenous Peoples from their lands in egregious violation of their rights. An aggressive hydropower development agenda is also violating Indigenous Peoples' rights to Free, Prior and Informed Consent (FPIC) and to their livelihoods, sacred sites, and economies on lands that are flooded and otherwise damaged by projects. The 2020 Foreign Contribution Regulation Act limits access to funding for civil society organizations including Indigenous organizations. The Citizenship Amendment Act threatens the citizenship rights of Indigenous Peoples. Indigenous women continue to be subject to violence due to their multiple marginalized identities as women and as Indigenous people. India must ratify ILO 169, put an end to extrajudicial killings and the policies that purport to justify them, process land claims in compliance with Indigenous land rights in accordance with India's international obligations, and ensure compliance with Indigenous Peoples' rights to FPIC.

II. Background

There are 705 Indigenous Peoples recognized as "Scheduled Tribes" in the Constitution of Indiaⁱ but that is only some of the many Indigenous Peoples in India, some of whom are not recognized as Scheduled Tribes. In central India, Indigenous Peoples prefer to be called "Adivasis."ⁱⁱ According to the 2011 census, of the total population of 104.3 million people, Adivasis comprise 8.6%, almost 90% of whom are living in the rural areas across 30 statesⁱⁱ. Also, the periodic *Census of India* reports,ⁱⁱⁱ which provide ethnographic accounts of Scheduled Tribes, are often disputed due to the conceptual and practical difficulties in recognizing various communities as Scheduled Tribes. There are also questions about the demarcation between recognized Tribes and other caste-groups around them with similar cultures and interests, which raise concerns about the concept's origins in colonial politics and power structures as well as post-colonial ideologies.^{iv} Still, the national government largely follows a broad working definition developed by the 1965 Advisory Committee Report on the Revision of the Lists of Scheduled Castes and Scheduled Tribes, popularly known as the Lokur Committee Report. It defines Scheduled Tribes as groups of Indigenous people characterized by "primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large and backwardness."^v The largest concentration of Indigenous Peoples are found in the seven states of northeast India, and the so-called Central Tribal Belt stretching from Rajasthan to West Bengal.

Articles 15(4) and 46 of the Constitution of India provide for special protections for the classified Scheduled Tribes: recognizing their social, educational and economic "backwardness," and the need to protect them from social injustice and various forms of exploitation. Alongside Constitutional provisions, India has several laws such as the Fifth Schedule for Central India and the Sixth Schedule for certain areas of Northeast India, which recognize Indigenous Peoples'

right to land and self-governance. Though, in Jharkhand the Fifth Schedule is not properly implemented. The Indian government voted in favor of the UN Declaration on the Rights of Indigenous Peoples with the condition that, since independence, all Indians are considered Indigenous. However, the government of India has increasingly been using the term “Indigenous Populations.”

III. Previous relevant UPR recommendations

India has accepted the following UPR recommendations relevant to Indigenous Peoples that have yet to be fully implemented:

1. *Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled Tribes and minorities are well achieved.* Ghana, 2nd cycle.
2. *Take the necessary measures to ensure effective implementation of the Scheduled Castes and Scheduled Tribes Act, notably through the training of State officials.”* France, 2nd cycle
3. *Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, Tribes and other vulnerable populations.* USA, 2nd cycle
4. *Continue and strengthen measures to prevent and repress offences and violence against women and girls, including through early childhood education, awareness-raising and enhancing effective mechanisms of reparation.* Germany, 2nd cycle

IV: Failure to fulfill Treaty Obligations

As a founding member of the International Labor Organization, India ratified 41 ILO Conventions and one protocol, including ILO Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, on 29 September 1958. The ILO Committee of Experts on the Application of Conventions and Recommendations, Individual Observation concerning Indigenous and Tribal Population Convention, 1957, encouraged India in 2010 “to draw on ILO Convention No. 169.” It also requested that the government provide information on the progress made in the adoption of the “National Tribal Policy,” and to indicate how the collaboration of Tribal populations was sought in the preparation of that policy.^{vi} In 2021, the Committee once again requested that the government of India provide information on any developments concerning the elaboration and adoption of the national policy and indicate how the collaboration of Tribal populations is sought in the preparation of this policy.^{vii} In the interim, the Committee requested that the government provide information on the measures taken by the Ministry of Tribal Affairs to ensure that the actions and programs for the protection of the rights of Tribal peoples are developed and implemented in a coordinated and effective manner with their involvement.^{viii} The government of India has not yet responded to the ILO Committee of experts.

In the first UPR cycle, India noted Ghana’s recommendation that India ratify ILO Convention No. 169 and has not yet taken any steps for ratification. In May 2012, the first and only special report produced by the National Commission for Scheduled Tribes^{ix} cited the statement of the

Ministry of External Affairs, the Ministry of Home Affairs, and the Ministry of Tribal Affairs that the “concept of Indigenous Peoples provided in Article 1 (b) of ILO Convention No. 107 and Article 1(b) of Convention No. 169, is not relevant to India,” and objected to the need for ratification of the convention.

V. Ongoing Human Rights Violations

A. Militarization and Extrajudicial Killings

Violations of UNDRIP Articles 7 and 30; UDHR Articles 3 and 10; International Convention for the Protection of all Persons from Enforced Disappearance Article 1; ICCPR Articles 4, 6, 9, and 15.

Security forces have continued to violate Indigenous Peoples’ rights in Central and Northeast India. Indigenous Peoples in the northeast are accused of having links with insurgent groups,^x Maoists rebels in central India, resulting in hundreds of murders of and other violence against Indigenous people.^{xi} The Armed Forces Special Power Act (AFSPA) of 1958 is a law that confers “special powers” to armed forces and is operative in areas that are declared as “disturbed” and “dangerous” including, in Northeast India, the state of Arunachal Pradesh, where there is the largest concentration of Indigenous Peoples, as well as the states of Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.^{xii} This has resulted in gross human rights abuses including extrajudicial killings and disappearances in the name of suppressing counter-insurgencies. On 4 December 2021, security forces killed 13 innocent Naga Indigenous civilians in Mon District, in Nagaland, bordering Myanmar.^{xiii} A contingent of the Indian Army’s counterinsurgency unit opened fire on civilians, killing six and injuring two on their weekly return home to Oting Village in Mon District to meet their families and attend Sunday services. Following their killings, a clash erupted between the forces and local villagers in which seven more civilians and one personnel from the commando squad were killed.^{xiv}

Incidents in which police, paramilitary, and the army kill civilians they allege to have committed crimes in what they describe as self-defense before due process are known by security personnel in India as police “encounters.” The euphemism “encounters” attempts to hide the fact that these are actual extrajudicial killings or other forms of violence based on accusations that the victims are “‘militants,’ ‘terrorists,’ other criminal offenders, or for political or other reasons.”^{xv} Outcry at these types of killings and their cover-up refers to them as “fake encounters.”

According to government reports, more than 6,000 “encounters” were recorded from 2017 to August 2021.^{xvi}

In the state of Chhattisgarh, thousands of Adivasis have been displaced by mining. Rebel Naxals (Maoists) have been resisting the mining, and military crackdowns on the Naxals have left Adivasi villagers in the middle, subject to violence from both parties. *Al Jazeera* reports, “Security forces have been accused of committing mass sexual and human rights abuses, and extrajudicial killings of Adivasis” as well as arresting them based on false accusations of their being Naxals, and there are accusations that Naxals have been accused of attacks and murders of Adivasis as well.^{xvii} A majority of people living in seven districts of Bastar in Chhattisgarh are Scheduled Tribes. The government has established 28 security camps with 100,000 security forces, making Chhattisgarh among the most militarized zones in India.^{xviii} The violence by the

military has been decried by the National Human Rights Commission.

In the state of Assam alone in the past 12 years, more than 550 alleged ‘undergrounds’ (members of armed opposition, largely Tribal groups in the northeast) have been killed extrajudicially with only five casualties on the side of government security forces.^{xix} In July 2016, the Supreme Court of India held that the military is not authorized to use “excessive force even in that come under the Armed Forces Special Powers Act (AFSPA) and ruled that over 1,500 cases of alleged fake encounters in Manipur, over the last 20 years, ‘must be investigated.’”^{xx} A prior 2013 investigation of alleged “fake encounters” had found that in none of the six cases had the military conducted these “encounters” legitimately in the interest of self defense.^{xxi}

B. Torture, Physical Abuse, and Murder of Human Rights Defenders

Violations of UNDRIP Articles 7, 21, 24, and 30; UDHR Articles 3, 5, 9, 13, 20, and 25; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 2; ICCPR Articles 7, 9, 10, and 15.

The government of India has not yet taken steps to protect human rights defenders. Human rights defenders and Indigenous human rights defenders in particular are in fact facing greater risks. They are often arbitrarily detained, physically attacked, ill-treated, surveilled, displaced, and killed. Human rights defenders in India often labelled as Naxals, terrorists, militants, insurgents, anti-nationalists and members of underground and their movement is on many occasions unlawfully restricted.

One example of persecution of rights defenders was the government’s decision to prevent Neingulo Krome, general secretary of the Naga People’s Movement for Human Rights and a well-known Indigenous rights activist and leader, from flying to Bangkok from Kolkata in February 2021. He was barred from leaving the country and told that he was not allowed to travel abroad per orders of the government, an act that the organization Asia Indigenous Peoples Pact condemned.^{xxii} No further information was provided, nor evidence of this order.^{xxiii}

Another example is the case of well-known activist Soni Sori of the Koya Tribal community of Chhattisgarh. Sori contracted COVID-19 in September 2020, just prior to her required appearance before the National Investigation Agency for allegedly murdering police officers and a parliament member. Officials insisted she keep her appointment despite her COVID-19 diagnosis, and she was forced to bicycle to the appointment because transportation companies would not take her. Despite being sick, she was interrogated for over seven hours.^{xxiv} Although she had informed officials of her illness and had been forced to attend her court date anyway, she was then charged with “disobeying an order duly promulgated by a public servant, for indulging in a negligent act likely to spread infection of disease dangerous to life and malignant act likely to spread infection of disease dangerous to life respectively.”^{xxv}

Another case of violence against defenders of Indigenous rights and the environment was that of Stan Swamy, an 84-year-old Catholic priest who championed Adivasi rights and advocated against forced displacement and land theft. He was arrested on “fabricated terrorism charges”^{xxvi} and was subject to inhumane conditions, exacerbated by his Parkinson’s disease. He contracted and died of COVID in prison.^{xxvii} The treatment he suffered in exchange for his leadership and tireless advocacy for Indigenous rights is a prime example of the retribution to which defenders in India are subject.

C. Forced Eviction from Forest and Lands

Violations of UNDRIP Articles 3, 5, 8, 10, 11, 19, 20, 21, 25, 26, 27, 29, 31, and 32; UDHR Articles 22, 23, and 25; ICCPR Article 12.

Indigenous Peoples in India depend upon forests for their livelihoods. For many, the forest not only provides resources for economic subsistence, but it is also a way of life socially and culturally. But the large number of forest dwelling Indigenous communities in India have been denied rights to their lands and resources.

In 2006, the Indian government enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, known for short as the Forest Rights Act (FRA). The passage of the act was the result of many years of advocacy by millions of forest dwellers and forest rights and civil society groups in defense of their lands, resources, and livelihoods in the face of land theft and violence against forest-dwelling communities, majority of whom belong to Indigenous Tribal communities. It has been estimated that the act could restore “rights of forest dwellers over at least 40 million hectares or 100 million acres of forest land in 170,000 villages, i.e. one-fourth of the villages across the country. Importantly, at least 150 million people, including 90 million Tribal people, are estimated to benefit.”^{xxviii} The Ministry of Tribal Affairs is the agency responsible for conferring land titles to applicants under the law.

However, according to the monthly progress report on FRA published by the Ministry of Tribal Affairs, as of August 31, 2021, a total of 4.2 million individual and community claims seeking title have been filed under the FRA of which 53% from 20 states were rejected.^{xxix} Supporters of Scheduled Tribes’ rights say that “the Ministry and Department of Tribal Affairs are ignoring the legitimate claims of scheduled Tribes”^{xxx} and evidence suggests that this is happening nationwide. The committees responsible for addressing claims are causing delays in the process by not meeting regularly, and this, together with a failure of coordination among the various governmental departments responsible, mean that thousands of claims remain unaddressed for years.^{xxxi}

The forest dwellers and members of Scheduled Tribes whose Forest Rights Act (FRA) claims have been rejected were dubbed to be “encroachers” and were evicted.^{xxxii} Several Indian conservation organizations claim Indigenous Peoples threaten the forests’ biodiversity and advocate for their eviction.^{xxxiii} However, Tribal groups claim these lands to be their ancestral lands. The evictions resulted in homelessness for millions of forest dwellers and members of Scheduled Tribes who have an ancestral link to the land and forest. The government did not seek FPIC from the forest dwellers and Scheduled Tribes, nor have they ensured adequate compensation, nor were fair settlement plans or consultation processes determined prior to the rejection of the claims.

There exist strong laws guaranteeing the land rights of Adivasi of India, but these legal provisions have never been implemented. For example, Section 4(5) of the Forest Rights Act states, “...no member of a forest-dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under their occupation until the recognition and verification procedure is complete.”^{xxxiv} Similarly, the Panchayats (Extension to Scheduled Areas) Act, 1996, Section 4(i) states “...Gram Shabha or the Panchayats at the appropriate level

shall be consulted before acquiring land in the Scheduled Areas or implementing development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas...^{xxxv} However, there are increasing instances of Scheduled Tribes being evicted from their lands and forests despite their claims under the Forest Rights Act being under adjudication. The Union Ministry of Tribal Affairs has yet to set specific guidelines more than three years after the Supreme Court asked the state government to review the rejected claims on forest land under the Forest Rights Act.

On 13 February 2019, the Supreme Court of India ordered the eviction of more than a million forest dwellers after their land claims were rejected and directed 21 state governments to file affidavits with details on how they had processed those claims under the Recognition of Forest Rights Act.^{xxxvi} The court then directed states to specify whether due process was followed in rejecting the claims. The forest department could not initiate any eviction process because the move could trigger any social tensions in the area. Just two weeks later, the Supreme Court stayed its eviction order based on the consideration that the state governments had not provided sufficient information on how the decisions on the claims were made. It directed all states to submit an affidavit by 12 July 2019.^{xxxvii} The stay on evictions was subsequently further extended as states did not provide information to the court.

In accordance with the Supreme Court's February 2019 order, state governments are supposed to conduct reviews of rejected claims to forest land title, but they have yet to do so. Before the Supreme Court is due to begin a final hearing of their case to evict them from their land, Tribal people in India converged all over the country and protested to warn the government and the Supreme Court that their eviction will lead to mass agitation across the country. An organization of Tribal groups submitted a memorandum to the central government to intervene in the final Supreme Court decision. They adopted various means of protests—protest march, Dharna, open letter to governor, president, chief minister and prime minister, which resulted in the Court continuing its stay on the eviction of millions of Scheduled Tribes and other traditional forest dwellers whose claims for forest land rights have been rejected under the FRA. The government never has conducted transparent and independent reviews of the rejected claims nor ensured that no Indigenous Peoples are aggrieved. Alternatives were not provided to the affected people, nor was consent sought prior to the eviction and no adequate redress nor compensation was provided. Many Indigenous Peoples in India have already lost their homes in the name of “conservation,” mainly to make way for tiger reserves, despite the fact that these communities have lived in balance and relationship on these lands, with tigers and other wildlife, for generations.^{xxxviii}

The Ministry of Environment has proposed a series of amendments to the Forest Act of 1927 which, if adopted, would likely result in further violation of rights of Tribal and forest dwellers, as the draft law gives discretionary powers to Forest Officers to evict traditional forest dwelling Scheduled Tribes and local communities.^{xxxix} Thus, the government of India should take necessary measures to ensure that the rights to land of scheduled Tribes and other forest dwellers are fully recognized and protected and the role of Gram Sabhas—or local decision-making bodies^{xl}—is fully respected. Likewise, the government of India should respect the right to fair compensation and maintain the transparency in land acquisition rehabilitation and resettlement process, as guaranteed in UNDRIP, ILO 107, and even in Indian law, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013.

D. Violation of Land Rights and FPIC by Development Projects

Violations of UNDRIP Articles 3, 10, 11, 19, 20, 23, 26, 28, 29, and 32.

With the aim to meet the ambitious targets of installing 175 Gigawatts of renewable energy capacity by 2022, India is aggressively pursuing the construction of hundreds of large hydropower projects across the country. The Ministry of Power presented the report of the 43rd Standing Committee on Energy parliament in January 2019, classifying electricity generated by large hydropower plants as renewable energy, whereas previously only 25 megawatts or less was considered renewable. The report also discusses the potential benefits and challenges of hydropower in India.^{xli} Based on the report, in March 2019, India declared large hydropower projects as a source of ‘renewable energy’, with special focus on exploiting the full potential of hydropower in the unexplored regions of India, specifically the northeast.^{xlii} Over 168 hydropower projects with large dams are planned for the Northeastern states of Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura, where there is the largest concentration of Indigenous Peoples, and the region is said to account for almost 40% of the total hydropower potential in India.^{xliii} Communities in Northeast India have resisted hydropower, despite claims of its “cleanness” as an energy source.^{xliv} The projects violate Indigenous Peoples’ rights to maintain and strengthen their distinctive spiritual relationship with their traditionally owned and used lands, territories, waters, food, health, to practice their cultures, and their local economies (UNDRIP Article 25).^{xlv}

There has been an upsurge in infrastructure development, particularly large hydropower projects, mega-dams, gas and oil pipelines, mining and roads resulting in displacement of Indigenous Peoples from their land and territories in India. A case in point is the Loktak Downstream Hydroelectric Project with a 66 megawatt capacity. In August 2020, the Manipur state power company signed an agreement to purchase, on behalf of the state, all power generated by the Loktak Downstream Hydroelectric Corporation Limited. This project has already flooded over 50,000 hectares of the agricultural land of Laphupat Tera, Khodak Nongmaikhong, Arong, Ithai Wakokpi, Kumbi, Thang and many more communities who are dependent on their lands for subsistence and can no longer feed themselves.^{xlvi} Similarly, the 520 Megawatt Teesta IV hydroelectric project over Teesta River in Dzungu in North Sikkim state is another collaboration between the Indian government and corporations which target Indigenous Peoples’ land and resources. Planning and executing of hydroelectric projects without consultation nor FPIC of the Indigenous Peoples whose land, territories, or resources are affected violates their rights under UNDRIP Article 32.2 and their rights to food security and sovereignty guaranteed in Article 11 of the International Covenant on Economic, Social and Cultural Rights, to which India is a party. The Indian Ministry of Mines and Minerals has also undertaken mineral exploration and detected a number of minerals such as limestone, chromite, nickel, copper, malachite, acurite and magnetite and various platinum groups of elements in the same area.^{xlvii}

Another case of land rights violations for the purposes of development projects is the Imphal Ring Road Project, a government-sponsored road connectivity project, funded under Asian Development Bank’s South Asia Sub-Economic Cooperation to increase trade in the region. The project began in 2014, was delayed for years, and resumed in 2020. Among the impacts predicted are the destruction of at least 1,000 acres of agricultural land, hundreds of families, and the Kabui Indigenous Peoples’ sacred sites and ancestors’ gravesites.

All of these projects, resulting in displacement from Indigenous lands, violation of sacred sites, and development projects without consent, violate Adivasis' rights to FPIC, to their livelihoods and economic activities, and to their spiritual and cultural rights.^{xlviii}

E. Violations of Civil and Political Rights

Violations of UNDRIP Articles 4, 5, 8, 11, 14, 15, 18, 27, 31, and 36; UDHR Articles 20, 21, and 27; ICCPR Article 1, 22, 25, and 27.

On September 23, 2020, the Indian parliament passed a bill to amend the Foreign Contribution Regulation Act (FCRA)^{xlix} which imposes the overbroad and vague restrictions on civil society for accessing foreign funding for smaller non-governmental organizations mainly run by Indigenous Peoples and other minority groups. The amended bill adds additional regulations, a certification process and operational requirements, further adversely affecting civil society groups' access to funding and their ability to carry out human rights work.

The UN Human Rights Council in its resolution 22/6 on protecting human rights defenders, adopted in 2013,^l states, "no law should criminalize or delegitimize activities in defense of human rights on account of the foreign funding." The resolution also has called upon all member states "to ensure that any registration process for civil society is "transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal, and avoid requiring re-registration." However, the restriction in the amended bill continues a larger pattern of threats and harassment towards civil society organizations in India. The bill aims to stigmatize certain NGOs and lend credence to the authoritarian voices that have attacked them as anti-national. A case in point is the cancellation of the FCRA registration of approximately 6,000 NGOs by the Ministry of Home Affairs, on 1 January 2022.^{li} In the past decade, the government has canceled more than 20,600 NGOs' licenses.^{lii} Most of these cancellations were done because of non-filing of annual returns,^{liii} which is said to be a mandatory requirement under the Indian law. However civil society organizations say that this decision of the government restricting the flow of foreign funds affects the crucial works of NGOs and civil society organizations for the welfare of the Indigenous communities of India. It equally hampers the role civil society organizations and NGOs play in supplementing the efforts of the government on educational development, health care, livelihood enhancement, women's empowerment, environmental protection, awareness programs, legal support and many more in India.

F. Violation of right to dignified life of Indigenous Peoples

Violations of UNDRIP Articles 5, 7, 8, 11, 13, 14, 16, 15, 31, and 33; UDHR Article 20; ICCPR Article 27.

On 11 December 2019, India passed the Citizenship Amendment Act, which amended its existing Citizenship Act of 1955. The act has been criticized for anti-Muslim impacts; while it claims to support citizenship for immigrants from religious minorities, it discriminates against Muslim immigrants.^{liv} It also threatens the citizenship of India's Indigenous Peoples: IWGIA reports that "Indigenous Peoples fear that the CAA will render millions of them stateless because they will not be able to provide the necessary documents to prove their citizenship when the CAA is implemented through such mechanisms as the NRC, which was piloted in the state of Assam."^{lv} They consider the law a direct attack on their cultures.^{lvi} A pilot project conducted in 2019 in Assam state excluded close to 2 million people from official citizenship records, among

them 100,000 Indigenous people of various Peoples. Many Indigenous people in India do not have the documents required to prove citizenship; thus, implementation of this act nationwide would leave millions stateless. Detention of individuals unable to prove their citizenship has already resulted in violence, imprisonment, and death.

Over 140 petitions were filed with the Supreme Court of India upon passage of the act, stating that the law is unconstitutional,^{lvii} but the law remains in effect.^{lviii} Protests erupted nationwide after the law was enacted, mostly in the northeast. Between December 2019 and March 2020, up to 83 people were killed in protests across five states.^{lix} To quell tension, Indian authorities shut down mobile and internet connections and called on army personnel to restore order and imposed curfews.^{lx} “The government of India introduced the Bill without any proper consultations with concerned representatives and without a study of the impact,” said Ken Timung Arleng, young Indigenous rights activist at Diphu Assam in a conversation with Cultural Survival. The Citizenship Amendment Bill is likely to curtail the continuity of languages, cultures including economic well-being of the Indigenous Peoples of Assam and the northeast.^{lxi} Following the adoption of CAA, the Office of the UN High Commissioner for Human Rights (OHCHR) stated that it is discriminatory.^{lxii}

G. Failure to Protect Women’s Rights

Violations of UNDRIP Articles 21 and 22; UDHR Articles 2 and 16; Convention on the Elimination of All forms of Discrimination Against Women Article 2; ICCPR Article 26.

In the 2nd UPR cycle, India accepted a recommendation from Ghana to “put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled Tribes and minorities are well achieved.”^{lxiii} Similarly, India supported the recommendation from Vietnam in the 2nd cycle “to continue and strengthen measures to prevent and repress offences and violence against women and girls, including through early childhood education, awareness-raising and enhancing effective mechanisms of reparation.”^{lxiv} However, India has not implemented these recommendations. Adivasi and Tribal women in India continue to face discrimination, violence and unequal treatment in many forms and often without legal recourse, as “[t]here is very weak access to the justice system of the country by Adivasi/Tribal women. The legal and judiciary system is not gender sensitive and is male dominated. Likewise, most Adivasi/Tribal women are not aware of their rights including to due process, and have little access to competent lawyers. Further, many Adivasi/Tribal women in custody of the police or other authorities are raped or sexually abused.”^{lxv} Adivasi women face diverse abuses—such as killing, torture and other violence against women labeled “witches,” sexual violence, trafficking, militarization, and development-induced displacement.^{lxvi} In Chattisgarh state, 46 cases of gang-rape by security forces were reported over just six months between 2015 and 2016, and the number is likely higher than what was reported.^{lxvii} In its latest report published in September 2021, the National Crime Records Bureau of the Indian government stated that 1,137 Tribal women were raped and 885 assaulted “with intent to outrage her modesty” in 2020 alone.^{lxviii} Again, because of hesitancy to report, real numbers are likely much higher.

Many Indigenous women and girls in India working as domestic helpers undergo vicious cycles of exploitation, intimidation, and torture; many cases go unnoticed. A recent case was the 2021 murder of a 12-year-old Karbi Indigenous girl, Sumila Ronghagpi, who worked as a domestic

worker for a wealthy, high-caste family in Assam state. AIPP and IWGIA report that “[s] was allegedly tortured, impregnated and burnt alive.^{lxxix} According to a study conducted by Karbi Human Rights Watch, about 5,000 young Karbi girls work in similar exploitative conditions, many of whom face similar violence and are often without legal recourse, given their families’ poverty and other obstacles to their accessing their rights and the legal system.^{lxxx} IWGIA’s 2021 report to the CEDAW emphasized how public health measures undertaken to contain the COVID-19 pandemic exacerbated violence against Indigenous women globally, permitting increases in domestic violence and limiting survivors’ ability to access help.^{lxxxi}

In India, maternal death rates are higher among Adivasi and Tribal women than others.^{lxxxii} Indeed, disaggregated data is generally lacking with regards to the human rights situation of Indigenous women, which prevents having an accurate understanding of their needs and realities and is an obstacle to devising policies and programs to adequately address them. Disaggregated data is urgently needed in order to address these situations of violence and ensure that the government implements their rights under CEDAW, UNDRIP, and other relevant obligations.

VI. Recommendations

We urge the government of India to:

1. Ratify ILO Convention 169.
2. Conduct a high-level independent investigation to ensure that justice is brought to the victims of extrajudicial killings in northeast India and their families.
3. Repeal the Armed Forces Special Powers Act and put an end to the culture of extrajudicial killings in northeast India.
4. Uphold the letter and spirit of the Forest Rights Act by safeguarding the inherent rights of Scheduled Tribes and other traditional forest-dwelling peoples. Introduce fair settlement plans and consultation processes in order to process land claims in a timely and transparent way, as set forth in ILO Convention 107 to which India is a party.
5. Take appropriate and necessary actions to protect human rights defenders and civil society organizations against murder, harassment, and intimidation, including ensuring their right to freedom of association and access to financial resources.
6. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit India.
7. Create a national action plan on implementing Indigenous Peoples’ rights based on the World Conference on Indigenous Peoples’ Outcome Document.
8. Implement all development plans in line with international human rights standards, including the UN Guiding Principles on Business and Human Rights; Free, Prior and Informed Consent; and effective remedy and justice for communities affected by development and business operations.
9. Undertake periodic data collection –disaggregated by gender and ethnicity–and devise appropriate policies, programs, and protection measures to guarantee the safety of Indigenous women and girls.
10. Consult with Indigenous Peoples on ways to mitigate negative repercussions of the Citizenship Amendment Act on their communities and ensure their right to citizenship and their territories is implemented.

End Notes.

- ⁱThe Constitution (Scheduled Tribes) Order, 1950, https://legislative.gov.in/sites/default/files/19_The%20Constitution%20%28ST%29%20Order%201950.pdf
- ⁱⁱ Office of the Registrar General & Census Commissioner, India, "Census Schedules," Census India, 2011, <https://censusindia.gov.in/2011-Schedule/Index.html>.
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