



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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July 1, 2019

To,

**Mr. Khaleel Ahmed**

National Focal Point - Human Rights Defenders & Deputy Registrar

National Human Rights Commission

Manav Adhikar Bhawan,

Block-C, GPO Complex, INA,

New Delhi – 110 023

Email: [hrd-nhrc@nic.in](mailto:hrd-nhrc@nic.in)

Dear Sir,

***Sub: HRD Alert - India - Urgent Appeal for Action: Judicial Harassment of Fr. Stan Swamy, Alok Kujur and other human rights defenders, Jharkhand – Seeking intervention of the NHRC u/S 12 (b) of the PHRA, 1993 – 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 writing to express our grave concern regarding the false implication of Fr Stan Swamy, Alok Kujur and eighteen others in sedition charges and sections of IT Act by Jharkhand police.

**Status of Human Rights Defender:**

- Fr. Stan Swamy is a Human Rights Defender (HRD) is based in Ranchi, Jharkhand, and will be visiting Bangalore in the first week of July 2019. This is part of his break which he generally takes once in five years. Stan is 83 years old and has contributed

immensely to the human rights movement in India. Immediately after completing his post-graduation in 1971, he moved to West Singhbhum (now in Jharkhand) for two years. Upon his return to Bangalore, for the next 15 years he was associated with the Indian Social Institute, Bangalore, including 10 years as its director. On completion of his term, he moved back to Jharkhand (then Bihar) and helped revive a grassroots Adivasi organisation JOHAR in Chaibasa, West Singhbhum.

Fr. Stan over the past three decades has significantly contributed to the human rights movement in Jharkhand. He has worked extensively on a range of issues, implementation of PESA in scheduled areas, constitutional rights of Adivasis and Dalits, etc. Stan along with a few others founded Bagaicha in 2006, a training centre in Ranchi for Adivasi youth, which also carries out research, action and educate the marginalized about their rights. He has been in Bagaicha since then, teaching and inspiring thousands of young Adivasi men and women. Stan has been instrumental in mentoring generations of human rights defenders in Bangalore, Tamil Nadu, Jharkhand and other parts in this country.

- Aloka Kujur is a social activist working for the rights of women.
- Vinod Kumar is a senior journalist, novelist and essayist of repute.
- Rakeshroshan Kiro is a young social activist associated with Gram Swaraj Abhiyan.

**Source of Information on the Incident:**

- HRDA, East Regional Coordinator
- Interaction with defenders from the state
- Media reports

**Perpetrators:**

1. Mr. N.K. Choubey, Director General of Police, Jharkhand
2. Mr. Alok, Superintendent of Police, Khunti
3. Mr. Anish Gupta, Superintendent of Police, Ranchi

**Date of the Incident:**

June 19, 2019

**Immediate cause of action:**

On June 19, 2019, the Chief Judicial Magistrate of Khunti, has issued a warrant of arrest against Fr. Stan Swamy, Aloka Kujur, Vinod Kumar, Rakeshroshan Kiro and others, in case No. 124 of 2018. It is pertinent to mention here that a Criminal Miscellaneous Petition in Cr.M.P.No. 3183 of 2018) was filed in the High Court of Jharkhand at Ranchi for quashing this case. Issuing warrants when the matter is sub-judice in the High Court, is only an attempt to further threaten and harass the human rights defenders for their legitimate human rights work.

**Background of the case:**

On July 26, 2018, the Jharkhand police filed a case of sedition and other sections of the Information Technology Act, against 20 well known and reputed Adivasi activists, including Fr Stan Swamy, Aloka Kujur, Vinod Kumar, Rakeshroshan Kiro etc, for publishing posts on Facebook critical of the government policies and actions and for their prominent role in the Pathalgadi movement. The FIR in Cr.No.124 of 2018 was registered under sections 121, 121A, 124A of the Indian Penal Code and under sections 66A, 66F of Information Technology Act, 2000. In the said FIR, no progress in the investigation was made and no charge sheet has been filed till date against any of the 20 accused in spite of one year having passed.

In Khunti and other districts of Jharkhand, Adivasis have used the age-old ritual of installation of a memorial stone on a grave, i.e. Pathalgadi. They laid multiple stones to quote constitutional provision to declare their gram sabhas as sovereign. The Pathalgadi movement opposes government's proposal to introduce land acquisitions laws and state domicile eligibility. The Adivasi activists have viewed these reforms as infringing upon their land rights under ninth schedule of the Constitution.

Though they were not arrested after the FIR was filed, it is largely believed that this was an intimidation tactic to threaten and silence those who have been campaigning against state government's policies and actions favouring the corporates.

The FIR was filed by the police inspector Rajesh Prasad Rajak of Khunti police station in the context of an incident on June 26. It was alleged that people from Anigarha village of Khunti abducted three security guards of BJP leader Karia Munda from his house and that

Munda and his family were not present when the incident took place. The violence took place after the police personnel lathi-charged and beat up the silently-protesting villagers associated with the Pathalgadi movement of the village.

According to the FIR, the activists played a leading role in manipulating the innocent and uneducated villagers against the government and prodding them towards 'anti-national' activities. In the FIR, the Inspector of Police also accused the activists of misinterpreting the constitutional provisions and spreading their interpretation among the villagers of Khunti through their 'anti-national' speeches and propaganda. He alleges that the activists use social media to spread 'anti-national' propaganda.

According to the activists, Jharkhand government is solely focusing on corporate interests and is introducing repressive land acquisition policies to facilitate acquiring land. This can be proved by the amendments the government introduced in the Chotanagpur Tenancy Act and the Santhal Parganas Act. Further, the attempts to rearrange the demographic balance through changes in the domicile policy would shift the balance away from the Adivasis.

The present case is also an example of blatant violation of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India for mere criticism of state action. Also, it has been observed that the people here in question are intimidated and harassed again and again by the state only for having their own opinion on state actions as and when it has been repressive and unjust. Further, this is just another crackdown on civil society groups and human rights defenders who are now being slapped with false sedition charges and more so non bailable warrants have been issued against them. It is in the above context that the Hon'ble NHRC is urged to take action by intervening in the matter.

It is pointed out that free debate and open discussion is intrinsic to democracy and if that means government of the people, by the people and for the people, then every citizen must be entitled to participate in the democratic process which includes entitlement of every citizen to participate in the process and hold opinions and general discussion on matters related to the public at large.

The protection of human rights defenders is critical to ensure that they are able to work in a safe, supportive environment and be free from attacks and reprisals.

Article 21 of the Constitution of India ensures to all its citizen right to life – a life to live without fear, intimidation, harassment or mental torture. In the present case, fixing of false charges, issuing non bail-able warrants against the above mentioned human rights defenders amount to harassment and mental torture thereby infringing fundamental right to life in the present case. Also, the protection of human rights defenders is critical to ensure that they are able to work in a safe, supportive environment and be free from attacks and reprisals.

Further, The Declaration on Human Rights Defenders, adopted in 1998 by the UN General Assembly, states that governments are under a duty to *“take all necessary measures to ensure the protection of human rights defenders by the competent authorities against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary actions”* as a consequence of their efforts to promote human rights. Therefore, the government is bound by its international legal obligations to ensure that all activists and human rights defenders are provided with security against harassment or intimidation so that they may enjoy their constitutional right to due process, life and liberty under Article 21, and the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India.

The Global Alliance of NHRIs at their 13<sup>th</sup> International Conference from 10-12 October 2018 held at Marrakesh and known as ‘the Marrakesh Declaration’ deals on expanding the civic space and promoting and protecting human rights defenders. ‘The Declaration reads as follows:

*7. Human rights and fundamental freedoms including the right to freedom of expression, to peaceful assembly and association, and to participate, play a decisive role in the emergence and existence of peaceful and inclusive societies, as they are a channel allowing for dialogue, pluralism, and tolerance, and are preconditions for the enjoyment of all human rights by all.*

*8. We recall the Declaration on Human Rights Defenders, adopted by United Nations General Assembly in December 1998<sup>1</sup> as the international normative framework on human rights defenders.*

*9. Human rights defenders have a positive, important and legitimate role in contributing to the realisation of all human rights, at the local, national, regional and international levels,*

*including by engaging with Governments and contributing to the efforts in the implementation of the obligations and commitments of States in this regard.*

*10. We reaffirm the principle of self-identification of human rights defenders. In line with the Declaration on Human Rights Defenders this includes anyone working for the promotion and protection of human rights, which encompasses: professional as well as non-professional human rights workers; those working for women's rights and gender equality; those working on the rights of ethnic, linguistic, sexual or religious minorities; persons with disabilities; defenders working on environmental and land issues; those working on indigenous rights; volunteers; journalists; lawyers; and anyone else carrying out, even on an occasional basis, a human rights activity.*

*12. We are deeply concerned about reports on the increasing number of physical attacks against human rights defenders particularly where this includes sexual violence or killings.*

*13. We are also concerned about reports on shrinking civic space and on threats, risks and reprisals faced by human rights defenders, worldwide. This happens through restrictions on the rights to freedom of opinion, expression, association or peaceful assembly, and the right to privacy, or through arbitrary use of civil or criminal proceedings, prosecution, cruel, inhuman and degrading treatment, or acts of intimidation or reprisals.*

*16. We recognise that independent and effective NHRIs, as well as their members and staff, are human rights defenders themselves.*

*20. B. Protection*

- a) Monitor and report on civic space – online and offline - through the collection and analysis of disaggregated data, including gender-based disaggregation and statistics related to killings, fabricated legal charges, misuse of specific laws and other attacks against human rights defenders, journalists and trade unionists, lawyers, students, academics, in line with SDG indicator 16.10.1;*
- b) Identify when policy implementation disproportionately impact on human rights defenders and civic space;*
- c) Set up efficient and robust early warning mechanisms and focal points within NHRIs. This should be done with specific attention to groups at risk: human rights defenders, women human rights defenders and all those that advocate for the rights of those left behind. These mechanisms should have the mandate, capacity and expertise to initiate urgent actions;*

- e) *Report cases of intimidation, threats and reprisals against human rights defenders, including against the NHRI members or staff, and do what is possible to ensure protection;*
  - g) *Monitor places of detention including where appropriate by conducting preventive visits, and provide legal aid to persons in detention;*
  - h) *Promote that victims of violations of rights and fundamental freedoms have access to justice and work closely with the judiciary in that regard.*
20. C. Cooperation and partnerships
- a) *Interact with human rights defenders and civil society in a regular manner and include them in the planning and implementation of, as well as follow-up on, the NHRI's activities, in a gender and disability-sensitive manner;*

**Appeal:**

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

- Intervene using your powers u/S 12 (b) of the PHRA 1993 in the Court of the Chief Judicial Magistrate of Khunti on behalf of the human rights defenders and ensure that they are not arrested and subjected to reprisals because of their human rights work;
- In the incident in the FIR in Cr.No. 124 of 2018 against 20 human rights defenders dated July 26, 2018, order an immediate, independent, thorough, transparent, effective and impartial investigation, through NHRC's independent investigation team. The independent investigation is important given that despite the lapse of one year, there has been no progress in the investigation and this case where the complainant is the police inspector, is just a tool to harass and intimidate human rights defenders; and
- Based on the independent investigation, direct for necessary disciplinary actions, including prosecution, of the concerned police officials for the targeting of reputed human rights defenders.

Looking forward to your immediate action in this regard.

Yours sincerely,



**(Henri Tiphagne)**

Honorary National Working Secretary