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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (89-15)
IND 8/2013

4 July 2013

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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences; and Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, 23/25, and 23/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received with regard to **allegations of arbitrary detention and forcible dispersal of women human rights defenders in the context of a peaceful protest organized by the Maitree women's network in West Bengal**. Maitree is a human rights defenders' organization based in Kolkata that works for women's empowerment and the eradication of violence against women.

According to the information received:

On 13 June 2013, at approximately 7:30 a.m., a group of human rights defenders from the women's human rights network "Maitree" were reportedly concentrating in a peaceful protest in the proximities of the residence of the Chief Minister of West Bengal.

It is reported that protesters carried placards and publicly declared their willingness to submit a memoranda to the Chief Minister regarding two recent cases of gang-rape and killing of two young female students from Barasat and Krishnaganj, Nadia, in West Bengal. The peaceful protest was allegedly organized

after the Chief Minister had refused to meet with the activists on 10 June 2013 at the Writer's Building.

The police reportedly dismantled the protest and arrested 12 women activists accusing them of attempting to commit an offence (section 151 of the Criminal Procedure Code). It is alleged that the police had not shown an arrest warrant at the time of the arrest and that no formal charges were presented against them. The twelve defenders Ms. **Anuradha Kapoor**, Ms. **Anchita Ghatak**, Ms. **Aditi Basu**, Ms. **Kakoli Bhattacharya**, Ms. **Madhura Chakroborty**, Ms. **Ratnaboli Roy**, Ms. **Sharmistha Dutta Gupta**, Ms. **Shyamali Das**, Ms. **Shreya Sanghari**, Ms. **Sudeshna Basu**, Ms. **Shreya Chakroborty** and Ms. **Swapna**, were allegedly taken to Lalbazar Central Lock Up and were released on bail shortly after, at 4:30 a.m.

It is also reported that the detainees were also denied access to their lawyers during their time in detention, even though their lawyers were present in the Lalbazar Central Lock Up at Kolkata and had attempted to see the detainees from 10:00 a.m. until their release.

Defenders were protesting for the lack of adequate response by the Chief Minister with regard to the two cases of gang-rape and killing of a 20 year old student as she returned home from Kamduni college on 7 June 2013, and of a 14-year-old schoolgirl in the Nadia district shortly after, on 10 June 2013.

Without prejudging the accuracy of these allegations, concern is expressed at the allegations of arbitrary detention and harassment of women human rights defenders in the context of a peaceful assembly in West Bengal. Serious concern is further expressed as these allegations could be related to their advocacy activities in the defense of human rights and for responses by the authorities to cases of violence against women and girls. If confirmed, these allegations could reveal a continuing pattern of impunity with regard to cases of rape and sexual abuse of women and girls in India.

We would like to bring to your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. Moreover, the same article 4 (o & p) notes that States should recognize the important role of the women's movement and non-governmental organizations world-wide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's

movement and non-governmental organizations and cooperate with them at local, national and regional levels.

In addition, we would also 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 “[e]veryone 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”;

- article 21 which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others”; and

- article 22 which provides that “[e]veryone 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”.

In this connection, we would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 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.”

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 5 point a) which establishes that 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, to meet or assemble peacefully; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

More specifically, the situation of women defenders in India was raised by the Special Rapporteur on the situation of human rights defenders after her visit to the country in January 2011. In the report on her country visit, the Special Rapporteur underlined that “(w)omen human rights defenders, who are often at the forefront of human rights work, are at particular risk of persecution, especially those in rural areas. They face the same gamut of human rights violations as their male colleagues, in addition to gender-specific violations, such as rape and sexual violence used as another tool for harassment.” (HRC/19/55/Add. 1, para 103)

More recently, the issue of sexual violence was also raised by the Special Rapporteur on violence against women, its causes and consequences in a press statement at the conclusion of her official visit to the country in May 2013: “Sexual violence and harassment in India is widespread, and is perpetuated in public spaces, in the family or in the workplace. There is a generalized sense of insecurity in public spaces/amenities/transport facilities in particular, and women are often victims of different forms of sexual harassment and assault”. The Special Rapporteur also noted that “(d)espite numerous positive developments, the unfortunate reality is that the rights of many women in India continue to be violated, with impunity as the norm...” . .

Since 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 be grateful for your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please confirm the legal grounds for the detention of the aforementioned persons, including how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

5. Please provide information on any measures taken to ensure that activists and human rights defenders in India, particularly women defenders and those working on women's right and gender issues, are able to carry out their legitimate human rights activities without fear of reprisals and free of arbitrary restrictions to their fundamental freedoms.

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.

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

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

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of
discrimination against women in law and in practice