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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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5 June 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the cases of **Messrs. Devender Pal Singh Bhullar, Meesekar Madaiah, Gnanprakasham, Simon, Bilavendran, V. Sriharan alias Murugan, T. Suthendraraja alias Santhan, A. G. Perarivalan alias Arivu and Saibanna Ningappa Natikar**, who are reportedly at risk of imminent execution in India.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent their execution, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We reiterate that any death sentence undertaken in contravention of a State's international human rights obligations is tantamount to an arbitrary execution, and is unlawful. We call upon your Excellency's Government not to execute them, and to commute without delay the death sentence imposed against all of the mentioned individuals.

According to information received:

Mr. Devender Pal Singh Bhullar was arrested at Frankfurt Airport, Germany, in December 1994. Upon his arrest Mr. Bhullar applied for asylum with the German Migration Authorities. His asylum application was rejected by the first instance administrative court in Frankfurt and he was deported to India.

After his forcible return to India on 19 January 1995, Mr. Bhullar was arrested initially for illegal border crossing and possession of a fake passport. Reportedly, later he was charged with an attempt to assassinate a Punjab Police Officer, Mr. Sumedh Saini, as well as with an attempt to assassinate of Mr. Maninderjeet Singh Bitta, that time the President of the Indian Youth Congress, by a car bomb attack. The explosion, which occurred at Rasinia Road in New Delhi on 10 September 1993, killed nine and injured seventeen people.

On 25 August 2001 Mr. Bhullar was tried and sentenced to death under Section 3(2)(i) of Terrorist and Disruptive Activities (Prevention) Act, 1987, (TADA) and Section 120-B read with Sections 302, 307, 326, 324, 323, 436 and 427 of the Indian Penal Code (IPC) by a Special Court, which was designated to hear his case under TADA.

Following Mr. Bhullar's appeal of the death sentence the Supreme Court of India reached a split decision confirming his death sentence in March 2002. In December 2002 the death sentence was upheld after a review petition on the Supreme Court's decision was refused. In 2006, a Court in Punjab acquitted Mr. Bhullar of charges of attempting to assassinate Mr. Sumedh Saini. Mr. Bhullar's clemency petition, submitted in January 2003, was rejected by the President of India in June 2011. Mr. Bhullar then filed a petition in the Supreme Court of India asking that his sentence be commuted on grounds of "inordinate delay". This petition was rejected by the Supreme Court of India on 12 April 2013.

Reportedly, during Mr. Bhullar's detention from 19 to 23 January 1995, the Police of the Special Cell, Lodhi Colony, New Delhi, tortured and forced him to sign a confession. Allegedly electric shocks were applied to Mr. Bhullar's body during interrogations, as well as a wooden device known as a "gotna" (a large rolling pin) which was applied and rolled over his legs. Allegedly, during that period of time Mr. Bhullar was deprived of sleep, abused and threatened with being handed over to the Punjab Police, who would kill him in a "fake encounter". Reportedly, Mr. Bhullar later retracted the confession.

Allegedly, Mr. Bhullar made his confession to Mr. V.S. Bola, the Deputy Commissioner of Police of the Special cell, Lodhi Colony, New Delhi. Reportedly, since all pre-trial and trial proceedings were conducted under the TADA the confession, given by Mr. Bhullar during his detention to the Senior Police Officer in the absence of the defence lawyer, was admitted as main evidence for conviction and sentencing Mr. Bhullar to death by the Supreme Court of India. Allegedly Mr. Bhullar's confession was unsubstantiated by any other evidence. He was therefore convicted under TADA on the basis of evidence that would have been inadmissible as evidence and hence insufficient for conviction by an ordinary court under normal Indian law such as the Indian Penal Code. Furthermore, Mr. Bhullar was allegedly not provided with access to a lawyer during his detention, at the time of confession and at the trial.

In its decision the Supreme Court of India allegedly stated that Mr. Bhullar committed a crime that is the rarest of the rare, which deserves no mercy. It rejected the defence lawyers' motion on constitutionality of Mr. Bhullar's prolonged stay on death row, which he allegedly spent mostly in solitary confinement, which his lawyers claimed to be cruel, inhuman and degrading, in violation of international human rights law.

With regard to the conditions of Mr. Bhullar's incarceration in solitary confinement, he was reportedly kept at the maximum-security wing of the Tihar prison, which is reserved for alleged terrorist and "hardcore criminals". Allegedly, it is one of the harshest prisons in India. Reportedly, the sanitation is poor and the washing and toilet facilities, a wash bucket is provided in the same cell area for bathing. Reportedly, there is a hard concrete slab upon which bedding is laid as a bed in a single occupancy cells 8ft (2.4 meters) x 10ft (3 meters). Mr. Bhullar was kept as a convicted TADA prisoner from August 2001 until 12 December 2010 in a single occupancy cell. Allegedly, at the latter date Mr. Bhullar was transferred to the Institute of Human Behavior and Allied Sciences, where he has been undergoing psychiatric treatment at the moment of transmission of this communication.

The prolonged stay on death row in solitary confinement has allegedly seriously affected Mr. Bhullar's health. He has become mentally ill suffering from acute depression and schizophrenia and has been receiving treatment at a psychiatric facility in New Delhi, as certified on 2 September 2011 by a psychiatrist. In its judgment issued on 12 April 2013, the Supreme Court of India recognized all relevant documentation produced by Mr. Bhullar's lawyer indicating that "on account of prolonged detention in jail after his conviction and sentence to death, the petitioner has suffered physically and mentally". It however concluded that such documentation "cannot be relied upon for recording a finding that the petitioner's mental health has deteriorated to such an extent that the sentence awarded to him cannot be executed." Reportedly the judgment states that the prolonged delay "cannot be invoked [to claim commutation of death sentences] in cases where a person is convicted for an offence under TADA or similar statutes."

Allegedly, on 24 April 2013, the local authorities ordered Mr. Bhullar to undergo a psychiatric examination in determining whether he fits execution without indicating any date for its completion. The family of Mr. Bhullar has not received any confirmation of this from either the Government or the Supreme Court of India. It is alleged that Mr. Bhullar can be executed at any moment.

Furthermore according to information received:

Messrs. **Meesekar Madaiah** (aged 66), **Gnanprakasham** (aged 56), **Simon** (aged 46) and **Bilavendran** (aged 62) were sentenced to death by the Supreme Court of India in 2004 after an unsuccessful attempt by all four to appeal their life

sentences delivered in 2001 under Sections 3, 4, 5 of the TADA, and Sections 143, 148, 307, 302, 332, 333, 324, 120(B) and 149 of IPC, as well as Section 3 of the Explosive Substances Act and Section 25 of the Indian Arms Act by a first instance court in the State of Karnataka, India.

In 2004 all four filed petition for mercy with the President of India, which was rejected after nine years in February 2013. Due to alleged inordinate delay in consideration of the mercy petition, which reportedly caused them considerable mental suffering, all four filed an appeal to the Supreme Court of India seeking commutation of the death sentences. Currently all four are held in Hindalga Prison, Belgaum, Karnataka state, India. Allegedly, Messrs. Madaiah, Gnanprakasham, Simon and Bilavendran have been suffering from serious mental and psychological illness due to the prolonged stay on the death row in solitary confinement since 2004.

Reportedly, on 9 April 1993, a Senior Officer at the Palar Special Operation base of India Police Service assembled a forty one member team, consisting of police officers, forest officials and police informants, to launch a police operation against the Veerappan's militants, an extremist militant formation headed by Mr. Koose Muniswamy Veerappan. The same day, while the team was transported on two vehicles, one vehicle was caught in an explosion, killing 22 and injuring 13 people by a landmine set by the Veerappan's militants to halt the police operation.

Messrs. Madaiah, Gnanprakasham, Simon and Bilavendran were allegedly part of the Veerappan's militant formation and were detained in 1993. Reportedly, Mr. Veerappan was killed in cross fire by the Indian Special Task Force on 18 October 2004. According to the trial court decision rendered in 2001, it found all four guilty and sentenced to life term imprisonment based on the only eye witness account of the Senior Police Officer, who saw them at the incident site after he was heavily injured by the blast. Furthermore, his witness account led the Supreme Court of India to cancel the trial court judgement and render the death penalty to all four individuals in 2004.

Reportedly, the Supreme Court of India, on its own motion, imposed the death penalty, applying the 'standard' that "the question of enhancement of sentence to award death penalty can, however, be considered where the facts are such that to award any punishment less than the maximum would shock the conscience of the court."

Furthermore according to information received:

Messrs. **V. Sriharan alias Murugan** (aged 43), **T. Suthendraraja alias Santhan** (aged 43) and **A. G. Perarivalan alias Arivu** (aged 39) were arrested along with 23 other men and women in July 1991 in connection with the assassination of former Prime Minister of India, Rajiv Gandhi, who was killed by a suicide bomb explosion in the State of Tamil Nadu, India, in May 1991. All 26 were charged

with the conspiracy to murder Mr. Gandhi in May 1992 under Sections 3(3), 3(4) and 5 of TADA and Sections 120-B read with 302, 212 and 216 of IPC, Section 14 of the Foreigners Act, 1946, Section 25(1-B) of the Arms Act, Section 5 of the Explosive Substances Act, Section 12 of the Passport Act and Section 6(1-A) of the Wireless and Telegraphy Act, 1933. The first preliminary trial was held in May 1993. The trial itself took place in January 1994 in the Poonamallee jail in Madras, India, where a special court was designated to hold hearings under TADA.

On 28 January 1998, all 26 were found guilty and sentenced to death by a special court in the State of Tamil Nadu, India, which happened almost seven years after their arrest. Allegedly, the trial was held behind closed doors, in camera, and the non-disclosure of the identity of witnesses was maintained throughout the proceedings. Reportedly, since the trial was held under the TADA the confessions given during their detention to the Police Superintendent were taken as evidence against the defendants during trial. Allegedly, the defendants were convicted under TADA on the basis of evidence that would have been inadmissible as evidence and hence insufficient for conviction by an ordinary court under normal Indian law such as the Indian Penal Code. Reportedly, confessions by the defendants formed a major part of the evidence in the trial court judgment against them, which they later claimed were taken under duress.

On 11 May 1999, in its decision on appeal the Supreme Court of India held that the 26 convicts committed no offence under TADA. However, it confirmed that all of them were guilty in conspiring to murder Mr. Gandhi and sentenced four of them, including Messrs. Murugan, Santhan, Perarivalan and Ms. Nalini Sriharan, to death and the others to various jail terms. Later in 2000, Ms. Nalini Sriharan's death sentence was commuted to life imprisonment. Reportedly, while rendering its judgement the Supreme Court of India decided that though it acquitted all 26 persons of offences under TADA, the confessional statements duly recorded under TADA continue to remain admissible as to the other offences under any other law which were also tried along with TADA offences in that trial.

In August 2011, the President of India rejected the clemency pleas of Messrs. Murugan, Santhan and Perarivalan, which was submitted in June 1999. Their execution was scheduled for 9 September 2011. However, the Madras High Court intervened and stayed their execution for eight weeks based on their petition to the Supreme Court of India asking that their sentences be commuted on grounds of "inordinate delay". Reportedly their petition has not yet been decided by the Supreme Court. Currently all three are held in Vellore Prison, State of Tamil Nadu, India. Allegedly, Messrs. Murugan, Santhan and Perarivalan might have been suffering from serious mental and psychological illness due to the prolonged stay on the death row in solitary confinement since 1998.

We also received information regarding:

Mr. **Saibanna Ningappa Natikar** was sentenced to death in 2005 for the 1994 murder of his second wife and daughter under Section 302 of the IPC by the first instance court in Karnataka. At the time of the crime, he was released on parole from serving another conviction related to the murder of his first wife, for which he was sentenced to life imprisonment. The Supreme Court of India confirmed his death penalty on 21 April 2005. Reportedly, after Mr. Natikar's mercy petition was rejected by the President of India on 4 January 2013, he has filed a petition in the Karnataka High Court asking that his sentence be commuted on grounds of "inordinate delay".

Reportedly, fourteen former Indian judges petitioned the President of India, asking that Mr. Natikar's sentence be commuted because it was imposed in error. In their petition the former judges pointed out that the reasoning underlying the Supreme Court's confirmation of Mr. Natikar's death sentence in 2005 implied that capital punishment was mandatory for any prisoner convicted of a second offence that merited a life sentence, and violated a Supreme Court's decision from 1983. The Supreme Court of India had itself acknowledged the error in its reasoning on Mr. Natikar's case in 2009. Currently Mr. Natikar is held in Hindalga Prison, Belgaum, Karnataka state, India. Allegedly, Mr. Natikar has been suffering from serious mental and psychological illness due to the prolonged stay on the death row in solitary confinement since 2005.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and carried out against **Messrs. Devender Pal Singh Bhullar, Meesekar Madaiah, Gnanprakasham, Simon, Bilavendran, V. Sriharan alias Murugan, T. Suthendraraja alias Santhan, A. G. Perarivalan alias Arivu and Saibanna Ningappa Natikar** after proceedings which did not comply with international human rights law standards of fair trial and due process guarantees. Furthermore, we take note of the concerns brought to our attention that there are serious grounds indicating that the aforementioned individuals have been suffering from serious mental and psychological illness due to the prolonged stay on the death row in solitary confinement. We are also concerned that Messrs. Bhullar, Murugan, Santhan, Perarivalan and Ms. Nalini Sriharan were reportedly subjected to torture and other ill-treatment.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the aforementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we would like to stress that each Government has the obligation to protect the right to life, the physical and mental integrity of all persons. These rights are set forth inter alia in the UDHR, the United Nations Safeguards Guaranteeing Protection

of the Rights of those Facing Execution of 1984 (ECOSOC Resolution 1984/50) and the ICCPR, acceded to by your Excellency's Government on 10 April 1979.

In this context we would like to bring to the attention of your Excellency's Government that, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards, as provided in articles 6(2) and 14 of ICCPR. Furthermore, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Safeguard 4 further stipulates that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

With regard to allegations that Messrs. Bhullar, Murugan, Santhan, Perarivalan and Ms. Nalini Srihara were subjected to torture and other ill-treatment, we would like to draw the attention of your Excellency's Government to the case of *Uteeva v Uzbekistan* (Communication No 1150/2003, para. 7.4), in which the United Nations Human Rights Committee observed that "the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have been violated constitutes a violation of article 6 of the Covenant. In the [*Uteeva v Uzbekistan*] case, the alleged victim's death sentence was imposed on the victim in violation of article 7, and article 14, paragraph 3 (g), of the Covenant." Similar observations were made in the cases of *Khudayberganova v Uzbekistan* (Communication No 1140/2002 para. 8.4), *Levy v. Jamaica* (communication No 719/1996 para. 7.3) and *Marshall v. Jamaica* (Communication No 730/1996 para. 6.6). See also General Comment No 6 on article 6 ICCPR, para. 7.

Furthermore we would like to recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."

With regard to allegations that Messrs. Bhullar, Madaiah, Gnanprakasham, Simon, Bilavendran, Murugan, Santhan, Arivu and Natikar spent many years on death row in solitary confinement, we would like to draw the attention of your Excellency's Government to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may

amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights, (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

With regard to the conditions of incarceration of the aforementioned individuals on death row we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw attention of your Excellency’s Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Human Rights Committee has consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to allegations that Messrs. Bhullar, Madaiah, Gnanprakasham, Simon, Bilavendran, Murugan, Santhan, Arivu and Natikar might have been suffering of mental and psychological illness, we would like to draw the attention of your Excellency’s Government to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984. In particular, Safeguard 3 provides that the death penalty shall not be carried out on persons who have become insane. In addition, resolution 1989/64 of the Economic and Social Council of 24 May 1989 on the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, recommends in paragraph 1 (d) that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

With regard to allegations that that Mr. Natikar’s capital punishment was mandatory, we would like to draw attention of your Excellency's Government to the case of *Pagdayawon Rolando v. Philippines* (communication No. 1110/2002, para. 5.2), in which the United Nations Human Rights Committee reiterated that the imposition of the death penalty “constitutes an arbitrary deprivation of life...in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence”. Furthermore, the former United Nations Commission on Human Rights had “urge[d] all States that still maintain the death penalty...[t]o ensure...that the death penalty is not imposed... as a mandatory sentence” (Resolution 2005/59, para. 7(f)).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the aforementioned persons in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. Please provide detailed information on each stage of the judicial and post-conviction proceedings conducted against Messrs. Bhullar, Madaiah, Gnanprakasham, Simon, Bilavendran, Murugan, Santhan, Arivu and Natikar, and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined, inter alia, in article 14 of the ICCPR. Please also specify how full transparency was ensured at every stage of the proceedings.
3. Please provide details, including the legal basis of and reasons for, the detention of Messrs. Bhullar, Madaiah, Gnanprakasham, Simon, Bilavendran, Murugan, Santhan, Arivu and Natikar and how these measures are compatible with the aforementioned international human rights norms and standards.
4. Please provide details on the current legislation and practice of incarceration of all death row inmates, in particular regarding their alleged solitary confinement, as well as its conditions. Please explain how these are compatible with the international human rights norms and standards.
5. Please provide the details, and where available the results, of any medical and psychological examinations, or other inquiries carried out in relation to all aforementioned individuals. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. In the context of Safeguard 3, which provides that the death penalty shall not be carried out on persons who have become insane, please also explain in details whether current legislation in India requires mandatory and/or periodical medical and psychological examination of all individuals sentenced to death, in particular before their execution.
7. Please provide detailed information about application of TADA provisions during adjudication of the cases related to and imposition of death penalty on Messrs. Bhullar, Madaiah, Gnanprakasham, Simon, Bilavendran, Murugan, Santhan, Arivu, in particular, the provisions that allow use of confessions as evidence and please explain how it is compatible with the aforementioned international human rights standards.

8. Please provide the list with full names and necessary identity details of all individuals on the death row in India, and the legal basis of the death sentence imposed against them. Please indicate how this is compatible with international human rights law of fair trial and due process guarantees, as well as of prohibition of execution of those, who suffer mental and psychological illness.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment