



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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**March 8, 2018**

**To,**

**Mr. Srinivasa Kammath**

National Focal Point - Human Rights Defenders & Deputy 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 - Urgent Appeal for Action the illegal and arbitrary arrest  
of Advocate Upendra Nayak by Odisha Police in Odisha – Regarding***

Dear Sir,

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 are now writing to express our grave concern regarding the arbitrary arrest of human rights defender and lawyer Mr. Upendra Nayak for defending tribal victims implicated in false cases by police in Odisha.

**Source of Information on the Incident:**

The Coordinator of HRDA for the East

Advocate Arup Nanda from Paralakhemundi

Advocate and human rights activist Biswapriya Kanungo

**The Human Rights Defenders:**

Mr. Upendra Nayak is well-known pro-bono advocate Gajapati district of Odisha. He have taken many cases under the District Legal Service Authority for the poor tribals who have been implicated by police in false cases including some cases under the Unlawful Activities Prevention Act (UAPA). He had filed many cases in the area for the restoration of the rights of the tribals on the natural resources in their area.

**The Perpetrators:**

1. Dr. R.K.Sharma Director General of Police, Odisha
2. Mr. Asit Tripathy, Secretary Home Department Government of Odisha
3. Mr.Amulya kumar Das, Superintendent of Police, Gajapati District
4. Other police personals who went to arrest him during

**Date of Incident:**

February 21, 2018

**Place of Incident:**

Mr. Upendra Nayak's residence in Gajapati district of Odisha.

**Background:**

As a well-known pro-bono lawyer in the area, Advocate Upendra Nayak has defended few tribal youths since the year of 2009 in about ten cases where they were charged with offenses of sedition, including sections of UAPA. In connection to this and many others of his pro-bono activity the Odisha police had falsely fabricated him and some of his allies in false cases which were never known to them, prior to this arrest.

**Incident detail:**

As per the sources on February 21, 2018 at about 8 PM while Advocate Nayak was at his residence, personnel from local police station came to his house and arrested him based on a non-bailable warrant (NBW) issued against him. When he and his associates queried about the NBW, the police stated that between 2009-10, he was defending cases for some tribal youths in Mohana Judicial Magistrate Court and in that First Information Report (FIR) there were name of 62 other persons as accused. The police taking advantage of this, have recorded a statement of one of the tribal

youth Mr. Abhya Sahu under Section 161 of Criminal Procedure Code, where he has allegedly stated names of other persons who are associated in the anti-national work and has implicated Mr. Nayak also to be working with them. So, on the basis of this statement, the police have made a non-bailable warrant and arrested him. Though Mr. Nayak is a regular practicing lawyer it is found that his name was mentioned as absconding in the case as per the non-bailable warrant.

After his arrest, he was produced before the Mohana Judicial Magistrate Court by the Gajapati district police and was remanded to judicial custody. He was then sent to R. Udayagiri jail. He has been charged with under section 121(waging war against government), 121-A (conspiracy against government) ,124-A (sedition) of Indian Penal Code and various sections of Unlawful Activities Prevention Act.

A bail application was filed in the trial court which was dismissed. Later a bail application was filed before the Session Judge, Parlakhemundi and the hearing date fixed on March 7, 2018. and the same was rejected. As per source, Mr. Naik is unwell so he may be shifted to hospital soon and it is pertinent to note that he is a cardiac patient.

It is becoming a worrying trend that human rights defenders, lawyers in particular who work to secure justice and fair trial for people accused of false charges are being falsely implicated in similar charges by the police and security agencies so as to prevent them from appearing in court and securing justice for the victims.

**Appeal:**

We, therefore urge you to immediately take necessary steps to ensure that the Superintendent of Police, district Collector and District Magistrate of Gajapati district Odisha

Guarantee in all circumstances the physical and psychological integrity of Advocate Upendra Nayak who is still under risk of further reprisals from the perpetrators and provide a re-assurance of not engaging in such acts against HRDs.

Direct the Odisha SHRC and state government to immediately to announce a full and thorough investigation into the incident and take urgent steps to ensure the safety of Advocate Nayak and his family members.

Order for the State Legal Services Authority of Odisha to depute a senior criminal lawyer to represent Mr. Nayak at state costs.

Ensure provision of reparation, compensation, apology to the defender for the psychological sufferings she is undergoing because of the threats and intimidation to her life and give this assurance to the NHRC of India in writing immediately and urgently.

Looking forward to your immediate action in this regard,

Yours sincerely,



**(Henri Tiphagne)**

National Working Secretary

**Copies to:**

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