

## Introduction

Nomadic communities constitute approximately 7% of India's population. Marginalization continues to characterize the nomadic experience, and phenomena such as urbanization and environmental conservation schemes have contributed to the increasing impoverishment of these communities. In turn, the growing poverty has contributed to high rates of malnutrition, illiteracy and landlessness amongst these communities.

Land continues to be the primary source of livelihood, social and financial security in rural India. Consequently, many of these communities view settlement as the solution to their current difficulties. Although exercising the right to self-determination is essential to the identity of a community, the movement to settle raises many concerns. Impact analyses have to be conducted to determine how settlement will affect the cultural identity of the community, how the dynamic relationship between the community and the land will be altered, and how community customs can be preserved in light of the change in lifestyle. The needs of the community have to be identified and articulated in order to design programs that facilitate lifestyle adaptation. Ecological impacts of displacement must also be examined since nomadic communities have helped to preserve eco-diversity through their sustainable hunting, farming, herding and foraging practices.

Since 2001, Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN) has worked with the nomadic communities of Rajasthan, India. HIC-HLRN has contributed to the advocacy for their land and housing entitlements by sharing its expertise, research material and facilitating human rights education through workshops and training exchange programs. In May 2002 and October 2003, HIC-HLRN conducted a pilot study concerning the ongoing struggle for land and housing rights of six nomadic communities in Rajasthan. This project was undertaken in collaboration with Muktidhara Sanstan, a community based organization that has been working on the citizenship and constitutional rights of nomadic communities in the Aravali region of Rajasthan. The research was undertaken by Rita Anand, a freelance journalist who conducted the May 2002 phase and Ai Li Lim of Rooftops Canada who made a separate visit to the communities in October 2003. The HLRN work with the nomadic communities has also benefited from the guidance of Shivani Bhardwaj.

The researchers from HLRN visited the settlements of six different nomadic tribes in various parts of Rajasthan. A total of eight settlements were visited in addition to three single-family

dwellings located in various villages in the Alwar district of Rajasthan. During the October 2003 visit Ai Li Lim met with K.L. Sharma, *tehsildar*, or District Land Administrator, of the Bansur district to gain insight on the local land allotment process and to observe the office's management of a particular application for land deed filed by a member of the nomadic community. She also met with Prithvi Raj and Satish Kumar Sharma, District and Session Judges in Jaipur, to discuss the status of *Habitual Offenders Act* and the workings of the special courts for claims made under the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*.

Our study has revealed that, among other factors, State failure to provide the legal infrastructure to facilitate land holding and protect tenure has exacerbated the vulnerability of the nomads. In many cases, landless families are forced to move into unoccupied land. Their lack of legal status however, leaves them vulnerable to evictions. Further, the communities' inadequate access to basic amenities such as water, grazing land and roads are violations of human rights, pursuant to the Indian Constitution and international law. A review of India's international and domestic commitments regarding land and housing rights has also shown that the right to adequate housing must be adapted to the community's needs. Thus, regardless of a community's choice of lifestyle, the universal standards of adequate housing must be met.

## Executive Summary

The grassroots demand to formally articulate and advocate for the rights of the nomadic communities has yielded a pilot study conducted by Habitat International Coalition's Housing and Land Rights Network (hereinafter HIC-HLRN) in collaboration with Muktidara Sansthan, a community based organization.

For the purpose of the study, six nomadic communities were visited in the Alwar district of the state of Rajasthan, namely the Bhopas, Bawarias, Gadhiar Lohars, Kalbelias, Nats and Banjaras. The methodology of the inquiry included: observing the living conditions in the communities and recording instances of State failure to provide basic living amenities, reporting how land allotment schemes are implemented and retrieving testimonial evidence of human rights violations such as forced evictions, police brutality and racial harassment. Visits and investigations were facilitated by the local organization, Muktidara Sansthan.

The primary objective of the study was to identify the substantive concerns of the communities and to articulate these concerns within the paradigm of fundamental human rights, in particular, the right to land and adequate housing. It is hoped that by broadening the discussion to the universal language of rights, the report will:

1. Provide the communities with tools to assert their rights more effectively;
2. Emphasize the need for further, in-depth studies to be conducted, in light of the absence of information about nomadic tribes in India;
3. Identify problems that may arise during the adaptation to sedentary life;
4. Raise public awareness about the issues confronting nomadic tribes;
5. Initiate the creation of ties with other nomadic communities within India;
6. Pave the way towards a network with the Roma communities of Europe to strengthen the advocacy for nomadic rights on the international level.

### Observations and Findings

While HIC-HLRN recognizes that not all nomadic communities wish to alter their nomadic lifestyle, the research team observed that many communities are choosing to pursue sedentary lifestyles because traditional livelihoods have become unsustainable. All the communities studied

live well below the poverty line. Finding food is a daily challenge as urbanization has encroached upon common lands used for agriculture and conservation laws limit access to the forest produce that is critical to survival. The movement to settle is in part, a response to narrowing livelihood options as communities work toward the ultimate goals of self-reliance and the preservation of their culture:<sup>1</sup>

1. Through the classification of Scheduled Castes and Scheduled Tribes, the Indian Constitution provides legal benefits to communities that have been historically marginalized. The exclusion of some nomadic communities from the constitutional categories denies them these legislative safeguards and benefits.
2. The failure of the government to implement land reforms that recognize the customary rights of nomadic communities is a denial of the right to legal security of tenure, a fundamental component of the human right to adequate housing.
3. On a normative level, the nomads continue to suffer social isolation, ostracism and suspicion despite the constitutional guarantee to promote and protect the cultural and economic concerns of Scheduled Castes, Scheduled Tribes and Other Backward Classes.<sup>2</sup> Pursuant to both international and national legal obligations in matters of housing policy, the State must remain accountable in ensuring access to adequate housing and monitoring the impact of their housing policies. Presently, no formal scheme exists to address the housing needs of nomadic communities.

## Recommendations

The State must comply with all its commitments in accordance with the Constitution of India and the various international treaties it has ratified. Development and resettlement measures must be established with the consent and collaboration of the nomadic communities. The right to adequate housing can only be realized if various international criteria are fulfilled including: the right to secure tenure, availability of services, materials, facilities and infrastructure, habitability; accessibility for disadvantaged groups, affordability; location that allows access to schools and jobs, and housing policies that respect the cultural identities of the inhabitants.<sup>3</sup> Presently, these minimum core obligations are not realized.

HIC-HLRN recommends that the central government of India and the state government of Rajasthan:

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<sup>1</sup> Mandakini Pant, "Expression of Rights and Citizenship: the Case of the Nomads of Rajasthan, India" online: *Pria Annual Report 2001* <<http://www.pria.org/studyreport.htm>> (date accessed: 14 September 2003).

<sup>2</sup> Article 15 of the *Constitution of India* prohibits discrimination on the grounds of Religion, Race, Sex or Caste. More significantly, the Constitution enjoins the advancement and amelioration of Scheduled Castes and Tribes as well as Other Backward Classes, Article 15.4. These provisions are to be interpreted in accordance with the principles of "justice, social and political," enumerated in the preamble of the *Constitution*. For more on the discrimination suffered by the nomadic communities refer to Pant, *supra*, note 1.

<sup>3</sup> Committee on Economic Social and Cultural Rights, *General Comment No. 4 (1991) The Right to Adequate Housing (Article 11(1) of the Covenant)*, U.N. Doc. HRI\GEN\1\Rev.1 at 53 (1994).

### *Citizenship Rights*

1. Recognize the citizenship rights of such communities by implementing participatory processes that encourage the voice and visibility of nomadic community members in all levels of decision-making. In this light, voter identity cards should be issued.
2. Sensitize law enforcement officials through training and awareness programs. Ensure that strong punitive action is taken in cases of police brutality. Training programs should be established involving national, state and civil society human rights institutions
3. Develop public awareness campaigns to promote better understanding about nomadic communities.
4. Repeal of the *Habitual Offenders Act*, taking into consideration the historical stigma suffered by nomadic communities as social outcasts prone to crime.
5. Community-based groups are key players in reacting and responding to the needs of affected communities and lobbying for policy reform. The State must recognize their roles as intermediaries and collaborate with them when designing policies for livelihood training and land reform.

### *Land Entitlements and the Right to Adequate Housing*

1. Ensure transparency and administrative efficiency in all state transactions with the affected communities. Application for title deeds should be dealt with as a priority. Written explanations should be given to claimants for any delays in the application process.
2. Update land records to include the customary rights of access and use of nomadic communities. For example, migration routes should be mapped out and access to these lands should be facilitated.
3. Ensure that nomadic communities are given time and the forum to voice their needs and to discuss land allotment and encroachment issues, especially during public hearings held at the *panchayat*, or village, level.
4. Improve accessibility to records for verifying title deeds and other associated information to encourage transparency.
5. Perpetrators of forced eviction are punished to the full extent of the law and a schedule of sanctions for such offences should be published.

### *Right to Livelihood*

1. Initiate dialogue and a policy of public participation with the Department of Forestry with regards to environmental conservation schemes. In that regard, the *Indian Forest Act* and *Wild Life Protection Act* should be amended to include provisions that enjoin public consultation with communities affected by conservation measures. It is crucial that future establishment of protected areas should begin with the consent and the cooperation of the indigenous communities.

2. Establish livelihood-training programs designed in collaboration with the local community-based organizations, focused on addressing the specialized needs of the communities.

HIC-HLRN and Muktidhara hope that the findings of this report will inform the establishment of a regulatory and administrative housing policy for nomadic communities. It is also hoped that by voicing some of their concerns, the report will initiate meaningful dialogue between the affected communities and the government that will thereby engender new processes that emphasize consultation and inclusion.

### **Mukti Dhara Sansthan**

Formed in 1991, Muktidhara is a community-based organization committed to securing the citizenship rights and alleviating the social and economic deprivations of the Rajasthani nomads. The organization works with 18,000 nomads residing in 26 informal settlements at Alwar, Jaipur, Dausa and Bharatpur districts in northwest Rajasthan. Muktidhara has been at the forefront of the Rajasthani nomads' struggle to acquire land rights, voting rights and adequate education, health and civic amenities. It has attempted to compel government accountability in the implementation of state policies regarding nomadic communities. In addition to lobbying for land entitlements, Muktidhara has initiated rehabilitation and development programs aimed at increasing self-reliance. Informal education centers have been set up to teach nomadic children basic reading and writing skills. The organization has assisted in the digging of wells and worked to obtain voter identification and ration cards for every member in the district. To date, Muktidhara's interventions have reaped positive outcomes. Several nomadic communities in the Alwar district have been allotted land entitlements. Members of the district have been included on the public voting list. Six informal pre-schools have been established to prepare nomadic children for primary education. A *panchayat*, or council of nomads meets periodically to settle disputes and discuss development strategies. With Muktidhara's guidance, the nomadic communities of Rajasthan are learning to vocalize and articulate their needs and to demand the right to live with dignity and self-respect. However, much work remains. The community continues to be plagued by rising rates of poverty and unemployment. District level governments continue to be suspicious of Muktidhara's activities and, as a result, are often unresponsive to the organization's demands. Initiatives to open more informal schools have been hindered by the lack of instructors willing to commute to distant villages.

## Historical and Legal Overview of Nomadic Communities in India

The *ghumantoos*, or nomads, of India are mobile tribes, each characterized by a distinct culture that is reflected in their beliefs, customs and traditional practices. Each *jati* practices a hereditary occupation and often speaks a specialized dialect. The exact number of the nomadic population is unknown because a formal census has never been conducted of these nomadic communities in India. However, informal studies indicate that about five hundred endogamous groups make their home in India, two dozen of which can be found in Rajasthan. Nomadic communities constitute about 7% of the Indian population.<sup>4</sup> At present, nomadic communities are found in the states of Andhra Pradesh, Maharashtra, Gujarat, Karnataka, Tamil Nadu, Haryana and Punjab. Pastoral nomadic communities also live in the Himalayan region in India.

In general, nomadic tribes are organized into sub bands of five to fifteen families, each headed by an elder who wields the authority to settle disputes. A panchayat, or village council often governs inter-*jati* affairs. Family size may range from five to twenty five people, since the family group commonly includes extended family members. The sub band might travel on independent routes and maintains a self-contained existence and governance for most of the year. However, bands belonging to the same ethnic group return annually to the tribe's customary camping ground in order to regroup. During these reunions, marriages are performed, cattle are traded and communal bonds are reformed.<sup>5</sup>

Non-pastoral nomads traditionally depend on sedentary communities for their subsistence by providing services or goods to the communities they frequented during their travels. Each *jati* practices a particular craft such as basket weaving, blacksmithing and acrobating. In the past, because of the varied lifestyles and occupations of the tribes, livelihoods could be sustained and inter-tribe competition for jobs was minimal.

Today, nomadic communities in India are confronted with barriers of discrimination and exclusion. Colonial laws that declared these tribes to be "criminal" and caste segregation have contributed to this marginalization. Despite the repeal of such laws and constitutional guarantees

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<sup>4</sup> K.C Malhotra, "Nomads in India" in *State of the Environment in India*, eds. R. Chopra & A. Agarwal, New Delhi: 1982.

<sup>5</sup> See informal study reports in the introduction of Miriam Robertson, *Snake Charmers: The Jogi Nath Kalbelias of Rajasthan. Ethnography of Non-Pastoral Nomads*, Illustrated Books, Jaipur: 1998 at 27.

of equality, hierarchical social norms and historical prejudices continue to color the treatment of nomads today. For example, nomadic children are excluded from attending schools and families are banned from water wells and houses of worship. Physical contact with members of upper caste communities is forbidden because members of the nomadic community are considered impure. Thus, they are made to eat from different utensils and restricted from the facilities frequented by members of the upper castes.

Caste based violence is a prevalent concern. Nomadic communities are commonly blamed for high incidents of crime and soaring unemployment rates in the villages. Nomads that attempt to settle have had their houses burnt by members of settled communities unwilling to live in close proximity with nomadic families. The nomads continue to be targeted as objects of physical abuse: members of the community are physically threatened, stoned and mobbed by villagers intent on eradicating the social problems allegedly caused by the nomads. These incidents are largely unreported because caste bias often extends to local law enforcement agencies and the media.

Exclusion from schools contributes to high rates of illiteracy and unemployment. These social problems have, in turn, caused widespread poverty and high mortality rates. Lacking the academic requirements, most nomadic community members do not qualify for basic jobs. Legislative and constitutional guarantees have not translated into work opportunities, training, health care and schools.

### **Nomadism v. Settlement**

The livelihoods of nomadic communities have been affected by various phenomena. Pastoral nomads and nomadic hunters and gatherers have been particularly affected by privatization, degradation in the quality and quantity of natural resources and restrictions on their access to these resources. For non-pastoral nomads, mechanization, industrialization, and advances in modern entertainment technologies have also had adverse implications on livelihoods. Diminishing sources of income is the principle cause of the growing numbers of nomadic tribes shifting to sedentary lifestyles. This change in lifestyle often requires occupational change as well. For example, nomadic tribe members are increasingly resorting to wage labor.<sup>6</sup> It must be emphasized that the choice to pursue a nomadic or settled lifestyle rests solely with the individual or the community. However, the question of settlement raises several critical issues:

1. How will settlement affect the cultural identity of the communities?
2. Will engaging in new professions and livelihoods result in the erosion of cultural identity and stifle the heritage connected with the freedom to travel?
3. What will adaptation entail, considering that many of these communities have known no other way of life and are not trained to perform tasks relevant to sedentary life?
4. What are the ecological impacts of resettlement?
5. How will settlement policies affect other communities that want to continue the nomadic way of life?

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<sup>6</sup> P.K Misra & N. Prabhakar, *Non Pastoral Nomads and Bio-Diversity Subthematic Paper Prepared for the National Biodiversity Strategy and Action Plan*. Draft. Government of India: 2002.



## **Criminality: Notification and Denotification**

The prevailing social and economic impoverishment of the nomadic communities must be understood within its historical framework. Marginalisation of nomadic communities began with the British assumption of sovereignty in 1858. Sovereign laws replaced native customary laws and contributed to the dissolution of the traditional fabric of Indian society. Through the enactment of a succession of land and criminal legislation, nomadic communities were divested of usufructuary and hunting rights to the land, forests and animals from which they derive their livelihoods.

Prior to the 19<sup>th</sup> century, the nomads of India fulfilled specialized roles, connecting distant villages by making available goods and know-how from regions that were otherwise inaccessible. Even though excluded by caste, nomadic communities had a defined place within the social structure as they provided a variety of distinct services ranging from blacksmithing to entertainment.<sup>7</sup>

### *The Criminal Tribes Act*

In 1871, the colonial government enacted the *Criminal Tribes Act* with the objective of gaining greater control over rebel rural regions that resisted British annexation of land. In effect, tribes listed in the Act were declared “criminal.” Law enforcement officials were granted wide discretion regarding the management and governing of such enlisted communities, enabling them to carry out summary convictions and imprisonment without trial. Pursuant to the Act, the listed communities were subjected to mandatory daily registration that severely curtailed their movement. Rehabilitation camps were established in which criminal tribe members were “chained, shackled, caned and flogged while being surrounded by high walls ... in the name of the homegrown science of “curocriminology”, it was declared they would be cured of their criminal propensities if they were given work.”<sup>8</sup>

In 1952, the *Criminal Tribes Act* was repealed and replaced by the *Habitual Offenders Act*. The listed tribes were officially de-notified. However, the stigma of criminality still remains and the nomads continue to be perceived as social outcasts. Nor did de-notification affect the cycle of derivation. De-notified tribes are not an enumerated class under the constitutional schedules and because of this, lack the constitutional safeguards and benefits enjoyed by the Scheduled Castes and Tribes. Although some tribes have been included in recent amended lists, many impoverished tribes meriting specialized concessions remain unscheduled.<sup>9</sup>

The *National Human Rights Commission* (NHRC), in a historic meeting held in February 2000, recommended repeal of the *Habitual Offenders Act*.<sup>10</sup> The NHRC pledged to monitor the atrocities suffered by de-notified communities, reorient police training systems and to sensitize State machinery. The Commission recommends that each state work out an Action Plan addressing the requirements and special problems of these groups. However, to date such recommendations have yet to be implemented and the State of Rajasthan has not repealed the *Habitual Offender's Act*.

<sup>7</sup> Meena Radhakrishna, “Dishonored by History” online: The Hindu Folio <<http://www.hindunet.com/folio.html>> (date accessed: 15 September 2003).

<sup>8</sup> *Ibid.*

<sup>9</sup> Milind Bokil, “De-notified and Nomadic Tribes: A Perspective,” *Economic and Political Weekly*, 12 January 2002.

<sup>10</sup> “Taking up the Cause of the Denotified and Nomadic Tribes” online: National Human Rights Commission, India <<http://www.nhrc.nic.in>> (date accessed: 16 September 2003).

## Exclusion from Reservations

The Constitution makes provisions for the protection and “uplifting” of Scheduled Castes and Scheduled Tribes. To implement the constitutionally mandated welfare schemes, the tribes were identified and schedules were drawn up in 1950. However, orders for de-notification for “criminal tribes” were not passed until 1952. As a result, the de-notified tribes were excluded from the constitutional schedules. This exclusion has numerous implications:

1. The *Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act* 1989, prohibiting the violation of the civil and political rights of enumerated castes and tribes, does not apply to de-notified tribes. As such, violations of human rights cannot be addressed under its provisions.
2. De-notified tribes do not qualify for reservations and concessions. This contributes to the lack of representation in government and exclusion from employment opportunities.

Some de-notified tribes have been categorized as scheduled tribes in state lists but there has been no uniformity in the implementation of classification policies. The stigma of criminality and nomadism hinders the integration envisioned by government policies. Because their history, experiences and circumstances differ from that of other intermediate castes, a distinct framework of entitlements for ex-criminal tribes must be created. In a submission to the *National Commission to Review the Working of the Constitution of India*, jati representatives requested the creation of a separate schedule, particularly reflecting the needs of de-notified tribes.<sup>11</sup>

However, the government has yet to respond to this submission.

### Protection for Scheduled Castes and Scheduled Tribes

Today, although legally denounced, caste segregation prevails. As an illustration, in 1991, only 29% of Scheduled Castes and 36% of Scheduled tribes were literate.<sup>12</sup> The Constitution of India designates special provisions for the improvement of the so-called “backward” classes, or Scheduled Tribes and Castes. In addition to the prohibition of discrimination guaranteed to every citizen, the constitution includes safeguards to ensure that social and economic disabilities are alleviated.<sup>13</sup> The Constitution also stipulates that a National Commission be appointed to investigate the conditions of these classes and identify the sectors and classes of society that should qualify for aid. These identified classes are subsequently listed and granted constitutional protection.<sup>14</sup> In addition, the Constitution guarantees the implementation of welfare schemes and provides for special reservation of seats in the Legislature for Scheduled Castes and Tribes.<sup>15</sup> To protect the civil and political rights of Scheduled Castes and Tribes, the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* was enacted in 1989.<sup>16</sup>

<sup>11</sup> See All India Banjara Seva Sangh’s Report to the *National Commission to Review the Working Constitution of India*, 2000.

<sup>12</sup> UNDP India, UNDP India Reports, citing 1991 Census India, online: <<http://www.undp.org.in>> (date assessed: 10 November 2003). The Registrar General of India has not released literacy rates for SC/STs from the 2001 Census.

<sup>13</sup> Article 15.

<sup>14</sup> Article 340.

<sup>15</sup> Article 275(1), Article 330.

<sup>16</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* 1989 (33 of 1989), 11 September 1989.

## Implications of Conservation and Eco Diversity Schemes

Various legislative enactments aimed at ecological preservation have eroded the customary rights of hunting, foraging and trapping of nomadic communities. Pastoral nomadic tribes that are restricted from reserved land are unable to graze their herds and non-pastoral nomads that depend on the forests for resources are similarly deprived of the main source of their livelihoods. The establishment of protected areas has not only alienated communities from their cultural heritage, but has also contributed to the growing poverty amongst nomadic communities. Government initiatives to promote biodiversity have either failed to recognize the right of affected nomadic communities to participate in eco management policies or have not made such participation mandatory. Forest officials often penalize pastoral nomads for their efforts to protect the forest, not understanding the relationship of mutual dependence and respect nomadic communities share with the environment.<sup>17</sup>

Nomadic communities have long lived in harmony with their natural surroundings, respecting and protecting the integrity of the lands. Their sustainable hunting, collecting, pastoral and farming practices have helped to preserve eco diversity. For example, by raising their animals in conditions close to what is found in the wild, the rearing practices of pastoral nomads have contributed to the maintenance of native breeds of animals.<sup>18</sup> Land management policies can therefore be strengthened by incorporating their insight, know how and traditional practices. Despite this, nomadic communities continue to be excluded from resource management decisions.

### *The Wildlife (Protection) Act<sup>19</sup>*

Enacted in 1972 with a view towards ecological conservation, the Act prohibits:

1. The hunting or capture of wild animals without a permit and authorizes state appropriation of any wild animal bred in captivity.<sup>20</sup> Permits are only granted for an exhaustive list of purposes, including education, scientific research and scientific management.<sup>21</sup> Provisions addressing the needs of communities that practice hunting indigenously are not included within the Act. Pursuant to the Act, tribes are prohibited from capturing the animals that have been their only means of income.
2. The collecting of plants from forest lands.<sup>22</sup> Tribes who sustain themselves with forest products and the sale of medicines made from plants must seek a permit in order to legally maintain their everyday activities.
3. The Act also enables the state government to declare tracts of forest reserved for conservation purposes. Provided that all notification requirements are met, the courts have

<sup>17</sup>Ministry of Environment and Forests and Kalpavriksh, *Securing India's Future: National Biodiversity Strategy and Action Plan*. Draft. Government of India: 2003.

