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Date: 16th March, 2015

To,
Hon'ble Justice K. G. Balakrishnan
Chairperson
National Human Rights Commission
ManavAdhikarBhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023

Dear and respected Sir,

Subject: Representation and Appeal

- Gross violation of the right to association of Human Rights Organizations and HRDs in Tamilnadu**
- Request the NHRC to intervene under Sec 12 (b) of the Protection of Human Rights Act 1993**
- Plea for utmost respect for Human rights and protection of dignity of Human Rights Defenders in Tamilnadu**
- Plea for halt in registering of false and frivolous cases against genuine human rights organizations only because they use the words 'human rights' in the title of their organizations**
- Plea for upholding the rights of human rights defenders under the UN Declaration on Human Rights Defenders 1998 and specifically the right to association of HRDs in the state of Tamilnadu**

Reference:

- 1. NHRC Case No : 457/22/30/2015 from Human Rights Defenders' Alert India [HRDA]**

2. CrI.O.P. No 15960 / 2015 [filed before the Madurai Bench of the Madras High Court pending before Justice Kirubakaran now sitting before the Madras High Court [Principal Bench at Chennai] with parties as follows:
Petitioner: J. Suyambulingam; Respondents : (1) The State Represented by Superintendent of Police, Tirunelveli District, Tirunelveli [Tamilnadu] (2) The Inspector of Police, City Crime Branch, Tirunelveli City (3) The Union of India Represented by the Secretary, Ministry of Home Affairs, New Delhi (4) The Human Rights Commission, Represented by its Registrar, New Delhi .

Background :

On 16th February 2015, Hon'ble Justice Kirubakaran, Judge of the Madras High Court sitting in Chennai on a matter that was pending in CrI.O.P. No 15960/2014 before the Madurai Bench of the Madras High Court passed an order. The original copy of which has not yet been made available [since the original case bundle is in Chennai as the Hon'ble Judge's is hearing the case in Chennai] though filed before the Madurai Bench of the Madras High Court.

However, we have had access to the letter of Mr. S. Shunmugavelayutham, Public Prosecutor, High Court Chennai dated 21.02.2015 addressed to the Principal Secretary to the Government, Home department, Govt of Tamilnadu and the DGP that read as follows:

“ Sir,

Sub: *CrI.O.P.No. 1560 of 2014-Order dated 16.02.2015-Reg.*

The above matter came up for consideration before His Lordship Justice N. Kirubakaran on 16.02.2015. His Lordship has passed the following text of order:

1. “In spite of the amendment in the Societies Registration Act based on the recommendation given by the Human Rights Commission, Tamilnadu, that use of the words “Human Rights” to be prohibited, many organizations themselves claim to be “Human Rights Organisations”, using those words in their names are conducting “Kangaroo Courts” and blackmailing the officials, police authorities, business people and the general public.

2. Therefore, particulars, what are all the steps taken by the State Government to eradicate those organizations, using the name of “Human Rights Organization” and what is the action taken against the persons using the words “Human Rights Organization” are required to be furnished.

3. The Home Secretary and DGP have to file appropriate affidavit giving the details as to how many associations in the name of “Human Rights Organization” are functioning in Tamilnadu what are all the steps taken to eradicate such associations and what are all the actions taken against them and report by 02.03.2015.

I, therefore, request your goodself to prepare a draft affidavit as directed by the Hon’ble High Court listing the particulars of such organizations and steps against them to appraise the same before the Learned Judge. The matter stands posted to 02.03.2015

PUBLIC PROSECUTOR ‘

See Annexure No 1 for the copy of the communication from the Public Prosecutor to the Government.

It is respectfully submitted that the cause title of the Petition pending in the court reveals that the parties arrayed before the court are as follows :

1.J. Suyambulingam (M/50yrs)
Suyambulingam Primary School
32, Kavalramasamy Street, Pulliangudi
SivagiriTaluk, Tirunelveli DistrictPetitioner

2. The State
Rep. by Superintendent of Police
Tirunelveli District, Tirunelveli

3. Inspector of Police
City Crime Branch, Tirunelveli City

4. The Union of India
Rep. by the Secretary
Ministry of Home Affairs
New Delhi

5. The Human Rights Commission
Rep. by its Registrar
New Delhi ... Respondents

I wish to presume that the last Respondent arrayed is meant to be the National Human Rights Commission of India represented through its Registrar. We are not aware whether the Madras High Court has been able to serve the summons to the National Human Rights Commission. Hence, this fervent appeal from the Human Rights Defenders' Alert[HRDA] that the matter that the Madras High Court is dealing with is a matter relating to 'human rights violations' - the violation of the right to association of genuine human rights organizations and human rights defenders covered by the UN Declaration on Human Rights Defenders 1998.

Events that have followed :

· On the specific directions of the Director General of Police in Tamilnadu and other senior District and City Police officers, the Police in Tamilnadu have so far registered over 142 criminal cases [to our knowledge] and reduced them to First Information reports [FIRs] from almost 18 districts and 33 accused [read human rights defenders] have been remanded to judicial custody. **Kindly refer to the tabulation of cases annexed as [Annexure 2](#).**

- In almost all the FIRs the complainants are the police themselves or else where they have been successful, the Village Administration Officer, [VAO]. The sections used in the FIRs are: Sections 170, 420 IPC and Section 3/5 of the Names and Emblems (Prevention of Improper Use) Act, 1950.
- Of the 142 FIRs registered at least 6 of them are against the active leaders / officer bearers of 'Citizens for Human Rights Movement [CHRM] initiated by People's Watch, a human rights organization of state, national, regional and international repute. I, the Executive Director of People's Watch also serves as the State Adviser of the CHRM in the state. I incidentally also served for two consecutive terms as a member of the NHRC's Core Group on NGOs [2001 – 2011]; I also served as the State Representative for the State of Tamilnadu of the National Commission for the Protection of Child Rights [NCPCHR] specifically to monitor the Right to Education Act 2009; I am also the Chairperson of Forum Asia [a regional membership based human rights organization with headquarters in Geneva and Bangkok] which serves as the Secretariat for the Asian Network of NGOs working with NHRIs which

incidentally works in close collaboration with the Asia Pacific Forum of NHRIs; I am the Honorary National Working Secretary of Human Rights Defenders Alert –India (HRDA) and the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI); I also serves as the National Convenor of the ‘Working Group of Human Rights in India and the UN’ [WGHR] with its national secretariat in Delhi; I am also the Executive Committee Member of World Organisation Against Torture (OMCT), with ECOSOC Status registered & Headquartered in Geneva, the Executive Council Group Member of International Dalit Solidarity Network (IDSN), Copenhagen, Denmark and associated with host of several other national, regional and international human rights platforms, campaigns and networks and therefore works in close day to day communication with the UN Special Procedures, the UN Treaty Bodies and the office of the UN High Commissioner for Human Rights. The CHRM is a broad platform for protecting human rights and advocating for human rights protection and promotion in Tamilnadu since 2002. **Annexure No 2 is the list of total FIRs in TN with details of the press details leading to these figures and which were also telephonically verified with the SB Inspectors of each of the District SPs.**

- The CHRM is an unregistered association of persons like the People’s Union for Civil Liberties [PUCL]. However, the PUCL has in the last over more than 40 years of its existence worked closely in over 500 PILs before the High Courts and Supreme Court and been responsible for a large number of landmark judgments in the field human rights in India.
- One of the active members of CHRM against whom one of the first FIRs in the state was registered, namely, Mr. Kandasamy of Ramanathapuram, was not only arrested but also remanded to judicial custody. While he was in hospital, was also kept in leading chain in the Government Hospital, Ramanathapuram, completely contrary to the dictates of the Supreme Court of India. **Annexure No 3 is the urgent appeal sent in this case to the NHRC [Complaint No : 457/22/30/2015] with copies to the Government and the United Nations’ Special Rapporteurs on rights of human rights defenders and Freedom of peaceful assembly and**

association. Annexure 3A and 3B are the photographs of Mr.Kandasamy in the Government Hospital, Ramanathapuram in leading chains.

- It is pertinent to also state that Mr. Kandasamy of CHRM who was arrested in Ramanathapuram district of Tamilnadu was also remanded to judicial custody in spite of the specific directions of the Supreme Court to the contrary in Arneesh Kumar versus State of Bihar [July 2014] that there can be no automatic arrest and remand where the offence charged is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years. When this was brought to the attention of the Judicial Magistrate No II in Ramanathapuram when Kandasamy was being remanded by his counsel, Mr. Sheik Ibrahim, the learned Judicial Magistrate refused to abide by the SC order and remanded the accused. Mr. Sheik Ibrahim will be willing to file a sworn affidavit to this effect. The Judicial Magistrate No II also further refused to take any action when the learned counsel represented before him orally that the accused was being kept in leading chains in the Government Hospital Ramanathapuram, completely contrary to the directions of the Supreme Court of India.

The matter pending before the Madras High Court in the above referred matter relates to a ‘ human rights violation’ a violation of the right to association, a fundamental right under the Indian Constitution and clearly falling within the definition of the words ‘human rights’ in Sec 2 [d] of the PHRA 1993.

The original issue that was agitated before the Madras High Court in CrI.O.P.15960/2014 by the Petitioner related to a prayer for an action under Sec 482 Cr.P.C. praying that the Hon'ble Court pass orders for the respondents to register a complaint based on the complaint preferred by the Petitioner on 07.10.2013, conduct the necessary investigation and be required to file the final report in the same.

However, on 16th February 2015 when Hon'ble Justice N. Kirubakaran heard the matter he was pleased to pass an order that directed the Respondents as follows:

1. “In spite of the amendment in the Societies Registration Act based on the recommendation given by the Human Rights Commission, Tamilnadu, that use of the words “Human Rights” to be prohibited, many organizations themselves claim to be “Human Rights Organisations”, using those words in their names

are conducting “Kangaroo Courts” and blackmailing the officials, police authorities, business people and the general public.

2. Therefore, particulars, what are all the steps taken by the State Government to eradicate those organizations, using the name of “Human Rights Organization” and what is the action taken against the persons using the words “Human Rights Organization” are required to be furnished.

3. The Home Secretary and DGP have to file appropriate affidavit giving the details as to how many associations in the name of “Human Rights Organization” are functioning in Tamilnadu what are all the steps taken to eradicate such associations and what are all the actions taken against them and report by 02.03.2015.

The action of the Tamilnadu police, mentioned supra in para , throughout the state in initiating criminal cases against members of the Citizens for Human Rights Movement [CHRM] has now resulted in a violation of the human rights of defenders with the cases registered and some of them also being remanded and humiliated by the use of fetters contrary to the Hon'ble Supreme Court guidelines. The violations of human rights complained relate to the violation of the right to life, the right to association which is part of the right to freedom/liberty.

The issue also being undertaken by the Hon'ble High Court is a matter that also relates to the general

The PHRA clearly mandates the NHRC under Sec 12(b) as follows : ‘ intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such Court.’ ; under Sec 12 (i) as follows : ‘encourage the efforts of non-governmental organisations and institutions working in the field of human rights.’ ; under Sec 12 (f) as follows : ‘ study treaties and other international instruments on human rights and make recommendations for their effective implementation’ and under Sec 12 (j) as follows: ‘ undertake such other functions as it may consider necessary for the protection of human right’.

The Hon'ble NHRC in addition is also bound to protect the rights of human rights defenders all across the country in line with the mandate of the UN Declaration on human rights defenders, 1998.

The Hon'ble NHRC has in addition already undertaken several measures on its own through a series of circulars with specific regard to the matter under consideration before the Madras High Court dated 25.10.2009, 29.12.2010 and 11.12.2013 all addressed to states by the Secretary General. This very careful work and position of the NHRC with regards to organization misusing the name of the NHRC or SHRC needs to be officially placed before the Madras High Court to ensure that a modus operandi of handling such illegal efforts by some members of civil society calling themselves human rights organizations is also handled and at time the right to association of genuine human rights organizations and human rights defenders are also well protected. The Hon'ble NHRC through its annual participation in almost all the sessions of the UN Human Rights Council in Geneva, as a member of the International Coordinating Committee of NHRIs and by attending all its meetings and as a member of the Asia Pacific Forum of NHRI and attending not only its periodic annual meetings/conferences but also the several training programs being organized on several matters relating to human rights has a volume of knowledge and has also developed its own wisdom which it is essential for the Hon'ble Commission to pass on to the Hon'ble Madras High Court in this formal proceedings so that the mistake that took place with the recommendation of the Tamilnadu State Human Rights Commission on an identical question is not repeated in the eagerness of the Hon'ble Court to handle a situation that is serious at hand in the state created by certain organizations claiming to be 'human rights organizations' .

The NHRC's specific position on this issue pending before the Hon'ble Madras High Court:

The Hon'ble NHRC has issued three specific circulars [referred supra] as follows:
[Annexed as **Annexure 8**]

- NHRC circular No: D.No 15(38)/2008 issued by Mr. Akhil Kumar Jain IAS, Secretary General, NHRC dated 25.10.2009 to all Chief Secretaries.
- NHRC circular No : D.No 18(13)/2011 issued by Mr. K.S. Money IAS, Secretary General, NHRC dated 29.12.2009
- NHRC circular No : LD/MISC/CD-2013 issued by Ms. Parvinder Sohi Behurai IRS, Secretary General, NHRC dated 11.12.2013.

The NHRC in its circulars observes the following :

- It has come to the notice of the Commission that some NGOs/ Organizations / Societies are getting themselves registered as society/ trust/ company with names similar to the National Human Rights Commission or State Human Rights Commission for example using words such 'National Human Rights Association' or 'State Human Rights Association' etc. [2009]
- Some instances of misuse of the name /logo of NHRC have also come to notice of the Commission. Some organisations are taking advantage of the similarity of their name with NHRC or SHRC in various manners.[2009]
- The Commission has neither a provision for registration, affiliation of the individuals /NGOs/organizations nor authorize any one to act on its behalf. The individuals /NGOs/organizations using the NHRC logo, name or writing 'Having association with NHRC words to the effect misleading the public by misusing the name of the Commission with render themselves liable for legal action. [2010]
- During the visits of the National Human Rights Commission to various States in the country, the NGOs and Human Rights Defenders have drawn the attention of the Commission to the functional environment in the States being not very conducive to their work. They have alleged that functionaries of NGOs and Human Rights Defenders are being threatened and sometimes have been physically manhandled by the State authorities. It has been stated by them that they live in constant fear of being implicated in false cases. These issues have also been discussed with the State Government officers during the Commission meetings, Open hearings and Camp sittings.[2013]

The NHRC in its circulars has directed the following:

- Draw attention of all authorities registering societies/ trustees/ companies etc to the provisions of the Act with advice that if any organization applies for registration with a name / logo similar to NHRC or SHRC, the matter be referred to the Central Government under the intimation to NHRC.[2009]

- Advise all DMs/SDMs/SSPs/ that if any instances of misuse of name / logo of NHRC come to their notice, the matter should be reported to NHRC. [2009]
- To check misuse of the name and logo of the Commission, you are requested to: [2010]
- a) direct an DMs/ SSPs to take immediate action against such individuals / NGOs/ organizations who are found misusing the name and logo of the Commission and ensure that nobody misuses the name and logo of the NHRC for personal gains and action taken report may be sent to NHRC
- b) direct Registrar of Societies in the State not to register any organization similar name / acronym / logo as NHRC, India
- c) give wide publicity in the local electronic and print media that there is no provision for registration, affiliation of the individuals / NGOs/ organizations with the National Human Rights Commission does not authorize any one to act on its behalf. The individuals / NGOs/ organizations misusing the name and logo of the NHRC will invite legal against them.

It would, therefore, be of immense help if State Government functionaries are sensitized about the problems being faced by NGOs and Human Rights Defenders. The latter should be treated as partners in bringing about a positive change in the human rights environment in the States.[2013]

It is pertinent that this position of the Hon'ble Commission is placed before the Hon'ble Madras Court directly by the Hon'ble NHRC so that the same is respected and followed and further that gross violations of human rights and the rights of individuals, groups and organisations of human rights defenders are not further violated in the state and that the Hon'ble Court is assisted in this process that it has engaged upon with sincere interest.

It is further also unfortunate that as a result of this intervention by the Hon'ble Court, it is a fact that wrong messages have been sent to the general public that no one should use the words 'human rights' excepting state / national human rights commissions. I do not want to embarrass the different District Superintendents of Police or Commissioners of Police who have clearly issued press releases to this effect and further also provided their mobile or telephone numbers asking the public

to call them if there was anyone who used the words 'human rights' in their district. This is almost defaming activists engaged in human rights activities in the eyes of the general public and discouraging people to speak about the protection and promotion of human rights. **I give as an example three attachments of the press coverage to point out this point provided here as Annexures No 5, 6 & 7.**

HRDA's position on this issue of right to association:

I stating on behalf of HRDA firmly believe that the state has also a responsibility to its citizens to ensure that wherever and whenever there are organizations - which are registered or not and whether they bear the words 'human rights' in the name of their organizations – and when they engage in the conduct of 'kattaPanchayats', or blackmail the public, or act in a manner where they impersonate a government functionary or use 'names and emblems' contrary to law – there is a duty casted upon law enforcement officials [District Magistrates, Commissioners of Police and District Superintendents of Police] to take action against them as per procedures established under law. But unfortunately, HRDA believes that in most cases such non genuine organizations are hand in glove with police or other government officers [serving and/or retired] and sometimes also use the names of former judges of the Supreme Court / High Courts on their letter head, their visiting cards etc.] and hence no action seem to have been initiated so far all these years. The Tamilnadu Government has not been able to present a single case where they have verified from these former Officials [IAS/IPS, retired Judges] whether there are aware that their names are being used on the latter heads /name cards of these office bearers of these organizations. In one specific case there was also the photograph of the President of India [Dr. Abdul Kalam] that was used in public display on huge hoardings throughout the state of Tamilnadu while he was holding office and this hoarding had also continued for several years thereafter.

It is also a fact that some of these organizations are seen to be using in their names words such as 'national /international/world' when they are not at all working at the national level. There are also organizations that use the UN Emblem and call themselves 'World Human Rights Council' portraying that they have something to do with the formal United Nations Human Rights Council.

I stating on behalf of HRDA also firmly believe that the Tamilnadu Government's amendment to the Tamilnadu Societies Registration Act in the year 2010 stating that no organization should bear the words 'human rights' in its title can be registered under the Act or that organizations so registered earlier should change their names to delete the words 'human rights ' can in no way prevent organizations from carrying on their bogus/illegal activities narrated above. What should have been done, the HRDA feels is to ban the use of the words ' National Human Rights Commission' or ' State Human Rights Commission' or 'NHRC' or 'SHRC' etc in the title of any formal human rights organization that is registered.

I stating on behalf of HRDA further believe that the amendment to the Tamilnadu Societies Registration Act in the year 2010 in any case only applies to associations of people which have been registered or wish to be registered under the relevant law and does not apply to unregistered organizations/programs/projects/centre etc or also to organizations that bear the name ' human rights' in their title but are registered under the Indian Trusts Act or the Company's Act. HRDA firmly believes that while there are several genuine organizations of national repute in the state registered under the Trusts Act with the words 'human rights' in their title, it is also a fact that many of the bogus organizations have, only to get themselves out of the legal purview of the Tamilnadu Societies Registration Act have now re-registered themselves under the Indian Trusts Act or Company Act or some even as political parties!!!

The background to this present crisis:

- The Consumer Protection Act was passed in the year 1986 leading to the formation of a large number of consumer associations across the state /country. These organizations so established were also mostly registered under the Tamilnadu Societies Registration Act 1975. The Consumer Protection Act 1986 provided for different statutory bodies under the act such as: the District Consumer Disputes Redressal Forum; the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission. It also provide for the establishment of a State Consumer Council and a National Consumer Council. When it was observed that there were consumer organizations using the words 'council' in their names and they were being compared to the statutory state consumer

councils, the amendment was passed to the TN Society Registration Act directing that consumer organizations should not use the word ' council' in their titles.

- It is in this background that the State Human Rights Commission Tamilnadu[SHRC] comes across a complaint before it in SHRC Case No 1089/2009 and in which it held that an organization that claimed to be a human rights organization from Theni district in Tamilnadu had cheated a gullible member of the public who had approached the organization. However, after hearing the case and making the right observations, the Hon'ble Chairperson of the SHRC made the following recommendation to the Government. The recommendation was that the Government should amend the Tamilnadu Societies Registration Act 1975 to ban the use of the words 'human rights' in the title of organizations [just as it had been done in the case of banning the word 'council' in the title of consumer organizations].
- The Government of Tamilnadu then followed this recommendation of the SHRC Tamilnadu through its own communication of from the Public (Human Rights) Department, Secretariat, in Lr No 13593/HR/09-4 dated 23.06.2009 and then the Registration Department of the Government also sent a communication to all districts in Head of Registration, Chennai No 99971/2009 dated 25.06.2009.
- It is only after all this that the Tamilnadu Legislative Assembly passed the amendment to the Tamilnadu Societies Registration Act in the year 2010 and it received the President's assent on 22.01.2010. **The copy of this amendment is annexed as Annexure No 4.**
- However, it is not clear still how this amendment to the TN Societies Registration Act 2010 had played its role to stop the misuse of such human rights organizations. It is also not clear how many human rights organizations have changed their names, if they were registered under the said act to delete the words 'human rights' from their names. It is also not clear what action the Tamilnadu Registration Department has initiated against such organizations that did not change their titles if they contained the words 'human rights'.

- The Public Prosecutor appearing before Justice Kirubakaran in this case in Crl.O.P. 15960/2014 has also not asked the Registration Department of the Government to provide these details to him in order that the same may be produced before the Hon'ble Court. On the contrary his letter dated 21st February 2015 quoting the Hon'ble Judges order almost directs the DGP and the Home Secretary to report what action they had initiated against unscrupulous human rights organizations that were engaged in 'Kattapanchayat', blackmail etc.
- It is in response to this letter and further in response to 'directions' from the higher police officers that the series of actions across the state followed- all between 24th February and 7th March – that resulted in these 142 cases being registered and 33 persons being remanded.

The mandate of United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998 frequently abbreviated to “The Declaration on human rights defenders”.

The United Nations has also come out with a Declaration on human rights defenders titled 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.' **The Declaration is enclosed as Annexure No 9.** The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly in the year 1998 and therefore represents a very strong commitment by States to its implementation.

The Declaration provides for the support and protection of human rights defenders in the context of their work. It does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders. It gives attention, for example, to access to funding by organizations of human rights defenders and to the gathering and exchange of information on human rights standards and their violation. The Declaration outlines

some specific duties of States and the responsibilities of everyone with regard to defending human rights, in addition to explaining its relationship with national law. Most of the Declaration's provisions are summarized in the following paragraphs. It is important to reiterate that human rights defenders have an obligation under the Declaration to conduct peaceful activities.

Art 1 of the said Declaration states, '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.' The effect of the actions initiated and that too against some genuine, dedicated, human rights defenders who have been working with due advice from experienced human rights defenders of international repute, has only contributed to push such genuine work several levels below the state where they were at on the 24th of February 2015 before these actions being complained about took place.

It is further respectfully pointed out that the said UN Declaration states, in Art 5,

'For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.'

The right to form associations also therefore includes the right to name the associations thus formed.

It is further respectfully pointed out that the said UN Declaration states, in Art 9 (3) as follows:

3. To the same end, everyone has the right, individually and in association with others, *inter alia*: to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for

by the legal system of the State, which should render their decision on the complaint without undue delay;

Thus, human rights organizations have a right to associate which includes the right to name associations, the right to express and the right to be protected by the state as well.

Subsequent to passing of this Declaration on Human Rights Defenders, the United Nations Human Rights mechanisms further constituted another Special Procedure and that was on human declarations. The first such UN SR on HRDs was Ms. Hina Jilani from Pakistan [2000 – 2008]. She was subsequently replaced by Ms. Margaret Sekaggya [2008 – 2014]. She was in turn replaced last year in May 2014 by Mr. Michael Forst. Ms. Margaret Sekaggya visited India in the year January 2011 and submitted her country report to the UN Human Rights Council in March 2012 with several recommendations. **The full report is enclosed as Annexure No 10.**

Some of the important observations in the said report of 2012 of the UN Special Rapporteur to India of relevance to our present case are as follows :

Para 68. Throughout her mission, the Special Rapporteur heard numerous testimonies about female and male human rights defenders, and their families, who have been killed, tortured, ill - treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, placed under surveillance, forcibly displaced or had their offices raided and files stolen because of their legitimate work in upholding human rights and fundamental freedoms. They are often labelled as “ Naxalites (Maoists)”, “terrorists”, “militants”, “insurgents”, “anti-nationalists” and “members of underground” and their rights to freedom of expression, peaceful assembly, association and movement is on many occasions unlawfully restricted.

Para 69. Such violations are commonly attributed to law enforcement authorities; however, they have reportedly also shown collusion and/or complaisance with abuses committed by private actors. Some instances of serious human rights abuses by armed groups against human rights defenders were reported. Impunity for such violations was reported as a chronic problem, and defenders and their communities were often caught in

between during the fight between security forces and armed groups, targeted or killed for allegedly taking the “wrong” side.

134. India is now a political and economic heavyweight. Yet, as many other States, it has a number of challenges to overcome. There is an excellent array of laws in place, which need to be fully implemented. Others – which are outdated and not in conformity with international human rights standards – must be repealed. Defenders face multiple challenges and dangers in their daily work and the State has the responsibility to protect them. Government authorities, including security forces, and the judiciary and human rights commissions, at the central and state levels, need to do much more to ensure a safe and conducive environment for defenders. Full accountability for violations against defenders is an absolute priority and the perpetrators must be brought to justice on a systematic basis.

135. India should be proud of its human rights defenders, who are a key asset in advancing human rights and democratic governance. In an environment where economic liberalization and rapid economic growth have transformed many sectors and lives, but where the dividends have not been shared by others, human rights challenges are growing. For this reason, it is vital that human rights defenders have an environment where they can operate freely and safely without fear.

137. The highest authorities at the central and state levels should publicly acknowledge the importance and legitimacy of the work of human rights defenders, i.e. anyone who, “individually and in association with others, ... promote[s] and ... strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels” (art.1 of the Declaration on Human Rights Defenders).

140. Security forces should be clearly instructed to respect the work and the rights and fundamental freedoms of human rights defenders, especially the categories of defenders mentioned in the present report.

141. Sensitization training to security forces on the role and activities of human rights defenders should be significantly strengthened as a matter of priority,

with technical advice and assistance from relevant United Nations entities, NGOs and other partners.

- It is therefore a pity that we have utterances and actions that have been undertaken in Tamilnadu, particularly by the police, subsequent to the directions of the Hon'ble High Court, however completely contrary to the full and complete understanding of human rights, human rights engagements and human rights defenders. I wish to reiterate that Citizens for Human Rights Movement [CHRM] [which has also been targeted along with several other genuine human rights organizations in different parts of the state through a series of false criminal cases registered against it, in the districts of Ramanathapuram, Tirunelveli, Salem, Vellore and Namakkal] is clear within itself that the claim of some 'human rights organizations' that they work in the field of human rights in Tamilnadu is not correct at all. They actually do not. Many carry the words human rights on their titles but do not actually engage with human rights work. But any action against them still needs to be carefully initiated, steady, covered over a period of time, backed by concrete evidence, supported by people [complainants] who were genuinely affected by their illegal, kangaroo court actions etc. and definitely not in the manner in which it was carried out in the period 24th February 2015 to 7th March 2015 in Tamilnadu pursuant to the questions posed by Hon'ble Justice N. Kirubakaran of the Madras High Court in his order dated 16th February 2015. The actions now initiated seem to be akin to the 'encounter killings against 'alleged criminals in the state !!!
- It is also extremely clear to me stating behalf of HRDA and all genuine human rights defenders, many of whom have sacrificed several years of our professional lives for the work that they have committed to, that what is urgently required is not the tackling of organizations claiming to work in the field of human rights that are engaged in blackmail , threats etc but teaching law enforcement officials what human rights actually is, what human rights work entails, who are human rights defenders and that it is also a

responsibility of the state Government to make its officers, specially its law enforcement officers know the details of their responsibilities under the UN Declaration on Human Rights Defenders.

- I stating on behalf of HRDA am pained to see that these acts of several senior officers with IPS training has only resulted in criminalising the work of genuine human rights defenders in Tamilnadu under the garb of adhering to the orders of the Hon'ble High Court.
- I stating on behalf of HRDA would like to also point out that there are also universities and colleges in Tamilnadu notwithstanding the efforts of the 'Institute of Human Rights Education' [IHRE] in Tamilnadu and throughout the country to promote human rights education. The IHRE was led by none other than Dr. V. Vasanthi Devi, the Former Chairperson of the Tamilnadu State Womens Commission and Former Vice-Chancellor of the ManonmanianSundaranar University in Nellai. HRDA only hopes that in the further anxiety to register more cases for a fuller and complete report to be presented to the Hon'ble court there are no criminal cases registered by the police in Tamilnadu against these universities/colleges and even schools that have departments/centres/programs using the word ' human rights'. Such efforts at human rights education are also a fall out of the United Nation's Decade in Human Rights Education. [1995 -2004] .
- I stating on behalf of HRDA feel it is time to educate the law enforcement officials and district administrators of their own duties towards human rights defenders and to promote the engagement of larger sections of civil society as individuals, groups and as associations to commit themselves to work for the protection and promotion of human rights and fundamental freedoms.

The mandate of United Nations Special Rapporteur on the right to freedom of peaceful assembly and association :

The Special Rapporteur is mandated by UN resolution 15/21:

To gather all relevant information, including national practices and experiences, relating to the promotion and protection of the rights to freedom of peaceful assembly and of association, to study trends, developments and *challenges* in relation to the exercise of these rights, and to make recommendations on ways and

means to ensure the promotion and protection of the rights to freedom of peaceful assembly and of association in all their manifestations;

To incorporate in his or her first report an elaboration of the framework, including seeking the views of States, through which the mandate holder will consider best practices, including national practices and experiences, that promote and protect the rights to freedom of peaceful assembly and of association, taking into account in a comprehensive manner the relevant elements of work available within the Council;

To seek, receive and respond to information from Governments, non-governmental organizations, relevant stakeholders and any other parties who have knowledge of these matters, with a view to promoting and protecting the rights to freedom of peaceful assembly and of association;

To integrate a gender perspective throughout the work of the mandate;

To contribute to the provision of technical assistance or advisory services by the Office of the High Commissioner to better promote and protect the rights to freedom of peaceful assembly and of association;

To report on violations, wherever they may occur, of the rights to freedom of peaceful assembly and of association, as well as discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights, and to draw the attention of the Council and the High Commissioner to situations of particularly serious concern;

To undertake his or her activities such that the present mandate will not include those matters of specific competence of the International Labour Organization and its specialized supervisory mechanisms and procedures with respect to employers' and workers' rights to freedom of association, with a view to avoiding any duplication; and

To work in coordination with other mechanisms of the Council, other competent United Nations bodies and human rights treaty bodies, and to take all necessary measures to avoid unnecessary duplication with those mechanisms.

His report to the Un Human Rights Council [A/HRC/20/27] dated 21.05.2102 deals with the best practices related to the right to freedom of association. In this report he defines an association as follows:

An “association” refers to any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests(see report of the **Special Representative of the Secretary - General on human rights defenders, (A/59/401, para. 46)**He further states ,’ The word ‘association’ refers, inter alia, to civil society organizations, clubs, cooperatives,NGOs, religious associations, political parties, tradeunions , foundations or even online associations as the Internet has been instrumental, for instance, in “facilitating active citizen participation in building democratic societies” (A/HRC/17/27, para. 2).

He further holds that, that the right to form and join an association is an inherent part of the right to freedom of association. It also includes the right to form and join trade unions for the protection of one’s interests, as enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. ‘

He further holds that, ‘the right to freedom of association equally protects associations that are not registered. Individuals involved inunregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions. This is particularly important when the procedure to establish an association is burdensome andsubject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.

The UN SR further holds in the report that, ‘the right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence, including summary or arbitrary executions, enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman or degrading

treatment or punishment a media smear campaign, travel ban or arbitrary dismissal, notably for unionists.'

He further holds that, ' ... States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority's culture or for changes in law, including changes in the Constitution. The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear'.

Authorities must also respect the right of associations to privacy as stipulated in Article 17 of the Covenant on Civil and Political Rights. In this connection, authorities should not be entitled to: condition any decisions and activities of the association; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice. The Special Rapporteur recognizes the right of independent bodies to examine the associations' records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.

