



UNEARTHING ACCOUNTABILITY

JCB'S ROLE AND RESPONSIBILITY IN BULLDOZER INJUSTICE
IN INDIA

RESEARCH
BRIEFING

AMNESTY
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We are witnessing weaponization of laws and agencies. In that regard, JCB is also a weapon at the hands of the government.”

Asshar Warsi, a lawyer representing victims of demolitions in Madhya Pradesh, interview in person, 22 May 2023, Indore, Madhya Pradesh.

*Image: NurPhoto/Contributor via
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1. PURPOSE AND METHODOLOGY

This briefing is designed to put JCB¹ and JCB India² on notice of the misuse of their machines in punitive demolitions of Muslim people's properties, by several state authorities in India.

Amnesty International documented the targeted demolition of at least 128 properties, including Muslim homes, businesses and places of worship, between April and June 2022, in the Bharatiya Janata Party (BJP)-ruled states of Assam, Gujarat, Madhya Pradesh, and Uttar Pradesh, and the Aam Aadmi Party (AAP)-governed state of Delhi. Of these, Amnesty International investigated 63 demolitions across the five states, conducting interviews, site visits and open-source investigations. The demolitions adversely impacted at least 617 people, largely Muslims, including men, women, and children, either rendering them homeless or depriving them of their livelihoods.

Amnesty International further analysed the human rights responsibilities of JCB and JCB India and developed its recommendations for the issues identified. The findings of this research complement Amnesty International's research on unlawful and punitive demolitions and targeting Muslims by the Indian authorities.³

In April 2023, Amnesty International's Crisis Evidence Lab and Digital Verification Corps used open-source research techniques to obtain and verify 78 videos and photographs of demolitions. The Lab reviewed the date and location of 78 videos and photographs to confirm their authenticity. Of the 78 videos and photographs, 69 were sourced from social media platforms such as Facebook and X (formerly Twitter) and nine were sourced from victims of demolitions. The verification methodology included analysis of: the origin of the content; the source; the time/date the event depicted occurred; the location where the content was captured; and any corroborating evidence that supported what was depicted. In verifying the location of each case in the digital mapping, many incidents could be precisely geolocated by comparing information from the audiovisual evidence gathered against satellite and other street-level imagery on platforms such as Google Earth and Mapillary. In cases where precise geolocation was not possible, Amnesty International relied on corroborating evidence from the victims of the demolitions and community leaders to confirm where an event took place.

For many years, heavy machinery, including JCB-branded heavy machinery, has been used in situations where human rights violations have been committed.⁴ In 2021, Amnesty International carried out a detailed investigation and published a report on the use of JCB machinery to commit human rights violations in the Occupied Palestinian Territories (OPT).⁵ Despite specific recommendations by Amnesty International and the UN Office of the High Commissioner on Human Rights (OHCHR), JCB has not responded effectively to the call to identify and address the human rights impacts of the use of its products in OPT by the time of publication of this briefing.⁶ JCB machinery is also being used to commit human rights violations in India.

To understand whether the JCB machines used for demolishing properties were owned or rented by the state authorities, Amnesty International filed 10 Right to Information applications to the district heads, police heads and Municipal Corporations of all the cities and towns mentioned above (see Annexure 1). However, at the date of publication of this briefing, the organization had only received responses from two authorities.

Amnesty International also wrote two letters each to JCB and JCB India dated 27 July 2023 and 22 December 2023. The first letter informed the companies about the Indian authorities' use of JCB machines to carry out forced evictions and punitive demolitions of largely Muslim owned and

¹ JCB is the brand and trading name used by J.C. Bamford Excavators Limited, a UK-based company specializing in earthmoving, construction, agriculture, and demolition equipment.

² JCB India Limited (JCB India) is a fully owned subsidiary of J.C. Bamford Excavators Limited, UK.

³ Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (Index: ASA 20/7613/2024), 7 February 2024.

⁴ Amnesty International, *JCB Off Track: Evading Responsibility for Human Rights Violations Committed with JCB Machines in the Occupied Palestinian Territories* (Index: MDE 15/4985/2021), 18 November 2021, <https://www.amnesty.org/en/documents/MDE15/4985/2021/en/>

⁵ Amnesty International, *JCB Off Track: Evading Responsibility for Human Rights Violations Committed with JCB Machines in the Occupied Palestinian Territories* (previously cited).

⁶ Pursuant to the decision of UK National Contact Point in the case related to the misuse of JCB machinery in demolishing properties in OPT, JCB formulated a human rights policy which is available at: <https://www.jcb.com/dfsmedia/261086efe15a46f5afb95d093ef038ea/56088-source>

occupied homes in five states and sought their response. The second letter shared the detailed findings of this briefing and gave JCB and JCB India an opportunity to respond. The responses of Schillings International LLP (hereinafter “Schillings”), a legal firm acting on behalf of JCB, dated 1 September 2023 and 15 January 2024 respectively, are analysed in this briefing and reflected in the findings as appropriate.

2. INTRODUCTION

Popularly known as “bulldozer justice”, punitive demolitions have become a de facto state policy for many Indian states. This technique has been hailed and celebrated by political leaders and supporters of the ruling BJP in India.⁷ Initiated often under the guise of remedying illegal and unauthorized construction, Amnesty International’s research demonstrates that the demolitions are carried out without following any or adequate due process.⁸ The state justifies these demolitions as “routine action”⁹ against those allegedly running businesses out of shops built illegally, or people living in homes allegedly built without appropriate permissions, by terming these constructions as “encroachments”. However, this rationalization sits in contrast to the reality of the country where the implementation of building laws is fraught with a lack of (or non-uniform) enforcement, which has resulted in a lot of construction taking place without the requisite permissions. Although all states in India have municipal and land regulation laws – which often fall below international human rights standards – the state authorities failed to follow even the exiguous procedures laid down in the domestic laws while carrying out these demolitions.¹⁰

Amnesty International has also found that the use of demolitions by the Indian national and state governments is a form of collective and arbitrary punishment specifically targeted to deter and retaliate against marginalized groups, in particular Muslims, after episodes of communal violence and protests.¹¹

DEMOLITIONS BETWEEN APRIL AND JUNE 2022

The Bharatiya Janata Party (BJP)-governed states of Assam, Gujarat, Madhya Pradesh, and Uttar Pradesh, and the Aam Aadmi Party (AAP)-governed state of Delhi were the epicentre of 128 punitive demolitions between April and June 2022. Amnesty International investigated the punitive demolitions of 63 properties in these states including homes, shops and places of worship largely belonging to Muslims.¹²

Amnesty International found that these demolitions were carried out in predominantly Muslim communities. The communities most impacted by demolitions were those that had recently borne the greatest proportion of communal violence between Hindus and Muslims. This communal violence was a result of provocation by Hindu groups during Ramzan – a holy month of fasting before Eid-UI-Fitr between April and May 2022. Other communities most impacted were those that had been the location of protests by Muslims. These protests called for accountability for the custodial death of a Bengali Muslim fisherman and for discriminatory remarks made against Muslims by ruling BJP political leaders. Amnesty International believes this selective targeting of Muslims was punitive retaliation for the alleged involvement of some Muslims in protesting against discriminatory laws and practices enforced by the Indian state.

Amnesty International has previously documented the excessive use of force on protesters during these protests and communal violence.¹³ While in Assam, Madhya Pradesh and Uttar Pradesh, the demolitions were carried out a day after the violence; in Delhi and Gujarat the demolitions began five

⁷ Amnesty International, “India: Authorities must stop apparent unlawful demolitions of largely Muslim-owned property”, 14 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/india-authorities-must-stop-apparent-unlawful-demolitions-of-largely-muslim-owned-property/>

⁸ Amnesty International, “India: Authorities must stop apparent unlawful demolitions of largely Muslim-owned property” (previously cited); See in particular the section on Collective Punishment.

⁹ Ritesh K Srivastava, “Demolitions in UP: Yogi govt responds strongly to Jamiat Ulama-I-Hind’s plea, says THIS in SC”, Zee News, 22 June 2022, <https://zeenews.india.com/uttar-pradesh/demolitions-in-up-yogi-govt-responds-strongly-to-jamiat-ulama-i-hinds-plea-says-this-in-sc-2476563.html>

¹⁰ Assam Land Revenue Regulation 1886, Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Madhya Pradesh Land Revenue Code 1959, Madhya Pradesh Municipal Corporation Act 1956, Madhya Pradesh Bhumii Vikas Rules 1984, Gujarat Land Revenue Code 1879, Delhi Municipal Corporation Act 1957, New Delhi Municipal Act 1994, Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme 2019 and Uttar Pradesh Urban Planning and Development Act, 1973; Refer to section on Forced Evictions

¹¹ Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (previously cited).

¹² Rishika Sahgal, “Demolitions in Muslim neighbourhood in Delhi are unconstitutional”, Oxford Human Rights Hub, 18 May 2022, <https://ohrh.law.ox.ac.uk/demolitions-in-muslim-neighborhood-in-delhi-are-unconstitutional/>

¹³ Amnesty International, “India: Excessive use of force, arbitrary detention and punitive measures against protesters must end immediately”, 14 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/india-excessive-use-of-force-arbitrary-detention-and-punitive-measures-against-protesters-must-end-immediately/>

days later. Ahead of these demolitions, state officials and political leaders belonging to the ruling parties in the respective states also made discriminatory statements against Muslims.¹⁴

Between 19 May and 7 June 2023, Amnesty International's researchers visited four out of five states in India, including the Nagaon town in Assam, Jahangipuri area in Delhi, Khambhat and Himmatnagar towns in Gujarat and Sendhwa and Khargone towns of Madhya Pradesh where demolitions took place. It conducted a total of 107 interviews, including with 75 survivors of demolitions and 32 experts including lawyers, journalists, and civil society activists.

In all five states, Amnesty International found that the demolitions were carried out without following due process and thus they amounted to forced evictions.¹⁵ Only six out of the 75 survivors interviewed by Amnesty International received any form of prior notice from the authorities. Even in these limited cases, the notices gave little to no time to the survivors to appeal the demolition orders and seek legal redress.

The demolitions had a multi-dimensional impact on the affected individuals, families, and communities – both in the short-term and long-term. Amnesty International found that following the demolitions at least 24 children were compelled to drop out of or miss school due to financial losses. Amnesty International also documented instances of demolitions of small kiosks owned and run for decades by widowed women in Delhi, setting them back financially by at least a decade and significantly impacting their long-term economic stability.

Widespread use of intimidation and force by the police authorities to force people out of their properties was also documented in all five states, which in all cases was neither necessary nor proportionate as required by international human rights law. Victims reported a heavy presence of police armed with *lathis* [batons], and sometimes firearms, accompanied by government officials and media. In at least 39 cases documented by Amnesty International, the police authorities used intimidation or excessive force to carry out demolitions, to prevent the victims from collecting their belongings, or to retaliate against those asking the reasons for demolitions.

Amnesty International investigated reports by victims that the authorities had specifically targeted Muslim-populated areas or discriminately demolished properties of Muslims while the neighbouring Hindu properties were left untouched. Amnesty International verified this by visiting the sites of demolitions and found that properties owned by people of Hindu faith continued to stand erect. This pattern was distinctly visible in Madhya Pradesh and Gujarat. Amnesty International also found that of the 63 demolished sites it inspected in five states, 20 of the home or business owners were related to people alleged to have committed criminal offences in the preceding episodes of violence, raising concerns this constitutes collective and arbitrary punishment.

WEAPONIZATION OF BULLDOZERS

In India, bulldozers have become synonymous with the oppression of Muslims. Terming it “bulldozer justice”, several media channels, newspapers, and digital news magazines routinely headline the demolitions of properties owned or occupied by Muslims. These demolitions are praised as “successful actions” and “models of governance” by state leaders with little or no emphasis on whether demolitions are carried out in accordance with law.¹⁶ Among the machinery used in demolitions, those manufactured by JCB, a UK-based company specializing in earthmoving, construction, agriculture, and demolition equipment, have gained distinct popularity. The use of JCB-branded machinery has become so commonplace, the brand's name has become a generic term for bulldozers in India, as highlighted by Amnesty International's interviews with victims of demolitions in five states.¹⁷ Additionally, BJP political leaders routinely allude to JCB machines as a tool to punish Muslims. For example, during the demolitions in the national capital, Delhi, in April 2022, GVL

¹⁴ Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (previously cited).

¹⁵ Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (previously cited).

¹⁶ Indian Express, “After success of ‘Bulldozer Baba’ in UP, ‘Bulldozer Mama’ rolls into MP politics”, 26 March 2022, <https://indianexpress.com/article/political-pulse/after-success-of-bulldozer-baba-in-up-bulldozer-mama-rolls-into-mp-politics-7837103/>; Zee News, “Bulldozer Baba scare? Over 50 criminals surrendered since Yogi Adityanath's return to power,” 28 March 2022, <https://zeenews.india.com/india/bulldozer-baba-scare-over-50-criminals-surrendered-since-yogi-adityanaths-return-to-power-2448749.html>

¹⁷ Interviews with victims of demolitions, 19 May 2023 – 8 June 2023.

Narasimha, a BJP spokesperson, equated JCB with “Jihadi Control Board”, in a now-deleted tweet on his X (formerly Twitter) handle.¹⁸ Similarly, before the legislative assembly elections in Uttar Pradesh in February 2022, a BJP leader from Telangana state publicly threatened voters in the state to vote for Yogi Adityanath or face the demolition of their properties by JCB bulldozers.¹⁹ After the BJP leader Yogi Adityanath won a second consecutive term as the head of the Uttar Pradesh state, a celebratory rally of JCB bulldozer machines was carried out in Gorakhpur town.²⁰

Despite the increased use of JCB machines by the Indian authorities for mass demolitions, in April 2022, while demolitions were underway in Delhi, Madhya Pradesh, and Gujarat, the then prime minister of the United Kingdom (UK), Boris Johnson, inaugurated a newly established manufacturing factory for JCB India in Vadodara city, Gujarat.²¹ Prime Minister Boris Johnson was joined by Lord Bamford, the chairperson of JCB, and Bhupendra Rajnikant Patel, the Chief Minister of Gujarat.²² The former Prime Minister’s visit to the JCB factory was debated in the UK parliament, where various parliamentarians raised concerns about his silence on human rights violations in India, calling it a “moral failure”.²³ In response, Vicky Ford, the Parliamentary Under-Secretary of State for Foreign, Commonwealth, and Development Affairs, stated that the UK government condemns “any instance of discrimination because of religion or belief”, emphasizing that it remains “one of the top human rights priorities” of the country. She fell short of condemning the misuse of JCB machines.²⁴

Amnesty International’s Crisis Evidence Lab, with the help of its Digital Verification Corps, verified 78 photos and videos of demolitions, of which it confirmed the use of JCB machines to demolish properties in 69 photos and videos, constituting 33 cases of demolitions between April and June 2022. Of the 69 videos and photographs, six were from Gujarat, five from Assam, 14 from Delhi and Uttar Pradesh respectively, and 25 from Madhya Pradesh. The Lab also verified five videos showing the use of JCB machinery in other episodes of forced eviction in Uttarakhand state. The videos and photographs involved incidents of either partial or complete demolitions of residential buildings, shops and mosques. While JCB is not the only manufacturer of machinery used in the demolitions, the JCB machines were used in a consistent and widespread manner, indicating that the company is the brand of choice for these purposes.

¹⁸ India Today, YouTube video, “G.V.L Narasimha Rao takes ‘Jihad’ dig amid bulldozer showdown”, <https://www.youtube.com/watch?v=hPEt7438KXQ> (accessed on 21 January 2024).

¹⁹ Hindustan Times, YouTube video, “‘Vote for Yogi or get bulldozed’: BJP MLA T Raja threatens UP voters; EC issues notice”, 16 February 2022, https://www.youtube.com/watch?v=KZ_QLkCEBEY&t=9s

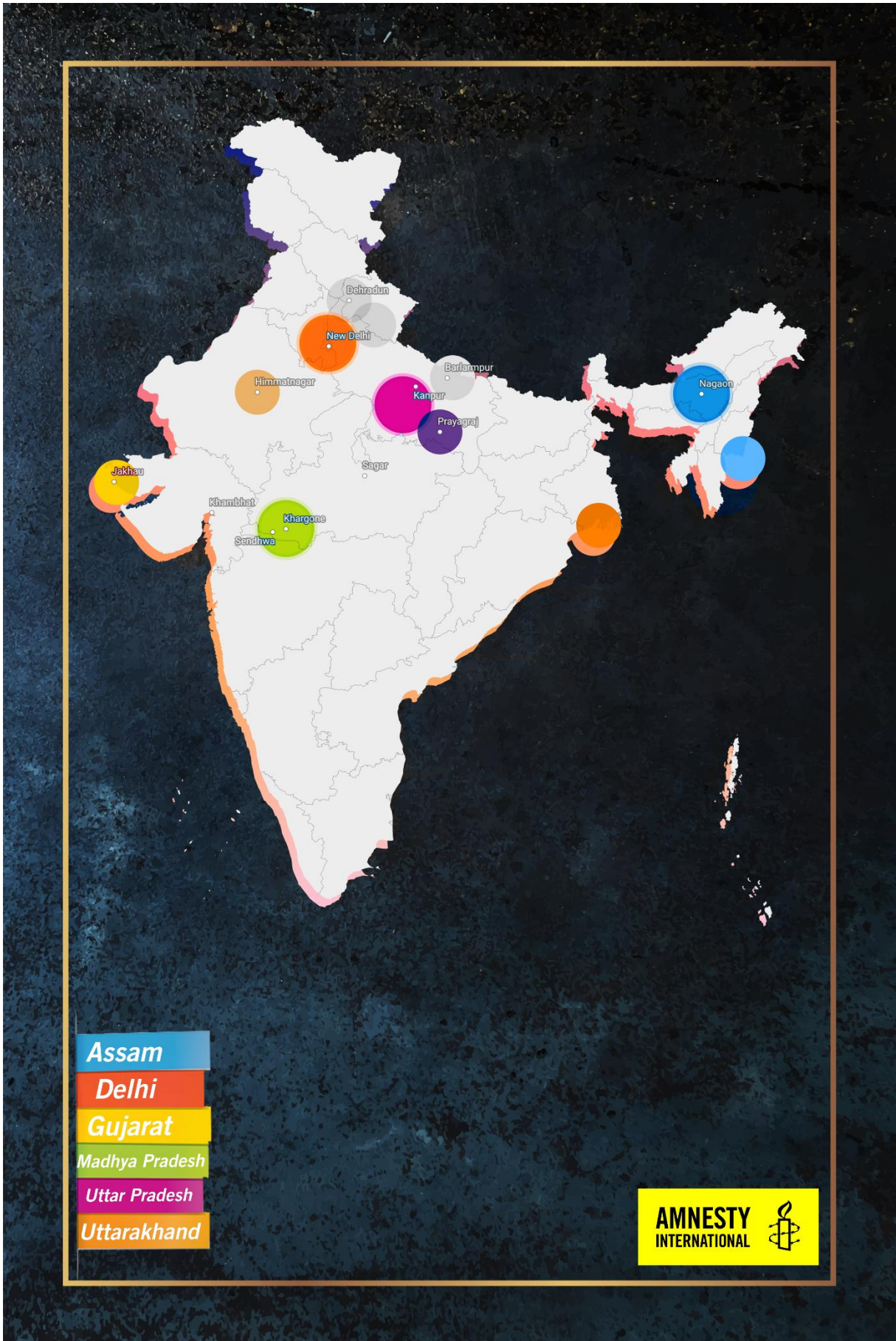
²⁰ “BJP supporters carry out bulldozer rally in Gorakhpur as CM Yogi wins the seat by 1,02,000 Votes”, India Today, 10 March 2022, https://www.youtube.com/watch?v=Zw_ZTqMQBw&t=31s

²¹ JCB, “Vadodara Inauguration”, 18 July 2022, <https://www.jcb.com/en-in/events/2022/07/vadodara-inauguration>

²² JCB, “Boris Johnson opens new factory as JCB goes for growth”, 22 April 2022, <https://www.jcb.com/en-gb/news/2022/01/boris-johnson-opens-new-factory>

²³ UK Parliament, debate on 26 April 2022 regarding Prime Minister’s Visit to India, Volume 712, <https://hansard.parliament.uk/commons/2022-04-26/debates/2F63783D-9638-4C3D-BED4-537ED4DED86C/PrimeMinister%E2%80%99SVisitToIndia>

²⁴ UK Parliament, debate on 26 April 2022 Prime Minister’s Visit to India (previously cited).



Amnesty International found that in the absence of reasonable notice provided in advance by the state authorities to the victims, often their only warning before the demolitions was the rumbling of JCB bulldozers. For instance, Amnesty International spoke with Hasina Bi, a 56-year-old widow whose house in Khargone town of Madhya Pradesh was demolished on 11 April 2022 by the municipal authorities.²⁵ Despite holding all the ownership documents of her house that was built under the Prime Minister Housing Scheme, she was not provided any prior or advance notice by the municipal authorities.²⁶ Amnesty International verified visual evidence of a JCB machine being used to demolish Hasina's home. Speaking to Amnesty International, she said:

“It was around afternoon. Everyone was sleeping in my house. We were fatigued after fasting for Ramzan. Suddenly we heard a lot of commotion outside. We came out and saw four or five JCB machines coming towards our house. The machines directly attacked our house. We were not given any notice, nothing.”²⁷

Thirty-three-year-old Imroz, whose dairy shop was demolished on 15 April 2022 in Himmatnagar town of Gujarat, also shared that he wasn't provided any prior notice.²⁸ Amnesty International verified visual evidence of JCB machines being used in the demolition of shops in Himmatnagar. Specifically flagging the use of JCB machines, he said:

“Our shops were demolished 4-5 days after the Ram Navami violence without any notice. They wrecked us with their JCB machines.”²⁹

Victims also shared that JCB machines were used by the municipal authorities and police to mete out extra-judicial punishment to not only them but also their customers and to instil fear among Muslims. In this regard, 38-year-old Ashu whose car and bike repair shop was demolished on 20 April 2022 in Jahangirpuri, Delhi, as verified by Amnesty International, said:

“I lost at least INR 250,000 (USD 2997.50). The JCB machines also damaged two bikes of my customers.”³⁰

Similarly, in Sendhwa town of Madhya Pradesh, 37-year-old Samar Khan told Amnesty International that the municipal authorities and police used the JCB machines as a weapon to force him to accept a crime he maintains he did not commit.³¹ Amnesty International verified visual evidence of JCB machines being used to demolish his family home. He said:

“[The authorities] used the JCB machines to compel me to surrender. They have wrongfully accused me of orchestrating the Ram Navami violence in Sendhwa. On the day of the demolition, the JCB machines were lined up outside my father's house. They forced everyone out and started demolishing everything without any notice. When my father asked them to stop, the authorities said they would only stop the JCB machines when I surrender.”³²

KK Roy, the lawyer representing Javed Mohammed, whose family home in Prayagraj city of Uttar Pradesh was demolished by the municipal authorities on 12 June 2022, told Amnesty International:

“The state authorities demolished the house of Javed Mohammed in front of hundreds of cameramen. They used the JCB bulldozers to create an atmosphere of fear and terror.”³³

The failure of the state authorities to follow due process before and after the demolitions, and their use of demolitions as a tool to mete out collective and arbitrary punishment to Muslims, constitute violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Child

²⁵ Interview in person, 21 May 2023, Khargone, Madhya Pradesh.

²⁶ Pradhan Mantri Awas Yojana, <https://pmaymis.gov.in/>

²⁷ Interview in person, 21 May 2023, Khargone, Madhya Pradesh.

²⁸ Interview in person, 20 May 2023, Himmatnagar, Gujarat.

²⁹ Interview in person, 20 May 2023, Himmatnagar, Gujarat.

³⁰ Interview in person, 4 June 2023, Jahangirpuri, Delhi.

³¹ Interview in person, 22 May 2023, Sendhwa, Madhya Pradesh.

³² Interview in person, 22 May 2023, Sendhwa, Madhya Pradesh.

³³ Interview by voice call, 13 June 2023.

(CRC), the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). By carrying out these punitive and unlawful demolitions, the Indian authorities have violated the rights to adequate housing, work, social security, fair trial and non-discrimination.

3. JCB AND JCB INDIA'S RESPONSIBILITY TO RESPECT HUMAN RIGHTS

J.C. Bamford Excavators Limited (JCB) is a private company incorporated in the UK. The company and its subsidiaries are part of a family-owned group: Most of the directors are members of the Bamford family. As a private company, only limited information about the nature of its work and business relationships is available to the public.

The principal activity of JCB and its subsidiaries is the “design, manufacture, marketing and sale of machines for the construction and agricultural industries”.³⁴ This includes a comprehensive range of excavating, earthmoving, materials handling and agricultural machines, and the provision of after-sales service and supply of parts for those machines.³⁵ The company produces generators, wheel loaders, dump trucks, backhoe loaders, hydraulic excavators, forklifts, lighting towers, utility vehicles, and defence products.³⁶ JCB manufactures and markets construction machinery and equipment for use worldwide.

JCB India Limited (JCB India) currently operates as a fully owned subsidiary of JCB's UK-based main corporate entity.³⁷ JCB's profile of its chairman, Lord Anthony Bamford, describes his decision to set up operations in India as his “most inspired” decision.³⁸ On its website, JCB terms India as its “single largest market” and JCB India describes itself as the “leading manufacturer of earthmoving and construction equipment” in the country.³⁹ It has six manufacturing units in India and a network of more than 60 dealers and 700 outlets across India. JCB India also manages other countries in the South Asia region including Nepal, Bhutan, Bangladesh, Myanmar, and Sri Lanka.⁴⁰ The JCB factories in India manufacture machines for Indian markets and for exports to more than 125 countries. In September 2023, JCB announced its plans to export 45% of the construction equipment machines it manufactures in India to other countries.⁴¹ JCB India's website advertises 11 different machines and 13 types of parts, which are all available through JCB India. JCB-branded machinery is used for many purposes, including for lawful purposes such as social and economic development, however the unlawful and punitive demolitions of properties with such machinery is a major human rights concern.

JCB'S DEALERSHIP NETWORK

In 2013, former Managing Director and Chief Operating Officer of JCB India, Vipin Sondhi, had stated that JCB India has more dealers than any of its rival companies.⁴² He had also stated that JCB India is “proud of their dealership network”.⁴³ JCB India's dealership network and outlets are exclusively responsible for the sale of new JCB machines and their parts in India, along with their post-sale maintenance.⁴⁴ Third-party companies are not able to sell new JCB machinery in India.

JCB India lists 10 dealers in Gujarat and Uttar Pradesh respectively, nine dealers in Madhya Pradesh, and four dealers in Assam on its website. The website does not list dealers in Delhi itself, but includes several in the wider Delhi National Capital Region that covers neighbouring towns and cities in Uttar

³⁴ J.C. Bamford Excavators Ltd, Directors' Report for year ending 31 December 2020, accessible via UK Government's Companies House, <https://find-and-update.company-information.service.gov.uk/company/00561597/filing-history>

³⁵ CompanyCheck, JCB listing, <https://companycheck.co.uk/company/00564955/JCB-SERVICE/companieshouse-data>

³⁶ Bloomberg profile of JCB, <https://www.bloomberg.com/profile/company/0455888D:LN>

³⁷ JCB, “About JCB India”, <https://www.jcb.com/en-in/company/about-jcb-india>

³⁸ JCB, “Lord Bamford Chairman of JCB”, <https://www.jcb.com/en-gb/about/lord-bamford>

³⁹ JCB, “Lord Bamford Chairman of JCB”, <https://www.jcb.com/en-gb/about/lord-bamford>

⁴⁰ JCB, “About JCB India”, <https://www.jcb.com/en-in/company/about-jcb-india>

⁴¹ Shally Mohile, “JCB to export 45% construction equipment machinery from India in 2023”, Economic Times, 10 September 2023, <https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/jcb-to-export-45-construction-equipment-machinery-from-india-in-2023/articleshow/103553144.cms>

⁴² “JCB India is proud of its Dealer Network”, Forbes India, 22 July 2013, <https://www.forbesindia.com/video/video/jcb-india-is-proud-of-its-dealer-network/35649>

⁴³ “JCB India is proud of its Dealer Network”, Forbes India, 22 July 2013, <https://www.forbesindia.com/video/video/jcb-india-is-proud-of-its-dealer-network/35649>

⁴⁴ JCB, “About JCB India”, <https://www.jcb.com/en-in/company/about-jcb-india>

Pradesh, Haryana and Rajasthan states.⁴⁵ JCB India also promotes its extensive dealer network as offering the best used JCB machines on the market.⁴⁶

Amnesty International filed Right to Information applications to the municipal corporations, police departments and district heads of the impacted towns and cities identified in this briefing. These Right to Information applications sought to understand: whether the machines used by the relevant authorities to carry out the demolitions were owned or rented; the name of the company or individual that owned or rented these machines; the serial number of such machines; the process that was followed for purchasing or renting these machines; and the copies of the public notice of the tender issued for purchasing or renting these machines. The applications also asked for any guidelines that may have been issued by these offices for use of such machines.⁴⁷ The only responses Amnesty International received were from the Superintendent of Police of Nagaon in Assam and District Collector of Khargone in Madhya Pradesh. While the District Collector forwarded the application to the Municipal Corporation, the Superintendent of Police answered “Nil” to all the questions.⁴⁸ In the absence of any meaningful response from the state authorities, Amnesty International reviewed the websites of all five state governments and was able to find tenders specifically floated for procurement or maintenance of JCB machines.

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) provide the most authoritative statement of the responsibilities of companies according to international human rights law and standards.⁴⁹ They were adopted by the UN Human Rights Council in 2011 and have been endorsed by governments and business associations. Since 2011, states, including India, have been developing national action plans to give effect to the principles under domestic law.⁵⁰ Businesses have also been developing policies to embed them across their operations.⁵¹

Under the UN Guiding Principles, business enterprises are responsible for respecting human rights. This means that they should avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.⁵² Corporations must seek ways to prevent or mitigate adverse human rights impacts directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.⁵³ They must have a policy commitment to respect human rights.⁵⁴ Importantly, they must carry out human rights due diligence, as appropriate to their size, the nature and context of operations, and the severity of the risks of adverse human rights impacts.⁵⁵ Finally, they must provide for, or co-operate with legitimate processes, in the remediation of adverse human rights impacts where they identify they have caused or contributed to these impacts.⁵⁶

In accordance with the UN Guiding Principles, JCB and JCB India have the responsibility to respect human rights. An essential component of this responsibility is the need to conduct human rights due diligence to identify, prevent, mitigate and account for adverse human rights impacts the company may cause, contribute to, or which are directly linked to its operations, products or services by its

⁴⁵ <https://www.jcb.com/en-in/dealer-locator?location=Delhi>

⁴⁶ JCB, “India”, <https://www.jcb.com/en-in>; see also JCB, “Used Equipment”, <https://www.jcb.com/en-in/campaigns/used-equipment>

⁴⁷ Refer to Annexure 1.

⁴⁸ Responses on file with Amnesty International.

⁴⁹ UN Human Rights Council (UNHRC), Resolution 17/31: *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, adopted on 21 March 2011, UN Doc. A/HRC/17/31 (UN Guiding Principles); UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2012, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (UN Guiding Principles Commentary).

⁵⁰ OHCHR, “State national action plans on business and human rights”, <https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights>; See also, Ministry of Corporate Affairs, National Action Plan on Business and Human Rights, Zero Draft, 11 March 2020, https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf

⁵¹ Business and Human Rights Resource Centre, “Company Policy Statements on Human Rights”, <https://www.business-humanrights.org/en/companypolicy-statements-on-human-rights>

⁵² UN Guiding Principles, Principle 13(a) and Commentary.

⁵³ UN Guiding Principles, Principle 13(b) and Commentary.

⁵⁴ UN Guiding Principles, Principle 15 and Commentary.

⁵⁵ UN Guiding Principles, Principle 17 and Commentary.

⁵⁶ UN Guiding Principles, Principle 22 and Commentary.

business relationships.⁵⁷ JCB's business relationships include not only relations with business partners but other entities in its value chain beyond the first tier.⁵⁸

3.1 HUMAN RIGHTS DUE DILIGENCE

Specifically, human rights due diligence, as defined in the UN Guiding Principles, has four main elements: identifying and assessing actual and potential adverse human rights impacts;⁵⁹ integrating and acting upon the findings;⁶⁰ tracking the effectiveness of their response;⁶¹ and communicating to affected stakeholders about how the company is addressing any adverse human rights impacts.⁶² Human rights due diligence is distinctive from many other forms of due diligence in that the primary focus is an appreciation of, and then the mitigation of, risks posed to people rather than to corporate or shareholder interests.⁶³

Human rights due diligence encompasses the entire value chain, both upstream and downstream.⁶⁴ The scope of human rights due diligence is not limited to those activities for which a company might be held legally liable or those entities with which the company in question has a contractual relationship. Moreover, it is not sufficient just to identify and analyse risks; meeting the standard of human rights due diligence laid down in the UN Guiding Principles also requires taking appropriate action to prevent or mitigate the risks.⁶⁵ Importantly, human rights due diligence is conceived as an ongoing and iterative process, in which lessons learned from past experience, especially concerns raised by stakeholders, are fed back into management functions and processes.

Upstream versus downstream

A value chain is the range of activities and processes needed to create a product and get it to market.

The downstream value chain refers to the part of the value chain concerned with the delivery of a product (or component of a product) to the market, and ultimately to an end user. It is distinguishable from the upstream value chain (often referred to as the supply chain), which is concerned with the sourcing by a manufacturer of the goods (or components of goods, such as raw or unprocessed materials) needed to make products (or components of products) for market.⁶⁶

Downstream actors refer to companies or intermediaries in the downstream value chain that are instrumental in the delivery of a product (or component of a product) to market, up to and including the end user. Depending on the way a business enterprise and its downstream value chain is structured, key downstream actors could be dealers, distributors, franchisees, licensees, purchasers, customers and consumers.

An end user is the downstream actor right at the end (or bottom) of the value chain. This is the person or entity that actually uses a product (as opposed to a dealer, distributor, or other intermediary who facilitates, in some way, the transfer of the product down the value chain).

⁵⁷ UN Guiding Principles Commentary.

⁵⁸ OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012, https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf

⁵⁹ UN Guiding Principles, Principle 18.

⁶⁰ UN Guiding Principles, Principle 19.

⁶¹ UN Guiding Principles, Principle 20.

⁶² UN Guiding Principles, Principle 21.

⁶³ OHCHR, Summary of the Report of the Working Group on Business and Human Rights to the General Assembly, UN Doc. A/73/163, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutiveSummaryA73163.pdf>, p. 1.

⁶⁴ UN Guiding Principles, Principle 17 and Commentary; see also OHCHR, EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission, 2 July 2017, pg. 2, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ohchr-recommendations-to-ec-on-mhrdd.pdf#:~:text=OHCHR%20strongly%20supports%20the%20statements%20set%20out%20in,suppliers%E2%80%9D%29%20would%20not%20be%20aligned%20with%20the%20UNGPs.www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutiveSummaryA73163.pdf>

⁶⁵ UN Guiding Principles, Principle 19

⁶⁶ For further discussion on this point see OHCHR, Report submitted to the UN Human Rights Council for its 38th session: *Improving accountability and access to remedy for victims of business-related human rights abuse: The relevance of human rights due diligence to determinations of corporate liability*, 1 June 2018, UN Doc. A/HRC/38/20/Add.2.

Under the UN Guiding Principles, the responsibility to identify and address human rights risks apply throughout the value chain and involve a holistic appraisal of all the various ways in which an enterprise's business activities may impact on human rights, including impacts that might arise both upwards and downwards on the value chain. The UN Guiding Principles and the OECD Guidelines call for creative use of leverage to prevent or mitigate these impacts where they are directly linked to a company's operations, products or services, regardless of how far down the value chain they may be.⁶⁷ The term "directly linked" is defined to exclude extremely loose connections to a company's operations, products or services, for instance with respect to wrongful conduct along entirely separate lines of production and distribution than those associated with a manufacturer's products. As such, a human rights harm may be directly linked to a company's products via indirect business relationships.⁶⁸

The UN Guiding Principles also call for proactive behaviour from companies, working closely with affected stakeholders, to help anticipate and respond quickly to new and emerging sources of risk.⁶⁹

3.2 HEIGHTENED RISK

Further, while all adverse human rights impacts need to be addressed, the UN Guiding Principles recognize it may not be physically or practically possible to achieve all of this at once, so it may be necessary to prioritize.⁷⁰ However, the basis for prioritization laid out in the UN Guiding Principles is not the nature of the relationship between the adverse impacts and the business in question, but the severity or irremediability of the human rights risks.⁷¹

Operating in or supplying products to users in an area where the rule of law is in question can considerably increase the risk of a company becoming complicit in gross violations of international human rights committed by other actors, in this case the municipal authorities.⁷² In practice, the heightened risk of severe human rights impacts can arise from different sources:

1. The broader operational context, including factors such as conflict, corruption, and weak governance.
2. Business relationships, including the experience, track record and management capacities of suppliers, joint venture partners, customers, and others to manage human rights risks.
3. Business activities, including activities commonly associated with human rights impacts, such as land acquisition and resettlement and extensive water usage.
4. The presence of vulnerable groups, meaning those groups within a society who experience political, social, or economic marginalization that makes them particularly vulnerable to business impacts.⁷³

For companies with multi-tiered and complex value chains, it may not be feasible to assess every business relationship. In these circumstances, companies are asked to:

"identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence."⁷⁴

⁶⁷ OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 10.

⁶⁸ Expert letters and Statements on the Application of the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights in the context of the financial sector, Note by the Chair of the Negotiations on the 2011 Revision of the Guidelines, regarding the Terminology on "Directly Linked", June 2014, <https://mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-3.pdf>

⁶⁹ UN Guiding Principles, Principle 18.

⁷⁰ UN Guiding Principles, Principle 24 and Commentary.

⁷¹ For further discussion of how to interpret the concepts of "severity" and "irremediability" in these contexts, see OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (previously cited), pp. 82-85.

⁷² OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* (previously cited), p. 42; Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (previously cited).

⁷³ Shift, *Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Business*, March 2015, <https://shiftproject.org/resource/human-rights-due-diligence-in-high-risk-circumstances/>, pp. 5-6.

⁷⁴ UN Guiding Principles, Principle 17 and Commentary.

As noted in the corresponding research on the obligations of the Indian government in ensuring the protection of people’s right to adequate housing, social security and work, Amnesty International found that Muslims were targeted with punitive demolitions in Assam, Delhi, Gujarat, Madhya Pradesh, and Uttar Pradesh states for their suspected role in the preceding communal violence and protests against discrimination by the Indian authorities, while the properties of suspected Hindus were left untouched.⁷⁵ Beyond the time period of April to June 2022, the rising marginalization of and discrimination against Muslims has been documented by UN agencies, Amnesty International, and other international human rights organizations.⁷⁶ Accordingly, the historical and ongoing discrimination faced by Muslims in India – and particularly these five states – demonstrates the presence of vulnerable groups who experience political, social, or economic marginalization that has made them particularly vulnerable to the impact of the misuse of JCB machines to unlawfully demolish their homes and businesses. Between April and June 2022, while the demolitions were underway, the widespread misuse of JCB machines to demolish Muslim homes was also reported by various national and international media outlets and debated in the UK parliament, demonstrating the company’s poor track record in managing human rights risks.⁷⁷ In light of the context presented by Indian authorities’ ongoing marginalisation of Muslims, it is essential that JCB considers its risk of involvement in gross human rights violations and formulates corresponding remediation processes as part of conducting effective human rights due diligence.

3.3 LEVERAGE

While the requirements of the UN Guiding Principles relating to remediation⁷⁸ are confined to cases where business enterprises have caused or contributed to adverse impacts, this does not imply that companies can ignore impacts that may be directly linked to their operations, products or services altogether. On the contrary, the UN Guiding Principles make it clear that when it comes to addressing downstream human rights risks, proactive action – and a certain degree of creativity – is required.⁷⁹ If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors. This is echoed in the recommendations set out in the OECD Guidelines for companies to:

“Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”⁸⁰

Accordingly, it is imperative that JCB and JCB India conduct human rights due diligence throughout their entire value chains, to determine whether punitive demolitions have occurred with the companies’ machines. When any such abuses are identified, the next step is to consider what leverage JCB might exert over any of the entities in its value chain to prevent or mitigate the violations. Amnesty International calls on JCB and JCB India to use their leverage with their network of dealers and outlets, to mitigate human rights harm by inserting relevant clauses into the sales and/or servicing

⁷⁵ Amnesty International, *If You Speak Up, Your House Will Be Demolished: Bulldozer Injustice in India* (previously cited).

⁷⁶ US Commission on International Religious Freedom (USCIRF), *Annual Report 2022*, <https://www.uscifr.gov/sites/default/files/Fernand%20de%20Varennes%20Testimony.pdf>; see also the section on Introduction.

⁷⁷ Heather Stewart, “Outcry in India as Boris Johnson visits JCB plant amid demolitions row”, *The Guardian*, 21 April 2022, <https://www.theguardian.com/politics/2022/apr/21/boris-johnson-visits-jcb-plant-india-demolitions-row>; Greg Heffer, “Boris Johnson bulldozes into new row: PM poses at JCB factory in India – owned by Tory Donor Lord Bamford – just a DAY after the firm’s machines were used to raze Muslim-owned shops in New Delhi”, *Mail Online*, 21 April 2022, <https://www.dailymail.co.uk/news/article-10739365/Backlash-PM-poses-JCB-factory-India-amid-row-bulldozers-razing-Muslim-owned-shops.html>; Sam Blewett, “PM’s India JCB visit condemned over use of diggers to destroy Muslim properties”, *Independent*, 21 April 2022, <https://www.independent.co.uk/news/uk/boris-johnson-jcb-gujarat-muslim-india-b2062644.html>; Gerry Shih and Anant Gupta, “How bulldozers in India became a symbol of Hindu nationalism”, *Washington Post*, 27 April 2022, <https://www.washingtonpost.com/world/2022/04/27/india-hindus-muslims-bulldozers-demolitions/>; Ben-Riley Smith, “JCB demolition row threatens to bulldoze first day of Boris Johnson’s India trip”, *The Telegraph*, 21 April 2022, <https://www.telegraph.co.uk/politics/2022/04/21/boris-johnson-sets-autumn-ambition-securing-free-trade-deal/>; “Boris Johnson Slammed By UK MPs Over JCB Factory Trip During India Visit”, *NDTV World*, 30 April 2022, <https://www.ndtv.com/india-news/bulldozer-row-reaches-uk-as-mps-slam-boris-johnson-trip-to-jcb-factory-2933922>; “British MP questions if Boris Johnson’s visit to JCB factory legitimised demolition drives in India”, *Scroll.In*, 29 April 2022, <https://scroll.in/latest/1022904/british-mp-questions-if-boris-johnsons-visit-to-jcb-factory-legitimised-demolition-drives-in-india>

⁷⁸ See UN Guiding Principle 22: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

⁷⁹ UN Guiding Principles on Business and Human Rights, Guiding Principle 23, and Commentary.

⁸⁰ OECD Guidelines (previously cited), IV(3).

contracts. The contractual clauses could, for example include: (1) prohibition on unauthorised use or conditions on onward sales, especially with respect to particular demolition contractors and state agencies involved in punitive demolitions; (2) termination of after-sales service or technical updates by the contractors providing JCB machines to the state authorities to carry out punitive demolitions; (3) downstream human rights due diligence obligations, including inspection and audit by seller; and (4) record keeping and reporting requirements.

It is vital that JCB and JCB India should also make public statements denouncing the use of their machinery in carrying out unlawful and punitive demolitions in India – with particular attention given to the risk of targeted demolitions of Muslim properties – and describe how they will take steps to prevent their machines from being used in a similar manner in the future and what steps they will be taking to mitigate adverse human rights impacts.

The ongoing role of JCB in the maintenance of its products through its agents, dealerships and LiveLink diagnostic systems⁸¹ underlines the likely direct link between the company and the punitive demolitions in five states. The parent-subsidiary relationship between JCB and JCB India, and the sole sales and maintenance agreement between JCB India and its dealers, fall within the definition of a business relationship under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.⁸² As such, JCB is responsible for preventing or mitigating any adverse human rights impacts caused or contributed to by third parties operating heavy machinery sold directly by its subsidiary and distributors.

In addition, any punitive demolition using JCB machinery that is serviced by the companies, in the form of maintenance or LiveLink diagnostic technology, establishes – as its name suggests – a direct link between the companies’ services and a human rights abuse. JCB promotes LiveLink as a service that enables users of its products to have complete control over their entire fleet. This includes tracking and reporting facilities and the capacity to share machine data with others.⁸³ In 2021, Deepak Shetty, the CEO of JCB India had stated that “over 180,000 JCB machines communicate through real time” in India.⁸⁴

JCB’s Privacy Policy specifies that LiveLink is active on JCB products as they leave the factory.⁸⁵ Even if users of its products choose not to use the system, LiveLink may continue to collect data. In this way, JCB is able to maintain comprehensive information about the use of its equipment after leaving the factory. The default position would appear to be that such information gathering will continue to be active unless users of its products contact the company to discontinue it.

Therefore, JCB should make every effort to use LiveLink for the purpose of conducting effective human rights due diligence and to use their leverage over their customers to insist they do the same and impose similar requirements on subsequent purchasers, lessees, and users of their equipment.

⁸¹ JCB’s promotion of its LiveLink facility, <https://www.jcb.com/en-gb/customer-support/livelink>

⁸² UN Guiding Principles, Principle 13 and Commentary.

⁸³ JCB, “LiveLink”, <https://www.jcb.com/en-in/customer-support/livelink>

⁸⁴ Nikhar Aggarwal, “We are building our future on IoT and Industry 4.0: Deepak Shetty, JCB India”, Economic Times CIO, 21 May 2021, <https://cio.economicstimes.indiatimes.com/news/strategy-and-management/we-are-building-our-future-on-iot-and-industry-4-0-deepak-shetty-jcb-india/82820582>

⁸⁵ JCB, “Privacy Policy”, <https://www.jcb.com/en-gb/info/privacy-policy>

4. JCB'S RESPONSE

To recall, Amnesty International has documented the use of JCB machines in at least 33 cases of unlawful and punitive demolitions through open-source verification of videos and photographs uploaded by concerned citizens and media houses on social media.

While it received no response from the Indian authorities about the details regarding the purchase of JCB machines, it is pertinent to note that new JCB machinery can be bought by a customer exclusively from the network of over 700 outlets and 60 dealers that JCB India has created in the country over the last four decades. In addition to sale of machinery, the 60 dealers are also responsible for the maintenance and servicing of JCB machines and sale of its various parts. In this regard, Amnesty International wrote to both JCB and JCB India on two occasions, on 27 July 2023 and 22 December 2023, informing them about the Indian authorities' use of JCB machines to carry out forced evictions and punitive demolitions of largely Muslim homes in five states. In its responses dated 1 September 2023 and 15 January 2024, Schillings⁸⁶, a legal firm acting on behalf of JCB, presented the following key points on behalf of JCB:⁸⁷

1. Schillings asserted that there is no direct link between JCB and the alleged human rights violations and that a majority of its machines are sold by JCB India through independent third-party dealers in the country.

“There is no direct link between our client’s manufacturing of machinery and the end use of it. Our client is no different to any other manufacturer in this regard. Its products are inanimate objects which users have full autonomy in respect of, control over, and responsibility for. This is the case whichever sales route described above is used.”

JCB takes issue with the definition of “direct link” presented in this briefing and cites a statement by the Chair of Negotiations on the OECD Guidelines, which it claims supports the claim that “indirect linkages are insufficient”.⁸⁸ However, the statement by the Chair of Negotiations on the OECD Guidelines reaches precisely the opposite conclusion – that there is no such thing as an “indirect linkage”. It is worth citing the statement in full:⁸⁹

“I would like to stress that the term ‘directly’ was included in the text in order to ensure that extremely loosely connected associations would not be covered by the due diligence provisions. It was never intended to suggest the existence of an ‘indirect linkage’. A company’s operations, products or services are either ‘directly linked’ to an adverse impact through a business relationship – or not at all linked as far as the guidelines are concerned.”

2. Schillings also stated that JCB cannot control the use of its products once they have been sold to the customers.

“Our client has no control whatsoever over its products once they are in the hands of dealers and are sold on, to individuals, small dealers, construction companies or public authorities etc.”

JCB conflates linkage with control in seeking to avoid its responsibility to respect human rights.

To be clear, this briefing does not claim that JCB has full control over the use of its products in the field, nor is it alleged that JCB has caused or contributed to the adverse human rights violations resulting from unlawful demolitions implemented with its machinery in India.

⁸⁶ Schillings International LLP (Schillings) is an international legal, reputation and privacy consultancy representing JCB.

⁸⁷ Response on file with Amnesty International.

⁸⁸ Response on file with Amnesty International.

⁸⁹ Expert letters and Statements on the Application of the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights in the context of the financial sector (previously cited).

However, JCB is likely to be directly linked to these violations because of the sale and servicing of JCB products by the company and its agents. As such, JCB has a responsibility to use its leverage, especially with respect to its contractual relationship with the dealers of its products and the services it provides to the users of its equipment, to effect change in the practices of its business partners to avoid harm arising from them.

3. Schillings also claimed that India has a second-hand market for construction machinery where JCB's machines can be bought or leased.

“As with any territory, there is a buoyant second-hand market for construction machinery, including our client's products, in India. Machines being used in India could have been purchased second-hand from sellers within India, from neighbouring countries, via the internet or international auctions, or brought in from abroad. There are many websites selling used JCB equipment or importing machinery from overseas. There is also a leasing and plant hire sector for operators who do not need or wish to purchase equipment outright. Our client does not have any control over, and plainly cannot have any responsibility for, the second-hand market or leasing market.”

JCB seeks to obscure any direct link to human rights abuses implemented with its machinery by pointing to a second-hand and leasing market in India. In doing so, JCB points to the UK National Contact Point's 2021 decision with respect to the unlawful use of its products in the OPT, which concluded that “the alleged adverse human rights activities [in the OPT] ... cannot be conclusively linked to JCB because of their business relationship with [their Israeli distributor] Comasco.”⁹⁰ Amnesty International, in its 2021 report “JCB Off Track Evading responsibility for human rights violations committed with JCB machines in the Occupied Palestinian Territories” came to a different conclusion and found a direct link between JCB and human rights harm in the OPT.⁹¹ However, it should be acknowledged that the circumstances in the OPT and India are distinct and must be addressed on their own terms.

JCB India's website promotes “pre-owned machines” and parts after they undergo a “rigorous 85-point checklist process and comprehensive dealer verification”.⁹² The Annual Maintenance Contract available on JCB India's website for post-sale maintenance services does not distinguish between new machines purchased directly from JCB India and its dealers, used machines purchased from JCB India and its dealers, and used machines purchased from the second-hand market.⁹³ Hence, given the extent to which the second-hand market for JCB's products may be linked to its network of dealers in terms of providing maintenance and after-sales services such as through its LiveLink technology, JCB cannot shirk responsibility for how its products are used after second-hand sale or leasing.

4. Schillings also stated that JCB does not have any leverage over those who use its products or its dealership network.

“JCB does not have any leverage over the persons who use their products. Again, as previously explained, the majority of JCB's products are sold in India through independent third-party dealers, and JCB cannot dictate how these third-party dealers operate their business.”

JCB goes on to deny having any leverage over those who use their products, while also asserting it cannot dictate the terms through which its products are used. This is incorrect.

JCB has leverage over the persons or entities who use their products in two ways. First, JCB has leverage over the sale of its products through its contracts with the distributors of its products, which can include clauses that limit or refuse sale to certain customers depending on their known or

⁹⁰ UK National Contact Point, Final Statement: Lawyers for Palestinian Human Rights complaint to UK NCP about JCB, 12 November 2021, <http://tinyurl.com/4eb43kkr>

⁹¹ Amnesty International, JCB Off Track: Evading Responsibility for Human Rights Violations Committed with JCB Machines in the Occupied Palestinian Territories (Index: MDE 15/4985/2021), 18 November 2021, <https://www.amnesty.org/en/documents/mde15/4985/2021/en/>

⁹² JCB, “Used Equipment”, <https://www.jcb.com/en-in/campaigns/used-equipment>

⁹³ JCB, “Annual Maintenance Contract”, <https://www.jcb.com/en-in/company/about-jcb-india>

intended use of the products. Notably, other companies in the heavy machinery sector acknowledge having this leverage. For instance, Hyundai has stated that it has included such clauses in its contracts with distributors and has terminated relationships with dealers that sell products to customers who use them in a manner that causes human rights harm in OPT.⁹⁴

The International Bar Association (IBA) and American Bar Association (ABA) have both released guidance for legal professionals on contractual techniques for addressing human rights-related risks in global supply chains.¹⁰³ The IBA guidance, which takes the form of an online handbook for lawyers,¹⁰⁴ is addressed to both upstream and downstream human rights risks. It has specific sections on the negotiation and oversight of downstream commercial arrangements such as sales, distribution, franchise and licensing agreements.

The ABA guidance, which takes the form of a series of “model clauses” and explanatory information,¹⁰⁵ is primarily addressed to upstream supply chain issues. However, these clauses also contain features relevant to management of downstream issues regarding requirements to perform human rights due diligence and allowing for termination or renegotiation of contracts in the event of non-compliance by business partners with human rights-related conditions. These include representation and warranties, contractual pre-conditions, covenants and undertakings, prohibitions on the unauthorised use and/or conditions on onward sales, after-sales service, or technical updates, effective complaints mechanism, record keeping and reporting, rights of inspection and audit, consequences of breach of contractual provisions designed to address downstream human rights risks and termination provisions.

Although contractual safeguards may only be legally enforceable against the “tier 1” downstream party (for instance, a dealer, wholesaler, distributor or franchisee), at least some of these may potentially be cascaded down to other actors further down the value chain. For example, by imposing binding contractual obligations on the “tier 1” downstream party to monitor and report back on downstream markets and activities, maintain proper records, and take action where cases of harmful and/or unauthorized uses are detected.

Second, JCB also has leverage over the services it and/or its dealers provide to the end users of its products, including the provision of LiveLink data and maintenance services, which can be limited or retracted from users who are known to be involved in human rights abuses. If JCB believes that it lacks sufficient leverage to change its business partners’ harmful practices, then it can seek ways to increase that leverage or, if it is unable to do so, JCB may consider ending that business relationship.⁹⁵

Moreover, according to the OECD Due Diligence Guidance for Responsible Business Conduct, the higher risks posed by factors such as conflict, presence of vulnerable groups, weak rule of law, and high rates of corruption, suggest a need for prioritization in human rights due diligence processes.

Some of the above-mentioned aspects are briefly reflected in JCB’s Human Rights Policy, available on its website, which states, “if any adverse human rights impacts are identified as part of these [appropriate due diligence] processes, then those will be discussed and reviewed with the relevant supplier or dealer in a fair, equitable and transparent manner and in compliance with principles of natural justice. JCB reserves the right to terminate any commercial relationship with any supplier or dealer where there is clear evidence of a failure on their part to comply with the terms of this policy.”⁹⁶ In addition, JCB’s Supplier Code of Conduct also mentions the company’s commitments to adhering “to the human rights principles stated in the International Bill of Human Rights, the UN Guiding Principles on Business and Human Rights and the International Labour Organisation’s Declaration on

⁹⁴ Hyundai’s statement was made in response to allegations that its machinery was involved in human rights abuses in the Occupied Palestinian Territories: Facing Finance, “Okkupert, Annektiert Und Profitiert - Palästinensische Gebiete, Westsahara und Krim: Company Responses”, July 2018, https://www.facing-finance.org/files/2019/08/190624_AntwortenXUnternehmen.pdf

⁹⁵ UN Guiding Principles, Principle 19 and Commentary.

⁹⁶ JCB, “Human Rights Policy”, <https://www.jcb.com/dfsmedia/261086efe15a46f5afb95d093ef038ea/56088-source>

Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises (Chapter IV).”⁹⁷

Contrary to its Human Rights Policy and Supplier Code of Conduct, JCB’s response to Amnesty International shows a lack of concern for the human rights impact of its machinery in India. Moreover, even though in its response, JCB referred to the visit of the then Prime Minister Johnson at the time the demolitions were ongoing in India as, “entirely coincidental”,⁹⁸ Amnesty International did not find any publicly available information, either from the UK government or JCB, condemning the use of the company’s machinery by the Indian state authorities nor a pledge to take a closer look at the end use risks of its machinery in India as part of its human rights due diligence. It is vital that JCB and JCB India publicly denounce the misuse of their machinery to unlawfully, punitively and arbitrarily demolish the properties of Muslims in India.

A proper use of leverage on the part of JCB does not involve merely signing up to commitments on paper, but also investing in the operational systems needed to ensure human rights abuses arising from the use of products will be quickly detected and breaches of legal obligations by downstream partners (including contractual obligations) vigorously monitored.

5. Schillings further asserted that Indian laws prevent JCB and the third-party dealers from “adjudicating as to whether an individual or company can purchase” their machines, without mentioning the specific laws.

“There are laws in India which prevent our client or dealers from adjudicating as to whether an individual or company can purchase our client’s machines. Our client has no control whatsoever over its products once they are in the hands of dealers and are sold on, to individuals, small dealers, construction companies or public authorities etc.”

JCB’s defence that Indian laws prevent JCB India and the third-party dealers from “adjudicating as to whether an individual or company can purchase” their machines without mentioning the specific legislation is vague and overbroad. Indian laws – particularly the Competition Act of 2002, an anti-trust piece of legislation which is relevant for companies in this regard – only prevent practices having an adverse effect on competition, such as tie-in arrangements, exclusive supply and distribution agreements, refusal to deal and resale price maintenance.⁹⁹ It does not prevent JCB India, nor its dealers, from incorporating thorough human rights impact assessments into their supply chains, to mitigate the risk of any human rights violations arising from the use of their products. Moreover, the responsibility of companies to respect human rights is independent of a state’s own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.¹⁰⁰

Furthermore, any limitation of Indian law in this regard is itself a serious risk that ought to have been evaluated as part of their responsibility to conduct human rights due diligence upon JCB’s presence and expansion within the Indian market and does not absolve the company of its responsibility to respect human rights. The UN Guiding Principles make clear that “[w]here the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.”¹⁰¹

6. Schillings also distanced JCB from accusations of involvement in human rights abuses in the five states on the basis that JCB India can sell JCB products to the Indian government through the Government E-Marketplace (GeM) which, as it claims, constitutes a small proportion of its cumulative sales in the country.

⁹⁷ JCB, “Supplier Code of Conduct”, <https://www.jcb.com/dfsmedia/261086efe15a46f5afb95d093ef038ea/57698-source>

⁹⁸ Response on file with Amnesty International.

⁹⁹ The Competition Act of 2002, available at <https://cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>

¹⁰⁰ UN Guiding Principles, Principle 11 and Commentary.

¹⁰¹ UN Guiding Principles, Principle 23 and Commentary.

“Like many other organisations in India, JCB India can sell JCB products to government buyers via the Government e Marketplace (“GeM”), albeit such sales are a fraction of total sales in India. JCB products are also sold via GeM by independent third-party dealers. GeM is an online platform in India which allows government buyers to procure products and services. Government buyers create a requirement on the GeM portal and sellers that are registered on GeM can participate in a reverse auction. Sellers submit technical specifications first, then suppliers who meet those requirements can subsequently make a commercial bid. Government buyers do not state in their tender what they intend to use the product for, or where. JCB India cannot dictate how or where government buyers acquiring any products through GeM use them once they have purchased them. Machinery and attachments acquired by government buyers can be used for many purposes and in many locations, including building schools, roads or to assist in disaster zones.”

In Madhya Pradesh and Gujarat, eyewitnesses informed Amnesty International that JCB machines used by the state authorities to carry out the demolitions belonged to local contractors engaged in real estate and farming businesses, and not the state authorities themselves.¹⁰² Speaking to Amnesty International, Altaf Khan, a community leader and former councillor in Khargone, Madhya Pradesh, said:

“The machines [Municipal Corporation] owns are smaller in size and are mostly used to remove waste and garbage or clean sewage. When they have a big mission in the city where they require the machines in 10-20 places, they need a bigger machine. For this, they have a mutual understanding with the local contractors. They don’t even rent it from them. It is just given to them on goodwill.”¹⁰³

Amnesty International acknowledges the possibility that some JCB machines used in demolishing homes and businesses in five states were not a result of direct sales between JCB India and the Indian state authorities. However, JCB is responsible for taking steps to prevent human rights abuses being committed with their machinery beyond their immediate dealers and distributors with whom they have a contractual business relationship, extending to those bodies primarily responsible for the violations. Where transactions are conducted at arms’ length from the perpetrators of harm, a key question is whether the company knew or should have known some of the equipment sold to the government agencies was likely to contribute to human rights abuses.

The use of JCB machines for demolishing Muslim properties in India has been documented by a number of national and international media reports and was severely criticized during former Prime Minister Johnson’s visit to India while the demolitions in Delhi, Madhya Pradesh and Uttar Pradesh were ongoing.¹⁰⁴ If the company was made aware of these incidents, then it has the responsibility to take preventive measures. If JCB failed to carry out due diligence fact-finding and assessments, then it is responsible for that failure to act – wilful ignorance is no defence.

Moreover, Amnesty International raised these concerns in its letter to JCB and JCB India. The letter asked whether the companies had knowledge of their machines being used to carry out punitive demolitions of Muslim homes in Assam, Delhi, Gujarat, Madhya Pradesh, and Uttar Pradesh. The response neither confirmed nor denied JCB’s knowledge of the demolitions and centred the defence on the denial of any legal liability for the losses caused to over 600 people in the five states. JCB should have known of the previous human rights abuses using its machinery and definitely can no longer claim to be unaware of these.

Overall, the response of Schillings on behalf of JCB suggests a policy framework in which the responsibility of a manufacturer to identify and address human rights risks arising from use of its

¹⁰² Interview with Altaf Khan and Faruk Khan, 21 May 2023 in Khargone, Madhya Pradesh; Interview with Mujahid Nafees, 19 May 2023 in Ahmedabad, Gujarat.

¹⁰³ Interview with Altaf Khan, 21 May 2023 in Khargone, Madhya Pradesh.

¹⁰⁴ Heather Stewart, “Outcry in India as Boris Johnson visits JCB plant amid demolitions row”, The Guardian, 21 April 2022, <https://www.theguardian.com/politics/2022/apr/21/boris-johnson-visits-jcb-plant-india-demolitions-row>; Sravasti Dasgupta, “How a British bulldozer is being seen as a symbol of religious discrimination in India”, 22 June 2022, <https://www.independent.co.uk/independentpremium/world/bulldozer-justice-demolitions-india-jcb-b2094741.html>; Animesh Jain, “Khargone violence: 50 homes and shops of riot accused razed, 84 arrested”, Times of India, 12 April 2022, <https://timesofindia.indiatimes.com/city/bhopal/khargone-violence-50-homes-and-shops-of-riot-accused-razed-84-arrested/articleshow/90789107.cms>

products ends at the point of sale. However, under the UN Guiding Principles, business enterprises are responsible for preventing and mitigating human rights harm when it is directly linked to their operations, products or services through a business relationship, including with entities in its value chain.

In summary, to meet these standards of responsible business conduct, JCB cannot ignore or discount the human rights harm caused by the end users of its products when it is likely directly linked to that harm through its distributor network and the services it provides. With the knowledge that its machinery is being used in punitive demolitions against largely Muslim communities across India, it is imperative for JCB to take its human rights responsibility seriously and conduct human rights due diligence to identify whether the machinery used in the demolitions identified in this briefing was purchased from or serviced by JCB India or its dealers, and, if so, use its leverage with those business relationships to prevent these demolitions from recurring.

5. CONCLUSION

Amnesty International's research found that the Indian authorities in the states of Assam, Delhi, Gujarat, Madhya Pradesh, and Uttar Pradesh carried out punitive demolitions against Muslim people's homes, businesses and places of worship, to punish those allegedly participating in protests and communal violence. This amounts to forced evictions and collective and arbitrary punishment and has impacted the rights to adequate housing, livelihood, life and liberty, and fair trial, of at least 617 people, including men, women, children and older persons.

In addition to the failures and violations of the respective state governments and the Indian government, Amnesty International found that JCB and JCB India failed to both acknowledge and conduct adequate human rights due diligence on the adverse human rights impacts of its machinery which was used in a widespread manner to punitively demolish properties in the five states. Its defence that the company does not have control over, and therefore cannot take responsibility for the impacts of its products after they leave its factories is clearly not in line with the UN Guiding Principles on Business and Human Rights and OECD Due Diligence Guidance for Responsible Business Conduct. JCB's claim that it does not have any leverage over its dealership network or those who use its products is wholly incorrect. JCB could exercise contractual leverage over its dealership network, by embedding human rights conditions into its contracts, which dealers would be required to pass on to subsequent purchasers and include into maintenance contracts for JCB's products. JCB also has the potential technological leverage – in the form of LiveLink – to track the use of its products, wherever applicable, after they leave its factories, making it difficult for the company to remain unaware of, or shirk the responsibility for, how its products are used after second-hand sale or leasing.

JCB now has notice of the human rights impacts of its products in the five states as they have been made aware of the open-source investigations conducted by Amnesty International's Crisis Evidence Lab, including the verification of photographic and video evidence, testimonies of victims witnessing the demolitions of their homes and businesses by JCB machines, along with numerous media reports on the misuse of JCB machines to demolish properties in a targeted and discriminatory manner.

The practice of unlawfully and punitively demolishing homes and businesses belonging to marginalized communities, particularly Muslims, such as what unfolded between April and June 2022 and which continues to take place, puts India in a direct and blatant violation of its constitutional and international human rights obligations and must be immediately stopped. In this regard, JCB must immediately engage with entities in its value chain and the Indian authorities to seek to prevent its machines from being used to mete out extra-judicial punishment to Muslims. It must also publicly condemn the use of its machines as symbols of hate, with debilitating repercussions for Muslims in the country. Lastly, it must take the most ambitious measures to identify and assess the human rights impacts of its products and services where there are heightened risks of misuse, and actively prevent and mitigate these risks and abuses.

6. RECOMMENDATIONS

TO JCB AND JCB INDIA

- A. Identify and assess the human rights impacts of the company's products and services, especially when they are used in areas where documented evidence of marginalization of a particular community is publicly available, such as Assam, Delhi, Gujarat, Uttar Pradesh and Madhya Pradesh.
- B. Take action to prevent and mitigate human rights risks and abuses, including through the contractual and technological means available to the company, and with regard to the leverage it can exert over dealers and agents, and others with whom it has business relationships such as:
 - prohibition of unauthorized use or conditions on onward sales, especially with respect to particular demolition contractors and state agencies involved in punitive demolitions;
 - termination of after-sales service or technical updates by the contractors providing JCB machines to the state authorities to carry out punitive demolitions;
 - insert downstream human rights due diligence obligations, including inspection and audit by seller, into its contracts;
 - insert record keeping and reporting requirements;
 - Consider no longer providing LiveLink technology as a service to customers who do not meet the required human rights due diligence standards.
- C. Publicly communicate all such risks that have been identified and how they are being addressed, in the fullest way possible.
- D. Engage with the Indian authorities, third-party dealers and private contractors in a constructive dialogue, to seek to ensure their machines are not used for punitively and unlawfully demolishing properties in India.
- E. Engage with the Indian authorities, third-party dealers and private contractors in a constructive dialogue to seek to ensure that JCB machines are not used for advocating hatred and violence against marginalized groups in India.
- F. Publicly condemn the use of JCB machinery to commit human rights violations or acts with adverse human rights impacts, such as forced evictions and punitive demolition of properties.
- G. Commit to respect human rights and create robust human rights due diligence policies and processes connected with the use of company products and services, including via its business relationships.
- H. Learn from best practice across sectors to prevent its products being used by those who might cause or contribute to actual or potential adverse human rights impacts.
- I. Consult with all stakeholders in relation to actual and potential human rights risks arising from its activities and from the activities of those with whom it has business relationships.

7. ANNEXURE 1

SUBJECT: Request for Information under Section 6(1) of the Right to Information Act, 2005

Name of the Applicant:

Address:

I request you to provide me with the following information:

1. How many excavators or bulldozers were used in Nagaon on 22 May 2022 to demolish the properties?
2. How many of them were owned by your office? Please provide the following details:
 - i. What process was followed purchase of these machines?
 - ii. Name and designation of the official who authorized the purchases.
 - iii. What was the stated purpose for which these machines were purchased?
 - iv. Please provide a copy of the public notice of the tender issued for these purchases.
 - v. Please provide details of machines purchased, preferably in the following format:

Name of the Company of the excavator/bulldozer	Serial number on the Machine	Date of purchase	Name and address of company or individual to whom purchase order was issued	Copy of purchase order issued to them

3. Has your office issued any guidelines for the use of these machines? If so, please provide a copy of these guidelines.
4. How many machines used by your office to demolish the aforementioned houses on 22 May 2022 were not owned by your office? Please provide the following details:
 - i. Were these machines hired or rented by your office?
 - ii. If so, please provide a copy of the public notice of tender issued for renting or hiring these machines.
 - iii. Did your office hire the driver or operators of this machine?
 - iv. Please provide the details of the machines hired or rented by your office, preferably in the following format:

Name of the company or individual from whom the machine was hired or rented	Serial number on the Machine	Date of Rent or Hire	Copy of the rent order or contract or agreement issued to the company or individual

I hereby inform that I am a citizen of India and I have deposited the requisite fee.

If the above asked information is not available in your office, kindly forward my application to the concerned public authority, as per Section 6(3) of the RTI Act 2005.

Name of the Applicant:

Phone Number:

Email Address:

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