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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

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11 April 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 24/5, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the prosecution of Ms. **Teesta Setalvad** and Mr. **Javed Anand**.

Ms. Teesta Setalvad is the Secretary of Citizens for Justice and Peace (CJP), a non-governmental organization (NGO) based in Mumbai advocating for peace in Gujarat. CJP has campaigned for justice concerning the Gulbarg Society Massacre of 28 February 2002. A Special Investigation Team within Gujarat police has been established by the Supreme Court of India to investigate the massacre.

Mr. Javed Anand is a civil right activist and editor of the magazine Communalism Combat. Ms. Setalvad and Mr. Anand are human rights defenders that have actively pursued justice for the Gulbarg Society Massacre victims by providing legal support in the investigation. They also publish a Mumbai-based monthly magazine called Communalism Combat, which analyses the activities of both minority and majority communal political parties, to try and combat communal conflict. Communalism Combat was awarded the Prince Claus Award in 2000, saying that it "opposes ethnic fundamentalism and separatism in Indian culture, it creates a space for freedom: a platform for the discussion of current and often controversial issues".

Ms. Setalvad was the subject of a previous communication to your Excellency's Government on 28 March 2011 (IND 5/2011) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. This communication concerned reprisals that Ms. Setalvad had experienced from having submitted information to the United Nations Office of the High Commissioner for Human Rights regarding the Gulbarg Society Massacre. We acknowledge the receipt of your Excellency's Government's response on 27 July 2011.

According to the information received:

On 4 January 2014, officials from the Gujarat Crime Branch reportedly filed a First Information Report against Ms. Setalvad and Mr. Anand, allegedly at the behest of a former resident of Gulbarg Society who claimed that Ms. Setalvad and Mr. Anand had embezzled funds of INR 15,000,000, assigned to the construction of a memorial for the 2002 Gulbarg Society Massacre.

Ms. Setalvad and Mr. Anand have reportedly been charged under Sections 120(B), 406 and 420 of the Indian Penal Code and Section 72(A) of the Income Tax Act. These charges relate to criminal conspiracy, breach of trust, cheating and dishonestly inducing delivery of property, and income tax. It has been alleged that these charges are unsubstantiated and that Ms. Setalvad and Mr. Anand have been falsely implicated in this case with the aim to defame them, as a form of reprisal for their work as human rights defenders.

On 10 January 2014, Ms. Setalvad and Mr. Anand were reportedly granted interim bail for three weeks by the Bombay High Court, which also observed that Ms. Setalvad had been falsely implicated in the past. Interim bail was extended until 28 February 2014 by the same court. Following procedures before the Supreme Court, request for anticipatory bail was refused and interim bail was extended until 31 March 2014. Following a petition against the Session Court's rejection of anticipatory bail, on 28 March 2014, the Gujarat High Court issued a notice to Ahmedabad Detection of Crime Branch, which postponed the arrest of Ms. Setalvad and Mr. Anand until 4 April 2014 for further hearing. The hearing was again adjourned to 23 April 2014.

On 4 April, the Bombay High Court rejected the petitions that Ms. Setalvad and Mr. Anand had filed to nullify the First Information Report filed by the Gujarat Crime Branch on 4 January 2014 and to unfreeze their bank accounts. The Bombay High Court ruled that the matter was not in its jurisdiction as it must be taken up before the Gujarat High Court, where the First Information Report was filed.

Grave concern is expressed that the criminal charges taken against Ms. Setalvad and Mr. Anand relating to the allegations of embezzlement might be false and unsubstantiated and they have been wrongfully brought to justice as a form of reprisal for their peaceful work promoting the human rights of the victims of the Gulbarg Society Massacre. Further concerns are expressed about alleged on-going acts of harassment against Ms. Setalvad, as mentioned in the report of the Special Rapporteur on the situation of human rights defenders on her mission to India in January 2011, under the section 'Defenders seeking accountability for communal pogroms' (A/HRC/19/55/Add.1, para. 130).

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR):

- article 19, which provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."; and

- article 22, which provides that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

We would also like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this connection, we would also like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or 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" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the

legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information on measures taken to ensure that all guarantees of justice and fair trial will be afforded to Ms. Setalvad and Mr. Anand and to prevent that unsubstantiated and false accusations are brought to the justice system as a form of reprisal for their work as human rights defenders.
3. Please provide information on any investigation or inquiry on the allegations of abuse of the justice system, relating to alleged false accusations against Ms. Setalvad and Mr. Anand.
4. Please explain what measures have been taken to ensure that all human rights defenders in India can carry out their peaceful and legitimate activities without fear of criminalization or harassment of any sort.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the

above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression