



# HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/UA/North/UP/03/01/2025

29 January 2025

To,  
Mr. Indrajeet Kumar,  
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: HRDA - Urgent Appeal for Action in case of targeting human rights activism by NIA Court, Lucknow through prejudiced and invidious observations against human rights organisations through its reported judgement - Reg**

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 concern regarding the observations made by the NIA Court, Lucknow through its reported judgement against various human rights organisations which are against orders of the Hon'ble Supreme Court of India, the Indian Constitution, the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders.

**Source of Information:**

- PUCL detailed response to the observations made by the Special NIA Court Lucknow against PUCL and other human rights organisations.
- In Communication with the other HRDs in the region
- Media Reports

1. <https://m.thewire.in/article/rights/legal-aid-fact-finding-not-anti-national-rights-body-condemns-nia-courts-remarks>
2. <https://www.counterview.in/2025/01/special-nia-court-lucknows-judgment.html>
3. <https://theprint.in/india/nia-court-directs-inquiry-into-funding-of-prominent-ngos-providing-legal-aid-to-accused-in-terror-cases/2433932/>

**Perpetrators:**

Special Judge NIA, Vivekananda Sharan Tripathi, Uttar Pradesh, Lucknow.

**Date of Incident:**

03-01-2025

**Place of Incident:**

Lucknow, Uttar Pradesh.

**Details of the Incident:**

On January 05, 2025, in cases No 1049/2022, 1758/2022, AND 2766/2022, the Special NIA court judge VS Tripathi observed, that various national and international human rights NGOs promptly provide free legal aid to those accused under UAPA and other anti-national activities. The Court also observed that human rights reports written by various NGOs like Alliance for Justice and Accountability (New York), Citizens for Peace and Justice, Indian American Muslim Council, People's Union for Civil Liberties, Rihaee Manch, South Asia Solidarity Group and United Against Hate exert pressure on the judiciary. The court further castigated lawyers from NGOs for representing cases of national security, terrorism etc.

The Supreme Court in Teesta Setalvad V. State of Gujarat ((2004) 10 SCC 88) observed that: -

*“Time and again the supreme Court has deprecated the practice of making observations in Judgments, unless the person in respect of whom comments and criticisms were being made were parties to the proceedings and further were granted opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. ....Observations should not be made by Courts against persons and authorities unless they are necessary or essential for decision of the case.”*

The judge has not restricted himself merely my recording his observation and arguments presented by the advocates but also issued orders stating: -

*“The copy of the judgement to be send to the Principal Secretary, Home Ministry, Government of India, New Delhi and Chairman, Bar Council of India to make them aware of the concerns expressed by the court on Page No. 124,125 and 126 regarding various domestic and foreign NGOs.”*

HRDA strongly believes that the prejudiced and invidious observations made by Special Judge NIA, Vivekananda Sharan Tripathi, Uttar Pradesh, Lucknow in the reported judgement against various human rights organisations and recommending Ministry of Home Affairs, Government of India and Bar Council of India to initiate action against human rights organisations is an act of reprisal for their activism.

#### **Explanation of law:**

The Constitution of India upholds the right to freedom of expression and the press under Article 19, an essential pillar of our democracy. Furthermore, Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) both guarantee the right to freedom of expression, which includes the right to seek, receive, and impart information and ideas through any media, regardless of frontiers.

The order of Justice V. Ramasubramanian in P. Sivakumar V. District Collector, Ramanathapuram and ors in WP. MD No. 12208 of 2011 dated 21.10.2011 regarding public inquest and fact finding by NGOs.

*“11. The argument that these parallel enquiries and the monitoring by Courts do not have the sanction of the law/Code of Criminal Procedure, has not carried any weight so far. This is in view of the fact that the domestic as well as international law relating to human rights have travelled a very long distance in the past more than 6 decades.*

*12. Even International Organisations, which have a conflict resolving or a peace keeping mandate or which deal with human rights problems, today possess an implied power to establish ad hoc fact finding bodies. Ever since World War II, the international community has grown increasingly towards the development of a system of international jurisdiction, complementary to that of domestic courts, even to try people accused of genocide, war crimes and*

*crimes against humanity. The Four 1949 Geneva Conventions and the Protocols Additional I and II, led to the recognition of universal jurisdiction against grave violations of human rights. The Armed Conflict in Balkans led the United Nations to set up an International Criminal Tribunal in The Hague, Netherlands. Thereafter, Special Courts were set up to prosecute domestic and international crimes in places like Kosovo, Bosnia, East Timor, Sierra Leone, Cambodia and recently in Lebanon.*

*13. As stated above, even International Organisations, such as Amnesty International go on fact finding missions. Ever since 1967, the United Nations Commission on Human Rights has established several fact finding bodies. The Economic and Social Council Resolution 1503 gave the United Nations Commission on Human Rights, the explicit mandate to establish ad hoc investigation committees for establishing facts in regard to situations or flagrant violation of human rights. Therefore, there are instances where such ad hoc investigative committees were engaged, such as Israeli Practices, the Human Rights Situation in Chile, the Apartheid Policy, etc.*

*14. On 3.4.2006, the General Assembly adopted a resolution bearing No.60/251 resolving to create a Human Rights Council. The Resolution acknowledged the fact that non-Governmental organisations play an important role at the national, regional and international levels in the promotion and protection of human rights....As a matter of fact, the Editors Guild of India itself sent a fact finding mission to Gujarat in the aftermath of the communal riots that took place in February 2002. On the environmental front, it is the contribution made by the fact finding teams of non Governmental organisations, which had contributed to the development of strong environmental law. Therefore, the argument that there cannot be a parallel inquiry by a non governmental organisation cannot be accepted.*

*19. Whether the exercise undertaken by someone would fall under the category of collection of information for larger public good or would fall under the category of interference in the course of administration of justice, is something that would depend upon who undertakes the exercise and in what manner they go about it. There is a vast distinction between what the media seeks to do in such circumstances and what fact finding bodies seek to so.*

*Therefore, today, there can be no impediment for any voluntary body to collect the information on a fact finding mission and also arrive at their own conclusions. It is needless to point out that the conclusions reached by such fact finding committees are not binding on any authority, including the Courts. The courts will be obviously carried away only by the evidence let in before them and not by the newspaper reports.”*

### **Indian and International standards:**

The UN Declaration on human rights defenders has also unequivocally recognised that, ‘Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.’

1. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on Human Rights Defenders) reaffirms already existing human rights and fundamental freedoms and frames them in a way relevant to the legitimate work of human rights defenders:
  - a) Article 1 provides that everyone has the right to promote and strive for the protection of human rights and fundamental freedoms;
  - b) Article 2 states that each State has a primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms;
  - c) Article 6 states that everyone has the right to know, seek, obtain and receive and hold information about human rights and fundamental freedoms and freely to publish, impart or disseminate to others views, information and knowledge;
  - d) Article 8 refers to the right to submit to governmental bodies and agencies concerned with public affairs criticism and proposals for improving their functioning;
  - e) Article 12 states that everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms and that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of those rights.

2. The Declaration on Human Rights Defenders 1999, also 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.
3. UN SR on Human Rights Defenders report to Human Rights Council 2013 on ‘The Role of National Human Rights Institutions in protection of Human Rights Defenders’.

*“84. National human rights institutions can potentially play a substantive role in protecting human rights defenders. The Special Rapporteur has recommended on numerous occasions that such institutions establish a focal point for human rights defenders with the responsibility of ensuring their protection. Protection constitutes a wide range of possible measures and interventions, including formal complaints mechanisms and protection programmes; advocacy in favour of a conducive work environment for defenders; public support when violations against defenders are perpetrated; visits to defenders in detention or prison and provision of legal aid in this context; mediation when conflicts occur between defenders and other parts of society; and strengthening of the capacity of defenders to ensure their own security.*

*98. When violations are perpetrated against defenders, in the form of threats, harassment, attacks and others, it is commonplace for human rights associations to make public statements condemning such acts. The Paris Principles stipulate that national human rights institutions should be in a position to address public opinion directly or through the press in order to convey to the public its opinions and recommendations (para. 3(c)). In the Special Rapporteur’s view, this should include denouncing violations suffered by individuals and associations acting to defend human rights as a result of their work, as well as voicing public support for this.*

*115. As independent public bodies, national human rights institutions are in a unique position to hold Governments accountable to their human rights obligations and international standards and principles in this regard, thereby becoming a vital actor in the fight against impunity for human rights violations.*

117. *National human rights institutions can potentially play a significant role in the protection of human rights defenders. Such a role is ensured by national institutions having a robust mandate with competence to receive complaints from individuals and associations working to defend human rights, investigate such complaints and provide a wide range of protection measures.*”

4. UN SR on HRDs report to UN General Assembly, 30.07.2015 on Situation of Human Rights Defenders states that: -

*“69. Defenders working on governance issues, promoting transparency and accountability on the part of States, and combating corruption are among the most at-risk groups of defenders, subject to relentless harassment and multiple types of threats and attacks.*

*97. The Special Rapporteur encourages national human rights institutions to: (a) Strengthen awareness-raising activities directed at representatives of their government and other branches of State regarding the situation of defenders in their country;*

*(b) Raise awareness of members and their personnel regarding the Declaration on human rights defenders and their role;*

*(c) Conduct regular exchanges of views with defenders and civil society and involve them in the planning and implementation of activities;*

*(d) Post public assurances of their support for the part played by defenders, especially those in the most exposed groups and actively collaborate with other stakeholders in cases in which defenders are in danger;*

*(e) Establish a point of contact or an entity dedicated to defenders, paying particular heed to groups of defenders exposed to special risks;*

*(f) Encourage the active participation of defenders in the preparation, implementation and evaluation of programmes and policies for their protection;*

*(g) Ensure that the mechanisms to protect defenders have sufficient resources and the requisite capacity to follow up on complaints received and investigate them promptly and impartially;*

*(h) Ensure that defenders can file complaints using various channels, including the institution's website, a hotline and instant messaging;*

*(i) Include in their reports a section specifically devoted to the situation of defenders.”*

5. The United Nations Special Rapporteur on Human Rights Defenders in her report to Human Rights Council on 'Situation of Human Rights Defenders' dated 01.02.2016 recommended that: -

*“97. The duty to protect also places a due diligence obligation upon States parties to take reasonable positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life from persons or entities whose conduct is not attributable to the State.*

*110. The protection of human rights defenders should be seen in the context of three obligations that international human rights law imposes on States: to respect human rights by refraining from violating them; to protect such rights by intervening through protective action on behalf of defenders against threats by others; and to fulfil them by ensuring a safe and enabling environment for defenders to enjoy their rights and to carry out their activities.*

*111. The Special Rapporteur proposes seven principles that, in his view, should underpin good practices by States in the protection of human rights defenders:*

- Principle 1: They should adopt a rights-based approach to protection, empowering defenders to know and claim their rights and increasing the ability and accountability of those responsible for respecting, protecting and fulfilling rights.*
- Principle 2: They should recognize that defenders are diverse; they come from different backgrounds, cultures and*



*belief systems. From the outset, they may not self-identify or be identified by others as defenders.*

- *Principle 3: They should recognize the significance of gender in the protection of defenders and apply an intersectionality approach to the assessment of risks and to the design of protection initiatives. They should also recognize that some defenders are at greater risk than others because of who they are and what they do.*
- *Principle 4: They should focus on the “holistic security” of defenders, in particular their physical safety, digital security and psychosocial well-being.*
- *Principle 5: They should acknowledge that defenders are interconnected. They should not focus on the rights and security of individual defenders alone, but also include the groups, organizations, communities and family members who share their risks.*
- *Principle 6: They should involve defenders in the development, choice, implementation and evaluation of strategies and tactics for their protection. The participation of defenders is a key factor in their security.*
- *Principle 7: They should be flexible, adaptable and tailored to the specific needs and circumstances of defenders.*

*117. The Special Rapporteur recommends that national human rights institutions: (a) Develop plans of action to protect defenders, establish focal points to coordinate their implementation and interact with defenders on a regular basis; (b) Monitor and investigate complaints received from defenders on the violations of their rights.”*

6. Human Rights Committee in its general comment (2018) observed that: –

*“20. States must respect the right to life of human rights defenders and refrain from engaging in any conduct resulting in an arbitrary deprivation of life, including by law enforcement officials. In ensuring their right to life, States must also exercise due diligence to protect*

*life against deprivations by persons or entities whose conduct is not attributable to the state.”*

7. According to Asian Pacific Forum Regional Action Plan 2021-2025, National Human Rights Commission of India is responsible to protect and support the work of Human Rights Defenders. Under the Marrakesh Declaration 2018 it is the duty of National Human Rights Commission to Support the State in implementing the Declaration on Human Rights Defenders. This includes ensuring that the judiciary, administrative and law enforcement officials are trained to respect the Declaration and other human rights norms, and that human defenders can self-identify.

**Appeal:**

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

- Intervene before the Special Judge NIA, Lucknow, Uttar Pradesh and ensure that remarks on the role of human rights organisations are removed.
- Direct the Director General of Investigation of the National Human Rights Commission to initiate a Transparent, Independent inquiry into prejudiced observations made by the NIA Court.

We hope to hear from you soon,

Yours Sincerely,



(Henri Tiphagne)  
National Working Secretary