



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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August 09, 2018

To

Shri 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
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Karnataka: HRD Mr. Thirumurgan Gandhi detained at Kempegowda International Airport, Bengaluru while returning to India after attending UN Human Rights Council session in Geneva – A case of reprisal – Regarding

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 illegal and arbitrary detention of HRD Mr. Thirumurgan Gandhi while returning to India after attending United Nations Human Rights Council (UNHRC) session in Geneva. HRDA believes this is an act of reprisal for his actions in the UNHRC and elsewhere in Europe.

Source of Information on the Incident:

- Media reports
- The Regional Coordinator for the South India, HRDA
- Communication with colleagues of Mr. Thirumurgan Gandhi from the May 17 Movement who were to receive him at the Kempegowda International Airport, Bengaluru this morning

The Human Rights Defender:

Mr. Thirumurgan Gandhi is the leader of the May 17 Movement. He is a well known human rights defender from Tamil Nadu. The May 17 Movement has been in the

forefront of many pro-people human rights movement. Mr. Gandhi advocates for the democratic aspirations of Eelam Tamils, Palestinians, Kurds, Kashmiris, Western Saharans and Sikhs. He engages on the issues of indigenous peoples and communities which have faced war crimes and has raised these issues in the UNHRC over the past few years. He has also been in the forefront on several issues like justice in cases of custodial murder of migrant labourers, water rights of the farmers, worker rights, refugee rights, disability rights, campaign against death penalty, rights of the linguistic and religious minorities, tribal rights, transgender rights etc. He has been active in protesting against the World Trade Organisation rules pertaining to public distribution system, privatisation of electricity, eco-sensitive projects like hydraulic fracturing, nuclear reactors in dense populations etc.

The Perpetrators:

- Immigration officers of the Bengaluru International Airport
- Police officers of Bengaluru's Kempegowda International Airport Police Station where he is presently detained
- Senior official from the Tamil Nadu Police

Date of Incident:

- August 9, 2018

Place of Incident:

- Kempegowda International Airport , Bengaluru

Incident detail:

According to sources, on the early hours on August 9, 2018, at around 4 AM, Mr. Gandhi arrived at the Kempegowda International Airport, Bengaluru from Europe. He has been detained by the immigration officials of the airport, allegedly on the basis of a 'Look Out Circular' (LOC). The LOC is stated to have been issued against him on the basis of instructions from the Tamil Nadu Police relating to previous cases he has been charged with. HRDA has been informed that no official papers had been provided to Mr. Gandhi reasoning his detention nor had he been provided with the copy of the LOC.

It is to be noted that Mr. Gandhi was returning to India after attending the recent UNHRC session and also attended formal meetings in the European Commission as well as other meetings in Europe. During the UNHRC sessions in June 2018, Mr. Gandhi had on record stated about the killings of 15 people in Thoothukudi City of Tamil Nadu due to police firing and other police actions upon the peaceful protestors against the Sterlite industry, a copper smelter plant causing environmental pollution in the district.

Mr. Gandhi had also appealed to the UNHRC about the misuse and harassment of human rights defenders in India by arbitrarily using prevention detention laws and incarcerating them in prisons. He cited his own case, where on May 21, 2017, he was arrested for organising a candle-light vigil in remembrance of the victims of the armed conflict in Sri Lanka during 2009. He was later detained under the notorious and draconian '*The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982*' (known as the Goonda's Act) by the Tamil Nadu Police on false and fabricated cases against him and other activists associated with May 17 Movement.

Mr. Gandhi in his statement to the UNHRC also mentioned about the detention of other human rights defenders in the state of Tamil Nadu naming Mr. Velmurugan, a political leader who had falsely been detained and Ms. Valarmathi, a student-activist who was detained under the Goonda's Act for organising protests. Mr. Gandhi appealed to the UNHRC to intervene in cases of misuse of sedition and other detention laws such as Goonda's Act, National Security Act (NSA)¹, Unlawful Activities Prevention Act (UAPA) etc. against human rights defenders and members of civil society organisations in India, especially in the state of Tamil Nadu.

¹ NSA is not in accordance with the international human rights law and since 1980 several governments have misused it to curb dissent. NSA restricts fundamental freedoms guaranteed by the Indian Constitution and provisions of the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights, i.e. freedom of association, freedom of speech, freedom of movement and impose restrictions on the rights to a fair trial. NSA is a reflection of the colonial India's Rowlatt Act which permitted detention without trial.

This incident of issuing an LOC on Mr. Gandhi and his possible arrest should be seen in context of the state terror that is being unleashed in Thoothukudi since the police firings against peaceful protestors on May 22, 2018. Human rights activists, members of civil society organisations are being persecuted with false cases by the police in Thoothukudi as also recently observed by the Madurai Bench of the Madras High Court and ordering quashing of the open FIRs. Six persons have been detained under the NSA by the police falsely claiming that they indulged in violence during the protests on May 22, 2018 against the Sterlite. Two lawyers who were providing legal aid to the persons who were illegally and arbitrarily detained by the police in Thoothukudi were also arrested and one of them under the NSA. Both of them as well as the others have been released by the orders of the Madurai Bench of the Madras High Court, which warned the police and the district administration of Thoothukudi not to arbitrarily detain persons under such preventive detention laws.

