

**NATIONS UNIES
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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 situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27)
IND 3/2012

15 February 2012

Dear Ms. Bhattacharya,

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 situation of human rights defenders; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 16/5, and 17/5.

In this connection, we would like to bring to your Government's attention information we have received concerning the **alleged killing of Mr. S. Bhuvaneshwaran on 10 January 2012**. Mr. Bhuvaneshwaran was the Secretary of the Veerapuram New Colony Housing Welfare Association, a land rights organization, and he had been involved in opposing alleged illegal land grabs by means of filing legal petitions and submitting Right to Information applications.

According to the information received:

On 10 January 2012, at approximately 12:15 p.m., Mr. S. Bhuvaneshwaran and his four-year-old daughter were returning to their home in Kolathur in the district of Chennai, state of Tamil Nadu, by motorcycle when they were intercepted by two men on a motorcycle on Fifth Cross Street near Gandhi Nagar. It is reported that one of the men restrained the girl, while the other man attacked Mr. Bhuvaneshwaran with a sickle. The assailants are then reported to have fled the scene.

Mr. Bhuvaneshwaran was first taken to a nearby hospital before being transferred to Kilpauk Medical College Hospital where he was declared "dead on arrival".

It is alleged that the killing is connected to the victim's campaigning against land-grabs purported to have been carried out by a land mafia group allegedly

associated with the Dravidian Progress Federation (DMK), a political party in Tamil Nadu.

According to the information received, the victim's father has formally accused a former DMK Member of the Legislative Assembly (MLA) of being behind the killing. It is reported that the police have initiated a case of criminal conspiracy under Section 120-B of the Indian Penal Code (IPC) against this individual, as well as registering a murder case under Section 302 of the IPC. Four teams of police officers have allegedly been mandated to track down the perpetrators.

On 7 July 2011, Mr. Bhuvaneshwaran is alleged to have reported receiving death threats from the aforementioned former MLA and three associates to the Avadi Tank Factory Police. In spite of these alleged threats, reports indicate that the human rights defender was not afforded any form of police protection.

Concern is expressed that Mr. Bhuvaneshwaran may have been killed as a direct consequence of his legitimate activism in the defence of human rights, particularly his land rights advocacy in the district of Chennai. Further concern is expressed in relation to the allegation that the police failed to take steps to protect the physical integrity of the human rights defender after he reported receiving death threats.

With regard to the allegation that Mr. Bhuvaneshwaran was killed by unidentified gunmen we would like to bring to the attention of your Government that article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to on 10 April 1979, recognizes that every human being has the right not to be arbitrarily deprived of his or her life. States have the responsibility to protect persons from human rights violations committed by non-state actors. In this regard, the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits, or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the, harm caused by such acts by private persons or entities. (para 8) General Comment No. 31 the Nature of the General Legal Obligation Imposed on States Parties to the Covenant.

We urge your Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected

cases of extrajudicial, summary or arbitrary executions”. The Council added that this includes the obligation “to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions.”

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your 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 International Covenant on Civil and Political Rights, 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.”

In this connection, we would like to refer your 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 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 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.

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency's Government the Human Rights Council Resolution A/HRC/RES/13/13 of 15 April 2010, which recognizes “the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all” as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also “urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity.”

Furthermore, the Special Rapporteur on the situation of human rights defenders, in her report to the General Assembly A/65/223 of 4 August 2010, stated that “the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights, including those of human rights defenders. (...)” The Special Rapporteur argued that the State’s obligation to protect “first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.”

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person is respected and that accountability of any person guilty of the alleged violation is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

3. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

4. Please provide full details of any protective measures which may have been put in place to ensure the physical and psychological security and integrity of the aforementioned human rights defender in the wake of the alleged threats against his life. If no measures were taken, please explain why not.

We would appreciate a response within sixty days. We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Ms. Bhattacharya, 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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions