

Mandates 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 situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL IND 21/2018

28 September 2018

Excellency,

We have the honour to address you in our capacities as 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 situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5, 34/6, 34/35, 31/3 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrests and arbitrary detentions of five human rights defenders, particularly active in defending the rights of the Dalit minority: Ms. Sudha Bharadwaj, Mr. Gautam Navlakha, Mr. Vernon Gonsalves, Mr. Arun Ferreira, Mr. Varavara Rao.

We recall that two communications related to the situation of human rights defenders promoting and protecting the rights of the Dalit community have been sent by Special Procedures mandate holders to the Government of Your Excellency in the last year: communication IND 12/2017 sent on 10 November 2017 and communication IND 16/2018 sent on 31 July 2018. We also recall that communication IND 8/2018, which was sent on 23 May 2018, highlighted a pattern of discrimination and violence against Dalit women and girls across India, as well as the authorities' failure to respond. We regret that no response has been received to any of these communications.

In light of the allegations highlighted in the recent and present letters, we remain concerned about ongoing human rights violations and abuses that those defending and promoting human rights, particularly the rights of those in the Dalit community, allegedly face. We are concerned that in a three-month period at least ten Dalit rights defenders have been arrested in two nation-wide police operations in relation to the Bhima-Koregaon commemoration.

Ms. Sudha Bharadwaj is a human rights defender, the vice-president of the People's Union for Civil Liberties (PUCL), and a visiting professor at the National

University in Delhi. She has been particularly active in defending the rights of the Dalits and indigenous groups. She was the subject of one previous communication, dated 31 July 2018, case no. IND 16/2018.

Mr. Gautam Navlakha is a human rights defender and journalist, who has long been active in the People's Union for Democratic Rights (PUDR).

Mr. Vernon Gonsalves is a human rights defender who had been a vocal opponent of the Unlawful Activities Prevention Act (UAPA), which he argued creates a presumption of guilt for terrorism offences based on evidence allegedly seized. He has written extensively on Dalit and *adivasi* rights.

Mr. Arun Ferreira is a human rights lawyer, who had also been a vocal opponent of the UAPA. He had been the legal defence for the Dalit rights defenders, Mr. **Surendra Gadling**, Ms. **Shoma Sen**, Mr. **Sudhir Dhawale**, Mr. **Rona Wilson**, and Mr. **Mahesh Raut** who were arrested on 6 June 2018 and who were also the subject of the aforesaid communication (IND 16/2018).

Mr. Varavara Rao is a human rights defender, as well as a well-known poet and journalist.

According to the information received:

On 28 August 2018, Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao were arrested during a wave of simultaneous raids across India in relation to their alleged participation in the 200th anniversary of the commemoration of the Bhima-Koregaon battle on 1 and 2 January 2018. Bhima-Koregaon is an important cultural symbol of empowerment for the Dalit. This was the second wave of arrests of human rights defenders in relation to the Bhima-Koregaon commemoration; on 6 June 2018, five human rights defenders were arrested and detained in connection with the Bhima-Koregaon, which was the subject of communication IND 16/2018 sent to your Excellency's Government on 31 July 2018. Of the ten human rights defenders who have so far been arrested and are being detained in relation to the Bhima-Koregaon commemoration, allegedly only one of them, Mr. Sudhir Dhawale, was present at the event.

Ms. Sudha Bharadwaj

At 5.30 a.m. on 28 August 2018, the police arrived at Ms. Bharadwaj's home in the state of Haryana. Maharashtra police officials raided her house, seized all of her electronic devices, and arrested her.

On the same day, her legal counsel filed a transit bail application before a local magistrate, who dismissed the application. Her lawyers then filed a petition in the Punjab and Haryana High Court, which ordered that she could not be taken to

Pune until the magistrate issued a decision on her transit remand. She remains under house arrest.

Mr. Gautam Navlakha

In the afternoon of 28 August 2018, police arrived at Mr. Navlakha's home in Delhi. The house was raided and he was arrested. Mr. Navlakha's transfer to Pune was initially approved by the Metropolitan Magistrate, Saket Court Delhi, but a *habeas corpus* petition was subsequently filed. He remains under house arrest.

Mr. Vernon Gonsalves

Before dawn on 28 August 2018, about ten police officers and constables arrived at Mr. Gonsalves home. They searched the house, seized electronics and unplugged the landline phone. Many books from the house were taken into evidence. The police remained in the house for almost seven hours and Mr. Gonsalves' family was not allowed to leave the house during that time. Mr. Gonsalves was arrested and taken to the city of Pune.

Mr. Arun Ferreira

At 6.00 a.m. on 28 August 2018, around fifteen plainclothes police officers arrived at Mr. Ferreira's house in Mumbai. Electronic devices were seized and details about the family's bank account were taken. He was arrested and taken to the city of Pune.

Mr. Varavara Rao

In the afternoon of 28 August 2018, police officers arrived at Mr. Rao's house in Hyderabad. The house was raided and many of his belongings were seized. It is understood that several of his family members' houses were also searched, and books and electronics were also seized from them. Mr. Rao was arrested and taken to Pune.

After their arrests, all five human rights defenders were charged with "promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony", "statements conducting public mischief", "abetting commission of offence by the public or by more than ten persons", "concealing design to commit offence punishable with imprisonment, if offence to be committed – if offence not to be committed" under Sections 153a, 505, 117, and 120 of the Indian Penal Code (IPC). They have also been charged with unlawful activities, terrorist acts, raising funds for terrorist acts, conspiracy, recruitment for terrorist acts, being a member of a terrorist organisation, offences relating to membership of a terrorist organisation, and offences relating to raising funds for a terrorist organisation under sections 13, 16, 17, 18, 18B, 20, 38, 39, and 40 of the Unlawful Activities

Prevention Act. Moreover, the arrest documents were written in the Marathi language, which is not spoken or understood by Ms. Bharadwaj, Mr. Navlakha, and Mr. Rao.

After being taken to Pune, Mr. Gonsalves, Mr. Ferreria and Mr. Rao were brought before the District and Sessions Court, where the prosecutor sought police custody for all three for a 14-day period.

Simultaneously, the Supreme Court heard a petition filed by a group of citizens challenging the arrests of Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao. The court ordered that the five human rights defenders be kept under house arrest until 6 September 2018. This required that Mr. Gonsalves, Mr. Rao, and Mr. Ferreria be transferred from Pune back to their homes on Thursday 30 August 2018. All five now remain under house arrest.

It is reported that the residences of other human rights defenders, who are also active in defending human rights, democracy, and the rights of Dalits, were also raided on 28 August 2018, although they were not arrested.

We would also like to bring to your attention additional information received with regard to the five human rights defenders that were arrested and detained on 6 June 2018 and who were the subject of communication 16/2018, sent by Special Procedures on 31 July 2018. Mr. Surendra Gadling, Ms. Shoma Sen, Mr. Sudhir Dhawale, Mr. Rona Wilson, and Mr. Mahesh Raut remain in Yerwada Prison in Pune, and were also charged with having incited the violence that broke out at the Bhima-Koregaon commemoration under the UAPA. This is in spite of the fact that the First Information Report, filed by Pune city police on 8 January 2018, names only one of the human rights defenders, Mr. Dhawale. None of the other human rights defenders were present at the Bhima-Koregaon commemoration.

Furthermore, two of the imprisoned human rights defenders, Ms. Sen and Mr. Gadling, are suffering from poor health. Ms. Sen has not been permitted access to her prescribed arthritis medication, while Mr. Gadling, who suffers from hypertension and a heart condition, has been denied his medicine since he was transferred from Sassoon Hospital to Yerwada Prison on 11 June 2018.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our grave concern over the arrests and detentions of Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao. We also wish to repeat our concerns for the ongoing detentions of Mr. Gadling, Ms. Sen, Mr. Dhawale, Mr. Wilson, and Mr. Raut. We are concerned that Bhima-Koregaon is being used as a pretext to silence human rights work in the protection and promotion of the rights of the Dalit community.

We are equally concerned at the house raids, the arrests, the detention, and the charges against Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira and Mr. Rao,

and of the detention and charges against Mr. Gadling, Ms. Sen, Mr. Dhawale, Mr. Wilson, and Mr. Raut, which appear to be directly related to their work in defence of human rights, including minority rights and the rights of the Dalit community, in particular.

The arrest and detention of Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao, as well as the ongoing detentions of Mr. Gadling, Ms. Sen, Mr. Dhawale, Mr. Wilson and Mr. Raut, appear to showcase an alarming pattern with regard to the use by the authorities of provisions of the Penal Code and of the Unlawful Activities Prevention Act to suppress dissent and to curtail human rights work, in particular with regard to the defence and promotion of the rights and freedoms of minorities and scheduled castes. We are particularly concerned at this use of counter-terrorism legislation to conflate human rights activities with terrorist activities. The UAPA's vague definition of "unlawful activities" and "membership" of terrorist organisations confers discretionary powers upon state agencies and weakens judicial oversight, thereby diminishing civil liberties in the process.

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.

As 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 comment(s) you may have on the above-mentioned allegations.
2. Please indicate the factual and legal basis for the arrest and detention of Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, Mr. Rao, Mr. Gadling, Ms. Sen, Mr. Dhawale, Mr. Wilson and Mr. Raut in relation to India's international human rights obligations, inter alia, under articles 9 and 14 of the ICCPR;
3. Please indicate the legal basis for the decisions to prolong the detention of Mr. Surendra Gadling, Ms. Shoma Sen, Mr. Sudhir Dhawale, Mr. Rona Wilson and Mr. Mahesh Raut and the evidence that substantiates these decisions;
4. Kindly provide information about Ms. Sen and Mr. Gadling's access to adequate medical assistance and adequate medication with the view to effectively treating their reported health conditions;
5. Please provide information on the specific charges against Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, Mr. Rao, Mr. Gadling, Ms. Sen, Mr. Dhawale, Mr. Wilson and Mr. Raut, and explain how their

consistency with India's obligations under articles 19, 21 and 22 of the ICCPR;

6. Please provide information on why the arrest documents were presented to Ms. Bharadwaj, Mr. Navlakha and Mr. Rao in the Marathi language, which they do not speak or understand;
7. Please provide information on why charges related to terrorist acts, raising funds for terrorist acts, conspiracy, recruitment for terrorist acts, being a member of a terrorist organisation, offences relating to membership of a terrorist organisation, and offences relating to raising funds for a terrorist organisation have been levied against these named human rights defenders and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004);
8. Please provide information on the measures undertaken to ensure that minority human rights defenders, and in particular human rights defenders working for the protection and promotion of the rights of persons belonging to scheduled castes and tribes in India, are able to carry out their legitimate work in a safe and enabling environment, without the fear of prosecution, intimidation, harassment and violence, in full respect of their civil and political rights.

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 above-mentioned persons in compliance with international instruments.

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 of 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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary

Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure. Please accept, Excellency, the assurances of our highest consideration.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
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E. Tendayi Achiume
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Fionnuala Ní Aoláin
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Ivana Radačić
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex
Reference to international human rights law

The above-mentioned allegations, if proven to be accurate, would amount to a violation of the right to liberty and security, the respect of due process and the right of presumption of innocence, freedom of opinion and expression, freedom of association and assembly, equality before the law without discrimination on any grounds, and the right of persons belonging ethnic, religious or linguistic minorities, to enjoy, in community with the other members of their group, their own culture, to profess and practice their own religion, or to use their own language, as enshrined in articles 9, 14, 19, 21, 22, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), acceded by India on 10 April 1979. We would like to draw particular attention to article 14(a) of the ICCPR, which states that in the determination of a criminal charge, everyone should be informed in a language that they understand.

Moreover, we wish to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India on 10 April 1979, which asserts that States recognize the rights of everyone – including prisoners – to the enjoyment of the highest attainable standard of physical and mental health.

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

In addition, we are drawing your Excellency's Government's attention to the fundamental principles set forth in the United Nations Declaration on Human Rights Defenders; in particular articles 1, 2 and 6, which state that everyone has the right to

promote and to strive for the protection and realization of human rights, that each State has a prime responsibility and duty to protect, promote and implement all human rights, and that everyone has the right to obtain and hold information about all human rights, to freely publish, impart or disseminate to other information on all human rights. We would also like to draw your attention General Assembly resolution 68/181 whereby States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights.

We would like to refer to the Convention on the Elimination of all Forms of Discrimination against Women, ratified by your Excellency's Government on 9 July 1993, which provides for the right of women to participate in non-governmental organizations and associations without discrimination.

Furthermore, we would like to draw the attention of your Excellency's Government to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. In its article 1.1, the Declaration requires that States protect the existence and the national or ethnic, cultural or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

We also wish to refer to India's obligations under the Convention on the Elimination of All forms of Racial Discrimination (ICERD), ratified on 3 December 1968. We recall particularly that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. Article 5 prohibits discrimination on the basis of race, colour, descent, nationality or ethnic origin and guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, especially with regard to (a) the right to equal treatment before the tribunals and all other organs administering justice; (d) (viii) (ix) also guarantees the rights to freedom of opinion and expression and freedom of peaceful assembly and association without distinction based on ethnicity. Furthermore, we would like to bring to the attention of your Excellency, the General Recommendation No. 29 from the Committee on the Elimination of Racial Discrimination which condemns discrimination

based on caste and analogous systems of inherited status and States should take appropriate measures to secure equal access to the justice system for all members of descent-based communities (section 5 (u)).

Finally, 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, 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 also refer you to article 5 and 6, which provide for the right to participate in non-governmental associations, to have information about human rights and fundamental freedoms and to impart this knowledge.