HRDA believes that this incident of issuing a LOC against Mr. Gandhi and detaining him at the airport is an act of reprisal against a human rights defender for participating in the UNHRC session and especially stating about the human rights violations in the state of Tamil Nadu. More importantly raising the issue of killing of 15 people by police firing and killings in Thoothukudi on May 22 & 23, 2018.

HRDA also humbly requests the Hon'ble Commission not to transfer this complaint to the Tamil Nadu State Human Rights Commission but to inquire on the matter itself considering the continuous harassment and reprisal against Mr. Gandhi.

Background of the incident:

A complaint regarding the May 2017 arrest under the Goondas Act of Mr. Gandhi and three others - Mr. Arunkumar, Mr. Tyson and Mr. Ilamaram, all associated with May 17 Movement, was submitted to the UN Working Group on Arbitrary Detention (WGAD) in July 2017. The complaint had questioned the detention order passed by Mr. A.K. Viswanathan, the Commissioner of Police, Chennai City. Mr. Viswanathan had issued the preventive detention order under the Tamil Nadu Goondas Act based on unproven allegations that the police had failed to investigate for years.

In this regard, Human Rights Defenders Alert – India (HRDA) had also petitioned before the Hon'ble Commission on May 30, 2017. This complaint was registered as case number 1310/22/13/2017 and the NHRC passed orders to transfer the case to the Tamil Nadu State Human Rights Commission on which there are no actions taken till date.

The WGAD at its eightieth session in November 2017 had rendered its opinion as to the arbitrariness of the detention of Mr. Gandhi and others. The WGAD in its report stated that it considers the arrest and detention of Mr. Gandhi violates articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR) and also concludes that there is no 'legal basis justifying the deprivation of liberty'.

The WGAD further stated that *"The Working Group expresses its concern at the chilling effect that the widespread use of preventive detention against human rights defenders is bound to have on their exercise of the right to freedom of expression, assembly and association"* and thus the detention violates articles 19 and 20 of UDHR and articles 19, 21 and 22 of ICCPR. The WGAD noted that Tamil Nadu's Goondas Act gave the police inspector and other state officials the power to detain any person indefinitely without trial in the name of crime prevention.

The report states that *"Although Mr. Gandhi and his associates won a reprieve after the Madras High Court's intervention, they had already been deprived of their liberty for four months due to the preventive detention order and had endured inhuman treatment, such as beatings, during police custody"* and reminded the Government of India of its obligations as a signatory to the UN Convention against Torture. The WGAD also stated that Mr. Gandhi's detention *'prejudiced his right to the presumption of innocence and negated his right to a fair trial'*.

The WGAD established in its report that Mr. Gandhi's arrest and preventive detention resulted from his exercise of the right to freedom of expression, assembly and association and also constitutes a violation of international law on the grounds of discrimination based on political or other views. It emphasised in paragraph 44 of its

report that *“The Working Group notes that the police initially denied Mr. Gandhi’s May 17 Movement permission to gather and arrested the peaceful participants of the candlelight vigil. The incidents demonstrate the Government’s indiscriminate prejudice and bias against the whole group of demonstrators who took to the street on 17 May 2017 because of their political or other views and their desire to exercise their civil and political rights, regardless of their individual responsibility for causing violence or committing other illegal acts. Mr. Gandhi’s role as the founder and leader of the May 17 Movement also deserves consideration.”*

The WGAD mentioned that Mr. Gandhi’s political views are at the centre of the present case and that the authorities have displayed a discriminatory attitude towards Mr. Gandhi and hence equal protection of the law was not followed in this case. The report pointed out that the grounds of discrimination was based on political opinions, and also his status as a human rights defender.

The WGAD was convinced that Mr. Gandhi’s preventive detention is clearly connected to the exercise of his rights and freedoms as a social activist and human rights defender and hence considered that Mr. Gandhi’s preventive detention was neither legitimate, necessary nor proportionate under its *four-prong test*.

The report also noted that the Tamil Nadu police detained over 1,250 persons in 2015 under preventive detention laws, including the Tamil Nadu Goondas Act. The WGAD expressed its concern at the *“chilling effect that the widespread use of preventive detention against human rights defenders is bound to have on their exercise of the right to freedom of expression, assembly and association”*.

Appeal:

We, therefore urge you to immediately and urgently take necessary steps and:

- Orders an immediate, thorough, transparent, effective and impartial investigation into the illegal and arbitrary detention of Mr. Gandhi allegedly on the basis of the LOC and also ensure if it is in order with the Office Memorandum No 25022/20/98 – F IV dated 27.12.2000 issued by the Ministry of Home Affairs of the Government of India;

- Take immediate action on the perpetrators in this case the immigration and the police of Tamil Nadu Police for issuing the LOC and not providing Mr. Gandhi with a copy of the same;
- Ensure that the time of his arrest is from the time he was formally detained on the basis of the LOC at the immigration and therefore that as per the provisions of the CrPC he is produced before a judicial magistrate in Bengaluru and only thereafter transported to Chennai.
- Withdraw the cases filed and LOC issued against Mr. Gandhi and seek their immediate release;
- Guarantee in all circumstances at the cost of the state, the physical and psychological integrity of the defender who are still under risk of further attacks from the perpetrators;

Looking forward to your immediate action in this regard,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

(Henri Tiphagne)
National Working Secretary