

July 22, 2020

To,

The Hon'ble Chairperson and

Other Esteemed Members of the National Commission for Women (NCW),

New Delhi

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From:

All India Union of Forest Working People (AIUFWP) &

Citizens for Justice & Peace, Mumbai

Sub: *Physical and sexual assault on women belonging to nomadic tribe, Van Gujjars, by forest officials and police*

Respected Madam,

We write to you concerned about incidents that have taken place recently in Rajaji National Park, Dehradun, Uttarakhand, where van Gujjars tribal community reside, whereby forest officials and some police officials came unannounced and assaulted two women from the community. This is not just a case of physical abuse of women whereby they were brutally beaten up but also of gendered custodial violence.

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. **These Deras (Shelters) have been here for decades.** 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. At that time of the incident, there were only women present and on hearing a commotion, Mustafa Chopra, a senior resident and member of the All India Union of Forest Working Peoples (AIUFWP), 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 for recognition of land rights, at the government level.

The incident of June 16, 2020 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 Chopra 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 Ramzan Bibi, aged 50, the daughter in law of Mustafa Chopra, was brutally assaulted the following day and they had to be taken to Deen Dayal Upadhyaya Hospital, Dehradun where they were examined and treated by doctors.

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

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

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 A above.

*The letters to the Head of Clement town police station as well as to the Superintendent of Police, Dehradun dated June 17 have been annexed as **Annexure C** herewith.*

The attempts of Mustafa's son, Noor Mohammad to file an FIR in this regard also failed as the police at Clement town police station refused to register the same and asked him to drop his complaint in the drop box while refusing to give any acknowledgment of receipt. Instead a false FIR was lodged against Mustafa Chopra and his family members including the injured Noorjahan and Ramzan Bibi 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. Mustafa and his family members were arrested on June 18.

While in custody on June 18, 2020 Noorjahan, was beaten up by the police and forest department staff and assaulted and injured on sensitive parts of the body. The police, however, gave a false medical report before the Magistrate stating that they were all fit. Noorjahan was extremely scared and embarrassed to even mention that she was assaulted (read molested through gendered violence) 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!'. The police and forest staff misbehaved with four arrested women in custody and used abusive language. The four women wrongfully arrested have been since granted bail and have been released on June 30, 2020.

It is humbly submitted that such incidents of violence against women that should generate outrage and immediate legal steps and prosecution are even more worthy of action when perpetrated on women belonging to vulnerable sections of society such as Adivasi, indigenous and forest dwelling communities. These communities are physically distinct and distant from urban and rural societies, hence incidents of violence and gendered sexual abuse against them go easily unnoticed even if they take place in broad daylight. This incident of assault was so grave and the intensity of the beating so severe, that, when the two women were beaten up, Noorjahan even lost her consciousness. All this happened in a forest where only the community members and the public officials stood witness.

Hence, we hereby urge this Hon'ble Commission to take cognizance of this matter in order to bring justice to the tribeswomen among Van Gujjars as well, so as to prevent such acts of sexual abuse and assault on women by public officials in the future. Public officials commit unspeakable acts of violence under the garb of authority and do the same with complete impunity. This is why it is incumbent on the National Commission of Women –that stands for *all women*, needs to act. Or else, like always, the officials will escape scot free. Taking advantage of the immunity that law affords to public officials, they assault and abuse women while doing their "duty" and also indulge in outrageous acts of even gendered custodial violence that amount to sexual abuse.

Please note that a complaint has been sent to the National Human Rights Commission (NHRC) with respect to the human right violations that have occurred in these incidents

on June 29, 2020. But since, this incident, apart from being a human rights violation which is a broader spectrum, also involves gendered violence inflicted by people in authority on women of a vulnerable community, the intervention of this Hon'ble Commission becomes imperative. This Commission has in the past taken up issues related to sexual harassment and sexual assault on tribal women such as the incident where tribal women were paraded naked in Odisha as well as the rape of a tribal girl in West Bengal. Hence, we truly believe that this outrageous incident of sexual violence in broad daylight as well as in police custody will elicit a similar response from the Commission and that necessary action will be taken.

*A copy of the complaint to NHRC has been annexed as **Annexure D** herewith.*

Criminal liability

Custodial violence has indeed become a menace in our criminal justice system and to put a stop to such unwarranted violence against women merely to establish fear becomes the prerogative of this Hon'ble Commission.

We would also like to bring to your notice that the acts of violence and sexual abuse by the forest and police officials make them liable under the Indian Penal Code sections 120B [Criminal conspiracy], 307 [attempt to murder], 322 [Voluntarily causing grievous hurt], 354 [Assault of criminal force to woman with intent to outrage her modesty], 354A [Sexual harassment], 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] as well as sections 3(1)(w)(i) [intentionally touches a woman, when such act of touching is of a sexual nature]; 3(1)(w)(ii) [uses words, acts or gestures of a sexual nature towards a woman belonging to Scheduled Caste or Scheduled Tribe] and 3(2)(vii) [being a public servant, commits any offence under this section] of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.

Criminal law still has some lacunae since it does not recognise sexual assault or sexual abuse by a person holding public office to be serious offence under penal law hence making it difficult for us to point towards a particular offence to hold the public officials liable for this degree of sexual assault.

The Justice Verma Committee report of 2013 which led a major overhaul in the definition of sexual offences in penal law, had many other recommendations which were not considered by the governments then or now. One of these recommendations was to include acts of **“commission of or any attempt to commit any sexual offence by any police officer or the abetment of any sexual offence by a police officer”** under the definition of **“serious misconduct”** for initiation of a mandatory inquiry under the Model Police Act.

Thus, the offence of sexual violence in police custody is a much prevalent menace that has not been adequately addressed and needs to be brought forth in the discourse and we believe that if this Hon’ble Commission takes cognizance of such incidents, the same can be achieved.

We, thus, urge this Hon’ble Commission to take adequate and requisite action under section 10 of the National Commission of Women Act. Further, the Principal Conservator of Forests, Uttarakhand, has ordered the Director of Rajaji National Park to institute an independent inquiry into the matter and we urge this Hon’ble Commission to intervene in this inquiry so that a member of this Commission can become a part of it. This will ensure that the offences of sexual assault and abuse are also addressed with equal importance rather than the inquiry just focusing on eviction of the Van Gujjars and the destruction of their shelters.

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

SHO of Clement town police station, Dehradun – Narotam Bisht and other officers on duty

Prayers before the Commission

- 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 cognisance of this case under **section 10(1) (f) of the National Commission of Women Act** which, inter alia, states that the Commission shall look into complaints and take suo moto notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection of women.
- We further urge this Hon'ble Commission to investigate into this matter as per **section 10(1)(a) of the National Commission of Women Act** which states that the Commission shall "investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws";
- We pray that this Hon'ble Commission intervene in the inquiry instituted in this matter by the Director of Rajaji National Park and partake in it to address the issues of sexual assault and abuse on the van Gujjar women, as mentioned hereinabove; or in the alternative this Commission may institute a separate suo moto inquiry into the matter to look into these pertinent issues;
- Any other relief that this Hon'ble Commission may deem to be necessary and prudent so as to ensure that such incidents of sexual assault and abuse are not repeated in the state or any other part of the country.



defending human rights in the courts and beyond

Yours sincerely,

Roma Malik

All India Union of

Forest Working People (AIUFWP)

Teesta Setalvad

Citizens for Justice & Peace

Annexures:

- A Medical reports of Noorjahan and Ramzanbibi
- B Video of the Incident (only going in soft copy)
- C Letters written after Incident to Clement Town Police station and SP, Dehradun
- D Complaint to NHRC