



# Human Rights Defenders Alert – India

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13<sup>th</sup> April, 2016

To

**Shri A. K. Parashar**

National Focal Point - Human Rights Defenders & Joint Registrar

National Human Rights Commission

Manav Adhikar Bhawan, Block-C, GPO Complex, INA,

New Delhi – 110 023

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Dear Sir,

**Sub: HRD Alert - India – Memorandum for Action – Odisha: Seeking Hon'ble National Human Rights Commission's intervention in matter related to indefinite hunger strike by 12 (twelve) under trial prisoners (UTPs) in Odisha in jail premises since March 30, 2016 who are protesting against the delays in their trials. The UTPs have been languishing in Sub-Jail in Bhanja Nagar (Ganjam District of Odisha) and Special Jail, Jharpada (Bhubaneswar, Khurdha District of Odisha) for the period covering 3 to 8 years – Regarding**

**Greetings from Human Rights Defenders Alert - India!**

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

We express our grave concern regarding the indefinite hunger strike by 12 (twelve) under trial prisoners (UTPs) in Odisha. According to Odisha based human rights group, 'Campaign Against Fabricated Cases' (CAFC), the agitating UTPs include 12(twelve) under trial prisoners(UTPs), who are languishing in Sub-Jail in Bhanja Nagar(Ganjam District of Odisha) and Special Jail, Jharpada(Bhubaneswar, Khurdha District of Odisha) for the period covering 3-8 years. The UTPs in Bhanja Nagar Jail (Ganjam District of Odisha) are on hunger strike since 31st March, 2016 and UTPs in Special Jail, Jharpada(Bhubaneswar) are on hunger strike since 30th March, 2016. The UTPs are raising questions about inordinate delay and demand speedy trial

of cases pending against them. Most of them have been arrested for their alleged Maoist links. The striking under trials include the following:

**Bhanja Nagar Sub Jail, Ganjam:**

1. MalatiMajhi- Tribal Girl: aged about 23 years
2. TelemSoni- Tribal Girl: aged about 24 years
3. KadamBijal- Tribal Youth: aged about 25 years

All the above mentioned prisoners have one Case ST-53/2013 and have been in jail since last 5 years. The Chief Judicial Magistrate has always been extending hearing dates from time to time due to the absence of Investigation Officer(I.O). They have been assured by court since last 2014 that their cases will be closed within 3 months.

4. KandraDalabehera-Tribal (GR-57/11 & ST-129/13)/. He was arrested 3 years back. Though he filed a Discharge Petition on GR-57/11 on 5th November, 2015, but nothing has moved yet. Case no -ST-129/13 is not progressing at all due to the absence of I.O and other witnesses.

5. K. Anita Majhi- Tribal Girl: aged about 22 years –She has been charged in total 15 cases and has been acquitted in 7 cases.

GR-27/10 & GR-13/11(Bail granted by Odisha High Court).

GR-88/10, GR-31/11, GR-57/11, GR-164/11 AND GR-165/11 have been pending in the JMFC Court Sorada, Ganjam District. Though she filed a Discharge Petition on GR-57/11 on 5th November, 2015, nothing has moved till date.

ST-10/14 has not been progressing due to the absence of I. O.

**Jharpada Jail: Bhubaneswar:**

1. KamalakantaSethi (Scheduled Caste) and his wife.
2. PadmabatiTukruka (Scheduled Tribe)alliasSujataSethi- Arrested and in jail since last 8 years.
3. Asutosh Soren (Tribal) - In jail since last 7 years.
4. Ranjit Sana- (Dalit) - In jail since last 7 years (ST-31/10 & 34/10 pending at Nayagada Chief Judicial Magistrate).
5. Rabi Dulal- (Gen) - Jailed since last 7 years: additional 4 cases at Daspallha Court with ST-31/10 AND ST-34/10.
6. Kishor Kumar Jena: In Jail since last 6 years: (ST-31/10 & 34/10 pending at Nayagada Chief Judicial Magistrate).

7. D. Kesab Rao alias Azad: ST-26/12, ST- 41/12, ST-45/12, ST-46/12, ST-47/12 have been pending at Nayagada C.J.M Court and 5 cases at JMFC, Daspalla. He surrendered before Andhra Police and arrested by Odisha Police in 2012.

Of the 12 prisoners who have stopped taking even a morsel of food, 4 are women. The prisoners are predominantly from tribal (adivasis) communities. Most of them belong to the poor families and cannot afford to engage lawyers to represent them. Campaign Against Fabricated Cases (CAFC) has argued that there are deliberate attempts by the state government to slow down the justice process. In many instances witnesses are not produced in time and the investigating officers do not attend the trial courts. Even under trials are denied their rights to be produced in courts in time.

We would like to draw your attention to an order of the Odisha State Human Rights Commission (OSHRC) on April 4, 2016 directing the State Home Secretary to take action for expeditious trial. The Hon'able commission also issued notices to Director General of Police, Additional Director General Police (Prison) and Inspector General of Police to take appropriate action so that UTPs and prosecuting witnesses appear before the court on the date fixed and submit an action taken report to the panel within two weeks.

We have been informed that 5 prisoners of Bhanja Nagar Sub Jail, Ganjam called off their hunger strike after getting assurance from the Judiciary through jail authorities on 2nd April, 2016 but the 7 other under-trial prisoners of Jharpada Special Jail are still continuing their hunger strike. While two prisoners, Mr. Kishor Kumar Jena and Mr. Asutosh Soren, on hunger strike in Jharpada have been admitted in the Capital Hospital on 7<sup>th</sup> April 2016, others are undergoing treatment in jail premises.

We also expresses its grave concern over the inhuman treatment and violation of human rights of under trial prisoner Mr. Kishore Jena who has been admitted at the Capital Hospital in Bhubaneswar lying in serious condition on the bed with handcuffs. The practice of police teams bringing or keeping remand prisoners handcuffed is a clear human rights violation and contravenes the orders of the Supreme Court and High Court. The Supreme Court of Indian in Prem Shankar Shukla v Delhi Administration 1980 SCC 526 said that indiscriminate use of handcuffs is inhuman, unreasonable and arbitrary. As a rule, handcuffs or fetters must not be used on an under trial or on a convicted prisoner whether in jail or when being taken to court, without authorisation of a magistrate.

We most humbly submit that presumption of innocence is a legal right of the accused in a criminal trial, and it is also regarded as an international human right under the UN's Universal Declaration of Human Rights, article 11. It is a salutary principle of Indian criminal justice is that "every person is presumed to be innocent till he is proved to be guilty by a court of law in a free, fair and just procedure".

We also believes that the right to speedy trial is a fundamental right of an under trial under Article 21 of the Constitution. In the case of Katar Singh v. State of Punjab(1994) 3 SCC 569,it was declared by the Indian Supreme Court that right to speedy trial is an essential part of fundamental right to life and liberty. Hence there can be no ground for the delay.

Therefore, we most respectfully appeals that this Hon'ble Commission to –

- Urgently intervene in the matter referred above under section 12(d) of the Protection of Human Rights Act (1993) which empowers the NHRC to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- Intervene in the matter referred above under section 12(b) of the Protection of Human Rights Act (1993) which empowers the NHRC to intervene in any proceedings involving any allegation of violation of human rights pending before a court, with the approval of such court.
- Intervene in the matter referred above by conducting independent custody visit of the jails and assessing the prevailing conditions of detainees in jails in the state of Odisha.

Looking forward to your immediate action in this regard,

Yours sincerely,



**(Henri Tiphagne)**

Honorary National Working Secretary