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Indigenous Rights Monitor

A Quarterly Newsletter of
Indigenous Rights Advocacy Centre

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IRAC has set up a
dedicated [legal
helpline number](#) for
the victims. To seek
legal help, please call
+91-9667279541 (10
AM-5 PM on Monday-
Friday)

Message from the Executive Director

Dear friends and colleagues,

We are pleased to present you the second issue of IRAC's Quarterly Newsletter titled "Indigenous Rights Monitor". In it we have attempted to capture the current human rights situation of the indigenous peoples of India during the reporting report.

The decision of the Government of India to recognise November 15 – the birth anniversary of legendary tribal freedom fighter Birsa Munda – as "Janjatiya Gaurav Diwas" (indigenous pride day) is a welcome step, and equally welcome is the intention of the Government to recognize the unsung freedom fighters belonging to the indigenous communities. This will increase awareness about the existence and contributions of the indigenous peoples both during colonial period and at present. However, the Government will need to do much more to respect and protect the rights of the indigenous peoples. It is indeed a matter of serious concern that the indigenous peoples are being criminalized for defending their *Jal, Jangal, Jameen* (water, forest and land resources). This is particularly happening in areas where the indigenous peoples are defending their land and culture from mining companies. It is a sad reality that the Government is promoting corporate interests at the cost of the indigenous peoples, without taking their free, prior and informed consent.

Further, poor indigenous peoples are often picked up on false cases (primarily theft cases) and tortured in police stations. As 'law and order' is a state subject, the state governments should immediately release all the tribals arrested for petty crimes or fabricated cases. Tragically, the tribals have been ruthlessly evicted from their homes, particularly by the forest officials, during the COVID-19 pandemic on the accusation of being illegal encroachers of forest land and after eviction, they are forced to live in pathetic conditions without basic facilities. The criminalization of indigenous peoples must end immediately.

RIGHTS VIOLATION UNDER THE LENSE OF IRAC

Maharashtra: Custodial death of Bhim Kale due to alleged torture by police

On October 3, 2021, a 35-year-old tribal man, Bhim Kale who belonged to Phase Pardhi tribe, died in a hospital due to alleged torture in police custody at Vijapur Naka police station in Solapur district, Maharashtra. Bhim Kale lived with his wife Swati and seven children and used to work as a labourer in a farm.

Family members claimed that Bhim Kale's both legs broke due to torture in police custody

Kept in illegal detention

According to his family members, the police picked up Bhim Kale on September 18, 2021 after falsely accusing him of being involved in a house burglary case. While the law demands that an arrested person should be produced before the court within 24 hours of arrest, Bhim Kale was produced before the court only on September 23 which means that he was kept in illegal custody for five days at Vijapur Naka police station.

Brutal torture in police custody

Rajesh Kale, a cousin of the deceased, told the media that the police brutally tortured Bhim Kale during illegal custody to extract confession to the theft which he did not commit. Rajesh claimed that Bhim's both legs were broken due to custodial torture.

On September 23, the court sent Bhim to two-day police remand. When his wife, Swati, met him at Vijapur Naka police station, he was allegedly bleeding from his leg and writhing in pain.

Phase Pardhi community suffers from stigma since colonial times

The Solapur police commissioner said Bhim Kale was "a history-sheeter" and police had arrested him in a theft case. However, State president of Dadaji Adivasi Phase Pardhi Samaj Sangathana, Matin Bhosale, told Mid-day newspaper, "Phase Pardhi community has been living with the tag of thieves or burglars since colonial times. The police produce fake or concocted evidence to nail Phase Pardhi tribals."

On November 11, 2021, based on a complaint filed by the Indigenous Rights Advocacy Centre (IRAC), the NHRC has issued notice to the District Magistrate, Solapur district to submit a detailed report within six weeks (NHRC Case No. 2423/13/28/2021-ad).

END CRIMINALIZATION OF INDIGENOUS PEOPLES

The indigenous peoples or Scheduled Tribes of India are being criminalized for defending their *Jal, Jangal, Jameen* (water, forest and land resources). From April 2021, the IRAC has documented 15 cases of forced eviction of indigenous families by the forest department officials who falsely accused them of encroaching upon forest land despite living and cultivating on that land for generations. While being evicted, indigenous peoples are subjected to torture, burning down of huts which destroyed properties, damage to agricultural land, etc. They have been evicted without making alternative arrangements of shelter, water, sanitation, medical facilities and other basic necessities of life. When indigenous peoples defended their land and forests, false cases are lodged against them and many have been arrested and jailed. This is particularly happening in areas where the indigenous peoples are defending their land and culture from mining companies. It is sad reality that the Government has been aggressively pursuing mining and other projects without the consent of the local Gram Sabhas which is a mandatory legal requirement in Fifth Schedule areas and under the Forest Rights Act, 2006. In April 2021, the Odisha Government extended Hindalco Industries Ltd (part of Aditya Birla Group) company's lease by 50 years to mine bauxite in Mali Parbat (hill) in Koraput district, despite protests from the local indigenous communities who consider the Mali hills sacred. When the state government held public hearing for granting of environmental clearance to the company on September 22, 2021, it is alleged that the police and the paramilitary forces prevented the tribal villagers from attending the public hearing and preponed the timing of the hearing. The hearing had to be cancelled due to

strong protest from the local people. Later, Odisha police arrested 22 tribal youths including a class VIII student and booked them under serious criminal charges, including attempt-to-murder, criminal intimidation, rioting and "obscene acts and songs". Subsequently, the public hearing held on November 22 also faced stiff resistance from the Mali Parbat Suraksha Samiti (Mali Hill Save Committee). Similarly, huge protests are taking place in Chhattisgarh. In October 2021, thousands of Adivasis marched 300 kms to reach state capital Raipur on foot in protest against the plan to allow coal mining in the forests of Hasdeo Arand which are known as the "lungs of Chhattisgarh". But the Government has not given any heed to their demand.

The indigenous peoples are also being criminalized for defending their land from being allegedly taken over to establish new security camps in Maoist-affected areas. Tribals say that militarization has led to land grabbing, fake encounters, illegal arrests and oppression against them. In December 2020, at least 50 representatives of panchayat bodies, including 38 sarpanchs (village heads), resigned protesting against the opening of two Border Security Force (BSF) camps built at sacred land at Katgaon and Kamdera in Kanker district, a 5th Schedule Area, in Chhattisgarh. On May 12, 2021, a camp of the Central Reserved Police Force (CRPF) was set up at Silger in Sukma district, which is 5th Schedule area, in Chhattisgarh without informing the Gram Sabha. On May 17, three protestors were killed in firing at Silger and the police dubbed them as Maoists. The police called the Silger protests "Maoists-sponsored protests". On November 2, eight tribal villagers were reportedly arrested as alleged Maoists while returning home from Silger protest. If the war against the Maoists is to be won, the State must take the indigenous peoples along and for this criminalization must end. Further, all cases of violence against indigenous peoples must be swiftly investigated and guilty public officials punished.

RIGHTS VIOLATION UNDER THE LENSE OF IRAC

Madhya Pradesh: Custodial death of Bisan due to alleged torture



Huge protest by Adivasis against custodial killing of Bisan. Photo credit: Jagrit Adivasi Dalit Sangathan, link:

<https://www.facebook.com/JADS.mp/photos/pcb.1447500075633153/1447498785633282>

A 35-year-old tribal man identified as Bisan S/o Habu and three others from Kherkundi village under Bistan Police Station in Khargone District (Madhya Pradesh) were picked up by police officials on August 31, 2021 on suspicion of robbing people on the highway on August 24. They were allegedly kept illegally in custody and tortured. Only after Bisan's family filed a case in the court on September 3, his formal arrest was registered and the suspects were produced before the court the next day and medical examination was conducted. Despite the fact that Bisan had sustained serious injuries, the doctor allegedly issued a false MLC (medico-legal certificate) terming the injury as "minor". After the court remanded Bisan and three others to police custody, they were allegedly beaten up with a *patta* used to grind wheat. Family members alleged that the police tortured the four accused in front of them and further denied food to Bisan at the Bistan police station. The police tried to shift him to the jail after his condition became critical. But the jail superintendent admitted him to the district hospital because of critical injuries sustained by him. But due to pressure from the police, the doctor allegedly termed the injury minor and denied treatment to Bisan. Hence, he died in the jail on September 7. Bisan is survived by his wife Ramtu Bai and four children.

Following the public protest, the state government announced Rs 200,000 compensation to the deceased's family and suspended four policemen of Bistan police station. A judicial magisterial inquiry was also ordered. As the matter snowballed into a major political issue with the opposition Congress party raising the issue, Madhya Pradesh Chief Minister Shivraj Singh Chouhan on September 12 announced the transfer of the Superintendent of Police Shailendra Singh Chouhan "due to (his) lack of supervision in the case."

ADVOCACY

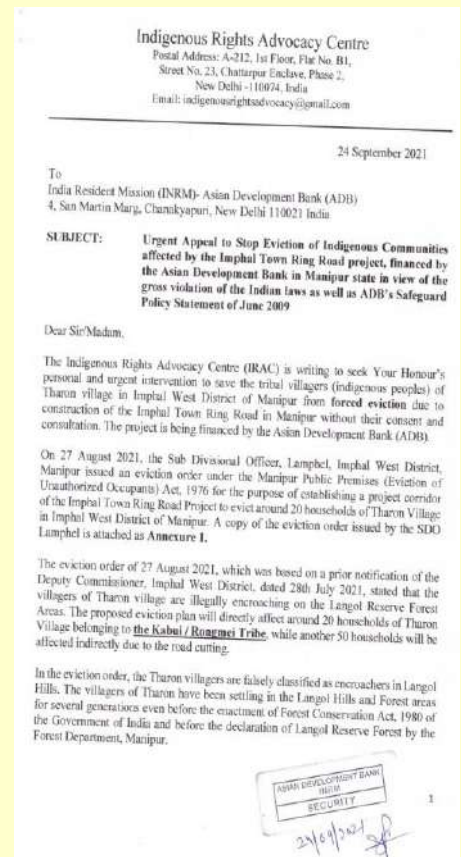
IRAC urges ADB to withhold funding of Manipur road project for human rights violations

On September 24, 2021, the Indigenous Rights Advocacy Centre (IRAC) wrote to the India Resident Mission (INRM)-Asian Development Bank (ADB) to stop eviction of indigenous communities due to the construction of Imphal Town Ring Road project in Manipur, financed by the ADB in view of the gross violation of the Indian laws as well as ADB's Safeguard Policy Statement of June 2009. (see petition on the right)

In the eviction order dated August 27, 2021, the Sub Divisional Officer, Lamphel, Imphal West District, Manipur falsely declared the tribal families (around 20) of Tharon as encroachers on the Langol Reserve Forest areas. The affected communities belong to Kabui / Rongmei tribe. The truth is that Tharon villagers had settled in the Langol hills and forest areas for several generations even before the enactment of Forest Conservation Act, 1980 and before declaration of the Langol Reserve Forest by the Forest Department of Manipur.

The said eviction notice was issued without first preparing the detailed project report, the rehabilitation and resettlement plan, Indigenous Peoples Plan, or carrying out the Social and Environment Impact Assessment. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in particular section 41 relating to "Special provisions for Scheduled Castes and Scheduled Tribes" provides for, among others, preparation of "Development Plan" for the Scheduled Castes and Scheduled Tribes (indigenous peoples); and the Forest Rights Act, 2006 makes it mandatory to seek the consent of the Gram Sabha/ traditional village council for any diversion of forest land within their territory.

Further, Asian Development Bank's Safeguard Policy Statement of June 2009 makes it imperative upon the State government of Manipur (borrower/client) to respect the rights of the indigenous peoples, including "meaningful consultation with affected Indigenous Peoples" [Para 10]; conduct "a full social impact assessment (SIA)" [para 13]; prepare "an Indigenous Peoples Planning" (IPP) through meaningful consultation with the affected Indigenous Peoples communities. [para 16]; and create "Grievance Redress Mechanism" (para 22). IRAC called upon the ADB to "withhold its funding to the project till all safeguards provided to the indigenous peoples under the Safeguard Policy Statement of June 2009 are fulfilled and indigenous communities' consent to the project is fully taken."



IRAC's interventions with NHRC

Between September 1 to November 30, 2021, the Indigenous Rights Advocacy Centre (IRAC) has intervened in a total of 44 cases of human rights violation of the Scheduled Tribes/indigenous peoples with the National Human Rights Commission (NHRC) of India. These included 6 cases of torture by security forces/police/forest officials, 6 cases of violence against women, 4 cases of torture by non-tribals, 3 cases of forced eviction, 3 cases of custodial death due to alleged torture (2 in police custody, 1 in judicial custody), 2 cases of threat to eviction, 2 cases of arrest under false charges, 2 cases of filing of false charges (not leading to arrest), 1 case each of injury in police firing, torture by village panchayat, killing by Maoists, killing by non-tribals and malnutrition/starvation, and 11 cases related to various other violations (especially violation of Economic, Social and Cultural Rights).

Geographically, these cases are spread across the country. 7 cases took place in Tamil Nadu, 6 each in Madhya Pradesh and Maharashtra, 4 in Telangana; 3 each in Chhattisgarh and Jharkhand, 2 each in Kerala, Andhra Pradesh, Odisha, and Mizoram, 1 each in Assam, Gujarat, J&K, West Bengal, Manipur, and Karnataka, and 1 case of all-India nature.

Nature of violations	Total number of Cases
Torture by SF/Police/Forest Officials	6
Violence against women	6
Torture by non-tribals	4
Forced Eviction	3
Custodial death due to alleged torture (Police)	2
Custodial death due to alleged torture (Judicial)	1
Threat of eviction	2
Arrest on false charges	2
Filing of false FIR (not leading to arrest)	2
Injured in police firing	1
Torture by village panchayat	1
Starvation/malnutrition	1
Killing by non-tribals	1
Killing by Maoists	1
Others (esp. ESCR)	11
TOTAL	44

State	Total No. of Cases
Tami Nadu	7
Madhya Pradesh	6
Maharashtra	6
Telangana	4
Chhattisgarh	3
Jharkhand	3
Kerala	2
Andhra Pradesh	2
Odisha	2
Mizoram	2
Assam	1
Gujarat	1
J&K	1
West Bengal	1
Manipur	1
Karnataka	1
All over India	1
TOTAL	44

NEWS SNIPPETS

Petty cases against tribals will be withdrawn: MP CM Shivraj Singh Chouhan (The Times of India, October 6, 2021)

On October 5, 2021, Madhya Pradesh Chief Minister Shivraj Singh Chouhan announced that petty cases “which are not of serious nature” lodged against the tribals will be withdrawn, so that tribals do not need to visit courts regularly. He also said that the state government will soon implement Provisions of the Panchayats (Extension to the Scheduled Areas) Act in tribal areas to protect and conserve community resources.

Podu lands: CM KCR directs officials to accept claims from tribals (Telangana Today, October 24, 2021)

On October 24, 2021 Telangana Chief Minister K Chandrashekhar Rao instructed officials to accept claims from tribals from November 8 to December 8 for podu cultivation. Village committees should be constituted as per Recognition of Forest Rights (RoFR) Act after convening preparatory meetings at various levels before November 8, he said. “It is the innocent tribals who are protecting forests and external forces are only resorting to destruction,” he said, adding that Gond, Kolam and Koya tribals were children of forests who won’t cause any damage to forests.

J&K to implement Forest Rights Act, 2006 (The Hindu, September 14, 2021)

After a long delay, the Jammu and Kashmir administration has decided to implement the Forest Rights Act, 2006, which will elevate the socio-economic status of a sizeable section of the 1.4 million-strong population of tribals and nomadic communities, including Gujjar-Bakerwals and Gaddi-Sippis, in the Union Territory. “After a wait of more than 14 years, due rights have been conferred upon the tribal community by implementing the Forest Rights Act, 2006, keeping in mind the basic spirit of social equality and harmony as guided by the Constitution of our country and Parliament,” J&K Lieutenant-Governor Manoj Sinha said on September 13.

'Possessing Bhagat Singh's Book Not Illegal': Karnataka Court Acquits Tribal Youth, His Father of UAPA After 9 Years (News18, October 23, 2021)

Nine years after a tribal youth Vittala Malekudia (32 years) and his father Lingappa Malekudia (60 years) were arrested by the Karnataka police for their alleged links with Naxalites, the district court acquitted them as the pieces of evidence produced by the prosecution were mere “articles required for day-to-day livelihood”. One of the materials seized by the anti-naxal unit of the police was a book on Bhagat Singh (a revolutionary freedom fighter) from the journalist’s hostel room. The order was pronounced by the third additional district and sessions court in Dakshina Kannada district on October 21, 2021.

IRAC IMPACT: NHRC orders on-the-spot inquiry into plight of tribal bonded labourers in Maharashtra

On August 26, 2021, the IRAC submitted a complaint to the NHRC against inhuman treatment of bonded labourers belonging to 18 Katkari tribal families in Thane district of Maharashtra. The tribal families working in a brick kiln factory were subjected to inhuman atrocities, including public flogging, starvation and enslavement for years by the factory owners at Pilanje Budruk Chinchpada village in Bhiwandi under Thane district. The factory owners forced the tribals to work without proper pay, food or water and assaulted them and forced them to repay loans allegedly taken by their forefathers, prohibiting them from looking for other jobs.

The NHRC registered the complaint as Case No. 2081/13/0/2021-BL and passed a historic interim order. On September 15, 2021, the NHRC directed the District Magistrate, Thane, Maharashtra to “conduct spot enquiry immediately or to depute an officer subordinate to him for an immediate on the spot enquiry for identification of the bonded labourers, if any, and to take further action in accordance with the provisions of law.” The NHRC also directed the District Magistrate, Thane, to follow the following points while undertaking the enquiry:

1. Whether the brick-kiln operator obtained a licence to run the brick-kiln from Competent Authority or not? If obtained, the details thereof. If not, why it has been allowed to operate and forward the name/s of persons with designation permitting to operate without licence.
2. How many labourers belong to S.C./S.T./O.B.C. [Scheduled Castes/Scheduled Tribe/Other Backward Classes]? And whether the provisions of SC/ST Act are followed during enquiry?
3. Total number of labourers, male, female, child with names, and their complete address.
4. Amount of wages paid to them - monthly / fortnightly. Is it in conformity with the notified minimum wages?
5. Forward the legible copies of wages register, muster roll, wage slips, copies of Registers required to be maintained under various Labour legislations (Payment of Wages Act, Contract Labour (Regulation & Abolition) Act, Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act.
6. Whether the labourers were employed directly or through an agent/ Thekedar/ Contractor and whether such an agent obtained a licence under the law or not?
7. Total number of migrant labourers from Nepal and Bangladesh, if any, details thereof and action taken for their deportation through the concerned Foreigners Regional Registration Officers.
8. Whether the recruiting agents obtained a licence under the Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, whether the Principal employer obtained a Registration Certificate under the Act or not, and whether the brick- kiln operator paid benefits under the aforesaid Act and the Rules made thereunder or not. If there is failure, forward the names of officers with their designations.

9. Whether actions under all other relevant Acts like IPC [Indian Penal Code], POCSO Act [Prevention of Children from Sexual Offences Act], JJ Act [Juvenile Justice Act], SC/ST Act [Scheduled Castes/Scheduled Tribes Prevention of Atrocities Act] have been taken in the matter, if yes details thereof, if not, reasons thereof.

10. Whether the brick-kiln owner has followed all the provisions contained in the Minimum Wages Act, 1948 and the Rules made there under or not. If not, what action is taken?

11. Whether the labourers have been provided with basic amenities like schooling to children, Medical and Health care, Food, Water, Sanitation / toilets and proper accommodation by the employer?

12. Whether the labourers have been got medically examined by the District Administration during the course of enquiry, if not, reasons thereof?

13. Whether the concerned District Magistrates of their native place have been informed of their release and steps taken for ensuring their safe arrival at the destination point, if yes, details thereof?

14. Whether recoveries of Rs. 20,000/- each has been made from the employer in favour of the Child Labourers and the funds @ Rs. 25,000/- each stands deposited with the District Magistrate for the welfare of such Child labourers, if not reasons thereof, if yes, details thereof.

15. Whether Vigilance Committee as mandated under the provisions of the Bonded Labour System (Abolitions) Act, 1976, was constituted or not. If not, the reasons thereof. If functioning, since when? You may give all the details of the Committee constituted according to law.

16. Whether the members of the Vigilance Committee belonging to SC & ST accompanied the team or not? If not, the reasons of the same to be conveyed.

17. In view of the averments made in the complaint and in absence of documents required to be maintained and in absence of benefit to be extended as mandated by law, the District Magistrate is duty bound to raise the presumption that the labourers are bonded labourers. Attention of the District Magistrate is drawn to the judgement of the Hon'ble Supreme Court in cases i.e. a) Bandhua Mukthi Morcha delivered on 16.12.1983 in Writ Petition No.2135. b) People's Union for Democratic Rights v/s Union of India (1982) 3 SCC at 259. c) Sanjit Roy v/s State of Rajasthan (1983) SCC 525 at 535. d) Neeraja Choudhary v/s State of Madhya Pradesh (1984)3SCC 243 at 250.

Notably, the NHRC directed the District Magistrate, Thane to submit the report to the Commission within four days failing which “the Commission may issue a coercive process to remain present with the detailed report.” The report should also specify the name of the District and the State from which these labourers migrated for further direction to the District Magistrate of that District.

This newsletter is published by *Indigenous Rights Advocacy Centre* to create awareness on human rights issues. IRAC may be reached by post at: A-212, 1st Floor, Street # 23, Chattarpur Enclave, Phase 2, New Delhi- 110074, India; or by email: indigenousrightsadvocacy@gmail.com

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