

**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**

REFERENCE: AL  
IND 6/2015:

4 August 2015

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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning allegations of unfounded investigations and charges against Ms. Teesta Setalvad and Mr. Javed Anand in relation to their legitimate and peaceful human rights work, as well as measures allegedly restricting access to their organizations.**

**Ms. Setalvad** and **Mr. Anand** are human rights defenders who, in conjunction with several other individuals, founded the Mumbai-based non-governmental organization **Citizens for Justice and Peace**, which advocates for peace in Gujarat and provides assistance and legal aid to the victims of communal violence in the so-called Gulbarg Society Massacre of 28 February 2002, including to **Ms. Zakia Jafri**. Citizens for Justice and Peace has been actively involved in obtaining life sentences for 120 perpetrators of the 2002 massacre, as well as lesser sentences for seven other perpetrators. Ms. Setalvad and Mr. Anand are also the founders of **Sabrang Trust**, a non-governmental organization promoting communal harmony and which was established after communal violence in Mumbai in 1992 and 1993 as well as **Sabrang Communications and Publishing Private Limited (SCPPL)**, a not-for-profit association in field of communications, research and data publishing which issues the publication Communalism Combat.

**Ms. Jafri** is the relative of a victim of the Gulbarg massacre seeking the prosecution of high-ranking officials in relation to their alleged complicity in the 2002 violence in Gujarat. She receives legal assistance from Citizens for Justice and Peace.

**Ms. Setalvad** and **Mr. Anand** were the subject of a previous Allegation Letter pertaining to the alleged misappropriation of trust funds from Citizens for Justice and Peace, sent to your Excellency's Government on 11 April 2014 (see A/HRC/27/72, case no. IND 3/2014) by 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. We regret that, to date, no response has been received.

**Ms. Setalvad** was also the subject of an earlier Urgent Appeal sent to your Excellency's Government on 28 March 2011 (see A/HRC/18/51, case no. 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. The Urgent Appeal concerned alleged reprisals against Ms. Setalvad for having submitted information to the United Nations Office of the High Commissioner for Human Rights regarding the Gulbarg Society Massacre. We acknowledge receipt of your Excellency's Government's response of 27 July 2011.

According to new and updated information received:

*In relation to the judicial proceedings against Ms. Setalvad and Mr. Anand for alleged misappropriation of funds*

Citizens for Justice and Peace assisted Ms. Jafri in filing a criminal complaint for criminal and administrative culpability against several high-ranking officials. In March 2008, a Special Investigation Team was set up by the Supreme Court to re-investigate several cases related to the 2002 riots. Citizens for Justice and Peace provided assistance with formulating the arguments and drafting a protest petition, filed in April 2013, against the 2012 closure report of the Special Investigation Team which found no evidence to prosecute the individuals listed in the complaint. The arguments in this matter began on 15 April 2013 and were subsequently closed in September 2013. On 26 December 2013, the protest petition was dismissed and no case was brought against the high-ranking authorities concerned.

On 4 January 2014, eight days after the dismissal of Ms. Jafri's protest petition, a First Information Report was issued which alleged that Ms. Setalvad, Mr. Anand, and three other individuals embezzled trust funds collected by the Citizens for Justice and Peace on behalf of victims for the Gulbarg Society Massacre. A judicial order was then issued freezing their professional bank accounts without prior notice, as stipulated under section 102 of the Criminal Procedure Code (CPC). Sources report that the timing of the allegations was done with a view to preventing Ms. Setalvad and Mr. Anand from filing an appeal in case by the 26 of March 2014 deadline. Ms. Setalvad and Mr. Anand submitted the appeal on 15 March 2014, and it will be reportedly considered on 4 August 2015.

On 25 March 2014, the five accused sought anticipatory bail from the Sessions Court to avoid possible pre-trial detention, but their application was rejected. On

27 March 2014, the accused appealed the decision of the Sessions Court of Ahmedabad to the High Court of Gujarat.

On 12 February 2015, the High Court of Gujarat upheld the Sessions Court's decision not to award anticipatory bail to Ms. Setalvad and Mr. Anand, but granted the requested interim measures to the three other applicants. It is alleged that the evidence provided by Ms. Setalvad and Mr. Anand in their defense was not considered by the Sessions Court.

The High Court of Gujarat decided that Ms. Setalvad and Mr. Anand would not be awarded anticipatory bail as it allegedly concluded that Ms. Setalvad and Mr. Anand did not use the funds of the trust for their stated objective; that they had not been filing returns or audited statements of accounts; and that they had begun to make large deposits into their personal bank accounts after the organization had started to receive substantial sums, whereas prior to that no such transactions had occurred.

The High Court of Gujarat reportedly also indicated that it was in the interest of justice that Ms. Setalvad and Mr. Anand be held in custody during the investigation as they had allegedly failed to cooperate with the police investigation.

It is reported that subsequently, the single judge bench of the High Court of Gujarat urged the police to arrest Ms. Setalvad and Mr. Anand and subject them to custodial interrogation. Approximately 30 to 40 minutes after the High Court of Gujarat's judgment was issued, the Gujarat Police arrived at Ms. Setalvad and Mr. Anand's home in Mumbai with the intent to arrest them, but they were not at the residence at the time. Later that same day, a one-day stay of arrest in favour of Ms. Setalvad and Mr. Anand was granted by the Supreme Court.

On 13 February 2015, a different bench of the Supreme Court ordered a further stay on the arrest of Ms. Setalvad and Mr. Anand until 19 February 2015.

On 19 February 2015, during the appeal hearing of the decision, a two-judge bench of the Supreme Court of India reserved judgment and held that Ms. Setalvad and Mr. Anand should remain at liberty, without being subjected to custodial interrogation, until their final decision regarding the appeal against the High Court's decision on the request for anticipatory bail.

On 19 March 2015, a split verdict was issued and the matter was subsequently referred to a larger bench. The appeal hearing regarding anticipatory bail against the decision of the High Court was scheduled before a three-judge bench at the Supreme Court on 21 April 2015 since the State asked for more time to fill another affidavit by 27 April 2015. No affidavit was filled to date.

However, the Supreme Court postponed the hearing until 7 July 2015 and extended Ms. Setalvad's and Mr. Anand's stay of arrest until the same date. A week prior to that date, when the list of hearings for 7 July was released, their scheduled hearing did not appear. Since the matter of anticipatory did not appear before a three-judge bench, Ms. Setalvad and Mr. Anand received protection against arrest until 15 September 2015, or until the date of the new hearing, if before.

*In relation to the judicial proceedings against Ms. Setalvad for the posting of an image online*

In 22 August 2014, Ms. Setalvad posted an image on her Twitter account condemning the Islamic State of Iraq and the Levant (ISIS), which reportedly could have been misinterpreted. In light of this possible misinterpretation, Ms. Setalvad promptly removed the image, publically apologized and issued a press release that day. Within 12 hours, the Gujarat police registered two First Information Reports against her, alleging the promotion of enmity between religious groups and other claims. Ms. Setalvad reportedly wrote to the Director General of Police of Gujarat and to the two police stations that previously registered First Information Reports.

In this connection, Ms. Setalvad required further anticipatory bail twice more in relation to these First Information Reports. On 30 August 2014, Ms. Setalvad received notice to appear in court and obtained transit bail from the Bombay High Court and recorded her statement for over 7 hours. The High Court also asked for her laptop, which she declined to provide.

On 23 September 2014, Ms. Setalvad applied for confirmation of anticipatory bail from the two districts of the First Information Reports in Gujarat. Within 2 days of that date, Ms. Setalvad applied for permission to travel and the Bombay High Court granted this authorization to her in order to attend a conference. As other circumstances occurred that did not allow her to undertake that travel, Ms. Setalvad deposited the passport and obtained a Clarificatory Order from the Bombay High Court noting that she can deposit her passport before the Magistrate's Court. Ms. Setalvad was reportedly able to deposit her travel document at the court and not with the police of Gujarat, in light of the circumstances in this case and the previous animosity with the police, as the same crime branch of the police requested her custodial investigation.

In March 2015, Ms. Setalvad applied to the Ahmedabad Sessions Court to travel out of the country and the permission was later granted. Her passport was released on 2 May 2015 by the Sessions Court.

On 11 July 2015, Ms. Setalvad was scheduled to deposit her travel document, however, as further travel was anticipated, she requested an extension to the decision from late June 2015 until 15 August 2015. This extension was overturned on 29 June 2015, for alleged non-cooperation with the crime branch investigation

for the First Information Report related to the previous posting of an image on Twitter.

Ms. Setalvad then filed two Criminal Miscellaneous Applications in the Gujarat High Court, which remain pending. One of the petitions seeks to challenge the order and asked for a modification of the condition on foreign travel. The second petition requested that the First Information Reports be quashed.

*In relation to the organization's access to funds*

As the judicial proceedings against Ms. Setalvad and Mr. Anand are ongoing in the High Court of Gujarat, the bank accounts of their organizations, as well as their personal accounts, remain frozen.

Ms. Setalvad and Mr. Anand sought to have the matter heard in the Bombay High Court, as the accounts are registered in Bombay. The case was brought to the Supreme Court to decide the matter of jurisdiction. The Supreme Court kept question of jurisdiction open by law, however, it noted that Ms. Setalvad and Mr. Anand should file the petitions in Gujarat. The petitions were subsequently filed in Gujarat in July 2014.

In September 2014, in order to expedite the proceedings, Ms. Setalvad and Mr. Anand obtained an order from Gujarat High Court stipulating that the Magistrate Court should dispose of the matter within three months. The case was later rejected by Magistrates' Court on 28 November 2014. While Ms. Setalvad and Mr. Anand did not meet the three-month deadline for appeal, the court accepted their delay in filing the motion. An appeal to lift the court order freezing their organizations' accounts was filed before the Gujarat High Court in May 2015 and the next High Court is on 5 August 2015.

The freezing of their financial resources has had a significant impact on Citizens for Justice and Peace's and Sabrang Trust's activities. It is reported that if Citizens for Justice and Peace is unable to continue funding its legal work, it will not be in a position to continue adequately supporting the victims the organization represents in cases related to the Gulbarg Society Massacre, and these cases would be at risk of being overturned on appeal.

Furthermore, as a result of the judicial order freezing the organization's account, Citizens for Justice and Peace's trustees had to open another domestic account with the support of local donors, in an attempt to continue funding operations and paying the salaries of staff. A team of lawyers have also offered to work pro-bono until the organization's accounts are unfrozen.

*In relation to the investigations of the organizations' access to funds*

On 10 March 2015, the Government of Gujarat's home department sent a letter to the Ministry of Home Affairs' Foreign Contributions Regulation Act (FCRA)

Unit alleging violations by all three entities, Citizens for Justice and Peace, Sabrang Trust, and Sabrang Communications. It is further alleged that the Government of Gujarat requested the Ministry of Home Affairs to conduct an inquiry into all three organizations for the alleged misuse of foreign funds sent to the organization, including one grant by the Ford Foundation. In that regard, from 6 to 11 April 2015, an inspection team, created by the Foreign Contributions Regulation Act Unit, carried out an investigation into the records of both Sabrang Trust and Citizens for Justice and Peace. In June 2015, they further investigated Sabrang Communications. These investigations were carried out with the full cooperation of Ms. Setalvad and Mr. Anand, who provided all required information and records to the investigators.

Reportedly, the Ministry of Home Affairs is monitoring the activities funded with money sent by the Ford Foundation to ensure that the funds are utilized for welfare activities that do not compromise national interest and security.

On 26 June 2015, it is alleged that the Indian Ministry of Home Affairs decided that the investigation against Ms. Setalvad and Ms. Anand would be taken forward by the Central Bureau of Investigation as a criminal case.

On 8 July 2015, the Central Bureau of Investigation allegedly registered First Information Report against Ms. Setalvad and Ms. Anand and several other individuals and companies for criminal conspiracy and receiving funds from foreign entities without registration or prior permission from the authorities. If found guilty of these allegations under the Indian Penal Code and the Foreign Contribution Regulation Act, the individuals could face up to five years' imprisonment.

On 14 July 2015, the Central Bureau of Investigation raided several premises linked to Ms. Setalvad and Mr. Anand in connection with the allegations of receiving funds from foreign entities without prior permission from the Government.

On 24 July 2014, a special court of the Central Bureau of Investigation rejected anticipatory bail in the case and reportedly claimed that custodial interrogation would be necessary and expressed that evidence may be tampered with should the measure be granted. Later that day, an application to extend their interim protection measures was filed with the Bombay High Court and was granted by that court until 10 August 2015.

#### *Contextual circumstances related to the information received*

Sources report that the current investigations and proceedings against Ms. Setalvad occurred in the context of other inquiries that have previously been brought against her by the authorities in India in relation to the work of her organizations. In 2004, Ms. Setalvad was accused by the Gujarat police of

pressuring a witness into giving false testimony about the so-called Gulbarg Society Massacre of 28 February 2002, and was fully exonerated in 2005, after the court set up a register general committee, which was later absolved by India's Supreme Court. Moreover, in 2010, Ms. Setalvad was accused of exhuming the remains of the massacre's victims. The judicial proceedings against Ms. Setalvad were stayed by the Supreme Court, however, the case has not been concluded. Furthermore, in January 2011, Ms. Setalvad was charged with pressuring several witnesses into giving false testimony and the case is stayed. In addition, other numerous other investigations were lodged by the crime branch of Gujrat police.

On numerous occasions, Citizens for Justice and Peace has requested that independent investigations into their organization be undertaken by authorities outside of the State of Gujarat as it is alleged that the past work of Citizens for Justice and Peace has created an adversarial relationship with the Government of that State.

Ms. Setalvad and Mr. Anand also appealed to the National Human Rights Institution in May 2014 to examine the investigations and charges against them. In June 2014, the National Human Rights Institution acknowledged the complaint, provided a file number and requested that Gujarat police reply to the allegations. In February 2015, the Gujarat police provided a response which in turn, Ms. Setalvad and Mr. Anand responded to in March 2015, with a comprehensive report.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed that Ms. Setalvad and Mr. Anand, as well as their organizations, are being targeted as a result of their peaceful and legitimate human rights work, including the legal assistance provided by Citizens for Justice and Peace in Ms. Jafri's ongoing petition. Further concerns are expressed about reports that the investigations into Ms. Setalvad and Mr. Anand were timed in order to debilitate the legal services provided by their organization in Ms. Jafri's high profile. In this connect, we articulate concerns that harassment towards Ms. Setalvad and Mr. Anand may continue to intensify as Ms. Jafri's appeal continues to be heard by the High Court of Gujarat from July 2015 onwards.

Further concern is expressed about the effects of the alleged unfounded investigation and charges on Ms. Setalvad and Mr. Anand's rights to freedom of expression and of association. In that regard, concern is expressed regarding the restrictions on Ms. Setalvad's travel, which appear to have resulted from her actions in posting an image online, in addition to the restrictions on Ms. Setalvad and Mr. Anand organizations' access to funding and the effects this has on the continued work of Citizens for Justice and Peace and Sabrang Trust.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations against Ms. Setalvad and Mr. Anand for the embezzlement of funds collected by the Citizens for Justice and Peace.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the additional allegations against Ms. Setalvad in connection with posting an image on social media in 2014, including relating to the ban on her foreign travel.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries undertaken with regards to the Central Bureau of Investigation's First Information Report against Ms. Setalvad and Ms. Anand and searches of their premises for receiving funds from foreign entities without prior permission from the authorities.
5. Please provide information on measures taken to prevent that allegedly unsubstantiated and unfounded accusations are used as a form of reprisal against human rights defenders for their legitimate and peaceful work.
6. Please explain what measures have been taken to ensure that members of associations in India can carry out their peaceful and legitimate activities without fear of criminalization or harassment of any sort.
7. Please provide the full details of the aforementioned proceedings and explain how they are compatible with India's obligations under international human rights law and standards, particularly with regard to the right of associations to receive and use funding.

We would appreciate receiving a response within 60 days.

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

David Kaye  
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

•

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 refer your Excellency's Government to take all necessary steps to secure the rights to freedom of expression and opinion and the right to freedom of association, enshrined in articles 19 and 22, respectively, of the International Covenant on Civil and Political rights (ICCPR), acceded to by India on 10 April 1979. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be prescribed by law, necessary and proportionate to the aim pursued.

In addition, we draw the attention of 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. We would also like to draw specific attention of your Excellency's Government to article 5, which stipulates the rights to assemble peacefully, to associate freely and to communicate with non-governmental or intergovernmental organizations, as well as article 13, which articulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights.

Furthermore, we refer to Human Rights Council resolution 24/5, in which the Council "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" (OP2).

In relation to the continued alleged acts of harassment against Ms. Setalvad, the Special Rapporteur on the situation of human rights defenders highlighted her plight under the section "Defenders seeking accountability for communal pogroms" in report A/HRC/19/55/Add.1 on the Special Rapporteur's official country visit to India in January 2011 (para. 130).

Regarding to the limitations to the funding of their association and the origins of those funds, we wish to recall Human Rights Council resolution 22/6 further calls upon

States to ensure that “that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto.”

The Special Rapporteur on the rights to freedom of peaceful assembly and of association indicated, in his report A/HRC/20/27, that “[m]embers of associations should be free to determine their statutes, structure and activities and make decisions without State interference” (para. 64).

In his report A/HRC/23/39, the Special Rapporteur on the rights to freedom of peaceful assembly and of association also called upon States “to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities.” In particular, the Special Rapporteur indicated that the ability of civil society organizations “...to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association, and these constraints violate article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights” (para.20).

In this context, the Special Rapporteur on the rights to freedom of peaceful assembly and of association also urged States to “adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received” (A/HRC/23/39 para. 82 (e)).