<sup>18</sup>P. Vivejanandan and SEVA, *National Biodiversity Strategy and Action Plan Sub Theme: Pastoral Communities and Biodiversity Conservation*. Draft. Government of India: 2003.

<sup>19</sup>*Wild Life Protection Act 1972* (53 of 1972) [hereinafter WPA].

<sup>20</sup>WPA Chapter III s.9 *See* Annex 1.

<sup>21</sup>WPA Chapter III s.12.

<sup>22</sup>WPA Chapter IIIA s.17A

upheld the forced eviction of unauthorized occupants.<sup>23</sup> Individuals with prior claims to the lands must tender an application to assert their rights.<sup>24</sup> Such stringent bureaucratic requirements substantively discriminate against the nomadic communities as many lack the resources to undertake land claims.

4. The Act prescribes for the constitution of a Wild Life Advisory Board. The Board exercises an advisory role when the state formulates conservation policies. Although the provision allows for tribal representation on the Board, it does not explicitly impose mandatory participation. Ultimately, the State wields the discretion to determine the Board's constitution and thus has the capacity to veto tribal representation.<sup>25</sup>

### *Indian Forest Act*<sup>26</sup>

The *Indian Forest Act* empowers the state government to declare any forestland and forest produce “reserved.” After a declaration of reservation, the state government has full management control over the land and its resources, including the power to levy duties on timber or forest produce collected and harvested within reserved forests. The Act also prohibits grazing, clearing, trapping or hunting within reserved forests.<sup>27</sup> In effect, the Act grants the government wide regulatory ambit to restrict access to reserved lands, but this power is not circumscribed by a corresponding state obligation to consider particular needs of the nomadic populations that depend on the forests for their livelihoods.

Although shifting cultivation is allowed, the state government heavily regulates the practice.<sup>28</sup> This right is deemed by the courts to be a *privilege* subject to the discretion of the government.<sup>29</sup> The court's interpretation invalidates the customary rights of pastoral nomads. Claimants must submit to the jurisdiction of the state government who demarcates the amount of land suitable for the needs of the applicant.

### *The Land Acquisition Act*

The land rights of the nomads are also diminished by the enactment of legislation related to land. The *Land Acquisition Act* 1894 describes the circumstances and reasons for which private land can be acquired by the State. There are three salient characteristics of the acquisition process: First, the government must declare its intent to acquire. Second, any person “interested” in filing an objection to the intention to acquire has 30 days to do so after declaration of intention.<sup>30</sup> Third, any claim for compensation requires the production of entitlement documents. This requirement excludes nomadic communities from compensation since nomadic lifestyles preclude the finding of permanent occupation and “ownership” as envisioned within the Act.

<sup>23</sup>*Jaladbar Chakema v. Deputy Commissioner, Aizwal, Mizoram*, AIR 1983.

<sup>24</sup>WPA Chapter IV, s. 19.

<sup>25</sup>WPA Chapter II, s. 6.

<sup>26</sup>*Indian Forest Act* 1927, (16 of 1927) [hereinafter IFA].

<sup>27</sup>IFA Chapter II s. 26(ff), *See* Annex 2

<sup>28</sup>IFA Chapter II s. 10.

<sup>29</sup>*Mohd. Sidiq v. State*, AIR 1968 All 396.

<sup>30</sup>*Land Acquisition Act* 1894 (1 of 1894), s. 4(1).

# Settlement: The Case of Six Nomadic Communities in Alwar, Rajasthan

India's northwest state of Rajasthan is home to 24 nomadic tribes with an estimated population of nearly four million people. In recent years, phenomena such as industrialization, urbanization, and the enactment of various land and forest policies have decimated their traditional livelihoods. In the past, nomadic communities were viewed with fear and distrust because of their distinct social norms but growing poverty has widened the social gap between settled and nomadic communities, contributing to their increased isolation.<sup>31</sup> In Rajasthan, relationships with settled communities have deteriorated and hostility against the nomadic existence has intensified.

Because traditional livelihoods are no longer sustainable, many nomadic communities, including the six studied in this report, seek to settle permanently. These six communities have settled mainly in so-called "wastelands" or uncultivated, unoccupied government land under state jurisdiction. Hostile resistance from settled communities hinders adaptation to sedentary lifestyle. This hostility manifests in many different ways: homes are burnt, children are denied entry in schools, families are prohibited from using village wells or pumps and community members are subjected to harassment from local law enforcement.

## **Introduction to the six studied communities: Banjaras, Gadiya Lohars, Nats, Bhopas, Kalbelias and Bawarias.**

### *Banjaras*

Known as the traders of salt and cattle, the Banjaras are, according to folklore, descendants of the Charan people who were bards to the Rajputs. Their nomadic lifestyle began during the Mughal dynasty, when they became carriers in the Mughal army. Their nomadism continued throughout the colonial period when they became transporters of food grain and followed transport routes through Gujarat, Rajasthan and Kabul. Also known as the *ghumantoos*, or people of the cattle, the tribe is known for their distinct religion that is a blend of Hindu, Sikh and Muslim rites and beliefs. Central to the religion is the figure of the cow, believed to be able

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<sup>31</sup>Meena Radhakrishna, "Colonial Construction of a Tribe: Yeruklas of Madras Presidency," *Economic and Political Weekly*, 8-15 July 2000, refer to Introduction.

to ward off evil spirits and diseases. Often, Banjaras set up camps near cattle fairs, where trading of their herd would ensue.<sup>32</sup> Their knowledge of the lands is legendary, as their travel routes became the foundation of the highways of North India. With the advent of railways and roads, their historical roles have become obsolete. The Banjaras are listed as Other Backwards Castes in Rajasthan.

### *Gadiya Lohars*

Blacksmiths by trade, the Gadiya Lohars travel via carts drawn by donkeys known as *gadiyas*. According to legend, the tribe followed the medieval leader Maharana Pratap and sought protection of the forests after his defeat by the Mughal kings. The travel routes of the tribes are determined by the agricultural seasons, as income is derived mostly from forging farming implements. Every member of the household participates in the manufacture of steel tools, although the male head is usually the principle artisan. Traditionally, trade in bullocks also supplemented their income and from March to May the entire tribe gathered at a summer camp to renew social ties and settle outstanding disputes.<sup>33</sup> The Gadiya Lohars have Other Backward Class status in Rajasthan.

### *Nats*

The Nats were historically wandering entertainers. They are trained from childhood to be acrobats and jugglers and these skills are displayed in fairs and carnivals. Also renowned for their knowledge in herbal medicines, the elders of the tribes were, sought after for their tattooing abilities. The Nats have Scheduled Caste status in Rajasthan.

### *Bhopas*

The Bhopas are troubadours by profession. Using verse, song and dance, the Bhopas perform traditional Hindu stories such as the battles contained in the *Ramayana* and the *Mahabharata*. The Bhopas' historical knowledge is voluminous as they can recount the histories of each region that they regularly traverse. The Bhopas are classified as a Scheduled Caste in Rajasthan.

### *Kalbelias*

The Kalbelia tribe practices snake charming. As a tantric sect and followers of the guru Kanipa, their esoteric practices have fuelled popular belief that they are practitioners of voodoo and black magic. Kalbelias believe their guru was blessed with the ability to tame the serpent so for them, snake charming is a sacred calling. Members of the Kalbelia tribe are often intricately tattooed and female members wear heavy silver anklets and bracelets. These bodily ornaments are to be presented after death as gifts to the gods. In addition to their prowess with snakes,

<sup>32</sup>C.H Childers, "Banjaras," in *Pastoralists and Nomads in South Asia*, eds. Lawrence Saadia Leshnik, Gunther-Dietz Sonthierner, Otto Harrassowitz, Weisbaden, Germany: 1975.

<sup>33</sup>P.K Misra "The Gadiya Lohars: Nomadism and Economic Activities" in *Pastoralists and Nomads in South Asia*, eds. Lawrence Saadia Leshnik, Gunther-Dietz Sonthierner, Otto Harrassowitz, Weisbaden Germany: 1975 at 275.

the Kalbelias are known for their potent poisons, potions and medicines, extracted from the venom of their snakes. It should be noted that the *Wildlife Act* prohibits the capturing of snakes. Thus, the Kalbelias have been forced to practice their art in fairs and exhibitions outside the country. The tribe is classified as Scheduled Caste in Rajasthan.

### *Bawarias*

The Bawarias are hunters, trappers and trekkers. Traditionally, they supplemented their livelihoods by selling their catch in local villages. In Rajasthan alone, their population numbers 31,903.<sup>34</sup> Hindi is the dominant tongue amongst the Rajasthani Bawarias. Currently, a large majority of the population is engaged as guards in agricultural fields (*chowkidari*). During agricultural season, the Bawarias set up temporary settlement in the fields of their employers. Bawarias are classified as Scheduled Caste in Rajasthan.

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<sup>34</sup>Bahar Dutt, "The forgotten people- Bawarias of Rajasthan, Proceedings of a Public Hearing." Draft. New Delhi: August 2003.

## The Legal Framework: The Right to Land and Adequate Housing

The Government of India is obliged to respect and protect the human right to adequate housing. The human rights paradigm engenders State accountability and offers the perspective, the standards and the mechanisms to ensure that entitlements are effectively realized. This framework also ensures that the overarching themes of equality and indivisibility of rights inform the discussion of land and housing entitlements.

In the case of the Rajasthani nomads, the fight for land and housing rights must also be understood in the context of discrimination and exclusion. Caste bias and anti-nomadic sentiments profoundly affect access to land, education and employment opportunities. The systemic discrimination suffered by members of nomadic communities is a flagrant breach of human rights norms.

### The Indian Constitution

The Indian Constitution enumerates the fundamental rights and duties of the State, and protects individual liberty by guaranteeing economic, social and political justice for all. The overarching philosophy of the Constitution is promulgated in a preamble that delineates the objects the State is obliged to promote and the spirit in which the constitutional provisions should be interpreted, namely, the ideals of justice, liberty and equality.<sup>35</sup>

Although the right to property has been omitted from the set of fundamental rights protected by the Constitution, the right to adequate housing is recognized and protected as a subset of other fundamental rights.<sup>36</sup> Article 21 provides that no person be deprived of his or her life and personal liberty.<sup>37</sup> The courts have held that the right to life encompasses the right to live with human dignity. The Supreme Court affirms that living with dignity necessarily entails that the core amenities of life are readily accessible. Thus, the right to shelter is a constitutional guarantee.

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<sup>35</sup>Re Berubari Union, A. 1960 S.C. 846.

<sup>36</sup>44<sup>th</sup> Amendment Act, 1978. Because the right to property is not a fundamental right, any person deprived of property as a result of governmental policy has fewer means of redress against the government including restricted access to compensation.

<sup>37</sup>See Annex 3



The Supreme Court of India, in *Francis Coralie v. The Union Territory of Delhi*, posits:

The fundamental right to life which is the most precious human right and which forms the arc of all other human rights must be interpreted...[to] enhance the dignity of the individual and the worth of a human person...We may think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head.<sup>38</sup>

This expansive vision of the right to life and human dignity is reiterated in *Chamelli Singh and Ors. v. State of UP*:

Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and *shelter* [*emphasis added*].

The Supreme Court has held that that the right to livelihood is an integral facet of the right to life.<sup>39</sup> Transgression of the right by legislation or administrative policies is colorable State action under the Constitution. In the same vein, the Supreme Court has recognized the close nexus between the effects of eviction and livelihoods in *Olga Tellis v. Bombay Municipal Corp*:

Eviction of the petitioners from their dwellings would result in deprivation of their livelihood. The right under article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood...there is a close nexus between life and means of livelihood and as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed an integral component of life.<sup>40</sup>

Article 14 of the Constitution is a guarantee of equal protection of the laws. This is a guarantee of substantive equality, interpreted by the courts as an obligation of the State to take affirmative action in providing facilities and opportunities for those disadvantaged.<sup>41</sup> More significantly, Article 15 directly addresses the principle of equality by prohibiting discrimination on the grounds of religion, race, caste, sex or place of birth. Read together, these provisions not only prohibit the exclusion of nomads from basic needs and land rights, but also implicate State action in redressing these deprivations.

India's commitment to justice and equality on an international level is enshrined in Article 51 of the Constitution. The Supreme Court has declared that the provision enjoins the State to meet its international obligations. More particularly, the court has articulated that legislative and executive actions conform to the principles established in international covenants.<sup>42</sup>

### **International Mechanisms and Instruments**

India is a signatory to international instruments that among others, obligates the State to take steps to eradicate discrimination and other segregationist practices. In addition to these anti-discrimination instruments, the government has ratified treaties that recognize that the right to adequate housing as a fundamental human right. The act of ratification legally binds the State to implement its obligations through legislative enactments, policy decisions, judicial affirmation

<sup>38</sup>(1981) 1 SCC 608.

<sup>39</sup>*Narendra Kumar v. State of Haryana* JT (1994) 2SC 94.

<sup>40</sup>(1985) 3 SCC 545.

<sup>41</sup>*Panchayat Varga Shramaji Samudaike Sabakari Khedut Cooperative Society v. Haribhai Mevabbai* A.I.R 1996 S.C. 2578.

<sup>42</sup>*Madhu Kishwar v. State of Bihar* (1996) 5 SCC 125.

and administrative reform. Pursuant to the Limburg Principles, timely implementation of rights emanating from international covenants is imperative.<sup>43</sup>

The list of international instruments ratified by India include: *International Convention on the Elimination of all Forms of Racial Discrimination* (hereinafter ICERD), *International Covenant on Economic, Social and Cultural Rights* (hereinafter ICESCR), *International Covenant on Civil and Political Rights* (hereinafter ICCPR), *Convention for Elimination of All forms of Discrimination against Women* (hereinafter CEDAW) and the *Convention on the Rights of Child* (hereinafter CRC).

Article 7 of the *Universal Declaration on Human Rights* guarantees the right to equal protection of the law and equal protection against any discrimination.<sup>44</sup> The preamble sets forth the obligation of signatory states to effectively implement such entitlements with the objective of promoting social progress and better standards of living. Protection against discrimination is reaffirmed in Article 5 through its prohibition of inhuman or degrading treatment of people.<sup>45</sup>

The *International Convention on the Elimination of All Forms of Racial Discrimination* condemns the practice of apartheid and segregation in any form.<sup>46</sup> Article 2 articulates the State Party's pledge to undertake the appropriate measures to protect against discrimination. In this context Article 2(2) refers in particular to the realization of economic, social and cultural rights. Elaborating on the fundamental obligations laid down in Article 2, ICERD in Article 5 guarantees:

- the right of everyone, without distinction as to race or color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
- (b) The right to security of person and protection by the State against violence or bodily harm whether inflicted by government officials or by any group or institution;
- (d) (v) The right to own property alone as well as in association with others
- (e) (iii) The right to housing
- (e) (iv) The right to public health, medical care, social security and social services
- (f) The right of access to any place or service intended for use of the general public....<sup>47</sup>

General Recommendation XIX of the *Committee on the Elimination of Racial Discrimination* recognizes that racial segregation may be created by governmental actions or can occur as a social phenomenon but nonetheless obligates the State Parties to monitor such trends and work towards eradication.<sup>48</sup> Article 15(d) of the Maastricht Guidelines binds the government to regulate the behavior of third parties to prevent the violation of economic, social and cultural rights.<sup>49</sup>

Similarly, the ICCPR obligates State Parties to ensure that that fundamental rights and freedoms are not violated, irrespective of race, color, sex, birth status and religion.<sup>50</sup> Article 6 declares

<sup>43</sup>The *Limburg Principles*, UN Doc. E/CN.4/1987/17 (1987), are guidelines used to interpret the scope of obligations contained in ICESCR provisions. These principles have the status of customary law.

<sup>44</sup>*Universal Declaration of Human Rights*, G.A. res. 217(III), UN Doc. A/810, (1948) [hereinafter UDHR].

<sup>45</sup>*Ibid.*

<sup>46</sup>*International Convention on the Elimination of All Forms of Racial Discrimination*, 660 U.N.T.S. 195, entered into force 4 January 1969.

<sup>47</sup>*Ibid.* Article 5.

<sup>48</sup>Committee on the Elimination of Racial Discrimination, *General Recommendation XIX on racial discrimination and apartheid (Article 3) of the Convention*, U.N. Doc. HRI/GEN/1/Rev.4 at 147 (2000).

<sup>49</sup>Article 15, "Violations through acts of omission," states: "Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include...(d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights..."

<sup>50</sup>See Article 2, *International Covenant on Civil and Political Rights*, GA RES. 2200A (XXI), UN Doc. A/6316 (1966) entered into force 23 March 1976.

that every human being has the inherent right to life and in that view, and Article 7 prohibits inhuman or degrading treatment of individuals.

Article 25 of the UDHR sets forth the right to an adequate standard of living that includes the right to adequate housing:

25(1) everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in event of...circumstances beyond his control.

The right to adequate housing is most comprehensively addressed in the Article 11 of the ICECSR. Not only is the State obliged to recognize the right to an adequate standard of living including food, clothing and housing, the provision also requires State intervention to take the appropriate measures to ensure the effective realization of the right. The *Committee on Economic, Social and Cultural Rights* has reiterated in General Comment 4 that the right to housing is not restricted to shelter but encompasses the right to live in security, peace and dignity. The Committee also notes that realization of other rights such as the right to participate in decision-making is indispensable to the full enjoyment of the right to adequate housing.

Several international instruments address the specialized housing needs of women and children. CEDAW Article 14 ensures that “women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and sanitation.” For children, CRC Article 27.3 calls on State Parties to assist parents and guardians in providing the child with proper food, clothing and housing.

The Maastricht Guidelines make it incumbent for State Parties to ensure the progressive realization of enumerated economic, social and cultural rights, irrespective of resource scarcity and level of economic development.<sup>51</sup> These guidelines set the international norms for monitoring and adjudicating economic, social and cultural rights. Progressive realization therefore requires immediate State action, demonstrating that measurable progress and specific targets are set and satisfied.

### **The Indigenous Question- Quest for Recognition**

In recent years, much international attention has been devoted to issues affecting indigenous peoples.<sup>52</sup> Aboriginal communities have made enormous strides in ensuring that their rights are protected in international instruments. The ICERD and ICCPR both guarantee self-determination for indigenous communities and General Recommendation XXIII of the CERD Committee directs State Parties to parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories.<sup>53</sup> Limburg Principle 14 qualifies that special measures are required to protect the rights of indigenous peoples.<sup>54</sup>

Currently, there is no consensus on whether the term indigenous applies to the tribal groups of India. The Government of India has not recognized the *adivasis* as indigenous peoples of

<sup>51</sup>Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997.

<sup>52</sup>See, for example, Douglas Sanders “Indigenous People on the International Stage,” in *The Indigenous Question: Search for Identity* ed. Walter Fernandes, Indian Social Institute, New Delhi: 1993.

<sup>53</sup>The relevant articles in the ICCPR are Article 1 and Article 27. See also ICERD, Articles 2.2 and 5(c).

<sup>54</sup>See Annex 4 for the text of Article 14.

India.<sup>55</sup> Notwithstanding the political debate that surrounds the definition of the term indigenous, it is not disputed that the *adivasis* are among the earliest settlers in India.<sup>56</sup>

In light of the growing movement to garner indigenous status for India's *adivasis*, it is important to take note of the existing legal framework protecting indigenous rights. ILO 169 is the most cogent elaboration of indigenous rights.<sup>57</sup> Article 2 calls on State Parties to eliminate the socio-economic gaps between indigenous and national communities in consultation with the concerned groups and Article 8 protects customary practices and institutions from the encroachment of domestic policies. The *Sub-Commission on Prevention of Discrimination and Protection of Minorities* has tabled a *Draft Declaration on the Rights of Indigenous People*. The Declaration recognizes that indigenous peoples have been deprived of their human rights and fundamental freedoms as a result of colonization and dispossession.<sup>58</sup> The Declaration therefore emphasizes the realization of the right to self-determination as the primary means of development and strengthening cultural institutions. These legal entitlements for indigenous populations are useful reference points for *adivasis* and nomadic rights advocates in India.

### Caste Based Discrimination

Various international treaty bodies have raised concerns about the continued prevalence of caste and descent based discrimination. The *Committee on the Elimination of All Forms of Racial Discrimination* has noted that despite the passage of constitutional provisions and legal provisions in India, "widespread discrimination" continues that "points to the limited effect of these measures." It emphasized that the perpetuation of the caste system contributes to the violation of human rights in India and urged the state and national governments to adopt urgent measures to combat the continued discrimination of vulnerable groups.<sup>59</sup> In 2002 the Committee issued General Recommendation XXIX, stating that caste and descent-based discrimination are in direct violation of ICERD obligations.<sup>60</sup>

The growing international awareness about caste and descent based discrimination can partly be attributed to the advocacy efforts of the *dalit* rights activists and organizations. With input and submissions from *dalit* rights organizations, the *Sub-Commission on the Promotion and Protection of Human Rights* unanimously passed a resolution to commission an expert to prepare a working paper on discrimination based on occupation and descent, further highlighting the issue of untouchability in South Asia.<sup>61</sup>

<sup>55</sup>For more in depth discussion, see K.S. Singh & B.K. Roy Burman, "Status of the Tribals in India," *Social Change*, Vol. 23 Nos. 2 & 3 (1993).

<sup>56</sup>*Ibid.*

<sup>57</sup>General Conference of the International Labor Organization, *Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries*, (seventy-sixth session), (1991).

<sup>58</sup>*Report of the Working Group on Indigenous Populations, Draft Declaration on the Rights of Indigenous People*, (eleventh session), U.N. Doc. E/CN.4/Sub.2.1993/29/Annex I.23 (1993) [hereinafter *Declaration*].

<sup>59</sup>Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: India*. (forty ninth session), UN Doc. CERD/C/3.ADD (1996).

<sup>60</sup>Committee on the Elimination of Racial Discrimination, *General Recommendation. XXIX on Article 1, paragraph 1 of the Convention* (sixty first session), UN Doc. CERD/C/365/Rev.1 (2002). See Annex 5.

<sup>61</sup>Sub-Commission on the Promotion and Protection of Human Rights, *Resolution. 2000/4* (fifty fourth session), UN Doc. E/CN.4/Sub.2/2002/L.42 (2002).

# The Findings

## The Housing Rights Methodology

HIC-HLRN will utilize the indicators for adequate housing developed by the *Committee on Economic, Social and Cultural Rights* as a framework for the findings of our study.<sup>62</sup> General Comment 4 sets out the aspects of housing that are significant in determining the concept of adequacy. In addition to the overarching objectives of peace, dignity and security, State governments must ensure the following entitlements:

1. Legal security of tenure
2. Availability of services, materials, facilities and infrastructure
3. Affordability
4. Habitability
5. Accessibility
6. Location
7. Cultural Adequacy

It is hoped that our findings will shed light on the reality that confronts the nomadic communities today and the ineffectiveness of current government settlement policies. These findings have also guided us in making recommendations to the various parties involved and raise crucial issues for the road ahead that will necessitate further study.

### 1. Legal Security of Tenure

*UDHR 17, ICESCR 11, ICCPR 1, Maastricht 6*

Tenure can be exercised in diverse forms including lease, ownership occupation and informal settlement. The right to secure tenure protects inhabitants from forced eviction, harassment or intimidation that threaten the safety and peace that are fundamental components of adequate housing. The *Commission on Human Rights* deems forced evictions gross violations of human rights.<sup>63</sup>

<sup>62</sup>Note that testimonial evidence of atrocities often lacked specific dates. Wherever possible, HIC has provided dates through investigation of police reports.

<sup>63</sup>See Commission on Human Rights, *Resolution 1993/77*, (sixty seventh meeting), UN Doc. E/CN.4/RES/1993/77 (1993).

## Due Process and the Right to Information in the Context of Rights to Legal Security of Tenure

To date, the State of Rajasthan has not developed a formal settlement policy for nomadic communities who desire to settle permanently. Because of government inaction and non-compliance with domestic and international housing commitments, the nomads have been occupying vacant land classified as pasture land, *gochar* (village grazing grounds) and “wastelands” in State registers. Tenure is precarious because the tribes do not have title deeds to the lands they are currently occupying.

Nomadic communities continue to be denied access to information and representation or participation in village level meetings. As a result, they are excluded from land allotment decisions. The communities are not involved in the decision making processes of district collectors that allot *gochar* land for private use, as well as forest management functionaries that design forest management policies.

On the village level, public information meetings are held for the disbursement of vacant lots. Description of plots, size and location are made available to the villagers during such meetings. Although these meetings were held throughout the month of June 2002 in the town of Alwar, nomadic attendance and participation was non-existent. It was reported that nomadic communities were discouraged from attending through purposeful misinformation about venues and times of meetings by settled villagers and local officials.<sup>64</sup> This denial of the right to participate in disbursement processes violates anti-discriminatory provisions in the Constitution as well as the norms established by international law.<sup>65</sup>

The bureaucratic requirements of title deed applications further hinder the settlement process. Proof of long-term occupancy on the disputed land must be established and the request for land formally submitted to a district collector, a sub-divisional magistrate, a block officer and finally, the *sarpanch*, or village chief, who wields discretionary authority to issue or deny the request for land. The research team heard accounts of land proceedings that have been in progress for a decade.<sup>66</sup> During this process, the nomads are considered illegal occupants of the land, liable to eviction and dispossession.

More alarmingly, applicants are not informed of the progress of their applications and are routinely denied information when it is demanded. The lack of transparency in decision-making procedures and the lack of accountability in facilitating requests for title deeds breaches the constitutionally guaranteed right to information.<sup>67</sup> In short, the nomadic communities are not involved at any level of decision-making. They are not informed about crucial characteristics of the land, such as availability of water for irrigation and quality of the soil. It is reported that local officials adopt a “take it or leave it” attitude and are insensitive to the social and economic needs and concerns of the community.

<sup>64</sup>Testimony of Ratan Katyani, 8 October 2003.

<sup>65</sup>See for example, ICERD Article 5. See also, ILO Convention 169 (Article 6).

<sup>66</sup>Testimony of Dhooli Bawaria, 8 October 2003.

<sup>67</sup>The right to information has been affirmed in *L.K Koolwal v. State of Rajasthan*, AIR 1954 SC 73.

Customary laws relating to caste also hinder nomadic landholding. In the Banjara settlement of Rawal Kar Jodah, regional customary practices dictate that only members of the higher castes are entitled to own land. Thus, the eleven Banjara families have occupied 2 hectares of farmland for 4 years, pursuant to an informal purchase agreement with local landowners. Since their easement of use is not secured in contract, their entitlement to continued use could be subject to the whims of the landholders. For example, the village leader had applied for a land deed in the year 2000 but there has been no response from village land allotment authorities.<sup>68</sup>

### Individual Case Study 1

The Nimuchana settlement of Bawarias has been living in the Chillori district for more than a decade. Laxman Bawaria and his family have had numerous conflicts with hostile neighboring landowners who view the Bawarias as squatters on village land. In July 2003, villagers determined to oust his family burned Laxman's hut. Their neighbors illegally harvest the community's mustard seed crops and each year, the land used by the community for agriculture is increasingly encroached upon by the expansion of surrounding farms.

Laxman applied to the local land administration office for a title deed in the year 2000. During the researcher's visit in 2003, Laxman's application was still pending. When the research team visited the land allotment office in Bansur, the land officer, K.L Sharma, stated that Laxman's case was still under district consideration, and although he could not justify the delay he refused to formally sign the deed.

### Cases of Forced Evictions

International concern over the issue of forced eviction is underlined by the fact that it has received particular mention by various UN bodies. General Comment No. 7 of the CESCR requires that "all states refrain from forced evictions and ensure the law is enforced as against its agents or third parties who carry out evictions."<sup>69</sup> Despite these affirmations, a large gap remains between international standards and the reality confronting nomadic communities in India.

It was reported that the informal homes of nomadic tribes are often mobbed and raided by local authorities and village members.<sup>70</sup> Violent tactics of intimidation are used by village members to expel nomads from their informal settlements: stones are thrown on makeshift huts, water pumps used by the nomads are destroyed, crockery and water jugs are deliberately broken and homes are burnt. Acting in cooperation with village members, local law enforcement officials often ignore claims of harassment or coercion filed by nomadic families. First Information Reports are not completed or filed. Community members allege that police inaction stems from pervasive, prejudicial attitudes of local law enforcement authorities.<sup>71</sup>

The cases below underline the need for urgent action by state and village authorities to contain the violence and victimization caused by forced evictions. Testimony from members of nomadic

<sup>68</sup>Testimony of Sohan Pal Banjara, 9 October 2003.

<sup>69</sup>Committee on Economic, Social and Cultural Rights, *General Comment 7, The Right to Adequate Housing (Article 11(1) of the Covenant): Forced evictions* (sixteenth session), UN Doc. E/C.12/1997/4 (1997). See Annex 6.

<sup>70</sup>Testimony of Sua Bawaria, 7 October 2003.

<sup>71</sup>Testimonies of Ratan Katyani, and Dhooli Bawaria, 8 October 2003.

communities attest to the state's failure to prevent local administration and hostile villagers from ousting nomadic families from the lands they have settled on.

In the year 2000, 80 Banjara families in Vir Bhagat Singh bustee commenced construction of permanent homes. Members of the community claimed that their settlement plans were disrupted by local *Brahmin* priests planning to transform the settlement area into a parking lot. Makeshift huts were burnt and the communal property destroyed by priests determined to oust the "squatting" families from the plot. Without priority claim to the land and documented proof of tenure, the Banjara families had no means of legal redress.<sup>72</sup>

In the village of Allahpura, ten Bhopa and four Bawaria families were physically assaulted and their huts burnt, allegedly by members of a neighboring village of Mem Muslims in August 1993. The community of Mem Muslims claimed that the land was needed for a cemetery, and demanded immediate evacuation. Local police were informed of the transgressions but no action was pursued nor were First Information Reports filed to launch preliminary investigations.<sup>73</sup>

Similarly, a settlement of Banjaras in the village of Haldina was reportedly attacked in the night by hired thugs from the village in September 2002. Huts were pillaged and burnt. Women and children that were physically threatened evacuated under duress. Compelled into silence by fear of further violence, when questioned by law enforcement officials, tribe's people did not deny the story fabricated by members of the settled communities that they had burnt the huts themselves.<sup>74</sup>

### Individual Case Study 2

Sua Bawaria had settled his extended family consisting of nearly thirty adults and children in the outskirts of the village of Virat Nagar. The adults made their livelihoods as agricultural laborers and *chowkidars*, night watchmen, for village farms. Despite being gainfully employed by local landowners, relations with the villagers remained hostile, as they regarded Sua's settlement as a usurpation of village common land.

In the summer of 1999, Sua's hut was set on fire whilst the family was asleep within. The fire took the life of Sua's grandchild, then only six days old. Municipal law enforcement authorities have not launched a formal investigation and the government has not provided compensation or aid for the reconstruction of the home or replacement of destroyed possessions.

In the year 2000, Sua was arrested by the land administration officer of Virat Nagar on the charge of illegal land occupation. He was incarcerated for three months at the Kotputli prison in Jaipur. He claimed that upon arrest, he was not informed about the charge or provided legal representation. His release upon bail was only achieved after his family sought legal advice from a local NGO. His case is still pending today.

<sup>72</sup>Testimony of Ratan Katyani, 23 June 2002.

<sup>73</sup>*Ibid.*

<sup>74</sup>*Ibid.*



### Individual Case Study 3

Ram Sahai Bawaria established a home in the village of Leila Mandari in Thanagazi. Although he has applied for a title deed, the village land allotment authorities have ignored his application. The family supplements their income by guarding goats belonging to landowners in the surrounding area. In July 2003, Ram was involved in a verbal altercation when a goat under his care escaped and grazed in his neighbor's field. On 24 August 2003, a group of villagers consisting of 6 males and 4 females set fire to Ram's hut, in retribution for his perceived trespass. Ram's wife was forcibly detained in the burning hut and suffered severe burns on her legs and feet. Although a complaint was lodged in the Naranpour police station, the police have not instigated a follow up investigation. During the research team's visit, Ram's family lived in a makeshift shelter fashioned of wood stilts and thatched grass, seven meters away from their former hut which was reduced to ashen rubble. Ram estimates that he lost Rs 15,000 in the destruction of his home and moveable possessions.

Because the nomadic populations are not legal owners on the lands they have chosen to settle, their tenure is extremely vulnerable to encroachment by settled communities with competing claims to the land. Evictions carried out by members of settled communities are often not investigated and thus, the perpetrators remain unpunished. The prevalence of discriminatory attitudes in regional public institutions transgresses international human right standards.<sup>75</sup> These standards require the State to sensitize law enforcement officials to become aware that their duties include the maintenance of human rights.<sup>76</sup>

#### 2. Availability of Services, Materials and Infrastructure

UDHR 25, ICESCR 12, ICERD 5(e), ILO 168 Art. 7(2), Maastricht 14(g)

Access to health facilities, safe drinking water, heating, lighting and proper sanitation and drainage services are necessary components of adequate housing. Particularly for women and children, issues of nutrition or resources for cooking and privacy concerns must be addressed. It is the State's obligation to provide sustainable and reasonable access to basic resources.

### Water

Rajasthan is composed primarily of desert land. Because of this, water is a scarce commodity and is the paramount concern amongst the communities visited. Most settlements have access to a hand pump or bore well. This single source of water is often communal, shared by dozens of families. Water drawn from hand pumps is used for drinking, bathing, feeding animals and watering crops. Low water levels, especially in dry summer months, result in irregular water supply.

Because of the scarcity of access, there is no surplus water for the raising of animals or cultivating crops. As a result, herding communities have to travel daily to natural watering holes in order to hydrate their animals. Agricultural crops are dependent on rainwater; hence dry periods or droughts severely diminish the livelihoods of pastoral nomads. In the village of Nimuchana,

<sup>75</sup>ICERD Article 2

<sup>76</sup>See Committee on the Elimination of Racial Discrimination, *General Recommendation XIII on the training of law enforcement officials in the protection of human rights* (forty-second session), U.N. Doc. HRI\GEN\1\Rev.1 at 67 (1994).

district of Chillori, twenty-seven Banjara families share a single hand pump for water. Growth of their millet crop is dependant on rain. The yield is not sufficient to sustain the settlement's dietary needs and male members have to resort to hunting and gathering in order to feed their families. All the communities visited have voiced the urgent need for the installation of more sources of water. The State of Rajasthan charges Rs 5000 for the installation of a hand pump. Many families cannot afford the cost of installation.

Water quality and its potability is a prevailing problem. The research team found that water drawn from the communal hand pump in the Rawal Kar Jodah settlement was cloudy with mineral sediments. The community leader reported an increase in cases of water-borne illnesses such as typhoid and viral fevers. Children bore the scabs of eczema and other skin conditions due to washing in contaminated water.<sup>77</sup> Despite numerous complaints to the government, water quality is not tested before the digging of bore wells and hand pumps.

In the village of Thanaghazi, about forty Gadiya Lohar families rely on one tap for their drinking, cooking and washing needs. The nomadic community is allowed to access this water source only in the evenings, when upper caste villagers do not frequent the area. Personal hygiene is poor due to lack of water. For the women, privacy is at a premium since there are no separate bathing facilities.

In most tribes, female members of the community bear the responsibility of fetching water for their family's needs. Tribal women recounted incidents of harassment and verbal abuse from caste women who accused them of defiling water sources. Their water containers have been destroyed as an additional means of intimidation.

Access to potable water is an essential human need and a fundamental component of the right to adequate housing. General Comment 15 states that access to water is inextricably related to the right to the highest attainable standard of health as set out in article 12 of the ICESCR, as well the rights to food and adequate housing.<sup>78</sup> In contravention of international standards addressing water supply and quality, the state government has not taken adequate measures to ensure that water supply is safe, readily accessible and affordable.

## Health Facilities

Medical facilities are non-existent in the isolated nomadic settlements. Because many of the communities are located in hillside regions inaccessible by vehicles, medical care consists of traditional herbs and practices dispensed by the elders of the tribe. In the Banjara settlement of Hanuman Kah Goara, the nearest clinic is 4km away in the village of Malluthana via rocky and hilly footpaths. Incidents of malaria and typhoid are common since the community cannot afford preventative vaccinations. Although medical consultation is free in government clinics, the cost of drugs must be borne by the patient. Tribe members suffered from conjunctivitis, gaping cold sores and other skin ailments.

<sup>77</sup>Observed, 8 October 2003.

<sup>78</sup>See Committee on Economic, Social, and Cultural Rights, *General Comment 15 The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. (E/C.12/2002/11, (2002). The right to clean drinking water is affirmed in the Kyoto Protocol and guaranteed in Article 24.2(c) of the CRC. See Annex 6 for the relevant excerpt of General Comment 15.

In the Bamanwas settlement, the sick have to walk for two hours to the town of Thanaghazi to receive medical attention. Lack of sanitation and drainage systems, unsafe drinking water and malnutrition attract and conduct diseases. It was reported that caste discrimination is prevalent even in the medical community: nomadic tribes people are refused service at local hospitals or are treated with hostility and disdain.<sup>79</sup>

Women do not receive medical attention during pregnancy and post-pregnancy. Delivery of children takes place in makeshift shelters or huts, without medical supervision because hospitals are too distant. In Thanagazi, the Gadiya Lohar women undergo childbirth on wooden carts with only overhead coverings of tarps and rags. Furthermore, children are not legally registered and remain outside the protection of State welfare policies and reservation schemes.

Article 12 of the ICECSR delineates the right of every human being to enjoy the highest attainable standard of mental and physical health, mandating that State parties to ensure provision of medical services and to improve environmental surroundings to prevent diseases. In failing to undertake legislative and policy measures to ensure that nomadic communities have accessible health services, including reproductive care, and in failing to guarantee access without discrimination, the Indian government contravenes the right to an adequate standard of living as set out in Article 25 of the UDHR:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services ....

### **Electricity and Fuel**

Every settlement visited is not installed with electricity. Because of the lack of light, night travel within the settlements is kept to a minimum and children have to complete all schoolwork before dusk. Kerosene lamps are utilized as a light source but because of the cost of fuel, they are used sparingly. With ration card deductions, the cost of subsidized kerosene is Rs 25 a litre. It was reported that district governments have rejected demands for installation of electric lines, stating that the cost must be borne by the community. Some families in the Thanaghazi village also state that at the conservative estimate of Rs 115 a month per family, their unstable incomes cannot support the monthly cost of electricity.

#### **Individual Case Study 4**

The Gadiya Lohar settlement in the village of Thanagazi consists of 22 families, 12 of which have title deeds and have constructed permanent homes of brick and mud. The ten families without deeds live on the periphery of these homes in makeshift shelters of wood stilts and canopies of rags. The main road in the village of Thanagazi, lined with electrical poles and shops equipped with electricity runs five feet away from the settlement. It was reported that the request to extend electricity to the settlement was denied. The municipality's position was that installation of a single pole, even in such close proximity, costs Rs 7000. Because tenure for many dwellers remains precarious, the settlement has not been willing to invest in the installation.

<sup>79</sup> Testimonies, Nimuchana settlement, 8 October 2003.

The primary source of fuel for cooking and heating purposes is firewood and a mixture of dried leaves and agricultural waste. Although the *Indian Forest Act* prohibits the collection of forest produce, all the families surveyed risk the illegality of gathering wood to avoid the additional expenditure of purchasing fuel.

### 3. Affordability

*ICESCR 7, CEDAW 13, Maastricht 15*

The principle of affordability entails provision of housing at a reasonable cost. The attainment of basic needs should not be compromised in order to pay for housing related cost. To this end, it is incumbent upon the State to implement housing subsidies for those unable to afford adequate housing and to ensure that the cost of housing does not exceed general income levels. This responsibility includes guaranteeing the availability of natural material if it is the primary source of construction material.

Earnings per family vary seasonally, ranging from Rs 10-40 a day. Many communities struggle for food. In the Nimuchana settlement, children bore symptoms of long-term malnutrition: emaciated bodies and distended abdomens. During growing season, the settlement's diet comprises of harvested millet crop and any meat acquired from hunting. Industrialization, modern machinery and prohibitive legislation has rendered traditional livelihoods such as snake charming obsolete. Many community members resort to other means of work for sustenance. However, employment options are limited due to the high levels of illiteracy and the lack vocational training. Members of the Bawaria tribe work as agricultural guards or *chowkidars* for a weekly sack of wheat and the Bhopas find work as holy men during festivals but supplement their income by begging in larger villages.

It was reported that materials for a modest one roomed hut of mud bricks and thatch costs approximately Rs 500. A permanent single room structure of stone and iron buttresses costs Rs 30,000.<sup>80</sup> Since a large percentage of income is needed for basic living expenses, most nomadic families have difficulty raising the funds to build homes without access to government credit schemes. Bank loads are not accessible without land deeds as collateral security.

Community efforts to build huts have been stalled by the local administration charging that the nomads do not have land rights. In May 2000, the Gadiya Lohar community at Thanaghazi hired a tractor to level a stretch of barren land they had settled with the intent to begin building huts. The local land administrator did not permit the leveling of land, demanding that the community provide ownership papers. To date, the Gadiya Lohar community continues to live in makeshift tents. The chief of the Thanaghazi settlement, Kamlesh, has stated that they would invest in housing only if the government allotted title deeds.

Precarious tenure is the main hindrance to investing income on permanent housing. The communities visited expressed a unanimous desire to construct permanent homes but fear the possibility of eviction due to the lack of title deeds securing ownership. Meager incomes have

<sup>80</sup>Testimony of Shyama Suar, 9 October 2003.

not been supplemented by government housing subsidies or credit schemes. Most home construction has been financed by informal loan arrangements and pooling within the communities.

The right to social security, health and gainful employment are guaranteed in Articles 6 and 11 of the ICESCR. Sustainability of adequate housing is inextricably linked to the ability to earn a steady income. The erosion of employment opportunities for nomadic communities is neglected by the State, in violation of Article 6 of the ICESCR. In Rajasthan, no formal policy of rehabilitation or training has been implemented to assist the nomads with their livelihood options. In addition, in view of the impoverishment of the nomadic communities, federal and state governments are obliged to provide raw material for housing at accessible, government-subsidized rates.

#### **4. Accessibility**

*ICESCR GC 4, CEDAW, CRC*

Settlement plans; housing policies and structural design must be executed with particular consideration to the specialized needs of disadvantaged and historically marginalized sectors of society. Hence, women, children, the elderly, people with disabilities, must be guaranteed equal access to civil amenities such as medical services and schools.

Voicelessness and non-participation in decision-making processes is particularly acute amongst nomadic females. Customary practices and traditions not only preclude women from decision-making but also prevent women from acquiring land and property. In the Banjara village of Sajanpour, a community meeting to discuss water supply was composed only of men.<sup>81</sup> As a result of their exclusion, community development processes are insensitive to the needs of women even though they are central in the daily management of households. In many families, the sole ration card is issued in the name of the male head of household. In agrarian societies where land is the most important economic asset, denial of women's right to access and to control over land exposes the household to poverty and homelessness.<sup>82</sup> Thus, it is critical that land entitlement is extended to both nomadic men and women.<sup>83</sup>

The lack of basic facilities and the non-implementation of education and vocational training programs have alarming implications for women and children. As livelihood options narrow for the nomadic community, women in particular, have difficulties finding gainful employment. It was reported that strength intensive agricultural work is most often reserved for men. As a result, some women in the Gadiya Lohar community are resorting to beggary and in the Nat community young girls are forced into prostitution.<sup>84</sup>

Although the Supreme Court has affirmed that Article 45 of the Indian Constitution mandates free and compulsory education for children up to the age of fourteen, most nomadic children

<sup>81</sup>Community meeting, observed 8 October 2003.

<sup>82</sup>Bina Agarwal and Renee Hirschon, *Women and Property-Women as Property*, New Delhi: 1984.

<sup>83</sup>This is affirmed in CEDAW Article 14.

<sup>84</sup>Oral testimony of Ratan Katyani, 8 October 2003. *See also*, Mukherji, *supra* note 4.

are not registered at birth and therefore, are not within the supervisory ambit of state educational administrators.<sup>85</sup> None of the children attend schools in the Lilomedha, Nimuchana and Rawal Kar Jodah settlements. Children from a settlement of Gadiya Lohars in Thanaghazi, attend a non-formal school facilitated by a local NGO. Because the school is not subsidized by government funding, the facilities are spartan. The “classroom” consists of an unsheltered cleared space on the edge of the settlement, devoid of chairs and tables with a makeshift board for teaching purposes. The lack of facilities for learning, as well as government inaction with regards to monitoring attendance of children, perpetuates a downward socio-economic spiral. Untrained, illiterate and unqualified, nomadic children cannot be integrated into mainstream job opportunities thus continuing the cycle of destitution.

The *Commission on Human Rights* has recognized that women are particularly affected by poor housing conditions. The Commission enjoins State parties to improve living conditions, in consultation with affected women, and to create opportunities for women to acquire training and education to realize their housing rights.<sup>86</sup> Thus, it is insufficient that *de jure* rights exist to protect women against discrimination or deprivation but the government must ensure that these rights are translated into *de facto* means of control and participation.

Implementation of comprehensive national plans of action to combat malnutrition, homelessness and illiteracy amongst children is dependant on timely birth registration. The *Committee on the Rights of the Child* has enjoined the Indian government to improve registration measures in rural areas.<sup>87</sup> Expressing concerns that incidents of forced relocation and displacement in India adversely affect child welfare, including lack of access to health care and education, the Committee has emphasized the State’s responsibility to facilitate family rehabilitation programs and ensure the provision of basic amenities.<sup>88</sup>

### 5. Habitability

*UDHR 12, ICESR 12, Maastricht 9*

Housing standards must meet minimum standards of habitability and safety. International standards for adequate housing direct the competent authorities to ensure reasonable levels of structural safety, hygiene and comfort. General Comment 4 also dictates that structural design must protect from disease vectors, elements of nature and provide sufficient space for personal development.

The environmental conditions of every settlement visited are unfit for human habitation. Living spaces are shared with animals. People defecate in the open because there are no toilet facilities. Common areas where communal cooking takes place and where children play are strewn with animal and human excreta. In Nimuchana, animal droppings were found in the huts around

<sup>85</sup>*M.C Mehta vs. State of Tamil Nadu*, AIR 1996.

<sup>86</sup>Commission on Human Rights, *Resolution on women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing 2003/22* (fifty sixth meeting) UN Doc. E/CN.4/RES/2003/22 (2003).

<sup>87</sup>Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: India*, (twenty third session), CRC/C/15/Add.115 (2000). This right is also delineated in ICCPR Article 24(2).

<sup>88</sup>*Ibid.*

the narrow cots of rope and wood. The sites where hand pumps are located are filthy with mud and accumulated dirt since they also serve as bathing and laundry facilities.

The lack of drainage is also a cause for concern. During monsoon season, many settlements are flooded with sludge-filled water. These become breeding places for malaria carrying mosquitoes. Low lying areas become cesspools of mud and effluent waste. In Thanaghazi, because the Gadiya Lohar settlement is located within the perimeter of the village watering hole, floodwaters annually submerge the makeshift shelters.

Most families live in single room huts constructed of dried mud, thatch, and branches averaging 3m by 4m in size. The single room is a multi-purpose site for the extended family and is used for cooking, sleeping, and as a storage room for fodder. Since space is limited, only eight to ten people can sleep within the hut and remaining family members sleep outdoors under canvas tents. The tent-like structures are poor protection against wind, rain and cold. In the Thanaghazi settlement, twelve families live in makeshift shelters of wood stilts and overhead canopies of canvas and cloth, unprotected on all four sides from the elements. For women, the closed living conditions renders privacy for bathing and changing impossible.

The abysmal living conditions that prevail in the nomadic settlements are inconsistent with the minimum standard of habitability that is implicit in the realization of the constitutionally enshrined right to life. Recognizing the legal right to habitability, the Supreme Court of India has reiterated that a “decent environment<sup>89</sup> reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man.”<sup>89</sup>

## **6. Location**

### *ICESCR 6 & 12*

Because adequate housing encompasses access to basic amenities and public services, location is a crucial component of the right. States must ensure that settlements are in close proximity to schools, employment opportunities, medical services and other important civic facilities. Particular consideration should be paid to settlements in rural areas, where the cost of commuting to work can be prohibitively excessive. Homes should also be a safe distance away from sources of pollutants and other deleterious substances that are threats to health.

With the exception of the Gadiya Lohar settlement in Thanaghazi and the Bhopa settlement in Allahpura, all the settlements visited were located in remote areas, inaccessible by vehicles, on the periphery of settled village communities. Many tribes have settled in these remote sites by necessity since caste customs preclude sharing space with higher caste communities. Hanuman Kah Goara and Rawal Kar Jodah are located 4-5 km from the nearest paved road. For settlement sites situated between private farmlands, community road construction efforts are unfeasible before local landowners grant permission.

Inaccessibility is exacerbated during monsoon, as slush and mud restrict the mobility of community members and severely curtail excursions to the village markets for amenities or public

<sup>89</sup>*Shanti Star Builders vs. Naryan Khimalal Totame & Ors*, JT 1990 (1) S.C 106, Civil Appeal No. 2598 of 1989.

distribution shops for rations. Distance is a contributing factor to the low levels of school attendance among nomadic children. For example, the commute from the Leilomandar settlement to the closest paved road where school buses can operate is treacherously winds through rocky footpaths.

Poor road connection and distance from the villages also hinder access to employment opportunities. Often, community members are limited to agricultural labor or herding as sources of livelihood. In Hanuman Kah Goara, several community members travel 3 km to the closest village daily on foot in order to supplement income derived from agriculture. Limited mobility directly affects livelihoods. Since it is unsafe for women to travel alone to work on isolated footpaths, income-producing capability of households are drastically reduced

Freedom of movement is a fundamental right, articulated in Article 13 of the UDHR. Substantive measures to ensure the full realization of the right include the provision of road connectivity and affordable means of transportation. The isolation of nomadic settlements is the result of the state government's failure to provide infrastructure such as roads and bridges. As a consequence of their isolation, nomadic communities are faced with the diminishment of their livelihoods and limited access to education and healthcare.

### **7. Cultural Appropriateness**

*ICESCR 11 & 15, ICERD 1, ICCPR 15, ILO 169 Art. 2*

The home environment defines our cultural identity. Hence, the space for personal development, and the room to express our uniqueness is an important dimension of housing. Homes should be configured to suit the cultural needs of their inhabitants and construction materials should meet use needs of the community. This aspect of the right to adequate housing entails that diversity be preserved and cultural or religious preferences respected.

Each nomadic tribe has distinctive customs and livelihoods, hence housing and property needs vary accordingly. As pastoralists and agriculturalists, the Bawarias and Banjaras need fertile, arable land for agriculture and the grazing of animals. The Gadiya Lohars, Nats, Bhopas and Kalbelias, with occupations ranging from blacksmithing to entertainment, are dependent on access to consumers in urban markets. For the latter group of tribes, some of whom can no longer practice their traditional occupations, close proximity to urban areas creates employment and vocational rehabilitation options.

Among most of the tribes visited, the practice of living together with members of extended family was common. Family size, per residence, ranged from 8 to 23 adults and children. With the exception of the Gadiya Lohar settlements, most families kept their livestock in their homes. Overcrowding has led to the absence of privacy.

Currently, questions of cultural adequacy are premature because reliable data on the long term needs and lifestyles of these communities has never been collected. To date, nomadic communities of Rajasthan lack the citizenship rights to vote, register in schools and gain access to government sponsored amenities. Although they are constitutionally defined as citizens, the



numerous deprivations they suffer reflect a contrasting reality. Many nomadic communities have not been included in India's National Population Census, the primary tool used to monitor and assess the socio-economic conditions in the country. Further in-depth study is necessary to understand the needs of these communities and to adapt the context of adequate housing to their particular lifestyles.

Cultural education must also be facilitated on a micro level. Absence of information about social relations and dynamics within nomadic communities has led to uninformed policy making. More research and human rights education should be conducted to identify and prevent the human rights violations within the community. Potential areas of study include inter-*jati* discrimination, prevalence of domestic violence and incest and women's role within society.

# **Observations and Recommendations: The Road Ahead**

## **General Observations**

1. Many of the challenges that confront nomadic communities today can be attributed to continued caste based discrimination and alienation from settled communities.
2. The combination of modern technology and legislation aimed at eco-conservation has caused the diminishment of traditional livelihoods, leading to widespread impoverishment. Regional and national governments have not taken measures to address the problem of narrowing livelihoods or provided support for these communities. As a result:
  - Families are denied their rights to adequate housing.
  - Communities fall further into the cycle of deprivation.
  - Historic patterns of marginalization and exclusion are repeated.
3. Denial of the right to housing and land has adverse implications on other aspects of life. For example, without having a permanent address, children cannot be registered in schools and communities lose their political voice because they are not included on voter lists.
4. Lack of information and knowledge about the lifestyles, needs, customs and traditions of nomadic communities contribute their marginalization.

## **Observations Regarding Land Entitlements and the Right to Adequate Housing**

1. Many nomadic communities have expressed the desire to pursue sedentary lifestyles. Often, settlement efforts are hindered by public antipathy towards nomadic communities.
  - Government housing policies have not addressed the particular obstacles that nomadic communities face regarding settlement such as the existence of caste hostility.
  - Land allotment processes are carried out on a municipal level and often reflect the local caste segregationist attitudes. Applications for title deeds filed by nomadic families are not processed, reportedly due to pressure exerted by members of settled communities on local land allotment authorities.

2. In many instances, nomadic settlements have been destroyed and the inhabitants, forcibly evicted by members of non-nomadic communities.
  - It has been reported that caste bias extends to local law enforcement authorities. As a result, civil atrocities committed against nomadic communities, including incidents of forced evictions and intimidation, are not pursued.
  - In many cases, First Information Reports filed against perpetrators are not been followed through with formal investigations.
3. Access to adequate accommodation is the immediate concern amongst many nomadic tribes. Typically, housing and living conditions in the settlements are inhabitable:
  - Civic amenities such as piped water and electricity are non-existent. One hand pump is commonly installed for each settlement and overuse has affected the quality of water pressure.
  - Types of shelter vary according to the lifestyles of the tribes, ranging from make- shift tents to thatched huts. However, most shelters do not provide adequate protection to the elements.
  - Conditions within the settlements are squalid due to lack of sanitation facilities.
  - Access to health care, schools and public distribution shops is severely limited by poor road connections.
4. Nomadic communities are often denied their rights to due process, information and rights to participate when dealing with district authorities.
  - Tribes are not informed about community meetings where land allotment is planned and discussed.
  - District land allotment authorities allegedly refuse to provide information when nomadic tribe members inquire into the status of their title deed applications.
  - Contrary to constitutional guarantees, customary (caste) laws bar nomadic families from ownership of land in some villages. For these arrangements, a percentage of income derived from the harvest is taxed for rent.

### **Observations Regarding the Denial of Human Rights**

1. A vast majority of nomadic communities subsist below the poverty line but ration cards are not distributed in the settlements to facilitate access to more affordable food and fuel.
2. The Forestry Act and Wildlife Conservation Act continue to deny customary rights of hunting and foraging, foreclosing significant livelihood options.
3. Incidents of harassment, intimidation or violence due to caste hostility are under-reported because law enforcement authorities have exhibited caste based bias.

4. Law enforcement authorities commonly raid and search settlements without warrants under the guise of nuisance control or crime prevention.
5. Inadequate access to schools contributes to the high illiteracy rates amongst the nomadic communities. Many families are unable to register their children in schools without permanent addresses or identity cards. Often, children are subjected to harassment in the village schools.

## Recommendations

### To the Government of India:

1. Establish constitutional safeguards for de-notified tribes that have been excluded from constitutional schedules. Recognize that these tribes face a specific form of marginalization due to the stigma caused by enactment of the *Criminal Tribes Act*.
2. In the development of legislation and policies to protect the rights of nomadic communities, ensure compliance with India's obligations under the international human rights instruments, in particular its obligations to protect these communities from all forms of discrimination.<sup>90</sup>
3. Guarantee the meaningful participation of nomadic communities in all levels of decision making by initiating dialogue with the communities and reserving positions for them in the government.
4. Drafting of a national habitation policy for nomadic communities that seek to settle, with the caveat that settlement policies can only be implemented with the consent and consultation of the communities. Drafting should take place in consultation with, inter alia, the nomadic communities, civil society organizations, ecologists and economists.
5. Provisions should be made to ensure women's right to property. A system of subsidized loans and grants or cooperative schemes should be established to ensure that land and adequate housing are accessible and affordable.
6. Nomadic communities must be included in the National Census. Organized and in-depth social- economic studies have to be conducted to forecast the potential problems communities may face in their adaptation to sedentary life.
7. Recognize and respect the citizenship rights of nomadic communities. The Census and Election Commissions should work concurrently to ensure that voter identity and ration cards are issued and distributed in the settlements. Regularized birth registration should be enforced.
8. The *Indian Forest Act* and the *Wildlife Conservation Act* should be amended to include a provision that enjoins prior consultation with communities affected by conservation measures.

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<sup>90</sup>In relation to the state obligations arising out of international commitments on the right to adequate housing and non-discrimination see the draft guidelines prepared by the Special Rapporteur on Adequate Housing in his 2002 report to the UN Commission on Human Rights: E/CN.4/2002/59. See Annex 8 for relevant excerpts.

9. Initiate livelihood training in cooperation with the community that is designed to address their particular needs.
10. Facilitate access to education, including more vigilant monitoring of the quality of instruction in informal schools.
11. Promote public awareness and re-education by advocating against caste segregation.
12. Establish halting sites for nomadic communities who maintain the traditional nomadic or semi-nomadic lifestyle. This will enable families to provide addresses when registering children in school or applying for social benefits.
13. Implement the recommendations of the National Biodiversity Action Plan. This includes giving effect to co-management policies and recognition of customary rights of access and use of natural resources.

#### **To the Government of the State of Rajasthan:**

1. Amend the *Land Revenue Act 1956* to lower entitlement criteria for nomadic communities.
2. Repeal the *Habitual Offenders Act* as recommended by the *National Human Rights Commission* in February 2000.
3. Monitor land allotment processes on the district level to ensure transparency and accountability.
4. All records should be computerized to ensure easy access to land records, information on title deed applications and information on land availability.

Timely and reasonable explanations in writing should be provided for any delays in the application process for title deeds.

5. Training programs should be carried out to sensitize law enforcement authorities, state and local authorities, civil society and the general public about nomadic issues. A zero tolerance policy for the use of excessive or unjustified force must be institutionalized.
6. Forcible evictions carried out by members of settled communities must be dealt with swiftly, to the full extent of the law.
7. An organized monitoring system should be implemented to ensure that the living conditions in nomadic settlements are adequate and that families are accorded access to electricity and water.

#### **To NGOs and CBOs:**

1. NGOs and CBOs should collaborate their efforts in a nation wide and international campaign to advocate and raise public awareness about the issues of land entitlements for nomadic communities. A national alliance should be established, bringing together NGOs working for nomadic rights, in order to design a coordinated strategy to place the plight of nomadic communities in the forefront.

2. More human rights education should be conducted within communities.
3. NGOs should utilize international human rights instruments and mechanisms to strengthen the arguments for land entitlement and to ensure more vigilant monitoring of government implementation of international law obligations.
4. Funding and technical expertise should be provided to local CBOs engaged in livelihood training and adaptation programs for communities that wish to settle.
5. Strengthen alliances with Roma lobby groups in Europe in order to exchange and learn from their experiences in national and international advocacy as well as benefit from their networks.
6. Explore means to advocate and raise awareness about nomadic issues on the international agenda in the way that indigenous and dalit rights groups have done in recent years.

**Annex 1**

*Wild Life (Protection) Act, 1972*

**CHAPTER III**

**HUNTING OF WILD ANIMALS**

4. Prohibition of hunting — No person shall hunt any wild animal specified in Schedules I, II, III, and except as provided under section 11 and section 12.

11. Hunting of wild animals to be permitted in certain cases.— (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV,—

- (a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause such animal to be hunted;
- (b) the Chief Wild Life Warden or the authorized officer may, if he is satisfied that any wild animal specified in Schedule II, Schedule III, or Schedule IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause such animal to be hunted.
- (c) The killing or wounding in good faith of any wild animal in defense of oneself or of any other person shall not be an offence:
- (d) Provided that nothing in this sub-section shall exonerate any person who, when such defense becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made there under
- (e) Any Wild animal killed or wounded in defense of any person shall be Government property.

12. Grant of permit for special purposes. — Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Chief Wild Life Warden, to grant a permit, by an order in writing stating the reasons therefore, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt subject to such conditions as may be specified therein, any wild animal specified I such permit, for the purpose of, —

- (a) education;
- (b) scientific research;
- (c) scientific management.

**CHAPTER III A**

**PROTECTION OF SPECIFIED PLANTS**

17A. Prohibition of picking, uprooting, etc. of specified plant—Save as otherwise provided in this Chapter, no person shall —

Willfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified, by notification, by the Central Government.

## **Annex 2**

### *Indian Forest Act, 1927*

26. Acts prohibited in such forests,—(1) Any person who—
- (a) makes any fresh clearing prohibited by section 5, or
  - (b) sets fire to a reserved forest, or in contravention of any rules made by the state Government in this behalf, kindles any fire, or leaves any fire burning, in such Manner as to endanger such a forest;  
Or who, in a reserved forest—
  - (c) keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;
  - (d) trespasses or pastures cattle, or permits cattle to trespass;
  - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
  - (f) fells, girdles, loops, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;
  - (g) quarries stone, burns lime or charcoal, subjects to any manufacturing process, or removes, any forest-produce;
  - (h) clears or breaks up any land for cultivation or any other purpose;
  - (i) in contravention of any rules made in this behalf by the state Government hunts, shoots, fishes, poisons water or sets traps or snares; or
  - (j) in any area in which the Elephants preservation Act.1879 (6 of 1879), is not in force, kills or catches elephants in contravention of any rules so made,
  - (k) shall be punishable with imprisonment for a term, which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid.
- (2) Nothing in this section shall be deemed to prohibit—
- (a) any act done by permission in writing of the forest officer, or under any rule made by the state Government; or
  - (b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by graft or contract in writing made by or on behalf of the Government under section 23.
- (3) Whenever fire is caused willfully or by gross negligence in a reserved forest, the state Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as it thinks fit.



### **Annex 3**

#### *Constitution of India*

21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **Annex 4**

#### *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc E/CN.4/1987/17*

14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living, of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities

#### *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*

15. Violations of economic, social, and cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights.

### **Annex 5**

#### *CERD General Recommendation XXIX on Descent Based Discrimination*

The Committee on the Elimination of Racial Discrimination,

Confirming the consistent view of the committee that the term ‘descent’ in Article 1, paragraph 1 the Convention does not solely refer to race and has a meaning and application which complements the other prohibited grounds of discrimination.

Strongly reaffirming that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status, which nullify or impair their equal enjoyment of human rights;

Strongly condemning descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention;

#### **Measures of a General Nature**

To adopt special measures in favor of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education.

To establish statutory mechanisms, through the strengthening of existing institutions or the creation of specialized institutions, to promote respect for the equal human rights of members of descent-based communities.

To educate the general public on the importance of affirmative action programmes to address the situation of victims of descent-based discrimination.

## **Annex 6**

*CESCR General Comment 7, the right to adequate housing (Art.11 (1) of the ICESCR): forced evictions.*

1. In its General Comment No.4 (1991), the committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of states parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.
2. The International community has long recognized that the issue of forced evictions is a serious one. In 1976 the Vancouver Declaration on Human Settlements noted that “major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made” In the 1988 Global Strategy for shelter to the Year 2000, the General Assembly recognized the “fundamental obligation (of Governments) to protect and improve houses and neighborhoods, rather than damage or destroy them” Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land” In the Habitat Agenda committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are ensuring, as appropriate, that alternative suitable solutions are provided” The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights” However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.
3. The use of the term “Forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection to the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions” primarily since all suggested alternatives also suffer from many such defects.
4. The term “forced evictions” as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection. The prohibition on forced evictions

does not, however, apply to evictions carried out by in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.

5. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelation and interdependency, which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.
6. In essence, the obligations of states parties to the Covenant in relation to forced evictions are based on Article 11 (1), read in conjunction with other relevant provisions. In particular, Article 2 (1) obliges states to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2 (1) to progressive achievement based on the availability of resources will rarely be relevant. 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 (as defined in para. 3 above). Moreover this approach is reinforced by Article 17 (1) of the international Covenant on Civil and Political Rights which Complements the right not to be forcefully evicted without adequate protection. That provision recognizes, inter alia, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is noted that the State’s obligation to ensure respect for that right is not qualified by consideration relating to its available resources.

## **Annex 7**

### *CESCR General Comment 15: The right to water (arts. 11 and 12 of the ICESCR)*

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic requirements.
3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including,” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity

## Annex 8

*UN Special Rapporteur on adequate housing: Draft Guidelines for States and other parties on The Right to Adequate Housing and Discrimination*<sup>91</sup>

- 46....(a) Enact or strengthen legislative measures that prohibit racial discrimination in all areas of the public and private sectors, including housing, planning and land policies and provision of building materials, services and housing finance;
- (b) Ensure that policies, programmes, and budgetary and financial allocations are carried out in good faith to promote equal access to civic services essential to the realization of the right to adequate housing - including potable water, electricity and sanitation-repeal policies and programmes that promote discriminatory access;
- (c) Guarantee access to judicial remedies for violations of the right, such as forced evictions, deliberate denial of civic services, including reparations for damages suffered, in accordance with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) Develop national institutions with adequate resources and mandates to monitor legislative, judicial and administrative services, including to receive complaints, and the capacity and authority to undertake follow-up action;
- (e) Undertake affirmative action to diminish, eliminate and compensate for conditions that cause or help to perpetuate discrimination in the realization and retention of the right to adequate housing;
- (f) Eliminate barriers to the enjoyment of the right to adequate housing that are disproportionately faced by ethnic and racial minorities and indigenous peoples living in life threatening and health-threatening housing conditions; special attention needs to be given to particularly vulnerable groups, i.e. persons affected by HIV/AIDS, so that they do not suffer from discrimination in housing;
- (j) Address the multiple discrimination facing minority, indigenous and distinctly low-income communities the habitability of whose housing is made hazardous by the environmental degradation of the areas where they live, often adjacent to an environmentally degraded workplace;
- (l) Provide domestic remedies for violations of the right to adequate housing, including facilities, training for legal practitioners, regulations and procedures, policy guidance, efficient administration of justice, equal court access and public education towards improved prosecution, litigation and other forms of dispute resolution with judicial effect;
- (m) Strengthen the efforts to monitor the living conditions of marginalized racial and ethnic groups, particularly with regard to fundamental economic, social and cultural indicators, including housing, and efficiently collect and disaggregate data according to different criteria such as gender, age, ethnicity, etc.;

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<sup>91</sup>Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, to the UN Commission on Human Rights (58th Session), U.N. Doc E/CN.4/2002/59. ([www.unhcr.org/housing](http://www.unhcr.org/housing))

## Glossary of Terms

*Adivasis*: Tribal Communities

*Below Poverty Line*: The poverty line is the average cost consumption for caloric norms to be met. The norms were 2400 calories per capita per day for rural areas, and 2100 calories for urban areas. These calorie norms have been expressed in monetary terms as Rs. 49.09 and Rs. 56.64 per capita per month for rural and urban areas respectively at 1973-74 prices.<sup>92</sup>

*Brahmin*: The priestly caste in classical four-tier Hindu caste system.

*Busti*: Settlement, cluster of houses

*Chowkidari*: agricultural guard who protects crops from poachers and wild animals

*Dalits*: Also referred to as untouchables or *Harijans*. People traditionally outside of the Hindu caste system and therefore considered impure.

*First Information Report*: First report filed at a police station when lodging a complaint.

*Gadiya*: Donkey

*Ghumantoo*: Nomadic

*Gocher*: Village grazing grounds

*Jati*: Endogamous community or caste

*Non-pastoral nomads*: Non-pastoral nomads rely on supplying specialized goods and services for their livelihoods.

*Panchayat*: Village council

*Patta*: Title deeds to land

*Pastoral nomads*: Nomadic communities whose livelihood is largely based on the rearing of domestic animals.

*Sarpanch*: Village head

*Tehsildar*: District land administrator

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<sup>92</sup>First determined by the *Task Force on the 'Projections of Minimum Needs and Effective Consumption Demands'*, constituted by the Planning Commission, Government of India, in 1979 under the chairmanship of Dr. Y.K. Alagh, Chairman, Advisor (PP) Planning Commission, New Delhi

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<sup>1</sup>In collaboration with Human Rights Monitoring Group (HURIMOG)

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<sup>3</sup>Mission conducted at the request of Citizen's Initiative, Ahmedabad

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<sup>4</sup>Adalah, the Legal Center for Arab Minority Rights in Israel; Association of Forty (Israel); Badil Resource Center for Palestinian Residence and Refugee Rights (Bethlehem); Boston University Civil Litigation Program (USA); LAW Society for the Protection of Human Rights and the Environment (Jerusalem); Palestinian Center for Human Rights (Gaza); World Organization against Torture (Geneva, Switzerland)

<sup>5</sup>Defence for Children International (Palestine); LAW Society for the Protection of Human Rights (Jerusalem) under the State of Israel's Al Mezan Center for Human Rights

<sup>6</sup>National Forum for Forest People and Forest Workers, Muktidhara, Youth for Unity and Voluntary Action, Kalpavriksh, Sajha Manch, Citizens Initiative, Save Narmada Campaign, and National Campaign for Dalit Human Rights



Working Paper

# **CONFRONTING DISCRIMINATION**

Nomadic Communities  
in Rajasthan  
and their  
Human Rights to Land and Adequate Housing



Housing and Land Rights Network  
HABITAT INTERNATIONAL COALITION



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*Confronting Discrimination: Nomadic Communities in Rajasthan and their Human Rights to Land and Adequate Housing*

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