

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; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL IND 16/2018

31 July 2018

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; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Mr. **Surendra Gadling**, Mr. **Rona Wilson**, Ms. **Shoma Sen**, Mr. **Sudhir Dhawale** and Mr. **Mahesh Raut**, and allegations concerning a smear campaign targeting Ms. **Sudha Bhardwaj**.

Mr. Surendra Gadling is a human rights lawyer who has represented human rights defenders arrested on trumped-up charges and holds the position of Secretary General of the Indian Association of People's Lawyers (IAPL).

Mr. Rona Wilson is the Public Relations Secretary of the Committee for the Release of Political Prisoners (CRPP), which has actively opposed restrictive laws, such as the Unlawful Activities Prevention Act (UAPA).

Ms. Shoma Sen is a women's rights defender, a member of the national network Women Against Sexual Violence and State Repression (WSS), and a professor at Nagpur University.

Mr. Sudhir Dhawale is a Dalit rights defender and is editor of the Marathi magazine 'Vidrohi'.

Mr. Mahesh Raut is a land rights defender, who is also involved in the People's Movement Against Displacement. All five human rights defenders have been particularly active in defending the rights of marginalised communities.

Ms. Sudha Bhardwaj is a human rights lawyer specialising on the rights of Adivasi people in the state of Chattisgarh and has been involved in several cases of alleged "fake encounters".

According to the information received:

In the early hours of 6 June 2018, police in India carried out a nationwide operation, which resulted in the arrests of Mr. Surendra Gadling, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Sudhir Dhawale and Mr. Mahesh Raut, all five human rights defenders.

Police simultaneously raided the homes of Mr. Surendra Gadling, Ms. Shoma Sen and Mr. Mahesh Raut in Nagpur, of Mr. Rona Wilson in Delhi, and of Mr. Sudhir Dhawale in Mumbai. All five were arrested under the UAPA, before being taken to Shivaji Nagar police station in the city of Pune in the state of Maharashtra, where they were placed in police custody. They were allowed access to their lawyers.

Their detention was extended from 14 June until 21 June. This was done on the basis that police claimed to have information that the five human rights defenders intended to assassinate Prime Minister Narendra Modi. On 21 June Ms. Shoma Sen, Mr. Mahesh Raut, Mr. Rona Wilson, and Mr. Sudhir Dhawale were placed in judicial custody in Yerwada jail. Mr. Surendra Gadling was placed in judicial custody four days later, on 25 June.

Mr. Mahesh Raut, Mr. Sudhir Dhawale, Mr. Surendra Gadling, and Mr. Rona Wilson are been kept in solitary confinement at night, in high-security egg-shaped blocks known as “Anda cells”, which are typically used for ‘high security’ prisoners. Due to Prof. Shoma Sen’s current health conditions, she has been kept in the hospital barracks since the beginning of her judicial custody.

Under the UAPA all five are charged with disseminating controversial pamphlets and with inciting violence through hate speeches on 31 December 2017 during Elgar Parishad. Elgar Parishad, the commemoration of a battle the Dalits won against the Peshwas, turned violent at Bhima Koregaon on 1 January 2018.

Since the arrests of the five human rights defenders, the media has portrayed them as having links to Maoist terror groups. It has been alleged that this is part of a wider effort to tarnish their characters and their work in defence of human rights.

On 4 July 2018, the news channel Republic TV stated that they had evidence of a link between Ms. Sudja Bharadwaj, “urban Maoists” and Kashmiri separatist groups. They claimed that she had sent a letter to a Maoist, identifying herself as “Comrade Advocate Sudha Bhardwaj” and stating that it was necessary to create a violent political climate in Kashmir. The source of the letter was not revealed. Ms. Bhardwaj believes that she was targeted for having condemned the arrest of her fellow human rights lawyer, Mr. Surendra Gadling, at a press conference on the 6 June.

The news broadcast targeting Ms. Bharadwaj came hours before the first court hearing of the five human rights defenders, on 4 July. The judicial custody of Mr. Surendra Gadling, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Sudhir Dhawale

and Mr. Mahesh Raut was extended. Their next hearing is scheduled for 2 August 2018.

We express serious concern at the arrest and detention of Mr. Surendra Gadling, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Sudhir Dhawale and Mr. Mahesh Raut, which appear to be directly connected to their peaceful and legitimate defence of human rights. Concern is also expressed about the smear campaign that is attempting to associate the five human rights defenders with banned Maoist groups to delegitimise them. We are also concerned at the smear campaign against Ms. Sudha Bhardwaj, in what seems to be an attempt to stifle her freedom of speech.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, the facts alleged, if proved correct, appear to be in contravention, among other norms, with articles 7, 9, 10, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by India on the 10 April 1979. They guarantee that no one shall be subjected to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to be treated with humanity and respect for the inherent dignity of the human person, the right to freedom of expression and the right to freedom of association.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and detention of Mr. Surendra Gadling, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Sudhir Dhawale and Mr. Mahesh Raut, and explain how they are in conformity with international human rights law, especially with regards to articles 9 and 14 of the ICCPR. In particular, please provide information about the evidence used substantiate the charges of incitement to violence and the charge of attempting to assassinate the Prime Minister.
3. Please explain the reasoning behind the subjection of Mr. Mahesh Raut, Mr. Sudhir Dhawale, and Mr. Rona Wilson to solitary confinement, and how this is compatible with international human rights norms and standards.
4. Kindly indicate what measures have been taken to ensure that human rights defenders in India are able to carry out their legitimate work in an enabling environment without fear of judicial harassment of any kind.

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(s) 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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with articles 7, 9, 10, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by India on the 10 April 1979, guaranteeing that no one shall be subjected to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to be treated with humanity and respect for the inherent dignity of the human person, the right to freedom of expression and the right to freedom of association.

We would also like to draw your attention to articles 3, 5, 9, 10, 11, 19 and 20 of the Universal Declaration on Human Rights (UDHR), which guarantees the right to liberty and security of person, to not be subjected to torture or to cruel, inhuman or degrading punishment, to not be subjected to arbitrary arrest or detention, to be presumed innocent until proven guilty in a public trial, to have the right to challenge the legality of detention, to freedom of opinion and expression and to freedom of association.

We also wish to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with principles 1, 3, 6, 8, 11, 36 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which state that all persons under any form of detention shall be treated in a humane manner, that there shall be no derogation from any of the human rights of persons under any form of detention, that no person shall be subjected to cruel, inhuman or degrading treatment or punishment, that persons in detention should be kept separate from imprisoned persons, that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority, that a detained person shall be presumed innocent and shall be treated as such until proven guilty, and that a person detained on a criminal charge shall be brought before a judicial authority promptly after his arrest.

Moreover, with regards to the solitary confinement, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Moreover, due to the prisoner's lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

Furthermore, we would like to bring to the attention of your Excellency's Government to principle 6 of the Basic Principles on the Role of Lawyers which provide that Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties. In addition, principle 23 establishes that lawyers are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the

promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

We recall that Resolution 24/5 of the Human Rights 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.

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, 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 9(3)(c), which provides for the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
- Article 12(2 & 3), which provides that the State shall take all necessary measures to ensure the protection of everyone 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.