In his general recommendations in his report he suggests among many the following Conclusions and recommendations:

- To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women; youth; indigenous peoples, persons with disabilities,

persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights;

- To ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;
- To ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Any restrictions should be subject to an independent, impartial, and prompt judicial review;
- To ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights to freedom of peaceful assembly and of association;
- To ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law;

He also specifically states that , 'National Human Rights Institutions' complying with the Paris Principles should play a role in fostering and monitoring the implementation of the rights to freedom of peaceful assembly and of association and in receiving and investigating allegations of related human rights violations and abuses.

In his specific recommendations on the Freedom of Association he states among others:

- Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment.
- Associations should be free to determine their statutes, structure and activities and to make decisions without State interference.
- Associations should enjoy the right to privacy.

- Associations should be able to access domestic and foreign funding and resources without prior authorization.

Hence it is a matter of exigency that the Hon'ble NHRC should place all these standards emerging from the report of the UN Special Rapporteur for the kind consideration of the Hon'ble Court.

I would therefore insist that it is the duty of this Hon'ble Commission in its protection of the rights of human rights defenders to immediately intervene before the said case before the Madras High Court in pursuance of its own mission and further ensure that a competent lawyer with a very good grasp of human rights law is engaged to represent the NHRC before the court since this case can have a lot of ramifications for human rights defenders across the country subsequently.

I and HRDA will always be willing to offer its own suggestions of the names of lawyers if required at any time. HRDA would also be happy to present itself before this Hon'ble Commission before a decision is taken up on this petition. Any delay whatsoever in taking a decision on this matter will have very serious implications for the larger human rights defenders in Tamilnadu and also the country at large.

I feel it may be good to end with the most recent statement of the President of the UN Human Rights Council, as follows :

Mr Joachim Rucker, President of the Human Rights Council

Civil society is at the core of human rights and at the core of our work within the Human Rights Council. NGOs put issues on the agenda, provide vital information about human rights on the ground, and give a voice and face to human rights. NGOs assist to implement and monitor the implementation of the decisions and resolutions of the Council at the national level. NGOs are thereby often bridging the gap between the international, regional and national levels, by helping to translate our work into action, by triggering change, and by reminding us to strive for accountability.

For instance, without the pressure of civil society, the Commission of Inquiry on the Democratic Peoples' Republic of Korea, enabling individuals to give the Human Rights Council their account of the human rights situation on the

ground, would not have been possible. Other examples of human rights engagement include the Commission of Inquiry on Eritrea and the fact-finding mission of the OHCHR to Sri Lanka. NGOs also support raising awareness about important thematic issues, including on racism and discrimination, on new technologies, development, environment and the like. There is no country, and no human rights topic, in relation to which the work of NGOs is not vital.

As President of the Human Rights Council, I am therefore proud that in resolutions 60/251 and 5/1 our founding fathers and mothers laid the basis for civil society participation, asking the Council to ensure that civil society can participate in the most effective manner possible.

Regrettably, the work of NGOs and human rights defenders is often marked by major risks. The Special Rapporteur on Human Rights Defenders, a special procedure mandate established in 2000, has shed light on thousands of cases. The current mandate holder, Michael Forst, has rightly underlined that many human rights defenders face smear campaigns, intimidation, stigmatization, threats to their families, defamation, accusations, ridicule or red tape, and in some cases disappearances and even deaths, for and because of their cooperation with the United Nations.

Intimidation and attacks against NGOs and human rights defenders are unacceptable. As Council President, I am alarmed by the many cases of intimidation and attacks against those that seek to cooperate with the UN, in particular its human rights mechanisms. Such acts not only contradict the spirit of the United Nations and its functioning but also the principles and purposes of the UN Charter and the Universal Declaration of Human Rights. Therefore, a consistent approach by the United Nations, in particular the Human Rights Council, and by all of us vis-à-vis reprisals and intimidation is needed and accountability for each case is essential. Otherwise, the UN loses legitimacy.

Within the Council, we should collectively condemn reprisals, defend the right to cooperate freely with the United Nations and protect those targeted. It is encouraging that many States play an active and positive role in supporting

NGOs and human rights defenders at the Human Rights Council and within the UN human rights system more broadly, but more needs to be done.

Furthermore, let me recall the words of the United Nations Secretary-General at the Human Rights Council panel on the protection of civil society space where he rightly said that ‘the space for civil society is a reflection of an entire society’s respect for human rights within its own borders and indeed around the globe’. Government-organized non-governmental organizations and legal, administrative and other restrictions, for instance on the basis of national security or public moral, restrict and impair the work of NGOs.

As President of the Council, I am guided by the growing body of resolutions and decisions of the Human Rights Council, including by its resolutions on human rights defenders and civil society space. I therefore urge States to fulfil their responsibilities vis-à-vis civil society.

To put it simply: Standing up for human rights, may they be political, civil, economic, social or cultural, is always the right thing to do.

I would like to thank you for your kind indulgence in this serious matter. Thank you again for your kind patience for reading through such a long memorandum .

Thanking you,

Yours sincerely,

Henri Tiphagne