

July 22, 2020

To,

The Hon'ble Chairperson and

Other Esteemed Members of the National Commission for Scheduled Tribes (NCST),

New Delhi

chairperson@ncst.nic.in

secy@ncst.nic.in

From:

All India Union of Forest Working People (AIUFWP) &

Citizens for Justice & Peace, Mumbai

Sub: *In the matter of police personnel and forest officials of Clement town, Dehradun attacking members of Van Gujjar nomadic tribal community and destroying their shelters.*

Hon'ble Sir/Madam,

We are writing to you as we are deeply concerned with the injustice being done to members of nomadic tribe Van Gujjars in Rajaji National Park, Dehradun. Since June 16, 2020 forest officials have been harassing the community living in Asharodi Forest of the Rajaji National Park, which has ultimately resulted in many members of the community, of one particular family being arrested and few others being injured and ending up in the hospital. The Van Gujjars, have been setting up their Deras (shelters) in these forests since even before India's independence. Their settlements in these forests are a matter of right as well as a matter of law. The same will be explained further in this letter.

About the incident

On June 16 and 17, 2020, Some forest officials along with some police personnel came to the Deras of Van Gujjars, specifically one belonging to Noorjahan, daughter of Ghulam Mustafa aka Mustafa Chopra, (75), and started questioning why these shelters were built and started destroying them.

On June 16, around 4 pm, only about 6 forest officials came to the spot and tried to destroy the Dera (shelter). On the following day, June 17 around 9.30 am, about 30 of them came destroying the Dera (shelter) and even, shockingly, assaulting the women.

This shelter was located at Asharodi forest in the Ramgarh range of Rajaji National Park Dehradun, about 500 meters from the Dehradun-Delhi highway. The officials came to the spot unannounced and without having given any prior notice to the settlers, in a group, thus defying even lockdown rules. As per a meeting convened by the Chief Secretary of Uttarakhand certain lockdown rules have been in force since April 28, 2020 specifically, with respect to protecting Van Gujjars from COVID-19. These rules, inter alia, state that Van Gujjars should be stopped from migrating and asked forest officials to take a head count of Van Gujjars and ensure that they do not leave their shelters at any cost. It also asks forest officials to ensure that the members of the community practice social distancing after they are explained how the same is to be followed and what rules are to be followed and ensure that they are made aware about the disease.

Instead of following these rules, the forest officials defied the same and while it was their duty to ensure that Van Gujjars remain in their shelters, they went ahead and destroyed their shelter.

*The lockdown rules pertaining to Van Gujjars are annexed as **Annexure A** herewith.*

In fact, the Indian Forest (Uttaranchal Amendment) Act, 2001 section 61A was inserted in the Indian Forest Act, 1927 which provides for a well laid down procedure before any summary eviction of unauthorised occupants. The section, inter alia, states as follows:

"61-A Summary eviction of unauthorised occupants-(I) If a forest officer, not below the rank of a Divisional Forest Officer, is of the opinion that any person is in unauthorised occupation of any land in areas constituted as a reserved or protected forest under section 20 or section 29, as the case may be, and that he should be evicted, the Forest Officer shall issue a notice in writing calling upon the person concerned to show cause, on or before such date as is specified in the notice, why an order of eviction should not be made."

No such notice was given to Noorjahan or her father Mustafa Chopra and in an unauthorised manner, the forest officials came and destroyed the shelters, assaulted the women and even registered false case against them, while they are the ones who got brutally injured in the assault and had to be rushed to the hospital; Noorjahan having even lost her consciousness.

Needless to say the actions of the forest officials are not just unlawful but also grossly violative of the fundamental right to a life with dignity which is a constitutional guarantee.

At that time of the incident, there were only women present and on hearing a commotion, Mustafa came to the spot and told the officials led by Officer Om Singh Kandali that they cannot destroy these shelters as individual and community forest claims under the Forest Rights Act 2006 on this land is under consideration at the government level. As a matter of fact, the officials had already been informed of such claims pending before government authorities in a letter to the Forest Officer on June 10, 2019 signed by Mustafa and his family members. In this letter, the officer was informed that their shelters are in Rajaji National park and that since their claims under the Forest Rights Act, 2006 are still pending, and their shelters should not be destroyed.

*A copy of this letter has been annexed as **Annexure A1** herewith.*

The incident of June 16 has in fact been captured on the phone camera, in a video by one of the children of the community. In this video it can be clearly seen that it was the police officials who assaulted the family members of Mustafa while destroying their shelter and it can also be clearly seen how his family members were manhandled and attacked by police officials and forest officials when they objected to the destruction of their shelters. As per a detailed account, Noorjahan, aged 42, d/o Mustafa Chopra was beaten up on June 16 and RamzanBibi, aged 50, the daughter in law of Mustafa Chopra, was brutally assaulted the following day and they had to be taken to DeenDayal Upadhyaya Hospital, Dehradun where they were examined and treated by doctors.

*The Medical reports of Noorjahan and RamzanBibi have been annexed as **Annexure B** herewith.*

*The video has been annexed as **Annexure C** herewith*

The officials, in the video, can be seen objecting to the filming of the incident, thus making it amply clear that the officials did not want a record of their wrongdoings and brutality.

Further, letters dated June 17 have been written to the Head of Clement town police station as well as to the Superintendent of Police, Dehradun giving a detailed account of the incident. In this letter it has been recounted by Noor Mohammad, son of Mustafa and husband of RamzanBibi, how 30 officials, including police and forest officials came to their shelter on June 17 and dragged Noorjahan and RamzanBibi and tore their clothes and started hitting them with sticks and after seeing other members approaching, they fled from the scene. In the rush they left behind some sticks and their

caps at the scene of the incident. Resultantly, Noorjahan suffered severe injury to her head and so did RamzanBibi, details of which are mentioned in the medical reports annexed as Annexure B.

The copies of letters dated June are annexed as **Annexure D** herewith

When Noor Mohammad went to Clement town police station to register an FIR with respect to this incident on June 16 itself, the complaint was not registered and they were asked to put the application in the drop box and when they asked for receipt, they were denied the same.

The police instead filed FIR against Mustafa and his family members alleging that on June 17 when the police officials objected to Mustafa and other members erecting a Dera, they abused the police officials and started assaulting them with sticks and pelted them with stones. The FIR states that Mustafa and others tried to obstruct them while performing their duty and attacked them and tried to kill them. The FIR has been lodged under sections 147 [punishment for rioting], 148 [Rioting, armed with deadly weapon], 504[Intentional insult with intent to provoke breach of the peace], 506 [Punishment for criminal intimidation], 333 [voluntarily causes grievous hurt to any person being a public servant], 353 [assaulting a public servant] and 307 [attempt to murder] of the Indian Penal Code.

A copy of the FIR has been annexed as **Annexure E** herewith

Mustafa and his family members were arrested on June 18. The four women were granted bail and released on June 30 and Mustafa and his minor grandsons were released on bail on July 10.

While in custody Noorjahan, was beaten up by the police on sensitive parts, but the police got the medical checkup done for all arrested before taking them to the Magistrate and mentioned in the report that they were all fit. When Mustafa's injuries were showed to the judge during the first bail hearing, the police claimed these were old injuries! If that were indeed the case, the question remains why were they not mentioned in his medical report? This clearly indicates that the police is hiding the fact that Mustafa was beaten up and sustained injuries while in custody. Further, Noorjahan was extremely scared and embarrassed to even mention that she was assaulted on her sensitive parts and this information was divulged by her to a female relative. Incidents of custodial violence are unfortunately so habitual and normalised within the Indian criminal system but such gendered violence, assaulting a woman in the sensitive parts surpasses even the accepted 'normal!' An incident such as the one that took place at the Dera (shelter) located at Asharodi forest in the

Ramgarh range of Rajaji National Park on June 16, puts into serious question the rights, life and dignity of individuals who belong to an invisibilised nomadic tribe, Van Gujjars and spotlight the unchecked brutal conduct of the police, especially calling into question their behavior with persons in custody.

According to the account given by Mustafa, this is not the first time that false and frivolous cases have been lodged against him by the police as he has been fighting for his and his community's forest rights in Rajaji National Park for over two decades now.

Esteemed Members, it is humbly stated that on viewing the video clip one might well conclude that this FIR is utterly frivolous and does not, in any extent, invoke charges of rioting, attempt to murder and assaulting a public servant! In fact, it was the police officials who assaulted the family members of Mustafa while destroying their shelter and it can be clearly seen how his family members were manhandled and attacked by police officials and forest officials when they objected to the destruction of their shelters.

A representation has also been made to the Governor of Uttarakhand in this regard, detailing the incident and demanding action against the officers responsible for attacking Noorjahan and Ramzan Bibi.

