

New Delhi
3rd June, 2010The Chairperson,
NHRC, Faridkot House,
N. Delhi**Subject: Immediate release of activists in Gujarat arrested in the last 3 months under FIR 1-37/2010 Police station Kamrej, Surat range; u/s 120 (B), 121(A), 124(A), 153 A& B of the IPC, and sec 38, 39 and 40 of the UAPA, 2004**

Sir,

This is to bring to your notice the case of arrest of several senior activists in Gujarat under FIR number **1-37/2010** dated 26-02-2010 filed in Police station Kamrej, Surat Range. All these activists have been falsely charged with being connected with and furthering the cause of the banned CPI (Maoist) organization. They have been booked under various sections of the IPC and UAPA. It has also come to our notice that 2 of them had been illegally detained for over 50 hours under the pretext of investigation into the said case.

We are shocked by the arrests and illegal detention of these activists. The work of five of these activists – Avinash Kulkarni, Bharat Pawar, Amrit Vaghela (Ambubhai), Hansaben and Srinivas Kurapatti - are described below. They have been working towards realizing the constitutional rights of the poor, Dalits and Adviasis. These activists have been in the forefront to uplift these groups and have been working towards ensuring the implementation of the various laws which empower these communities. We feel that this is a clear case of silencing the vocal activists as their work exposed the Government's fraud on the people. These people have been working with non-violent means and strongly believe that constitutional means of mobilization can help people achieve their rights. *We are of the opinion that the Gujarat Government is exploiting the hyped up anti-Maoist propaganda in the country to silence non-violent and peaceful defense of human rights and democratic dissent.*

1. Summary of the FIR

The 'omnibus' FIR dated 26th February, 2010 (under which the activists mentioned below have been arrested) reads like a general essay with no specificities given which are a must in a criminal case. The FIR, beginning with an unsubstantiated general allegation of CPI (Maoist) as having a secret plan to establish a guerilla zone across North Maharashtra, South Gujarat and Satpura forest ranges with militant cadres, goes on to say that the industrial belt stretching from Ahmedabad to Surat would be the main focus and Surat a focal point for such militant activities. All this is aimed at building a 'revolutionary movement' in India and 'total revolution' in India. The FIR also alleges that the Maoists are using the legal trade union movements as cover for illegal secret underground organization and makes sweeping statements such as accusing the detained persons as "carrying out false propaganda among tribal / forest people as well as religious minorities such as Christians and Muslims to separate them from the mainstream of the nation, to create civil war and to encourage revolt against the constitutionally established government....."

While an FIR is expected to describe concrete criminal actions by specific individuals what it describes are vague allegations described in ambiguous terms such as “....this FIR is against the underground leaders and members of the banned Naxalite organization CPI(Maoist).....inciting feelings of dissatisfaction among minorities and tribal people, creating civil war....” (see annexure 1 for the copy of the FIR).

2. Illegal Detention and Arrests

A total of 15 people have been arrested (see table at the end of this document). The first arrest of Niranjan Mahaptra, a trade unionist from Surat took place on 15.03.2010. This was followed by a spate of arrests of activists. The information that we have regarding the arrest and illegal detention of 5 activists that we have verified is as follows:

S.No	Name	Organisations where they worked	Place of Arrest / illegal detention	Date of illegal detention /Arrest
1	Avinash Kulkarni	Dangi Mazdoor Union, Dangi Lok Adhikar Samiti, Adivasi Mahasabha	Surat	Arrested on the 22 nd of March, 2010
2	Bharat Pawar	Dangi Mazdoor Union, Dangi Lok Adhikar Samiti, Adivasi Mahasabha	Ahwa, Dang District	Arrested after 3-4 days later
3	Srinivas Sattayya Kurapati (Kishore)	Darshan (NGO), Ahmedabad	Ahmedabad	30 th May 2010
4	Hansa (wife of Srinivas)	SEWA, Ahmedabad	Illegally detained on 30 th May 2010. On Srinivas's arrest, his family members were asked to report at the Crime Branch police station at Gaekwad Haveli. Hansa went there with Ambubhai at around 9.00 p.m. Since then she and Ambubhai were illegally detained (without any intimation to the family) till they were released at night on the 2 nd of June 2010	
5	Ambu Bhai	Lok Kala Manch	Went to the Gaekwad Haveli Crime branch police station at around 9.00 p.m. There he was illegally detained and transported to Surat, and was released on the 2 nd of June 2010 with Hansa at 9.00 pm	

We are writing the profile of five of the activists who are our colleagues in our human rights work in the country.

1. AVINASH KULKARNI

On the date 22nd of May, 2010 Avinash Kulkarni was arrested from Ahwa, in the Dangs district and taken to Kamrej, Surat (Rural Police District). Avinash is a widely respected activist working on the human rights of Adivasis in the Dangs district of Gujarat. An activist of long-standing repute, he has been working relentlessly for the rights of the Adivasis of Gujarat for around two decades. Based in Ahwa, Avinash and Bharat have been actively involved on issues pertaining to the empowerment and development of Adivasis, through the Dangi Lok Adhikar Samiti and the Dangi Mazdoor Union, in Dang district. Avinash and Bharat have played a significant role as part of the leadership of Adivasi Mahasabha Gujarat, both in the advocacy and struggle that brought about the Forests Rights Act and the monitoring of its implementation across the Adivasi areas of Gujarat. They have always worked with democratic and peaceful means of securing the rights and entitlements of the Adivasis and have always stood by non-violent means of working for social change.

The remand application for Avinash (*see Annexure 2*) that was submitted by the police is a misguide to his contribution and alleges that he is a member of the CPI (ML) Janshakti party, playing 'behind the scenes' role of instigating tribals to start a violent agitation by being in touch with CPI (Maoist) forces. The application then goes on to give extremely flimsy grounds for his remand such as it being required to get the details of the meetings he had with certain CPI (Maoist) leaders, to secure more 'Naxalite' literature from his place of residence and identify all the other people who aided in his 'naxalite' activities over the last 18 years in Dangs District.

The arrest of Bharat Pawar

Bharat Pawar, an adivasi from the Dangs district of Gujarat, has been a committed worker for the cause of the rights of the Adivasis. Closely associated with Avinash Kulkarni, he has been working over the past few years on the wages issue of Adivasi labourers through the Dangi Mazdoor Union, and more recently in the struggle of the Adivasis to get the Forest Rights Legislation passed and to get the forest land rights of the adivasis through proper implementation of the Act. In this process he has been victimized constantly by the Forest Officials.

Following the arrest of Avinash, within 3-4 days he also was initially detained for questioning, and then arrested on the same charges as Avinash. It is quite disturbing how human rights activists such as Bharat Pawar are harassed and arrested and charged with false and serious charges under IPC and UAPA. This is nothing but a ploy to decimate human rights activism.

The illegal detention of Amrit Waghela (Ambubhai)

As a significant Dalit leader and activist of the city, when Amrit Waghela came to know that Srinivas (Kishore) was picked up by the police at around 7.30 p.m. in the evening of the 30th of May 2010, he had gone to enquire at the Gaekwad Haveli Crime Branch office about the whereabouts of Srinivas. He was accompanied by Hansa, Srinivas's wife. From that time onwards till late night of the 1st of June, he was not allowed to communicate with anybody else and was in illegal detention. He and Hansa were taken to Surat along with Srinivas during these 48 hours without even their family members being informed. He was not even allowed access to their lawyer.

Amrit Waghela (Ambubhai) has been a cultural activist par excellence since the 80s. He founded the Lok Kala Manch in 1980, which has since produced and performed several plays based on Dalit issues, women's issues, political satires, particularly on communal harmony and the dangers of the ideologies of communal hatred. He has been active in countering the communal forces in Gujarat long before the communal carnage in 2002 and engaged in countering such communal elements more intensely after 2002. It is a known fact now that the cadre of the Rashtriya Swayamsewak Sangh Parivar which had some Dalit presence,

particularly in Ahmedabad, is now faced with significant desertion of these communal outfits by many of the Dalit cadres. Recently he led a major grassroots level movement known as 'Swabhiman Andolan' against the bootleggers in Gomtipur area of Ahmedabad, exposing conclusively the well-known nexus between the police and the bootleggers. His recent efforts to mobilize the urban lower middle class people against raising electricity charges by the private company that has taken over the power generation in Ahmedabad created a lot of discomfort in the corridors of power. His courage and integrity has always posed a threat to the police and the political establishment.

The arrest of Srinivas Sattayya Kurapati (Kishore) on dubious grounds

Srinivas was picked up on the evening of 30th of May 2010 from Gomtipur area of Ahmedabad and was taken to Gaekwad Haveli Crime Branch office in Ahmedabad. The police just informed the family that he was taken into custody, hence the family members should come over to give some statements. Accordingly his wife Hansa, activist Ambubhai and Hansa's father Ishwarbhai and sisters reached Gaekwad Haveli Crime Branch station around 9.00 p.m. the same night. They were given no further information regarding Srinivas, were not allowed to meet and talk to him, and in addition Ambubhai and Hansa were separated from the rest of them, not permitted to talk to them. Then the police forcibly sent Hansa's father and sisters back home to Gomtipur.

Srinivas Sattayya Kurapati hails from Nalgonda district in Andhra Pradesh. He came in search of a livelihood in Surat in the late 90s. He worked as a labourer and became a trade union activist during his years in Surat. However dire poverty drove him to Ahmedabad to search for a more stable job so that he could pay off his debts. Through friends and acquaintances he managed to secure a job as a typist in an NGO called 'Darshan'. Darshan is a cultural organization led by Hiren Gandhi a theatre expert and Saroop Dhruv and known Gujarat poetess and writer. It works mainly with the mode of street theatre, raising awareness on the issues of poor Dalits and Adivasis and has contributed to the process of peace and reconciliation in Gujarat following the 2002 communal carnage.

It should be noted that Srinivas after having got married to Hansa (the daughter of a respected grassroots Dalit activist in Ahmedabad), blessed with a one year old child and having bought a small house in a chali, has been struggling along to make two ends meet. As per the police briefings given to the media in Gujarat, he has been called the MASTER MIND of the Maoist operations in Gujarat, and has been alleged to be linked with the recent train accident at Jhargram. It is ridiculous that such a charge is being made for Srinivas who struggled from being a mazdoor to a typist and lived with his one year old son and wife in Ahmedabad.

The illegal detention of Hansa Srinivas Kurapati

Hansa, Srinivas's wife, on hearing about her husband's arrest, had rushed to the Gaekwad Haveli Crime Branch office and reached there around 9.00 p.m. in the night on the 30th of May 2010. She was accompanied by Ambubhai and later on joined by her father and her sisters. Little did she know that the police would detain her along with Ambubhai on the grounds that she was a suspected Maoist. From 9.00 in the night on the 30th of May she was detained and not allowed to communicate with her family members, and in a serious act of violation of her human rights, the police did not even consider the fact that her one year old child was waiting for her at home. Subsequently it has become known that she and Ambubhai were taken to Surat along with Srinivas and then released in the middle of the night on the 1st of June 2010. Thus she, along with Ambubhai, was under illegal detention of the Crime Branch of Ahmedabad and of the Surat Police from the 30th of May to the 1st of June. And to conclude this saga of cruel rights violation, the Surat police released her and Ambubhai in the middle of the night on the 1st of June in Surat. They did not even have the courtesy to escort them back home to Ahmedabad from where they were detained.

Hansa is a simple working woman who works in SEWA, a NGO, for a living. Coming from a family of cultural activists (her father Ishwarbhai was also part of Lok Kala Manch along with Ambubhai), she had an interest in theatre and had participated in theatre performances a few times as part of the Lok Kala Manch troupe. However, after the birth of a child and the purchase of their small house in a poor locality, both she

and Srinivas were engrossed in their family responsibilities, financial problems and their jobs in SEWA and Darshan respectively.

The harassment of Hiren Gandhi, Director Darshan

On the evening of the 1st of June as the news of the arrest of the 'Maoist' leader from Ahmedabad was being hyped up by the media with briefings from the police, Hiren Gandhi a theatre expert of repute and Saroop Dhruv a poetess and writer of great standing were in a meeting with human rights activists discussing the arrest of Srinivas, the typist from Darshan. A police inspector phoned him on his mobile and informed him that they had seized one computer from Darshan's office. Although Hiren Gandhi protested, the police, who had come with Srinivas seized the computer and went away. Search and seizure procedures, as stated in the CrPC were not followed. The entire exercise has become a process of harassment of activists like Hiren Gandhi. In addition to this, the police inspector asked Hiren to report to him in Gaekwad Haveli Crime Branch station the next day to get a statement recorded about the computer on which Srinivas worked.

Annexure III gives the total number of people arrested.

Our Demands,

The NHRC is so very familiar with the biased role of the Gujarat police in the past that after the 2002 genocide the then NHRC chief had recommended transfer of some key cases to the CBI for investigations.

The police's biased attitude in this case is also noteworthy as they have targeted those activists who are vocal as in the case of Avinash Kulkarni, Ambu Bhai and Andhra Pradesh.

1. We would like the NHRC to send a team immediately to Gujarat and investigate these arrests and detention.
2. Ensure the withdrawal of false cases, the release of these activists and the restoration of their civil liberties
3. Punish the guilty officers who forged false cases and violated procedures of arrest and seizure.
4. Take punitive action against the police officers responsible for the criminal mental torture inflicted on Hansa, who was illegally detained, despite the fact that she had a one-year old child at home.

Sincerely yours,

Pushkar Raj

(General Secretary)

Kavita Srivastava

(National Secretary)

Himanshu Kumar

(PUCLChhatisgarh, Executive Member)

Annexure I – The FIR

Annexure II – the remand application for the remand of Avinash Kulkarni

Annexure III- Total number of people arrested in Gujarat under FIR number- 1 37/2010, Kamrej PS

Annexure IV- Description of sections under which people have been arrested

Annexure - III

Names and Total number of people arrested till now against FIR number 1 37/2010 Kamrej PS Surat Range

- 1. Niranjan Mahapatra**
- 2. Advocate KN Singh**
- 3. Raju Pawar**
- 4. Sulat Kuwad**
- 5 Mataram chaudhari**
- 6. Jayram Goswami**
- 7. Satyamrav**
- 8. Laxman Ambade**
- 9. Vishwanath Aiyar**
- 10. Surya Deora**
- 11. Avinash Kulkarni**
- 12. Bharat Pawar**
- 13. Ssrinivas Kuttuputi**

Illegally detained then release

- 1. Ambubhai**
- 2. Hansa Srinivas**

Potential Targets of Gujarat Police

- 1. Hiren Gandhi and others in his office.**

ANNEXURE III

Descriptions of the Sections under which people have been booked in FIR number: 1-37/2010, Police station Kamrej, Surat range;

Sections 120 (B), 121(A), 124(A), 153 A& B of the IPC, and sec 38, 39 and 40 of the UAPA, 2004 are described below.

1. Section 120B. Punishment of criminal conspiracy¹[120B. Punishment of criminal conspiracy.

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death,²[imprisonment for life] or rigorous imprisonment for a term of two years or upwards shall, where no express provision is made in this Code fro the punishment of such a conspiracy, be punished in the same abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

We are giving Section 121 so that you can understand 121A better

Section 121 Waging, or attempting to wage war, or abetting waging of war, against the Government of India.-- Whoever wages war against the 3[Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or 4[imprisonment for life] 5[and shall also be liable to fine]. 6[Illustration.] 7[A joins an insurrection against the 3[Government of India]. A has committed the offence defined in this section. 8[

2. Section 121A. Conspiracy to commit offences punishable by section 121¹[121A Conspiracy to commit offences punishable by section 121

Whoever within or without²[India] conspires to commit any of the offences punishable by Section 121,³[***] or conspires to overawe, by means of criminal force or the show of criminal force,⁴[the Central Government or any⁵[State] Government⁶[***], shall be punished with⁷[imprisonment for life], or with imprisonment of either description which may extend to ten years,⁸[and shall also be liable to fine].

Explanation: -To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

3. Section 124 A. 1[Sedition.-- Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, 2[the Government established by law in 3[India], a 4[shall be punished with 5[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. Explanation 1.- The expression" disaffection" includes disloyalty and all feelings of enmity. Explanation 2.- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Explanation 3.- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

4. Section 153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

(1) Whoever

(a) By words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) Commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility,²[or]

²[(c) Organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

Shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.- (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

5. Section 153B. Imputations, assertions prejudicial to national-integration

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, -

(a) Makes or publishes any imputation that any class of persons cannot, by reason or their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) Asserts, counsels, advises, propagates or publishes that any class or persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India or

(c) Makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, pleas or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

Shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall be liable to fine.]

Section 38. Offence relating to membership of a terrorist organization.-(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation: Provided that this sub-section shall not apply where the person charged is able to prove- (a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and (b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Section 39. Offence relating to support given to a terrorist organization.-(1) A person commits the offence relating to support given to a terrorist organisation,- (a) who, with intention to further the activity of a terrorist organisation,- (i) invites support for the terrorist organisation, and (ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or (b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is- (i) to support the terrorist organisation, or (ii) to further the activity of the terrorist organisation, or (iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or (c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Section 40. Offence of raising fund for a terrorist organization.-(1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,- (a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or (b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or (c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism. Explanation.-For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration