

**Mandates of the Special Rapporteur in the field of cultural rights; 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**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 28/9, 25/2, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged arrest and detention of S. Sivadas, popularly known by his stage name Kovan, for the lyrics of two of his songs** which criticize the Tamil Nadu state government and chief minister.

Kovan is a Tamil folk singer and activist, head of the cultural wing of the Makkal Kalai Ilakkiya Kazhagam (People's Art and Literary Association). The organization, a 30-year-old group in Tamil Nadu, is working for the defence of human rights and the weaker sections of the society. Its cultural wing performs folk songs, music and street plays on socio-economic issues, such as corruption, women's rights and the rights of the Dalit.

According to the information received:

On 30 October 2015, at 2 AM, the Tamil Nadu police arrested Kovan at his house in Oraiur, Trinchy, and brought him to the Chennai police department.

It is reported that the arrest did not respect the legal procedures stated in section 41 of the Penal Code. No memo was issued stating the reasons for his arrest; his family was not informed about his place of transfer and detention; he was not allowed to meet or speak with his lawyer during his arrest and transfer; the arrest was not recorded on the notice board outside the control room in the Police commissariat of Chennai and Tiruchirapalli. To find out Kovan's whereabouts, his lawyer had to file a habeas corpus petition before the Madras High Court. Following the Court's intervention, Kovan appeared before a magistrate. On 16 November, a court in Chennai released him on bail. His case is now with a lower

court. As the charge sheet has not yet been formally filed, there is still no date for the hearing before the court.

Mr. Kovan was arrested after the recent release of two songs, 'Moodu tasmac Moodu' and 'Ooruku oru Sarayam'. The songs, for which videos were uploaded to the internet in August 2015, call for the Tamil Nadu government to close government-run alcohol shops in the state. A line in one of the songs says that the state chief minister was rejoicing while people were dying from alcoholism. The songs also talk about increasing prices of education and food and say that people could be killed, if they do not acclaim the ruling government representatives as their saviour.

Mr. Kovan is stated to have been arrested under charges of sedition, provocation with intent to cause a riot and public mischief, respectively under sections 124A, 153 and 502/1 of India's Penal Code.

Section 124A of India's Penal Code prohibits any words either spoken or written, or any signs or visible representation that can cause "hatred or contempt, or excites or attempts to excite disaffection" toward the government. In a 1962 ruling, the Supreme Court stated that unless the accused incited violence by their speech or action, it would no longer constitute sedition, as it would otherwise violate the right to freedom of speech guaranteed by the Constitution. That ruling has been upheld in numerous judgments since, but the police continue to file sedition charges, particularly against journalists, lawyers and activists. Under article 19 (2) of the Constitution, restrictions to freedom of expression and speech on the ground of offence of public order and incitement can be considered, but according to the ruling of the Supreme court, only when such restrictions are authorized by law and are not excessive or disproportionate. In 2014, the Court stated in the *Shreya Singhal* case that these restrictions would apply only when discussion or advocacy of a particular cause "reaches the level of incitement".

In August 2015, the government in Maharashtra state issued new guidelines to police on sedition which, if implemented, could have been used against people for mere criticism of the authorities. The government was forced to withdraw the guidelines in October, following protests by civil society organizations and a high court order directing it to withdraw or issue a new circular.

Concern is expressed at the alleged attempts to limit the legitimate exercise of the rights to freedom of opinion and expression, also in the form of arts, to take part in cultural life and to the freedom indispensable for creative activities of folk singer Kovan by members of the police. This situation may also have a broader, chilling effect on other human rights defenders and artists, in particular all members of the cultural wing of Makkal Kalai Ilakkiya Kazhagam, who might hesitate to exercise their legitimate rights and to freely engage in India's vibrant cultural life through music, songs and theatre. Although Mr. Kovan has been released on bail, concern is also expressed about the arrest procedures.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international human rights norms and standards that are applicable to the allegations brought forth, that are listed in the **Reference to international law Annex** attached to this letter

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. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the legal grounds for the arrest of Mr. Kovan are considered appropriate measures against the songs cited above, and how these are compatible with the international norms and standards on the right to freedom of opinion and expression, the right to take part in cultural life and the freedom indispensable for creative activities detailed in the Annex.
3. Please provide the full details of any prosecutions which have been undertaken.
4. Please kindly indicate what measures have been taken to ensure that artists and human rights defenders in India are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and criminalization of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt that alleged violations and prevent their re-occurrence and in the event that the investigations supports or suggests the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Karima Bennoune  
Special Rapporteur in the field of cultural rights

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to article 9 of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government has ratified on 10 April 1979, that prohibit arbitrary arrest and detention.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, 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."

We would also like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. It also prohibits restrictions on freedom of expression on national security grounds unless they are provided by law, strictly construed, and necessary and proportionate to address a legitimate threat.

We also refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties." The General Comment also establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Further, in particular with regard to the application of articles 124A, of India's Penal Code, General Comment No 34 specifically establishes that "extreme care must be taken by States parties to ensure that (...) sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws (...) to prosecute (...) human rights defenders, or others, for having disseminated such information." The Committee further underlines that "when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized

fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”

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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

In addition, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, to study, discuss and hold opinions on the observance of these rights.
- article 8, paragraph 2, which provides that everyone has the right, individually or in association with others, to submit to governmental bodies, agencies and organisations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms; and
- article 12, paragraphs 2 and 3, which provide that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency's Government has ratified on 10 April 1979, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for scientific research and creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic

creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d).

In the same report, the Special Rapporteur in the field of cultural rights also recalled that public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. Therefore, using laws to sanction disrespect for authority of the head of State and the protection of the honour of public officials, raise concerns in regards to the rights of everyone to take part in cultural life and to freedom of expression, including in the form or arts (A/HRC/23/34, para 45).