

Human Rights Defenders Alert - India

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Special Rapporteur on the situation of human rights defenders,

Ms. Margaret Sekaggya

c/o Office of the High Commissioner for Human Rights - Palais Wilson

United Nations Office at Geneva

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Switzerland

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Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – India/ Madhya Pradesh/Barwani district: "Show cause" notice served against Ms Madhuri Krishnaswami and Jagrit Adivasi Dalit Sangathan (JADS) under the Madya Pradesh Rajya Suraksha Adhiniyam (Madya Pradesh State Security Act, 1990) – Reg

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern over the show cause the service of a "show cause" notice issued against human rights defender Ms. Madhuri Krishnaswami by the District Magistrate Barwani in Madya Pradesh state under the Madya Pradesh Rajya Suraksha Adhiniyam (Madya Pradesh State Security Act, 1990) to expel her from Barwani and neighbouring districts.

Incident

Name of the Perpetrators: Barwani District administration, Madhya Pradesh

Place of incident: Barwani district, Madhya Pradesh

Date of incident: 10th May 2012

About the activist:-

Ms. Madhuri Krishnaswamy, popular as "Madhuri Ben" among the tribals of Barwani, has been instrumental in developing a grassroots movement-demanding

rural maternal and child health, labour rights and forest rights-in the remotest and most backward regions of the district. Madhuri has been working among dalits and tribals of the region raising issues like health, corruption in MGNREGA, land and forest rights.

Active in Barwani since late 1990s, Madhuri is associated with Jagrit Adivasi Dalit Sangathan (JADS), an organisation that works on various pro-people issues like health to wages under the MNREGA to food security among others. As a direct result of their efforts through a series of democratic modes such as awareness campaigns, public meetings and peaceful agitations, such as *dharnas*, between October to December 2006, Adivasi NREGA workers in Barwani district were paid unemployment allowances, totalling Rs 4,75,386.

Last year, she brought to light the horrifying story of Vyapari Bai, a tribal woman who died during labour after 27 hours of pain and absolute lack of medical attention, which sparked national outrage.

Case Narrative:

According to the information received, a "show cause" notice numbered 876/xxx/2012 was served against Ms Madhuri Krishnaswami on 10 May 2012 by the District Magistrate of Barwani. The notice has been issued under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (Madhya Pradesh State Security, Act, 1990) to expel her from Barwani and neighbouring districts accusing her of obstructing the government's public welfare and developmental scheme and striking fear and terror in the minds of government officials thus affecting government work. Madhuri has been asked to personally appear before the District Magistrate of Barwani in the first week of June and justify why she should not be externed from Barwani, Khargone, Khandwa, Dhar, Jhabua, Burhanpur and Alirajpur districts.

Although this notice was served to Madhuri in her personal capacity, there is reason to believe that such actions also target the civil society organisation, the Jagrit Adivasi Dalit Sangathan (JADS) against which another "show cause" notice has been served.

The government states that the 'compelling causes' that lead them to exercise this law against the JADS and Madhuri are certain criminal cases registered against the organisation over the past several years. However, to date, the courts have dismissed all these cases. Served under Section 8 (1) of the legislation, the notice lists 17 cases against Madhuri resulting from protests, gherao as also manhandling of government officials and servants over the past 13 years. Volunteers of JADS claimed that in most

of the cases mentioned against Madhuri in the notice, she has been acquitted. Six cases in the notice are fake and investigations are going on for 2 to 6 years.

It is also alleged in the notice that the organisation has been "obstructing" government-sponsored development work in the state. These accusations are baseless. The organisation has instead been insisting that the state administration ensure its welfare schemes are properly implemented and weed out corruption in the implementation of these schemes. The movement has been working to ensure that the benefits of these government schemes reach the tribal communities who are the rightful beneficiaries of these schemes. The JADS is engaged in educating its members and the extended tribal communities it support of their rights. The organisation is therefore a facilitator and stakeholder in the government's initiatives.

Madhuri Krishnaswamy, who frequently clashed with bureaucrats and the political leadership in the 15 years she has worked among tribals, has been barred from entering Barwani and five adjoining districts under the notice, usually issued against criminal elements.

It is reported that the executive magistrate who have served Madhuri and JADS the show case notice is acting merely on the dictates of the state's government, which has decided to use the Madhya Pradesh Rajya Suraksha Adhiniyam against the work of peoples' movements, movements such as JADS.

The tribals allege that it was the district administration's move as part of a conspiracy hatched by political leaders of BJP and Congress in view of next year's assembly elections. Incidentally, Madhuri's organization had a prolong battle with Congress regime too when then deputy chief minister Subhash Yadav aggressively sought her arrest, terming her a Naxalite in late nineties.

The tribal activists also alleged that these cases were registered to suppress their protests from time to time.

Additional Information:

The Madhya Pradesh Rajya Suraksha Adhiniyam, often referred to as a black (draconian) law has questionable premises concerning its enactment, a fact proved from the pattern of its enforcement.

This law allows the executive magistrate unbridled powers to curtail the civil rights of a person. The executive magistrate, after a summary proceeding, may (i) restrict the movements of a person; (ii) restrict the person from entering any place within his jurisdiction and places 'contiguous' to the magistrate's jurisdiction, which usually

implies the entirety of the state; (iii) impose conditions upon a person as to contain the person's freedom of association and communication; (iv) dispossess the person of the person's property; or (v) require a person to sign a security bond. Worse still is the statutory prohibition in the law (vide section 9) that restricts the options available to an aggrieved person by order of an executive magistrate to appeals only to the state government. This limits the jurisdiction of the courts to intervention only where errors are apparent in the procedure followed by the executive magistrate as specified in section 10 of this law.

The law contravenes constitutional guarantees. The state, in the absence of any proclamation of emergency, could exercise its powers through a state agent (in this case, the executive magistrate who is not a judicial officer) to restrict the civil liberties of a citizen. The law crucially assumes that a person served a "show cause" notice has committed an offence; this leaves only one option for the person so blindly charged. This is a summary procedure, where the law does not require the adjudicating executive officer to write a reasoned order.

Under this law, any and all calls for greater accountability and transparency could be termed "anti-state" or "a threat to national security"; this results in a reduced space for dissent and expressions of a desire for true democracy in India. Section 5 of the 1990 act empowers a district administration to remove a person whose acts could cause alarm, danger or harm.

The law is claimed by the government to be necessary in the prevention of organised crime, yet it serves instead to generate organised civil resistance, the suppression of which could end in widespread civil unrest.

The case against Madhuri and JADS is not an isolated incident. The process adopted by the state is an enactment of a larger pattern of state oppression of people's movements in Madhya Pradesh. On at least five occasions, the state has registered a series of false charges against social and political activists, serving them "show cause" notices so their activities could be legally and legitimately (albeit unconstitutionally) stopped. While some cases were eventually withdrawn by state administration, others were fought out in courts. Legislations such as the 1990 Madhya Pradesh State Security Act are the government's only response to increased calls for greater accountability and true democracy in India.

The state of Madhya Pradesh should seek to review its own institutions and processes, acknowledging the validity and lawful nature of civil society actors and refraining

from persecuting them any further. Only when this is accomplished the local authorities can carry out their legitimate activities without fear of reprisals.

Appeal

We, therefore, urge you to immediately take necessary steps to

1. Carry out a prompt and thorough investigation into the background in which the "show cause" notices against Ms Madhuri Krishnaswami and JADS are issued;
2. Provide assurance that Madhuri and members of JADS will not be legally or forcefully exiled from Barwani and contiguous districts;
3. Ensure that they must be protected from acts of impunity conducted by state and non-state actors and are permitted to continue meeting freely and to hold peaceful demonstrations;
4. Conform to the provisions of the United Nations Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, especially:
 - its Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels";
 - and its Article 12.2, which states that "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";
5. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by India.

Looking forward to your immediate action in this regard,

Yours sincerely,



Henri Tiphagne

Hon. National Working Secretary,
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