

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention and allegations of acts of intimidation against residents of the villages located on Chhindwada, and in particular against **Mr. Sunilam Mishra** and **Ms. Aradhna Bhargava**. Mr. Mishra is the National Secretary of the Samajwadi Party, as well as the National Secretary of the Indian Solidarity Committee (INSOCO), an organization that among other objectives, seeks to preserve the enjoyment of human rights. He is also the founder and president of the Farmers Struggle Committee (Kishan Sangharsh Samiti). Ms. Bhargava is an advocate and president of the Women Struggle Committee (Sangharsh Samiti) in the Madhya Pradesh state.

According to the information received:

It is reported that the farmers of five villages, namely Chausura, Hiverkhedi, Dhanora, Tekathawadi and Dagabani Piparia, have been campaigning for the restitution of their lands, which allegedly will be used by the Adani Pench Power Limited project, in order to build a thermal power plant at Chausara, Chhindwada.

On 26 June 2011, Mr. Mishra was arrested by the police when he reached Chhindwara railway station. Mr. Mishra was on his way to meet tribal groups that were organizing manifestations to get back their lands for agriculture. He was reportedly being detained at the Chindi Rest House which is located at a distance of 65 km from Chindi. Mr. Mishra did not have access to his family, lawyer nor taken in front of a judge. But later on the day, Mr. Mishra was told that under section 107, 116(3), 151 of the Indian Penal Code, the cause of his arrest was raising slogans and provoking farmers for violence. He was then taken to the village of Chindi, and later on the evening was released on personal bond.

On the same day, the police charged farmers inside the village Bhula Mohgaon. Police allegedly beat up the protesters and also took away their cell phones. 18 villagers were allegedly arrested under section 147, 148, 427, 186, 353, 336 of the Indian Penal Code. The farmers were not given food or allowed access to their families. They were released on 2 July 2011. It is further reported that although bail was granted, jail authorities did not release the farmers.

Ms. Bhargava was also arrested under section 151 of the Indian Penal Code. She was reportedly released after three days.

On 22 May 2011, Mr. Mishra and Ms. Bhargava had been attacked by around 10 men, after a meeting with farmers in the village of Bhulamohgaun. As a result of this attack, both Mr. Mishra and Ms. Bhargava's suffered head injuries and their hands were fractured. The attack took place near Ner village, around 15km away from Chhindwada.

Ms. Bhargava immediately reported the incident to the police who assured her that they would arrive at the scene promptly; however they did not arrive at the scene until two-and-a-half hours after the initial phone call was made. It is further alleged that the police did not contact the central police station in order to send out a warrant for the arrest of the attackers. The police registered the case as a simple beating under the Indian Penal Code. Although Mr. Mishra and Ms. Bhargava reportedly recognized the criminals as workers of Adani Group, including one manager of the company, and Mr. Mishra named those who he believed were responsible for attack in his statement to the police, the police did not include this information in the summary of the case.

According to the information received, the Adani Group began construction work without obtaining clearance from the Ministry of Environment and Forest. The latter was allegedly confirmed by an authority of the Central State Ministry of Environment and Forest to Mr. Mishra in a meeting they had in New Delhi. The construction of the power plant has reportedly continued despite the protests held by farmers, condemning the continuation of such a project.

The Pench Vayapvardhan project, operated by M/s S.K. Jain, in which two dams, Manchagora Dam & Pench Dam were due to be constructed, was cancelled approximately three years ago, after the Kishan Sangharsh Samiti organization raised the issue of how this land acquisition would have affected 33 villages and massive demonstrations by the farmers were allegedly carried out. Consequently the contract was taken by the Adani Group.

Mr. Mishra has been active highlighting the illegalities involved in the process of land acquisition. In particular, he has pointed out that the Land Acquisition Act states that land can be acquired only for public interest, and therefore it cannot be applicable to Adani Pench Power Limited project, given its engagement in commercial activities, in particular the use of water for profit-making purpose.

Serious concern is expressed about the use of acts of intimidation and threats against the lives and livelihoods of the residents of the villages located on Chhindwada. Further concern is expressed for the physical and psychological integrity of Mr. Mishra and Ms. Bhargava and that their detention and acts of intimidation may be linked to their legitimate exercise of the right to peaceful assembly and protest, as well as freedom of expression advocating for the protection of land rights and livelihoods of the local residents.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Mishra and Ms. Bhargava, as well as the detention of some residents of the villages located on Chhindwada, 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).

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."

Furthermore, we wish 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 ICCPR 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.

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The 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.

In this connection, we would 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.

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; 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 attacks 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 de 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 Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mishra and Ms. Bhargava 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.

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 residents of the villages located on Chhindwada, as well as the rights of Mr. Mishra and Ms. Bhargava, 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 above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of against the residents of the villages located on Chhindwada, and by or on behalf of Mr. Mishra and Ms. Bhargava?
3. Please provide the details, and where available the results, of any investigation, medical examinations, 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.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been or will be provided to the victims.

6. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of Mr. Mishra and Ms. Bhargava is guaranteed.

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

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