



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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**HRDA/East/OD/01/08/2023**

August 16, 2023

To,

Mr. Indrajeet Kumar,  
National Focal Point - Human Rights Defenders & Assistant Registrar,  
National Human Rights Commission,  
Manav Adhikar Bhawan,  
Block-C, GPO Complex, INA, New Delhi –110 023  
Email: hrd-nhrc@nic.in

Dear Sir,

**Sub: HRD Alert – Urgent Appeal for Action – Odisha – Illegal arrest, UAPA and other fabricated charges on tribal HRDs associated with Niyamgiri Surakhya Samiti, by Odisha police.**

Greetings from Human Rights Defenders Alert!

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 on the fabricated charges including the draconian UAPA against tribal HRDs members Niyamgiri Surakhya Samiti (NSS) by the police officials of Odisha.

**Source of Information:**

- Communication with the local HRDs
- Media Reports

**Date of Incident:**

August 06, 2023

**Place of Incident:**

Kalahandi district, Odisha

**Perpetrators:**

- Police officials of Kalyansinghpur police station
- Ms. Sumati Mohanty, Inspector In Charge of K. Singhpur police station
- Other police officials of Odisha

**About the Human Rights Defenders:**

Niyamgiri hills are home to about 8,000 Dongaria Kondh tribes living in 160 villages. NSS is a collective of tribes that has been opposing bauxite mining by Vedanta in Niyamgiri hills since 2003.

The following HRDs associated with the Niyamgiri Surakhya Samiti have been charged by the police officials.

1. Lada Sikaka (HRD and member of NSS)
2. Manu Sikaka (HRD and member of NSS)
3. Drenju Krushka (HRD and member of NSS)
4. Samba Huika (HRD and member of NSS)
5. Lingaraj Azad (HRD and Advisor NSS)
6. British Kumar (HRD and member of Khandualamali Surakhya Samiti)
7. Lenin Kumar (HRD and poet)
8. Gobinda Bag (HRD and supporter of NSS)
9. Upendra Bag (HRD and spokesperson of NSS)

**Details of the Incident:**

On August 05, 2023, HRDs Mr. Krushna Sikaka, and Mr. Bari Sikaka, who were members of the NSS had gone to Lanjigarh market in Kalahandi district. Their purpose was to meet villagers and to inform them about the World Indigenous Day. At about 9 am, some plainclothes police personnel suddenly arrived in a Bolero and forcibly abducted them.

On hearing news of their forcible pickup from villagers and other activists from NSS tried contacting Lanjigarh and Kalyansinghpur police stations as well as the SPs of both Raygada and Kalahandi districts. However, the police repeatedly denied either picking them up or arresting them.

In the morning of August 06, 2023, a protest was held in front of the Kalyansinghpur police station by the villagers and a memorandum was submitted to the police demanding the release of the two activists. The police officials allegedly mocked their demands by saying “are we disari (Adivasi astrologer) that we can predict their whereabouts?”

When the villagers were returning from their protest an attempt was also made by the police to pick up Mr. Drenju Krisika, a prominent leader of the NSS. However, the villagers resisted, and the attempt was thwarted.

At 7 pm on August 06, 2023 an FIR (No. 0087) was lodged in K. Singhpur police station by the Inspector In charge Ms. Sumati Mohanty, against nine people including Mr. Lada Sikaka Mr. Drenju Krisika, Mr. Lingaraj Azad, Mr. British Kumar, and Mr. Lenin Kumar under IPC sections 147 (punishment for rioting), 148 ( Rioting, armed with deadly weapon), 109 (Active abetment at the time of committing the offence), 294 (obscene song, ballad or words, in or near any public place, ), 188 (any deliberate disobedience of an order that is duly promulgated by a public servant empowered by law to do so.) 353 (assault upon a public servant ), 332 (punishment for the offence of voluntarily causing harm in order to deter a public worker from doing his duties), 307 (Attempt to murder), 149 (if an offence is committed by any member of unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of that offence, is a member of the same assembly, is guilty of that offence.”), and under Section 10 (penalty for being member of an unlawful association,), Section 11 (Penalty for dealing with funds of an unlawful association), Section 13 (advocates, abets, advises or incites the commission of, any unlawful activity) and Section 7 of the Unlawful activities (prevention) Act.

In the meantime, a writ of habeas corpus was also filed in the High Court to produce Mr. Krushna Sikaka and Mr. Bari Sikaka. As a result, the police released Mr. Bari Sikaka, but Mr. Krushna Sikaka was arrested under the charge of a rape case filed in 2018.

We believe that the Odisha police has misused the law and their powers, violated multiple sections of the DK Basu guidelines, and acted with malafide intentions by charging HRDs with draconian anti-terrorism law like the UAPA.

We believe that imposition of anti-terror UAPA charges on activists is another attempt by the Odisha police to stifle the voices of local people especially that of

Dongria Kondh community of Niyamgiri, who under the banner of Niyamgiri Surakhya Samiti (NSS) have been resisting corporate attempts to mine bauxite from Niyamgiri since the last two decades.

Firstly the arrests of the activists Mr. Krushna Sikaka, and Mr. Bari Sikaka cannot be called legal in absence of correct arrest procedure.

The DK Basu guidelines by the honourable Supreme Court categorically state that the police officers making an arrest must be in uniform and wear name tags while the two activists were picked up from the market by plainclothes policemen. Furthermore a detention memo or an arrest memo must be prepared at the time of arrest and the same should be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

No detention memo or arrest memo was created at time of the arrest. The detained or arrested persons have a right to lawyer and their families should be informed about the place of their detention. This was also not followed by the Odisha police. The attempt to abduct HRD Mr. Drenju Krisika also shows the malafide intentions of the police. The arrest of Mr. Krushna Sikaka after 5 years on an alleged rape charge also show that the malafide intention of the police to arrest the activists.

We would also like to highlight that the UAPA is draconian and its provisions are in violation to the underlying principles of natural justice, rule of law, due process and principles of fair trial. The United Nations Security Council Resolution 1456 states that States must ensure that any measure taken to combat terrorism must comply with all their obligations under international law in particular international human rights, refugee and humanitarian law. However, various provisions of the UAPA run in contradiction to the international obligations of India under International law.

Arrests made under the anti-terror law of UAPA assume the guilt of the accused and stand in contradiction to the underlying criminal law principle of presumption of innocence. The draconian provisions of UAPA do not only run against the principles of a fair trial but also violates the principle of natural justice and due process. After the recent 2019 amendments to the Act, for any allegation by a state agency, the onus to contradict the guilt is on the accused. This is in sheer violation of the natural principles of justice and moral values of democracy. It further undermines the constitutionally

guaranteed right to a fair trial, creating an enormous risk of wrongful prosecution, given the intolerance of the state towards human rights activists.

The International Convention on Civil and Political Rights (ICCPR), to which India is a party, stipulates that presumption of innocence is a universal human rights principle. In contradiction to this, the UAPA reverses the burden of proof.

The provisions of UAPA are in contravention of the requirements of Article 14 of the ICCPR and General Comment No. 32. Article 14(1) provides: “...*everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*” General Comment No. 32 clarifies that this requires access to first instance judicial remedies, and not appellate remedies as currently available under UAPA. Similarly, the absence of a hearing, the lack of a requirement for a reasoned decision, and the fact that the available review mechanisms are not impartial, all contravene the requirements of Article 14 and General Comment No. 32.

According to the Crime in India, published by the National Crime Records Bureau (NCRB), between 2014 and 2017, 68 per cent of cases under the UAPA ended in either acquittal or discharge. This clearly shows that without material evidence on record, the charges under UAPA are being levied. The legislation is being used over the years as a tool of repression — a weapon to keep people entangled in the legal system and throw people in jails for indefinite period at the fancies of the state. UAPA gives disproportionate power to the government to implicate individuals for being proactive members of the society, ban critical thinking and criminalize dissent by designating them as terrorists.

Our Constitution provides citizens to exercise freedom of speech and expression under Article 19(a) of the Indian Constitution which is crucial to the work of HRDs, including human rights defenders and activists. The right to freedom of expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and 3) the right to impart information and ideas of all kind.

On the aforesaid it is stated that Declaration on Human Rights Defenders seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights. If citizens are muffled up their reporting on facts when they criticise politicians and public

officials, seldom human rights activists will dare to take a stand and the democracy will be crushed further.

Globally, human rights defenders face major risks as a result of their work both from the state and out of state actors. The protection of human rights defenders ending impunity for attacks against them, is a global priority for safeguarding freedom of expression. States are under an obligation to prevent, protect against, and prosecute attacks against human rights defenders. A free expression and active civil society are essential to ensure the public's right to know, so that governments and institutions can be held accountable.

**Appeal:**

We urge the Hon'ble Commission to take cognisance of the above case and urgently:

- Direct the Director General of Police of Odisha to immediately release HRD Mr. Krushna Sikaka.
- Direct the Director General of Police of Odisha to immediately drop all charges under UAPA (and other fabricated charges) against the HRDs.
- Direct the independent wing of the NHRC to initiate an immediate, independent, thorough, transparent, effective and impartial investigation into illegal arrests and charges against human rights defenders by Odisha police.
- Depending on the result of the investigation, to initiate strict action against all the police officials who carried out the illegal arrests and fabricated charges, flouting DK Basu guidelines and other international and national laws.
- Submit to the Government of India and the Indian Parliament expressing concerns on a series of prominent HRDs being charged under the anti-terror law UAPA and subjected to prolonged detention without trial.

We hope to hear from you soon,

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary