

Indigenous Rights Monitor

A Quarterly Newsletter of
Indigenous Rights Advocacy Centre

IMPACT OF IRAC'S INTERVENTION

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NHRC recommends payment of Rs 0.7 million to family of pregnant tribal woman who died due to denial of medical treatment

The Indigenous Rights Advocacy Centre (IRAC) has made impactful interventions with several authorities to uphold human rights in India and to provide justice to the victims belonging to the indigenous communities. IRAC has regularly intervened with the NHRIs primarily the National Human Rights Commission (NHRC) and the National Commission for Scheduled Tribes (NCST) and achieved successes.

On January 25, 2023, the NHRC has recommended to the State Government of Andhra Pradesh to pay a sum of Rs 7 lakhs (0.7 million) as compensation to the family of 42-year-old pregnant woman, Vantala Tulasamma, a tribal, who unfortunately died due to denial of medical treatment at Gurthedu Primary Health Centre (PHC) in East Godavari district on March 19, 2022.

The NHRC issued the above directive on the basis of a complaint filed by the Indigenous Rights Advocacy Centre (IRAC) in the month of March 2022, which was registered as Case No. 695/1/5/2022.

In its complaint, IRAC brought to the notice of the NHRC about the inhuman denial of treatment of the pregnant tribal woman by the staff at the Primary Health Centre (PHC) at Gurthedu where she was taken for delivery. But the Medical Officer was absent although he reported to the duty. Instead of taking care of the pregnant lady, the PHC staff referred her to the Area Hospital in Rampachodavaram which was 32 km away. Unfortunately, she died in the ambulance itself on the way to Rampachodavaram. IRAC demanded a proper investigation, action against those responsible for her death and compensation for the family of the victim.

The NHRC took swift action on IRAC's complaint and on May 5, 2022 it issued a notice to the Principal Secretary, Department of Health, Government of Andhra Pradesh calling for a report in the matter within four weeks.

In response to the directions of the NHRC, a report dated July 13, 2022 was submitted by the Director, Department of Public Health and Family Welfare, Government of Andhra Pradesh which admitted to the lapses at the PHC. The report stated that the matter was inquired into and three government employees namely Smt. Subbalakshmi (Auxiliary Nursing Midwifery or ANM), J. Kamlakumari (ANM) and Smt. Kimmudu Gowararnma (ASHA) were found responsible for the negligence.

Since the Government has admitted lapses on the part of the government employees leading to the death of the pregnant tribal woman, the NHRC issued a "show cause notice" under section 18(1)(a) of Protection of Human Rights Act 1993 to the Government of Andhra Pradesh through its Chief Secretary, to give reasons as to why compensation of Rs. 7 lakhs be not recommended by the Commission to the State to be paid to the Next of Kin (NoK) of the deceased for the negligence on the part of Government employees. The Chief Secretary, Government of Andhra Pradesh was directed to reply to the show cause notice in a period of four weeks.

In response to the Show Cause Notice, a reply dated September 21, 2022 was submitted by the Principal Secretary to Government, Health, Medical & Family Welfare (VC-II-1) Department, Government of Andhra Pradesh. The report stated that disciplinary action has been taken against the concerned ANMs and ASHA staff and they have been warned not to repeat such mistakes in future and to be careful while performing duties along with certain instructions, as there is laxity in this particular case as per the report. The concerned Medical Officer who should be held responsible was absent on that day and he has resigned.

While considering the report the Commission on January 25, 2023 held that "this is an established case of violation of human rights by a public servant and the State is liable to compensate the NOK of the deceased." Therefore, the Commission recommended to the Chief Secretary, Government of Andhra Pradesh to pay a compensation of Rs 7 lakh to the NOK of the deceased victim and submit a compliance report along with proof of payment to the Commission within four weeks.

The status of this case shall be updated in future edition as and when compliance report is received from the State of Andhra Pradesh.

"The Commission has considered the reply. Admittedly, disciplinary action has already been taken against the responsible persons. Therefore, this is an established case of violation of human rights by a public servant and the State is liable to compensate the NOK of the deceased. Therefore, the Commission recommends to the Chief Secretary, Government of Andhra Pradesh to pay a compensation of Seven Lakhs to the NOK of the deceased victim" - NHRC said vide order dated January 25, 2023

RIGHTS VIOLATION UNDER THE LENS OF IRAC

Assam: Alleged land grab by private company for setting up a solar power plant



During the 2020 pandemic, the land of the Adivasi and Karbi farmers was allegedly grabbed by Azure Power 40 Pvt Ltd (company) for setting up a 15 MW solar plant in Mikir Bamuni Grant village in Nagaon district of Assam, Northeast India. The indigenous villagers have alleged that about 93 acres of the land they were cultivating for generations were taken over forcibly by the company and the state government officials have allegedly helped the company in this. The land in question is fertile agricultural land and the village and area around is an active Elephant corridor.

There have been allegations that the state government departments have tweaked rules to help the Azure Power Forty Pvt Ltd company to allegedly grab the tribal land and in the process, there have been serious violations of the existing laws and rights of the indigenous peoples, as described below.

i. Violation of the Assam (Temporarily Settled Areas) Tenancy Act, 1971

Mikir Bamuni Grant Village consists of lands that were a part of a Fee Simple Grant, a special kind of land tenure scheme created by Britishers in the 19th century to promote special cultivation (especially Tea). Tea, however, was never cultivated on these lands of the village. So, villagers of Mikir Bamuni converted these lands, which included forests and wetlands, into paddies. The villagers possessed Khatians (record of land rights) issued by the local administration since 1980s that proved they were cultivating those very lands. But the transfer of the said land to the Azure Power Forty Private Limited was done on the basis of false reports of the Sub-Divisional Agriculture Officer of Kaliabor who claimed these lands were uncultivated over the past 10 years.

The rights of tribal villagers of Mikir Bamuni Grant are particularly protected under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 with Khatians of the villagers dating back to the 1980s which recognise their forefathers as occupancy tenants. This law recognizes and protects tenancy rights of cultivators and establishes inheritable rights to land to occupant tenants to continue cultivation. Ejection of such cultivators can only be done in conformance with procedure laid out in Section 51 of the Act. The rights of the villagers as tenant farmers have not been settled. The legal entitlement is defined at Section 5(1) of the Assam (Temporarily Settled Areas) Tenancy Act 1971 stating, "A person who for a period of not less than 3 years has continuously held land as a tenant shall have a right of occupancy in that land." But before transfer/sale of the said land was made to the company, the rights to land of the tribals (who are occupancy tenants) had not been settled by the State government.

ii. Violation of the Assam Fixation of Ceiling on Land Holdings Act, 1956

Assam Fixation of Ceiling on Land Holdings Act, 1956 provides that in Assam an individual can possess land up to maximum of 50 bighas. The excess land beyond the ceiling limits is acquired by the Government and termed Ceiling Surplus land. Such ceiling surplus lands are then distributed to landless cultivators. Thus, in Mikir Bamuni Grant Village case, the original owner and his/her family were entitled to merely 50 bighas of its Fee Simple Grant land and the surplus land should have been acquired by the Government and distributed to landless cultivators. But the State Government converted about 295 bighas of Free Simple Grant land into Khiraj miyadi patta plots and assigned to 8 descendants of the original landholder without settling the tillers' right to the land as per the Assam (Temporarily Settled Areas) Tenancy Act, 1971. The villagers have alleged that the state government allowed the 295 bighas land to be divided among 8 heirs to circumvent the Assam Fixation of Ceiling on Land Holdings Act, 1956 and allow the private company to buy the land from the 8 heirs without first settling the rights of the occupancy tenants.

iii. Violation of Assam Land Revenue Re-Assessment Act, 1936

In order to help the Azure Power Forty Private Limited to set up its solar power plant, it is alleged that the State government has illegally changed the land use of the Mikir Bamuni Grant Village lands and reclassified it from agricultural to industrial. No notification calling

for objections to the proposed change in land use from agricultural to urban or industrial or infrastructure development in Mikir Bamuni has been published as required under Section 3 of Assam Land Revenue Re-Assessment Act, 1936. Instead, in clear violation of the law, the Nagaon Deputy Commissioner's Office issued an order on 29 February 2020 reclassifying the agricultural land to industrial purpose. The order relies on a certificate issued by the Sub Divisional Agriculture Officer, Kaliabor falsely claiming that land in question has not been under any agricultural use over the past 10 years.

iv. Violation of the Assam Solar Energy Policy, 2017

Azure Power's solar power project in Mikir Bamuni is also in blatant violation of Assam Solar Policy 2017. Key objectives of the policy are: "5(c): To encourage setting up of Solar Parks with the necessary utility infrastructure facilities in the state on vacant government lands". Azure Power's solar power project is in blatant disregard of Objective 5(c) as the acquired land is fertile agricultural land and standing paddy crops were destroyed at the time of acquisition of the land by the company.

v. Mikir Bamuni is an elephant corridor

The clearance issued by the Forest Department for the Azure Power's solar project was on the basis that it did not fall under a Notified Elephant Corridor. But the forests adjacent to Mikir Bamuni Grant are connected to Burha Pahar in West Kaziranga, where elephant herds of 150 to 200 elephants are known to move frequently. According to the villagers of Mikir Bamuni they witness movement of elephant herds during the crop season and also in the post-harvest season.

vi. Violation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, LARR Act, 2013) defines "affected family" to include "(i) a family whose land or other immovable property has been acquired; (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land." Clearly, the tribal families of Mikir Bamuni Grant village who are occupancy tenants are "affected families" under the LARR Act, 2013 if the state government is to acquire the land for the Azure Power Forty Private Limited to set up the solar power plant.

Instead of the state government acquiring the said land under the LARR Act, 2013, it has allowed the Azure Power Forty Pvt Ltd to directly buy it, after circumventing the existing laws and this has denied the affected indigenous families the benefits/protection of LARR Act.

The sale of the land in question to the Azure Power Forty Pvt Ltd is nothing but “alienation of tribal land”. Section 41(9) of LARR Act, 2013 states, “Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.” Thus, since the existing laws and regulations such as Assam (Temporarily Settled Areas) Tenancy Act, 1971, Assam Fixation of Ceiling on Land Holdings Act, 1956, Assam Land Revenue Re-Assessment Act, 1936, Assam Solar Energy Policy, 2017 have been violated, the transfer/sale of the land in question should be declared as “null and void” and the State government of Assam should settle the land rights of the affected tribal families who are occupancy tenants as per the existing laws.

vii. Violation of the UNDRIP

The solar plant has already been set up, and the Azure Power Forty Pvt Ltd carried it out without respecting the rights of the Adivasi and Karbi farmers to their land. The lack of meaningful consultation and free, prior, and informed consent (FPIC) is quite evident. Hence the provisions of the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP) have been violated. Article 10 of UNDRIP states, “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

Use of force against Karbi and Adivasi farmers and false prosecution to silence their voices:

On **May 23, 2020**, as per the villagers, nine people were called to the police station and they were allegedly beaten at the Police Station under Samaguri Division and kept in custody till 10:30 pm without any food. On **October 08, 2020**, Azure Power’s security personnel and police officials reached the power plant site with bulldozers and razed the sown paddy crop. There was a confrontation and 14 villagers were arrested for allegedly beating up someone who settled for the company’s offer. They were released after 12 days. On **29 December 2020**, ten villagers were booked under serious charges including attempt to murder. Out of these accused, 4 were in jail till March 2, 2021. Champa Timung, a woman, was allegedly kicked by the police personnel during the confrontation between police and villagers on 29 December 2020. She suffered a miscarriage.

Update on action taken by Assam SHRC: At the time of writing this, acting on a petition from IRAC, on April 10, 2023, the Assam State Human Rights Commission issued notice to the Assam Chief Secretary to submit requisite information/report by May 10, 2023. Earlier on April 5, the Justice T. Vaiphei, Hon’ble Chairperson of Assam SHRC heard the IRAC’s complaint and passed the order to seek action taken report from the Chief Secretary, Assam and listed it again on May 10, 2023 for further proceedings.

ADVOCACY

Madhya Pradesh: Chief Minister's Office replies to IRAC's call for action against eviction of 7 tribal families



Indigenous Rights Advocacy Centre <indigenousrightsadvocacy@gmail.com>

Seeking your urgent intervention against illegal eviction of seven tribal families by the local Gram Panchayat at Barkheda village in Sardarpur tehsil of Dhar district of Madhya Pradesh on December 20, 2022

Chief Minister Madhya Pradesh <cm@mp.gov.in>
To: indigenousrightsadvocacy@gmail.com

Wed, Jan 4, 2023 at 4:03 PM

आपका ई-मेल दिनांक 04/01/2023 नियमानुसार आवश्यक कार्यवाही हेतु पंचायत एवं ग्रामीण विकास विभाग को प्रेषित कर दिया गया है। तसंबंध में आगामी कार्यवाही की जानकारी हेतु कृपया संबंधित विभाग के सक्षम अधिकारी से संपर्क करें।
सधन्यवाद

मुख्यमंत्री कार्यालय
वल्लभ भवन-II, पंचम तल मंत्रालय
भोपाल

From: indigenousrightsadvocacy@gmail.com

To: "Chief Minister Madhya Pradesh" <cm@mp.nic.in>

Sent: Sunday, January 1, 2023 1:10:44 PM

Subject: Seeking your urgent intervention against illegal eviction of seven tribal families by the local Gram Panchayat at Barkheda village in Sardarpur tehsil of Dhar district of Madhya Pradesh on December 20, 2022

[Quoted text hidden]

Screenshot of the response received from CMO, Madhya Pradesh

On January 5, 2023, the office of Chief Minister Shivraj Singh Chouhan of Madhya Pradesh responded to IRAC's call for action against forcible eviction of seven tribal families during biting winter cold at Barkheda village in Dhar district. IRAC acted based on a news report carried by *The Free Press Journal* that the tribal families were evicted by the Gram Panchayat of Barkheda on December 20, 2022, for allegedly failing to pay bribes to the officials.

No alternative arrangement was made for those evicted families before the houses were demolished using JCB. Those evicted included women and infants who were forced to live in harsh winter without shelter and other basic necessities. The victims went to the police but no action was taken.

The IRAC sent the email petition on January 1, 2023. Within four days, the Chief Minister's Office (CMO) responded saying that the petition has been forwarded to the Panchayat and Rural Development Department for necessary action.

Separately, IRAC also submitted a complaint petition before the NHRC. The Commission disposed of the case by directing the District Magistrate of Dhar district to take "such action as deemed appropriate". However, IRAC is yet to hear from the District authorities as to what action has been taken.

Human Rights Council adopts Universal Periodic Review outcome of India

The United Nations Human Rights Council adopted the Universal Periodic Review (UPR) outcome of India on March 27, 2023. India's human rights record was reviewed at the 4th cycle of the UPR on November 10, 2022. The Council's President said India had received 339 recommendations, out of which 221 were adopted, and 118 were noted. Some of the recommendations with respect to indigenous peoples are ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) (Paraguay) which India 'noted'; take measures to foster a safe, respectful and enabling environment for civil society and human rights defenders, especially women and Indigenous human rights defenders, free from persecution, intimidation and harassment (Latvia) which India 'noted'; and continue the efforts and measures to increase safe and sustainable drinking water in rural areas and to improve sanitation coverage, especially for Indigenous communities and the most vulnerable groups (Cambodia) which India 'supported'. Among others, India has been asked to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by several countries which India "noted".

India said it had accepted over two-thirds of the 339 recommendations for implementation and had taken note of the remaining. The country had also recently established a national mechanism for implementation, reporting and follow-up for all human rights reporting obligations, which would play an important role in delineating the steps advancing the promotion and protection of the human rights of the people. India had made rapid strides in achieving the Sustainable Development Goals, tracked through the Sustainable Development Goals' India Index and Dashboard. The country was on the cusp of achieving a favourable sex ratio due to relentless efforts in protecting the girl child, a feat that seemed decades ahead of its time. India also presented its success story in tackling COVID-19 pandemic.

During the discussion during the adoption of the UPR outcome, some speakers welcomed India's commitment to supporting those most in need, such as the homeless and those living with slum-related deprivation, calling it admirable. The support for the protection of women and girl's rights, in particular housing and sanitation, was also welcomed. Local governments at all levels should observe international law and best practice with regard to forced evictions. Some speakers also requested India to repeal or amend the law regulating the access of non-governmental organizations to foreign contributions as per the International Covenant on Civil and Political Rights. Some also expressed concern for the continued harassment and silencing of human rights defenders.

In Concluding Remarks, India said it attached high importance to the Universal Periodic Review process and believed that the lack of progress in fulfilling obligations was mostly due to lack of capacity. Therefore, a greater emphasis needed to be placed on technical assistance and capacity building, in consultation with and with the consent of concerned States, for improving the human rights situations on the ground.

IRAC participates in the 4th UN SAFBHR, Kathmandu, Nepal, 20-22 March 2023



The 4th UN South Asia Forum on Business and Human Rights (Kathmandu, Nepal, 20-22 March 2023) brought together governments, NHRIs, human rights organizations, activists and other stakeholders to discuss the implementation of the UN Guiding Principles on Business and Human Rights in South Asia, looking at the State duty to Protect human rights in business operations, the business responsibility to respect human rights and the need for effective access to victims of human rights abuses by enterprises. Indigenous Rights Advocacy Centre (IRAC) played a crucial role in the SAFBHR 2023. It was one of the organizing partners along with Community Empowerment and Social Justice Network (CEMSOJ), Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and Indigenous Peoples Rights International (IPRI) in the side event titled “Where are Indigenous Peoples in National Action Plans on Business and Human Rights?” held on March 21. As a panelist, Dilip Chakma, Executive Director, IRAC provided useful recommendations on NAP of India including (i) review of conflicting laws/policies in line with UNGPs; (ii) inclusion of IPs in the process of development of NAP, (iii) NAP must be more than a policy document, it should also include a process of implementation; (iv) Final NAP must address the rights of IPs/forest dwellers being impacted by businesses; and stop the criminalisation of IPHRDs, and (v) reform and strengthening of non-judicial and quasi-judicial redressal mechanism (i.e. empowerment of NHRC and NCST to intervene in BHR cases). Mr Chakma was also one of the speakers at side event “Interconnections between Land Insecurity, Displacement, and Forced Migration in South Asia” held on March 22.

IRAC's action against criminalization and torture

Maharashtra: NHRC demands status report on torture

On February 20, 2023, the NHRC directed the Chief Conservator of Forests (CCF), Maharashtra as well as the District Magistrate of Amravati (Maharashtra) to submit additional reports including status of investigation and compensation paid to the victim Ankush Gorelal Mavaskar (25 years) who was tortured with hot iron rod by the forest guards when he was caught fishing inside the Melaghat Tiger Reserve in August last year. IRAC filed a complaint before the NHRC. The Commission's latest order came after the CCF and Field Director, Melghat Tiger Reserve, and the Superintendent of Police, Amravati Rural submitted contradictory reports. While the former claimed that the victim was never taken into custody and hence ruled out custodial torture, the Superintendent of Police informed the Commission that the medical officer of Dhulghat Railway stated that the victim was seriously injured and he was not in working condition. Based on the order of the court, an identification parade of suspected forest employees was conducted and forest employees were found to be accused in the crime.

Manipur: NHRC summons District Magistrate and SSP Churachandpur

On March 22, 2023, the NHRC issued conditional summons to the District Magistrate, Churachandpur and the Senior Superintendent of Police (SSP), Churachandpur directing them to personally appear before the Commission on May 12 along with the required information/documents in the case of custodial death of one Chinkhanlian Guite (50 years) at the Churachandpur police station in February 2022. IRAC has filed the complaint before the NHRC. Despite a final reminder issued on December 8, 2022, the authorities have failed to submit the report sought by the NHRC.

MP: NHRC asks SP to provide financial relief to rape survivor

On March 20, 2023, the NHRC disposed of a case of gang rape of a 25-year-old tribal woman by issuing direction to the Superintendent of Police (SP), Dhar district, Madhya Pradesh to "take steps to provide financial relief to the victim under the relevant provisions of the law." The case was filed by IRAC seeking justice for the victim. Earlier, the SP told the Commission that a chargesheet has been submitted in the court.

NHRC asks top forest officer of Telangana not to send old reports again and again: On February 21, 2023, the NHRC issued fresh reminder to the Principal Chief Conservator of Forest, Telangana Government to submit the latest status report in the light of complainant's (IRAC) comments within four weeks, in a case of torture of some Lambada tribals including women. The forest officials had tortured the tribals for entering into the reserve forest to pick Mahua flowers in March 2021. Earlier on December 21, 2022, the Commission had made the observation that the top forest officer had only submitted "old reports".

This newsletter is published by *Indigenous Rights Advocacy Centre* to create awareness on human rights issues. It is for private distribution only. IRAC may be reached by post at: A-212, 1st Floor, Street # 23, Chattarpur Enclave, Phase 2, New Delhi- 110074, India; or by email: indigenoustrightsadvocacy@gmail.com. To know more about IRAC, do visit our website: www.irc.in Follow us [@irac_india](https://twitter.com/irac_india)