



Date: July 9, 2020

To,

The Hon'ble Chairperson and

Other Esteemed Members of the National Human Rights Commission (NHRC),

New Delhi

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From:

All India Union of Forest Working People (AIUFWP) &

Citizens for Justice & Peace, Mumbai

Sub: In the matter of harassment and violent assault by forest officials on women of Tharu tribe of Kajaria Village Lakhimpur Kheri, UP

Hon'ble Sir,

We are writing to you with concerns about the safety, lives, security and livelihood of members of the Tharu tribal community who have been, once again, assaulted by the forest officials of the Dudhwa Tiger Reserve in the midst of the countrywide Covid 19 Pandemic Lockdown. This is not something new, and part of a continued pattern of harassment, for decades, at the hands of forest officials of Dudhwa Tiger Reserve, Lakhimpur Kheri, Uttar Pradesh. This is to bring to your notice not just one incident of harassment meted out to the members of this community but a series of such escalated incidents in recent years. **Worse still, despite the Covid 19 Pandemic Lockdown situation and paralysis, the authorities are using these unusual circumstances to directly attack and snatch the livelihood and land rights of Tharu Adivasis.**

People from Tharu community live in this area occupying 46 villages and have been doing so even before the Dudhwa Tiger Reserve was recognised in 1978. Until The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [referred to as FRA hereinafter, for sake of brevity] came along, the Tharu community of Dudhwa Tiger Reserve was being harassed for generations by the malicious act of filing false cases against members of their community for "endangering wildlife, for collecting firewood" and so on. This still continues but the community now has the right, under the FRA 2006, to file claims over the land, which have been duly submitted to the concerned authorities. The Tharu community's struggle to get the claims registered and decided shall be dealt with further in this complaint.

At the outset, we urge this Commission to take cognizance of the matter, as it did in a similar instance of police brutality towards forest dwellers. It is humbly submitted that in 2018, CJP, along with AIUFWP had brought to the cognizance of this Commission an incident in village Lilasi Muirpur, Sonbhadra Dist., Uttar Pradesh, whereby several women and children were attacked for exercising their forest rights and this Commission had taken some stringent steps which involved ordering the District Magistrate to initiate a probe in the matter.

The recent incidents

The recent incidents of harassment of Tharu community started a few weeks ago when the forest officials dug up trenches of approximately six feet on the periphery of the village, in early June 2020, so as to prevent them from going to the forests. This act of digging up of trenches has not only adversely affected the livelihoods of the Tharu community but has also led to the drying up (killing) of trees. These trenches, dug using JCBs (akin to a bulldozer) have not only killed trees in the vicinity of trenches but stopped the drainage of rain water from the adjacent fields. The resultant water logging has destroyed crops of wheat. These are wilful criminal acts by the forest officials.

*Copies of photographs of the trenches and fields are annexed as **Annexure A** herewith.*

On July 2, 2020 the forest officials once again came to the village fired shots in the air, molested women and beat up some youngsters. One such young man, Suvendar Rana has recorded a video of himself retelling the horrific incident whereby forest officials including forest ranger Alok Sharma came to the village while the villagers were working on the field and started an unprovoked, violent assault. He recounted that they beat them up with lathis and hence they fled from there. He further said that the officials then started attacking and molesting his mother, even tore the clothes of many women working at the field, including his mother, Veermati's.

There is even a video of his mother, Veermati, where she is seen sitting with her torn up blouse, worried about the whereabouts of her son who was struck with lathis on his head. She also said that the forest officials fired their guns five times and beat up another woman who was with her and misbehaved with her, tore her blouse, which can be clearly seen in the video. The video compiled by our local members (of the Union) can be viewed [here](#).

The incident of digging up trenches surrounding Kajaria village were brought to the notice of the Deputy Collector by a letter dated June 6, 2020 in which it was mentioned that the trenches not only pose a threat to the villagers but also to the wildlife in the forest who could lose their lives by falling into the trenches. The Sub Divisional Magistrate had taken cognizance of this matter and this was probably the reason why the forest officials did not cause any trouble for the next few days to Kajaria villagers until the wee hours of July 1, 2020.

*The copy of the letter dated June 6, 2020 has been annexed as **Annexure B** herewith.*

On July 1, two FIRs were filed at Gauriphanta Police station, one by the Tharu women and the other by the forest department officials. The FIR registered by the forest department officials stated that the tribals from Kajaria village were tilling on forest land that did not belong to them and when they got such information they reached the spot with some police officials. When the Tharu women were told to stop the work, all the villagers allegedly gathered around and started hurling abuses at the officials, tore up their own clothes, and threatened them that they will file charges of molestation against them. Further they started beating the officials with lathis, even snatched the rifles of the officials and started hitting one of them with the back of the rifle. When some more police officials began approaching the spot, they villagers fled towards the sugarcane fields and the forest officials fled towards the forest while firing gun shots in the air. These rifles were then recovered from the forest area near Kajaria.

The FIR was filed against 25 individuals under the following sections of the IPC: 147 [Punishment for rioting], 149 [member of unlawful assembly], 186 [Obstructing public servant in discharge of public functions], 188 [Disobedience to order duly promulgated by public servant], 189 [Threat of injury to public servant], 193 [Punishment for false evidence], 269 [Negligent act likely to spread infection of disease], 270 [Malignant act likely to spread infection of disease], 332 [Voluntarily causing hurt to deter public servant from his duty], 333

[Voluntarily causing grievous hurt to deter public servant from his duty], 353 [Assault or criminal force to deter public servant from discharge of his duty], 427 [Mischief causing damage to the amount of fifty rupees], 447 [Punishment for criminal trespass], 394 [Voluntarily causing hurt in committing robbery], 504 [Intentional insult with intent to provoke breach of the peace], 506 [Punishment for criminal intimidation]; as also sec 7 of Criminal law Amendment Act, 2013 and sections 51 [Punishment for obstruction] ,and 53 [Punishment for misappropriation of money or material] of the Disaster Management Act, 2005

*A copy of the FIR filed by forest official is annexed as **Annexure C** herewith.*

The other FIR was filed by Veermati, who is seen in the video sitting with torn clothes and recounting the incident whereby her son was thrashed by the officials and she was sexually abused and assaulted by the forest officials. In the FIR she has stated that the forest officials reached the field where her son Suvendar was working and started beating him up. When she protested this unwarranted beating, the officials blurted out casteist slurs at her and started abusing her verbally. Further they started molesting her by trying to disrobe her, tore her clothes and sexually assaulted her by touching her inappropriately and also snatched the traditional tribal jewellery that she was wearing. They further brutally attacked her other son who came to her rescue and when other women of the village reached the spot on hearing of the incident, the officials started firing gun shots in the air to scare them. When Sub-Inspector of Gauriphanta police station, Bhatt, came to the spot, instead of protecting the women, he started abusing the women.

This FIR has been filed under the following sections of the IPC: 323, 504 [Intentional insult with intent to provoke breach of the peace], 506 [Punishment for criminal intimidation], 354C [Voyeurism], 392 [Punishment for robbery], 376 [Punishment for rape], 511 [attempt to commit offence], 364 [Kidnapping or abducting in order to murder] as also sec 3(2)(v) [commits any offence under the IPC punishable with imprisonment for a term of ten years] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

*A copy of the FIR filed by Veermati is annexed as **Annexure D** herewith*

The incident was also covered widely in local language newspapers bringing to the fore the harassment of the Tharu community of Kajaria village at the hands of forest officials.

*A copy of few news clippings has been annexed as **Annexure E** herewith.*

Legal sanction in favour of Tharu community

On July 31, 2013, forest dwellers from 17 villages of the Dudhwa Tiger Reserve region submitted details of around 2150 families to claim lands under community forest rights provision as per the amendments made to the FRA Rules in 2012. These claims have been pending with the Sub-District level Committee since after the community filed a rebuttal to the objections raised by the forest department.

The unlawful acts of the forest officials, digging trenches to prevent the tribals from accessing the forest area, entering the village and assaulting them unprovoked are condemnable not only on grounds of gross violation of human rights but also for unlawfully restricting lawful activities of the tribals. An order of the Ministry of Home Affairs dated April 16, 2020 allowed “collection, harvesting and processing of Minor Forest Produce/Non timber Forest produce by Scheduled Tribes and other forest dwellers in forest areas”. Further, regular agricultural activities have also been permitted by the central government in these guidelines.

*The MHA order dated April 16, 2020 is annexed as **Annexure F** herewith*

Clearly, the lockdown guidelines by the central government permitted such activities as they thought them to be important for the sustenance of the forest dwelling communities such as the Tharu. Hence, the forest officials acted in contravention to the rules laid out by the central government by indulging in such nefarious acts committed only for causing unwarranted trouble and to threaten the tribals. The land that the forest officials are claiming to be “forest land” is among the land for which community rights have been claimed by the Tharu community of close to 25 villages.

Hence, as per the Supreme Court’s order of February 28, 2019 in the case of Wildlife First Vs Union of India IA no 35782/2019, the eviction of forest dwellers, the forest officials have no authority to prevent the tribals from indulging in livelihood activities on the lands they have claimed rights on and also have no authority under any law for unwarranted attacks on the members of tribal communities such as the Tharu for merely tilling a land!

Further, when Dudhwa Tiger Reserve was identified as a critical tiger habitat as per Wildlife Protection Act, 1972, in June 2010, an expert committee had marked the area to be reserved for it. The notification dated June 9, 2010 issued by the Governor of Uttar Pradesh, stated that the critical tiger habitat for Dudhwa Tiger Reserve be kept inviolate for the purpose of tiger reservation “without affecting the rights of the Scheduled Tribes or such other forest dwellers”.

*A copy of the notification dated June 9, 2010 is annexed as **Annexure G** herewith.*

The history of Tharus as a community and their long standing battle with the government is germane to the recent incidents that this Hon’ble Commission needs to take cognizance of. Here’s a brief look at Tharu settlements since British era and their legal battle to claim their rights which is still on going before the Hon’ble Supreme Court.

History of Tharu

While the people of these villages have lived here for centuries, official records indicate evidence on paper dating back to at least 200 years. The community itself extends into Nepal with social ties like marriages common even across the international border. Historically a part of Khairagarh estate, these villages were handed over to British owners in 1904 under a deed of exchange between Rani Surat Kuar and the Secretary of State for India. In 1927, under the newly enacted Indian Forest Act, they were brought under the control of the forest department who now held unabridged powers over forest produce including timber and hence over the people who historically had worked the forests. In 1978 when Dudhwa Tiger Reserve was carved out of this area, the Tharu people found themselves facing eviction. A long and bruising legal battle followed that gained momentum after the FRA, 2006 was passed.

History of assaults on Tharu

After Dudhwa Tiger Reserve was recognised in 1978, Tharu faced threat of eviction and the legal battle began. The Allahabad High Court in 2003 gave a judgment which was in line with the Forest Department’s demand and a denial of the rights of the Adivasis. Thus was formed the Tharu Adivasi Mahila Mazdoor Kisan Manch that led the non-violent struggle.

On January 20, 2012, [Nivada Rana](#) along with thousands of males and females from villages- Kajaria, Sariyapara, Suda, Bhuda, Biriya, Najhauta, Devrahi and Jaynagar led a march to the forest in Dudhwa Tiger Reserve along with thousands of bullock carts, demanding their rights. On their way, they were confronted by Warden Ishwar Dayal and Kotwal Shubhsuchit Ram of the Dudhwa forest department and were brutally attacked. Shubhsuchit

Ram, in a deadly attack, hit Nivada on her forehead with his baton, cutting apart her forehead. Not only were there brutal physical assaults; the attacks also assumed sexual undertones, with officials manhandling women inappropriately. An FIR was lodged in this case against the officials after a month's persistence and is pending before the District and Sessions Court.

Tharu Community rights

The preamble of FRA 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. The nonviolent and democratic struggle of the Tharu community in Dudhwa Tiger Reserve has spanned decades. Their struggle, along with the All India Union of Forest Working Peoples (AIUFWP) has been persistent, aimed at getting their community rights recognised. One such struggle culminated after the passing of FRA 2006 itself, when villages like Surma, Golbojhi and Devipur were granted revenue village status and thereafter started enjoying community rights since 2012. Hence, the community has kept its struggle going through democratic means.

Filing claims for community rights on the land has not been an easy ride for the Tharu community either. As mentioned earlier, their struggle has spanned decades. In 2003, when an Allahabad High Court judgment amounted to a denial of their rights to the lands, the Tharu Adivasis launched a non violent struggle. Thereafter, the passing of the FRA gave the much needed momentum to their struggle, after which they began the process of filing their claims. On July 31, 2013, forest dwellers from 17 villages of the Dudhwa Tiger Reserve region submitted details of around 2150 families to claim lands under community forest rights provision as per the Amendments to the FRA in 2012.

Though the villagers were promised by the Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC) in July 2013 that their claims will be verified and disposed of within a month, no such thing happened. No action was taken on these claims for two years. Because of consistent protests by people, in 2015, the SDLC got together files of many villages. The files containing the claim related documents for many villages had been misplaced by then!! As a precautionary measure, the All India Union for Forest Working People (AIUFWP), which has played a significant role in mobilising people in the area, had preserved photocopies of the files and another copy of the claims that were submitted again in 2016.

Further, because of the deliberate attempts of the forest department officials to mislead the administration the matter was kept in limbo until 2017.

Whenever the movement gained momentum, the process of verification of documents would be hastened for a brief while but because of frequent transfers of administrative officials, the process kept getting interrupted in a deliberate bid to deny land and livelihood rights to Tharu Adivasis.

As the movement was renewed in February 2019, the Sub District Magistrate (SDM) of Palia attributed the official responsibility to look into the files/ land claims submitted by villagers to the *Lekhpal*. The files were sent to the FD for verification. After about three months, when people organised and agitated for a time bound end to the process, in July 2019, the FD sought to reject the land claims on reportedly flimsy grounds. The villagers then submitted point by point rebuttals to these objections.

*A copy of the rebuttals filed by the villagers are annexed as **Annexure H** herewith.*

Liability of the Forest Officials

Based on the incident as articulated hereinabove, the forest officials, namely, Alok Sharma, Sunil Sharma and Narendra have not only committed crimes under IPC as per the FIR filed by Veermati (copy of FIR annexed as **Annexure D**) but additionally have also committed crimes under section 120B [Criminal conspiracy], 166 [Public servant disobeying law, with intent to cause injury to any person], 166A [Public servant disobeying direction under law], 307 [attempt to murder], 322 [Voluntarily causing grievous hurt], 336 [Act endangering life or personal safety of others], 354 [Assault of criminal force to woman with intent to outrage her modesty], 354B [Assault or use of criminal force to woman with intent to disrobe], 355 [Assault or criminal force with intent to dishonour person, otherwise than on grave provocation], 431 [Mischief by injury to public road, bridge, river or channel].

Further, they are also liable under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, sub sections of section 3(1) as follows:

3. Punishments for offences atrocities.— [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

Further, since the forest officials are public servants section 3(2)(vii) also applies which states,

“(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(x) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

The liability of the officials is amply clear from what is stated above and in line with the incidents as explained hereinabove whereby the Tharu community of Kajaria village has been repeatedly harassed and threatened by the public servants with the intention of establishing fear in the minds of the community and to make them subservient to their authority. But the community being dauntless is still standing strong and willing to fight for their rights despite of unfavourable and hostile surroundings with no guarantee of their own and safety of their loved ones.

It is at this point that an intervention from this Hon'ble Commission will bolster their efforts and make them feel a sense of security that their human rights are being safeguarded. This constant intimidation from persons of authority creates a fearful mindset which makes these vulnerable communities prone to mental trauma and

arouses a feeling of being oppressed in a democratic country where equality of law is a significantly fundamental right. Public officials being persons with authority ought to be held liable for such acts of attacking the modesty of a woman in broad daylight in the presence of her son! The brazenness with which this act of outraging the modesty of the tribeswoman by tearing her clothes, has been carried out, should be an eye opener in itself. Further also stating barefaced lies in their FIR that the woman tore her own clothes and threatened to frame them in a case of sexual harassment is downright outrageous and this Hon'ble Commission will surely agree that this in itself is an attack on her dignity as a woman.

We urge this Hon'ble Commission to take cognizance of this matter and bring justice to the Tharu Adivasi community so that public officials are hereafter deterred from unnecessarily harassing and assaulting tribal communities across the country. This is another such incident of sexual assault on women and unwarranted attacks on tribal communities. One such recent incident of the Van Gujjars of Rajaji National Park of Dehradun, Uttarakhand has already been brought to the notice of this Hon'ble Commission by us vide a complaint dated June 29, 2020 and is awaiting action.

We sincerely believe, that this Hon'ble Commission will take prompt and requisite action in both these matters to deter public officials from attacking vulnerable communities under the guise of execution of law so that human rights of these communities remain safeguarded in the long run.

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

Alok Sharma - Forest Range officer

Sunil Sharma – Deputy Forest Officer

Narendra – Forest worker

Bhatt- Sub-Inspector Gauriphanta Police station

Further Background

In a major breakthrough for Adivasi organisations and advocates of rights of forest dwelling communities, on September 12, 2019, the Supreme Court of India has admitted all the 19 intervention applications that had been filed before it urging it to stop the eviction of millions of forest dwellers. Filed by different sets of directly concerned individuals and organisations, all of these defended the constitutional validity of the Forest Rights Act (FRA) 2006. This included an intervention application filed by the Adivasi women and forest movement leaders Sokalo Gond and Nivada Rana backed by the All India Union of Forest Working People (AIUFWP) and Citizens for Justice and Peace (CJP), two organisations that have been actively campaigning for forest rights

Prayers before 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 Protection of Human Rights Act (PHRA) and we also urge the NHRC 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 tribals and forest dwelling community.

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) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant"

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,

Roma Malik

All India Union of

Forest Working People (AIUFWP)

Teesta Setalvad

Citizens for Justice & Peace

List of Annexures:

Annexure A - Copies of photographs of the trenches and fields

Annexure B -The copy of the letter dated June 6, 2020

Annexure C - A copy of the FIR filed by forest official

Annexure D - A copy of the FIR filed by Veermati

Annexure E - A copy of few news clippings on the incident

Annexure F - The MHA order dated April 16, 2020

Annexure G – Copy of the notification dated June 9, 2010

Annexure H - A copy of the rebuttals filed by the villagers