

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 rights to freedom of peaceful assembly and of association; 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 discrimination against women and girls

REFERENCE:
AL IND 17/2019

28 August 2019

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 rights to freedom of peaceful assembly and of association; 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 discrimination against women and girls, pursuant to Human Rights Council resolutions 33/30, 34/18, 41/12, 34/5, 34/6, 34/35, 40/16 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued judicial proceedings against and arbitrary detention of ten human rights defenders promoting the rights of the Dalit minority, and the house arrests of five of them.

Mr. Surendra Gadling is a human rights lawyer and Secretary General of the Indian Association of People's Lawyers (IAPL).

Mr. Rona Wilson is a founding member and the Public Relations Secretary of the Committee for the Release of Political Prisoners (CRPP), which defends the right to freedom from arbitrary detention and campaigns against laws deemed to impinge upon human rights in India, such as the Unlawful Activities Prevention Act (UAPA) a legislative enactment aimed to regulate national security.

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

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

Mr. Mahesh Raut is a land rights defender, who has been involved in the People's Movement Against Displacement.

All five of the above human rights defenders are active in defending the rights of marginalised communities in India.

Ms. **Sudha Bhardwaj** 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 is active in defending the rights of the Dalits and indigenous groups.

Mr. **Gautam Navlakha** is a human rights defender and journalist, who has long been active in the People's Union for Democratic Rights (PUDR), a non-governmental organisation legally promoting and protecting human rights in India.

Mr. **Vernon Gonsalves** is a human rights defender who has been a vocal opponent of the UAPA. He has written extensively on Dalit and Adivasi rights.

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

Mr. **Arun Ferreira** is a human rights lawyer, who has also been a vocal opponent of the UAPA. He has acted as legal defence for Mr. Surendra Gadling, Ms. Shoma Sen, Mr. Sudhir Dhawale, Mr. Rona Wilson, and Mr. Mahesh Raut

We would like to recall two joint communications sent by Special Procedures mandate holders to your Excellency's Government concerning the arrests and detention of the ten above mentioned human rights defenders: AL IND 16/2018 sent on 31 July 2018; and AL IND 21/2018 sent on 28 September 2018. We regret that no response has been received from Your Excellency's Government to either of these communications, and remain deeply concerned about ongoing human rights violations faced by those defending and promoting human rights, particularly the human rights of the Dalit minority.

According to the information received:

Concerning Mr. Gadling, Mr. Wilson, Ms. Sen, Mr. Dhawale and Mr. Raut

On 6 June 2018, Mr. Gadling, Mr. Wilson, Ms. Sen, Mr. Dhawale and Mr. Raut were arrested in relation to their alleged involvement in the violence that broke out during the 200th anniversary of the commemoration of the Bhima-Koregaon battle on 1 and 2 January 2018. Their laptops, as well as letters and other documents were seized as evidence. As detailed in the abovementioned communication AL IND 16/2018, the human rights defenders were then remanded in police custody on charges brought under the UAPA. All five have remained in detention since this time. They are currently being held in Yerwada Central Jail.

On 24 October 2018, the Bombay High Court rejected a police request for an extension of the period of investigation into the charges against Mr. Gadling, Mr. Wilson, Ms. Sen, Mr. Dhawale and Mr. Raut.

On 13 February 2019, this judgment was overruled by the Supreme Court, which further held that the human rights defenders would not hold a default entitlement to bail, despite the fact that ordinarily, persons are entitled to bail if the police fail to file a charge sheet in their case within the stipulated period.

In March 2019, the arguments of the defence concluded in bail proceedings launched by the five human rights defenders. In May 2019, the prosecution concluded its arguments in the proceedings. However, as the judge presiding the case was transferred prior to the issuing of a judgment, proceedings had to begin again, and both sides were obliged to re-present their arguments. In addition, various adjournments in the case were caused by the unavailability of police personnel to escort Mr. Gadling to court, reportedly on account of elections and festivals.

Whilst detained, Mr. Gadling has on several occasions requested permission to study human rights law and cyber law. These requests have been rejected by prison authorities, to avoid him “learning to manipulate the jail’s computer system with cyber law”. Further, Mr. Gadling and Mr. Raut have attempted to enroll in a human rights diploma course at the Indira Gandhi National Open University. This request was also rejected by prison authorities who argued that the State would need to verify whether the course contained “seditious material”.

Mr. Gadling filed applications in January, March and May under section 207 of the Code of Criminal Procedure to provide the complete charge sheet and electronic evidence to all the accused. On 17 May 2019, the Court has ordered the Forensic Science Laboratory (FSL) to make copies of the hard disks of all the seized electronic devices in the presence of the accused. The FSL now has to make 230 copies of hard disks. However, it reportedly takes over six hours for just one copy to be made. The judge decided that he would hear the bail applications only after all the copies were made and given to the accused. Thus, although hearings took place on 27 June, 6 July and 18 July 2019, the bail applications could not be reviewed. During the two months following the passing of the Court order, only four copies of a single hard disk were reportedly made. The process is thus expected to take several months.

Whilst detained, Ms. Sen, who suffers from acute arthritis, has been forced to sit and sleep on a thin mattress on the floor of her cell, aggravating her medical conditions.

Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao

On 28 August 2018, Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira, and Mr. Rao were arrested during simultaneous raids carried out across India. All five defenders were placed under administrative house arrest. The arrests were made in relation to their alleged participation in the abovementioned commemoration of the Bhima-Koregaon battle. They were subsequently charged under various provisions of the Indian Penal Code and UAPA. Information received relating to their arrests was raised with your Excellency's Government in communication IND 21/2018, previously referred to.

Mr. Gonsalves and Mr. Ferreira were kept under house arrest until 27 October 2018, when they were taken into custody by the Pune police. They have been detained in Yerwada jail since then.

Ms. Bharadwaj was kept under house arrest until 28 October 2018, when she was taken into custody by the Pune police. She has been detained in Yerwada jail since then. She was granted temporary bail from 17 August 2019 to 20 August 2019 to attend her father's funeral.

Mr. Rao was kept under house arrest until 7 November 2018, when he was taken into custody by the Pune police and transferred to Yerwada jail.

On 29 August 2018, the Supreme Court granted an interim protection from arrest to Mr. Navlakha, which was extended until 26 October 2018 by an order passed on 28 September 2018. On 1 October 2018, the Delhi High Court observed that the detention of Mr. Navlakha in the absence of remand order was untenable under law, and released him from house arrest. On 5 October 2018, Mr. Navlakha filed a petition requesting the Bombay High Court to quash the case against him. On 12 June 2019, the Bombay High Court, after perusing evidence submitted against Mr. Navlakha, including letters recovered from his laptop allegedly written to him by senior Maoist leaders, observed that there was "nothing against him in any of the letters." During a hearing on 24 July 2019, the Pune police told the Court that Mr. Navlakha had links with the Hizbul Mujahideen armed group, and asked the court to revoke the protection from arrest. However, on 26 July 2019, the Bombay High Court extended interim protection from arrest for Mr. Navlakha until the pronouncement of its final order on his plea.

On 1 February 2019, Mr. Rao was taken to a court in Surjagarh for a hearing of a different case, concerning arson. He was kept in police custody until 11 February 2019, and was later sent back to Yerwada Prison. In an open letter to the Chief Justice of India, which was endorsed by more than 600 academics and human rights defenders, Mr. Rao's relatives emphasized that he has been implicated in over 25 cases in the last four decades. Even though he was never convicted of a crime, he has spent more than 7 years in pretrial detention. The letter also highlights that Mr. Rao is 79 years old and suffers from health issues related to his age and previous incarceration.

On 21 February 2019, the police filed an 1800-page charge sheet against the five human rights defenders.

Mr. Rao's bail plea under section 439 of the Criminal Procedure Code (CrPC) is due to be heard along with that of Mr. Wilson, Mr. Raut, Ms. Bharadwaj, Ms. Sen, Mr. Dhawale and Mr. Gadling, after copies of all seized electronic evidence have been prepared and provided to the accused. The bail plea filed under section 167(2) of CrPC for all the accused is due to be heard together. The bail applications of Mr. Ferreira, Ms. Bharadwaj and Mr. Gonsalves are pending before the Bombay High Court.

Mr. Rao has recently been charged in a third case, in connection with an alleged attack by Maoist groups in 2005, in which eight members of Central Reserve Police Force were killed. On 3 July 2019, Mr. Rao was taken into custody by police from the state of Karnataka. He is alleged to be the "main conspirator" in the attacks, and has been charged under Sections 302, 307 of the Indian Penal Code, the Unlawful Activities Prevention Act and the Explosives Act. On 6 July 2019, after two days of interrogations, Mr. Rao was sent back to Yerwada jail.

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, house arrests and charges against Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira and Mr. Rao, as well as the arrests, detention and charges against Mr. Gadling, Mr. Wilson, Ms. Sen, Mr. Dhawale 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. Furthermore, there is significant cause for concern that due process and fair trial guarantees may have not been followed in some or all of the above-mentioned cases and that the detention conditions may have significantly aggravated the health conditions of some of the arrestees, and in particular of Mr. Rao and Ms. Sen. The use of security and counter-terrorism legislative provisions to legally regulate the activities of human rights defenders is of particular concerns to the Special Rapporteurs.

We reiterate our concern that the alleged participation of the human rights defenders in the 200th anniversary of the commemoration of the Bhima-Koregaon battle is being used as a pretext to silence human rights work in the protection and promotion of the rights of the Dalit minority. Our concerns are heightened in light of the authorities' use of the Unlawful Activities Prevention Act to silence human rights defenders who protect and promote the rights of the Dalit minority in India. This use of counter-terrorism legislation to conflate human rights activities with terrorist activities showcases an alarming pattern and is inconsistent with the international law addressing the regulation of terrorism and extremism.

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 Mr. Gadling, Mr. Wilson, Ms. Sen, Mr. Dhawale and Mr. Raut, as well as the arrest and house arrest of Ms. Bharadwaj, Mr. Navlakha, Mr. Gonsalves, Mr. Ferreira and Mr. Rao, in relation to India's international human rights obligations, inter alia, under articles 9 and 14 of the ICCPR.
3. Kindly provide information about Ms. Sen and Mr. Rao's access to adequate medical assistance and adequate medication with the view to effectively treating their reported health conditions, including any specific services and support provided to Ms. Sen as a woman detainee in compliance with the international standards.
4. 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 their consistency with India's obligations under articles 19, 21 and 22 of the ICCPR.
5. 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).
6. Please provide information on the measures undertaken to ensure that women 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.

We would appreciate receiving a response within 60 days. After this time period elapses, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 urgent 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.

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.

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

Leigh Toomey
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

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

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Meskerem Techane
Chair-Rapporteur of the Working Group on discrimination against women and girls

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 to 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.

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.

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.

We would 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. (OP5, 19 and 20) and would also like to refer to the Human Rights Council resolution 31/28.

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, the Special Rapporteur would also like to bring to the attention of the Government her 2018 report A/HRC40/52 entitled “Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders”, and in particular would like to reiterate her observation at paragraph 36 “national counter-terrorism legislation increasingly includes provisions that restrict rights that are key to civil society: freedom of expression and opinion, freedom of association, freedom of assembly and freedom of religion”. She would also like to bring to the attention of the Government paragraphs 75 (a) to (i) of the same report.

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 wish to recall the 2016 thematic report by the Special Rapporteur on minority issues to the Human Rights Council, which focuses on “Minorities and discrimination based on caste and analogous systems of inherited status” (A/HRC/31/56). The report highlights civil society’s instrumental role in advancing the cause of caste-affected communities through advocacy at both the national and international levels, and through networking and implementation of specific programmes and campaigns to combat caste and caste-like discrimination (paragraphs 120-122).

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 by your Government Excellency’s 1968. We recall 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. ICERD makes clear that Article 5 equality-without-distinction guarantees extend to the enjoyment of all human rights, including (a)

the right to equal treatment before the tribunals and all other organs administering justice (Art. 5(a)); rights to freedom of opinion and expression (Art. 5(viii)), and rights to freedom of peaceful assembly and association (Art. 5(ix)). Furthermore, we would like to bring to the attention of your Excellency, 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. The Committee urges States to recognize and address the scourge of descent-based discrimination and to empower communities affected by such discrimination. The Committee recommends States take appropriate measures to secure equal access to the justice system for all members of descent-based communities (section 5 (u)).