Legal sanction favoring Van Gujjars settlement

The community not only has the law on their side, in the form of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (known as the Forest Rights Act) but also has a High Court judgment in their favour.

The Forest Rights Act recognizes community forest rights as well as individual forest rights and allows forest dwellers to file claims to their forest rights under section 6 (1) of the Act. Section 6 of the Act contains provisions related to such claims and the authorities having the powers to vest these rights on to the forest dwellers, which includes Scheduled Tribes as well as traditional forest dwellers.

Further, the Supreme Court has, in February 2019, stayed the eviction of forest dwellers whose claims have been rejected for want of due process.

More specifically, Van Gujjars of Rajaji National Park have in their favour an order of the Uttarakhand High Court at Nainital whereby the court, had directed the authorities to consider the representations made by Mustafa and his family members and decide whether their rights of retention fall under the ambit of the Act. While these claims have not been decided upon by the concerned authorities, Mustafa and his family reserves the right to settle where their claim lies.

The order dated April 9, 2019 of the Uttarakhand High Court is annexed as **Annexure F** herewith.

There also exists an older judgment of the Uttarakhand High Court, in **Ban Gujjar Kalyan Samiti vs. State of Uttaranchal**, whereby a bench headed by the then Chief Justice Rajeev Gupta directed the state to consider the representations of the petitioner for including the names of rest of Van Gujjars in the list prepared for rehabilitation from Rajaji National Park, by also giving them reasonable opportunity to all concerned members of the community; without prejudice to the rights of the community members to avail remedies under the Forest Rights Act in case they are not satisfied with the decision of the state authorities.

The order dated June 20, 2007 of the Uttarakhand High Court is annexed as **Annexure G** herewith.

Further Mustafa and others had also approached the Uttarakhand High Court in 2008 and the Single Judge Bench of Justice Prafulla Pant had considered their plea for issuance of writ of mandamus to ensure that the Committees for redressal of grievances of Van Gujjars be formed as per rules under the Forest Rights Act. The writ was thus issued directing the state government to form these committees within 60 days of the order. This order is being mentioned here to demonstrate to this Hon'ble Commission how Mustafa has been constantly attempting to get his forest rights claims registered with the government thus proving the bonafide nature of his acts.

The order dated September 26, 2008 of the Uttarakhand High Court is annexed as **Annexure H** herewith.

In another case which concerned the eviction of Van Gujjar families living in the buffer zone of Corbett National Park in Uttarakhand, a letter of additional secretary to the chief conservator forest Uttarakhand was presented. Whereby it was stated that "Van Gujjars are traditional forest dwellers of Uttarakhand, who have been issued permission for looping/grazing from time to time by different divisional forest officers of Uttarakhand".

The letter further stated, “Such Van Gujjars and their families living in the forest of Uttarakhand cannot be removed under Section 3 (1) d of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, until the process of verification of recognition of their Forest Rights is not completed.”

Hence, it is amply clear from the above mentioned that the rights of the Van Gujjars have been both specifically and holistically identified by the courts of law, including the apex court, by giving them opportunity to stake their claim to their rights.

The Forest Rights Act, 2006 was enacted especially to ensure that the specified rights enumerated under Article 244 of the Indian Constitution vis a vis the Schedule V of the Indian Constitution are realised by the vast section of Adivasis, forest dwellers and indigenous peoples. The rights protected under this statute are applicable to the forest dwellers all across the country. Despite of the law being in force since 14 years, individual as well as community claims of forest dwellers are not yet being recognized. This has given further impetus to the powerful nexus between the local mafia, police and forest department, who have for centuries exploited forest dwellers. This state of affairs has allowed a historical injustice to be perpetuated despite the laudable and emancipatory objectives behind the law. Further, despite of the country facing such a crucial health crisis, the atrocities of the forest officials towards the tribal community has not diminished by any measure and is in fact continuing in full force.

The refusal of forest authorities to recognise the rights of Adivasis (tribals), forest dwellers and indigenous communities, in complete disregard of not just the mandate of the law but also orders of the courts of law, and constantly and repeatedly invoking of false cases against these sections of Indians is a clear display of their contempt towards these tribes. The Van Gujjars are a vulnerable class of people sustaining themselves on simple activities such as cattle rearing and selling small scale dairy products and it is imperative that this Commission takes cognizance of such incidents of incidents against them so their oppression at the hands of forest officials can finally come to a halt. This incident calls for urgent action by this Commission so that the public servants who have caused such disservice and impinged upon not just the forest rights but the natural human rights of these tribals can be brought to justice and held liable for their actions. Such despotic attitude of the forest authorities shall continue unless constitutional bodies like this Hon’ble Commission take strict action

against those liable and protect the right of livelihood, right to live and other allied human rights and legal rights of Adivasis and forest dwellers.

It is the constitutional mandate that this Hon'ble Commission shall safeguard the rights bestowed upon tribes under the Constitution as well as any other law in place. The preamble of **The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [known as the Forest Rights Act]** states that the object of the Act is to “address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers” and recognises that historical injustice has been meted out to the forest dwelling communities since colonial times.

As mentioned above, it is not the Forest Rights Act, 2006 that they are protected with but also some judgments/orders of the courts of law which are not being followed by forest department officials which is ultimately leading to the oppression of these tribals. This certainly warrants the intervention of a constitutional body like this Hon'ble Commission which seeks to safeguard legal rights of such tribes.

About Van Gujjars

The Van Gujjars are a transhumance tribe of pastoralists belonging to the Himalayas. Their livelihood and subsistence depend primarily on their cattle. During summer they walk upto and beyond 12,500 ft in the mountains and trek down on the onset of winter.

Each member of the tribe treks to the mountains during summer, and make the same journey down before the snowfalls. Van Gujjars reside in temporary settlements known as Dera. Dera is their home which is a small wooden structure with a roof that serves as a shelter for them. Each Dera belongs to a particular family. As the winter approaches, Van Gujjars abandon these little Deras and make their way to the lower plains. Before they embark on this journey, the Van Gujjars ensure that every Dera has its roof taken off. This is done to prevent Dera from any damage caused during the heavy snowfall.

Name, designation and Address of public servant against whom Complaint is being made:

Please note the names and designation of public servants have been mentioned to the best of knowledge of the community members; further probe may identify them more clearly

1. Om Singh Kandali - Ranger Ramgarh range
2. Parsuram – Forester
3. Seema Penuli, Forester
4. PrabhudyalNotyal - Van Daroga
5. Amrita Singh – Forester
6. Amare Thapa,
7. Aan Singh,
8. Rajendra,
9. Sardar Singh,
10. Arun Kumar,
11. Data Ram - Forester -Van Aarakshi
12. Dinkar - Van Daroga
13. Narendra Singh – Driver
14. Pradip Thapa - Contract worker
15. Brahamanand - Van Daroga
16. Bhupinder Singh Bisht – Forester
17. Prithvi Singh Negi - Van Daroga
18. Amrita Dobhal – Forester

Prayers to the Commission

1. We, at the All India Union of Forest Working Peoples (AIUFWP) and Citizens of Justice and Peace (CJP) earnestly urge this Hon'ble Commission to take suo motu cognizance of this case under the provisions of Article 338A of the Indian Constitution and we also urge the NCST to constitute a special team to inquire and investigate the matter.

2. We also demand that an immediate notice to the District Magistrate and Superintendent of Police for their inability to protect the rights and life of the Adivasis and forest dwelling communities.

3. As organisations committed to reclaiming the rights over land of the Adivasi and Forest Dwelling communities and a civil rights group committed to the rule of law and equality before the law as enshrined in the Indian Constitution, we urge this Hon'ble Commission to, in exercise of its powers and functions: "(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the

time being in force or under any order of the Government and to evaluate the working of such safeguards” as also “(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes”

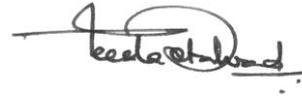
4. Any other relief that this Hon’ble Commission may deem to be necessary and prudent so as to ensure that such brutal police action is not repeated in the state or any other part of the country.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Roma'.

Roma Malik

**All India Union of
Forest Working People (AIUFWP)**

A handwritten signature in black ink, appearing to read 'Teesta Setalvad'.

Teesta Setalvad

Citizens for Justice & Peace

Annexures:

- A Lockdown rules pertaining to Van Gujjars
- A1 Letter from Mustafa etc dated June 19, 2020
- B Medical reports of Noorjahan and Ramzanbi
- C Video of the Incident (only going in soft copy)
- D Letters written after Incident to Clement Town Police station
- E Copy of FIR against Mustafa and others
- F Order dated April 9, 2019 of the Uttarakhand High Court
- G Order dated June 20, 2007 of the Uttarakhand High Court
- H Order dated September 26, 2008 of the Uttarakhand High Court