

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL IND 10/2020

11 June 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18, 41/12, 34/6, 34/35, 40/10, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning judicial proceedings against and detention of eleven human rights defenders linked to their participation in protests against the Citizenship (Amendment) Act (CAA).

Mr. **Meeran Haider** is a human rights defender and student of Jamia Milia Islamia (JMI) University in Delhi. Mr. Haider is a member of the Jamia Coordination Committee (JCC) which organized anti-CAA protests in December 2019.

Ms. **Gulfisha Fatima** is a woman human rights defender and recent graduate of Delhi University. Ms. Fatima was actively involved in the women-led protest in Seelampur in North East Delhi against the CAA, where she worked to raise awareness among local women about the CAA and is a strong voice for secular constitutional principles and women's rights.

Ms. **Safoora Zargar** is a woman human rights defender and student of JMI University. Ms Zargar is a member of the media team for the Jamia Coordination Committee (JCC) which organized anti-CAA protests in December 2019. Ms. Zargar is currently in the second trimester of pregnancy.

Mr. **Shifa Ur Rehman** is a human rights defender and President of the Alumni Association of JMI University. Mr. Ur Rehman is a member of the JCC and has been a vocal critic of the CAA through his speeches.

Mr. **Asif Iqbal Tanha** is a student at JMI who actively participated in the protests against the CAA at his university.

Ms. **Devangana Kalita** is a woman human rights defender and MPhil student at the Centre for Women's Studies at Jawaharlal Nehru University (JNU) in Delhi. She is a co-founder of "Pinjra Tod" ("Break the Cage"), a women's rights collective founded in 2015.

Ms. **Natasha Narwal** is a woman human rights defender and PhD student at JNU's Centre for Historical Studies, and a co-founder of "Pinjra Tod" ("Break the Cage"), a women's rights collective founded in 2015.

Mr. **Khalid Saifi** is a human rights defender and social activist associated with the NGO United against Hate.

Dr. **Kafeel Khan** is a medical doctor who came to be known as a whistle-blower in the case of medical negligence which led to the death of 60 children in the BRD hospital in Gorakhpur, Uttar Pradesh in 2017. Dr. Khan made a speech which was critical of the CAA at the Aligarh Muslim University (AMU) in Uttar Pradesh State

Mr. **Sharjeel Imam** is a human rights defender and student of JNU University who made a number of speeches which were critical of the CAA during the protests.

Mr. **Akhil Gogoi** is a human rights defender and president of Krishak Mukti Sangram Samity (KMSS), an organization working with indigenous communities in Assam to protect and promote their land rights, and has been vocal against corruption in the public sphere.

Our concerns over the seemingly discriminatory nature of the Citizenship (Amendment) Act (CAA) have already been shared with your Excellency's Government through a previous joint communication dated 13 February 2019 (case no. OL IND 2/2019). We regret that no reply has yet been received to this communication.

We would also like to recall the communication AL IND 3/2020 sent by Special Procedures mandate holders to your Excellency's Government on 28 February 2020 concerning allegations of excessive use of force, arrests and arbitrary detention of protesters, in the context of demonstrations against the CAA which began in December 2019. We also recall OL IND 7/2020 sent on 6 May 2020 which raised concerns in regard to the compatibility of the Unlawful Activities (Prevention) Act (Amendment 2019) with international human rights standards, including the use of counter-terrorism legislation as a way to conflate human rights and civil society activities with terrorist activities.

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 minorities.

According to the information received:

Concerning Mr. Haider, Ms. Fatima, Ms. Zargar, Mr. Ur Rehman, Mr. Tanha, Ms. Kalita and Ms. Narwal

Since the beginning of April 2020, a number of those who organized or participated actively in peaceful protests against the CAA in Delhi, many of them students at Delhi universities, have been arrested by authorities, accused of having been involved in instigating the communal violence that took place in Delhi from 23-25 February 2020 and which resulted in more than 50 deaths. National security and counter-terrorism laws such as the Unlawful Activities (Prevention) Act (UAPA) have reportedly been used opportunistically by authorities against the accused, in order to deny bail, despite the order of the Supreme Court of India [W.P (C) No. 01/2020] regarding decongestion of jails in view of the COVID-19 pandemic, and despite one of the accused being pregnant.

Mr. Haider, Ms. Fatima, Ms. Zargar, Mr. Ur Rehman and Mr. Tanha are currently being held in pre-trial detention under the same police investigation, based on First Information Report (FIR) 59/2020. FIR 59/2020 was filed by a Delhi police officer from Delhi Police Crime Branch on 6 March 2020, based on "secret information" from an unnamed police informant. It set out that the communal violence that took place in Delhi from 23-25 February 2020 was the result of a conspiracy timed to coincide with the visit of the US President, and in order to show the condition of minorities in India in a poor light in the international arena. FIR 59/2020 was amended on 21 April 2020 to include offences covered by the UAPA law, which is non-bailable and allows for prolonged pre-trial detention.

On 1 April 2020, **Mr. Haider** was arrested by the Delhi Police Special Cell after being called in for questioning about the anti-CAA protests that had taken place in Delhi. As a member of the Jamia Coordination Committee (JCC), Mr. Haider was actively involved in the organization of anti-CAA protests at JMI in December 2019. Mr. Haider was arrested under First Information Report (FIR) 59/2020. At the time of his arrest, this FIR did not name Mr. Haider and only made reference to charges under Sections 147, 148, and 149 (read with 120B) of the Indian Penal Code (IPC), which are bailable offences punishable with less than seven years of imprisonment and do not require remand, as per the Indian Supreme Court's guidelines. On 2 April 2020, Mr. Haider was remanded in police custody for four days by the Metropolitan Magistrate, which was subsequently extended by nine more days. On 15 April 2020, having spent almost 14 days in police custody, Mr. Haider was transferred to Delhi's Tihar Jail, where he remains detained. He has been charged with sedition as well as UAPA offences under FIR 59/2020.

On 8 April 2020 **Ms. Fatima** was served with a notice from the Special Cell, Crime Branch. In the evening of 9 April 2020 she was picked up from Tughlakabad by officers from the Delhi Police Special Cell (Lodhi Colony) without a warrant. She was subsequently taken to the Special Cell Police Station, and later arrested at Jaffrabad police station under FIR 48/2020. Her arrest was allegedly contrary to jurisprudence established in the case of *Nandini Satpathy v. Dani [PL] and Others [10978 SCR (3) 608]*. In this ruling, Section 160 of the Code of Criminal Procedure was reiterated to expressly mean that a woman cannot be forced to visit the police station for the purpose of investigation. It suggests punitive action against the erring police official who forces a woman to appear in the police station for investigation. On 10 April 2020, the Metropolitan Magistrate at the Mandoli Jail Complex remanded Ms. Gulfisha Fatima in police custody for two days. She was reportedly not provided with any legal representation for the remand hearings. On 12 April 2020, Ms. Fatima was taken to Mandoli Jail, and arrested under the above-mentioned FIR No. 59/2020. She was again remanded in police custody for four more days pursuant to FIR No. 59/2020 by the Metropolitan Magistrate. On April 16, 2020, Ms. Fatima was remanded in judicial custody and has remained detained in Delhi's Tihar Jail since then.

On 10 April 2020, **Ms. Zargar** was arrested by Delhi police, accused of inciting violence that took place in Delhi on 23-26 February 2020, alleged involvement in terrorist activities, and delivering speeches in peaceful protests against the Citizenship Amendment Act (CAA). Ms. Zargar is in the second trimester of pregnancy and suffers from a related health condition, which is likely to worsen in prison. As a member of the media team for the Jamia Coordination Committee (JCC), Ms. Zargar was actively involved in the organization of anti-CAA protests at JMI in December 2019. Her initial arrest – itself the subject of several alleged irregularities, notably in regard to the above-mentioned jurisprudence on the questioning and detention of women suspects - was under FIR 48/2020, for which she was granted bail by Karkadooma District Court on 13 April 2020. The bail order cites her pregnancy, healthcare needs, and the directives issued by the Indian Supreme Court on decongestion of prisons during the COVID-19 pandemic, as motives for its decision. Despite being granted bail, she was never released and was immediately re-arrested by the Special Crime Branch of the Delhi Police under FIR 59/2020. According to the information received, the FIRs under which she has been held do not name her as an accused, nor are there any specific charges against Ms. Zargar apart from the allegation of delivering inflammatory speeches. Ms. Zargar has been held since 15 April 2020 in Tihar Jail, Delhi, where she has allegedly been kept in conditions which equate to solitary confinement, been denied regular contact with her family and legal representative, and has not received adequate medical care or diet in relation to her pregnancy. Ms. Zargar has reportedly been the subject of a vicious social media campaign, including fake pornographic content.

On 26 April 2020, police arrested **Mr. Ur Rehman** under FIR 59/2020. Mr. Ur Rehman, as a member of the Jamia Coordination Committee (JCC), has been a vocal critic of the CAA, and stands accused of provoking or inciting the communal violence that took place in Delhi in February 2020 through his speeches. Mr. Ur Rehman was taken for questioning at Special Cell Police Station in Delhi, where he was reportedly arrested after having been denied permission to contact his lawyer and forced to sign blank papers. His personal belongings, mobile phone, laptop, bank and other documents were allegedly seized without following proper procedures. AAJMI's office was also raided and literature, anti-CAA posters, membership fee receipts, and scholarship programme receipts were seized. On 27 April 2020, Mr. Ur Rehman was remanded in police custody for ten days by the Metropolitan Magistrate. He was subsequently put under judicial custody at Delhi's Tihar Jail, where he remains detained.

On 16 May 2020, **Mr. Tanha**, was taken for interrogation by Delhi Police Special Cell. On 17 May 2020, he was arrested by the Police Crime Branch, Chanakyapuri, under FIR 298/2019 for alleged acts of violence that took place on 15 December 2019, near JMI University of which he is a student. On the same day, denying the police custody, the Duty Magistrate in Saket Court remanded him in judicial custody for 14 days. On 19 May 2020 he was also arrested under FIR No. 59/2020 and on 20 May 2020 he was remanded in police custody for seven days at the Police Crime Branch, Vasant Vihar, Delhi. On 27 May 2020 he was remanded in judicial custody at Delhi's Tihar Jail for 30 days. On 28 May 2020, Mr. Tanha was granted bail in connection with FIR No.298/2019, but remains detained under FIR No. 59/2020.

Ms. Devangana Kalita and Ms. Natasha Narwal

On 23 May 2020, the Special Crimes Cell of the Delhi Police arrested **Ms. Kalita** and **Ms. Narwal**, under FIR 48/2020. They had been actively mobilising peaceful protest against the CAA since its enactment in December 2019. Their arrest was based on their participation in the Jaffrabad sit-in protest in North-East Delhi against the CAA in February 2020. The initial FIR contains charges under sections 186, 341 and 353 of the Indian Penal Code (IPC): obstructing a public servant in discharge of public functions, wrongful restraint, and assault or criminal force to deter a public servant from discharge of his duty. On 24 May 2020, Ms. Kalita and Ms. Narwal were brought before the Duty Metropolitan Magistrate and granted bail after a special hearing at the Mandoli Jail. The judge noted that the defenders were merely exercising their right to freedom of expression by protesting and did not engage in any form of violence. The judge also took COVID-19 into consideration when declining the police's request to remand them.

Despite being granted bail, the women human rights defenders were never released. On 26 May 2020, the Delhi Special Crime Cell filed a further FIR 50/2020 against them and proposed they be remanded for 14 days. The new FIR

contains serious offences including sections 302, 307 and 120B of the IPC: murder, attempt to murder and criminal conspiracy; offences under the Arms Act and offences under the Prevention of Destruction of Public Property Act. The decision by the Delhi police to file the FIR 50/2020 with serious charges, despite already failing to prove the lesser charges under the initial FIR 48/20, reportedly appears to indicate an opportunistic use of legislation and procedure in order to ensure their continued detention. The hearing was held on 28 May due to COVID-19 inside the jail premises, which hindered their access to legal counsel and representation. They were remanded in judicial custody until 11 June 2020 in Tihar prison.

Concerning Mr. Saifi, Mr. Imam, Dr. Khan and Mr. Gogoi

On 26 February 2020 **Mr. Saifi** was arrested under FIR No. 44/2020 in relation to alleged acts of violence at a sit-in protest site in Khureji Khas, Delhi, as police attempted to disperse the protest. Mr Saifi is reported to have been arrested despite having acted in a composed manner to call for peaceful resolution of the situation. Video footage of his arrest on 26 February appears to show an unarmed, composed Mr Saifi walking calmly towards police officers and trying to reason with them, then being promptly arrested. Mr. Saifi was allegedly tortured by police in the hours following his arrest on 26 February, resulting in fractures to the lower legs. Subsequent video footage appears to show Mr Saifi being produced in court on 10 March 2020 in a wheelchair with the lower part of both legs in plaster cast, having at no point been released from police custody. On 21 March 2020, Mr. Saifi's request for bail was denied. On the same day he was arrested under FIR 59/2020. Mr. Saifi suffers from diabetes. He remains detained at Delhi's Tihar Jail.

On 29 January 2020 **Dr. Khan** was arrested at Mumbai airport by the Special Task Force (STF) of the Uttar Pradesh police and Mumbai police, for a speech critical of the CAA at the Aligarh Muslim University (AMU) in Uttar Pradesh state during the 'Open Talk' organised on the campus on 12 December 2019. Dr. Khan was granted bail on 10 February 2020. However, before being released, Dr, Khan was re-arrested on 14 February 2020 under the National Security Act (NSA), which allows the detention of an individual determined by an administrative tribunal for up to 12 months without charges. He remains detained in Mathura Jail, Uttar Pradesh State.

On 28 January 2020 **Mr. Imam** was arrested in Delhi and charged with sedition in relation to an anti-CAA speech he made at JMI University on 13 December 2019. He also faces charges for a speech he gave at the AMU university against the CAA on 16 January 2020, in which he was allegedly heard calling for the state of Assam to be cut off from India by means of a traffic blockade, as a way to get the Government's attention on the issues raised by the nationwide CAA protests. According to information received, he did not call for violence in either speech. The latter speech reportedly led to registration of cases against Mr. Imam in at

least five states including Assam, Arunachal Pradesh and Uttar Pradesh. The Assam police are reported to have filed an FIR under anti-terror law for 'hate speech'. He remains in pre-trial detention.

Mr. **Akhil Gogoi** was arrested on 12 December 2019 following a speech he delivered during a peaceful protest against the CAA in Jorhat, Assam state. The case against Mr. Gogoi was filed by the National Investigation Agency (NIA). He was charged under Section 120B (criminal conspiracy), 124A (sedition), 153 A (hate speech) and 153 B (imputations and assertions prejudicial to national integration) of the Indian Penal Code (IPC), and under sections 18 and 39 of the UAPA Act, that relate to conspiracy and support given to a terrorist organization. His remand to judicial custody has been extended several times since his arrest. On 26 December 2019, his house was raided by officials of the NIA, who seized several documents.

On 17 March 2020, a special NIA court granted default bail to Mr. Gogoi, after the NIA had failed to file a charge-sheet within 90 days of his arrest. The NIA had sought an extension of another 90 days to file a charge-sheet, but the petition was rejected by the special NIA court. Following the rejection of the petition, the NIA appealed to the Guwahati High Court, challenging the special NIA court's decision. While the High Court admitted the case, it did not pass a stay order on the default bail granted to Mr. Gogoi until 7 April 2020. Therefore, despite being granted bail on 17 March 2020, Mr. Gogoi was never released from custody. On 19 March 2020, two days after the default bail was granted, Mr. Gogoi was re-arrested after a case was lodged by police under Section 153A of the IPC, a non-bailable section. It is alleged that no prior information was given before the new arrest and that old cases are being brought up to ensure Mr. Gogoi remains in detention.

Mr Gogoi, 43 years of age, suffers from serious kidney problems and his health is reported to have significantly deteriorated while in detention, in the alleged absence of proper medical care and treatment. According to the information received, on 29 February 2020, Mr. Gogoi was taken from Guwahati Central Jail in Assam, to the Gauhati Medical College, where he was kept under observation for one day only, before being sent back to Guwahati Central Jail, despite having complained about stomach pain due to a urinary tract infection. It is alleged that no medical tests were conducted while he was under observation, reportedly due to the absence of clearance from the National Investigation Agency (NIA). On 6 March 2020, Mr. Gogoi was brought back to the Gauhati Medical College, where several tests were finally conducted. Mr. Gogoi is currently detained in Dibrugarh jail.

Due to the Covid-19 outbreak, remand extension hearings are reported to have frequently been held in prison complexes, with public health restrictions having resulted in severe access difficulties for lawyers to attend.

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, detention and charges against human right defenders who were actively involved in the protests against the Citizenship Amendment Act 2019 (CAA), passed by the Indian Parliament on 11 December 2019. We are concerned that the charges brought against Meeran Haider Gulfisha Fatima Safoora Zargar, Asif Iqbal Tanha, Devangana Kalita, Natasha Narwal, Khalid Saifi, Shifa Ur Rehman, Dr. Kafeel Khan, Sharjeel Imam, and Akhil Gogoi – which could result in lengthy prison sentences, up to life imprisonment – appear to constitute an attempt to silence dissent against the CAA, in particular from minority Muslim voices. These arrests appear to be part of a wider pattern of arrests targeting those leading and organizing the anti-CAA protests.

We are deeply concerned by the widespread use of national security and counter-terrorism legislation against human rights defenders, in seeming breach of international norms and good practice. Detailed concerns in regard to the use of the UAPA counter-terrorism law against human rights defenders were raised by Special Rapporteurs in joint communication OL IND 7/2020 sent on 6 May 2020. The repeated use of counter-terrorism legislation to conflate human rights advocacy with “terrorist” activities is a deeply alarming trend and inconsistent with international standards addressing the regulation of terrorism and extremism. The non-violent criticism of State policies should not be made a criminal offence or prosecuted through counter-terrorism legislation in any society governed by rule of law and abiding by international human rights principles.¹ Furthermore, we are deeply concerned that counter-terrorism laws such as the UAPA and other national security laws also appear to have been used specifically to deny bail, despite the judgment of the Supreme Court of India [W.P (C) No. 01/2020] regarding decongestion of jails in view of the COVID-19 pandemic, and calls by various international bodies in this regard. We are extremely alarmed by the detention of pregnant woman human rights defender Safoora Zargar, even more so in view of the reported spread of the COVID-19 virus in Indian prisons.

Serious concern is expressed at the allegations of torture in the case of Mr. Saifi, and allegations that due process and fair trial guarantees may have not been observed in some or all of the above-mentioned cases. Further concern is expressed that COVID-19 lockdown restrictions have impinged on detainees’ access to legal counsel and representation,. We are additionally concerned that the conditions of detention may have significantly aggravated the health status of some of those detained, and in particular of Ms. Zargar and Mr. Gogoi.

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.

¹ See Special Rapporteur on the promotion and protection of human rights while countering terrorism’s Report A/HRC/40/52

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 the above-named human rights defenders, in relation to India's international human rights obligations, under *inter alia* articles 9, 14, 19 and 21 of the ICCPR.
3. Please explain why Ms. Zargar, Ms. Kalita, Ms. Narwal, Dr. Khan and Mr. Gogoi were not released on bail, despite the corresponding court decisions to that effect. Please also explain the timing of and factual basis for their respective re-arrest under different investigations, following the granting of the aforementioned bail orders.
4. Please provide detailed information about when and how the above-named human rights defenders had access to legal assistance, when they were first taken before a judge and if they were granted the opportunity to effectively challenge the legality of their detentions.
5. Please provide detailed information on any investigations which have been undertaken with regards to the alleged acts of torture perpetrated against Mr. Saifi in police custody. Please also explain what steps have been taken in order to bring the perpetrators to justice. If no investigation has taken place, please explain the reasons for this, and how this is consistent with India's international human rights obligations.
6. Kindly provide information about Ms Zargar's and Mr Gogoi'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. Zargar as a pregnant woman detainee in compliance with international standards, notably the 'United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders' adopted by the United Nations General Assembly on 22 December 2010 ('the Bangkok rules').
7. Please provide information on why charges related to terrorist acts, or being a member of a terrorist organization, have been levied against these named human rights defenders and indicate how this complies with United Nations Security Council Resolution 1373 (2001), 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 human rights defenders, and in particular human rights defenders working for the protection and promotion of the rights of racial, ethnic, and religious minorities in India, are able to carry out their legitimate work in a safe and enabling environment, without 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 a communication 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. This letter in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We may 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.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Fernand de Varennes
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E. Tendayi Achiume
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and related intolerance

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

The above-mentioned allegations, if proven to be accurate, would amount to a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security the person, the respect of due process and the right of presumption of innocence, freedom of opinion and expression, freedom of peaceful assembly, as enshrined in articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979.

In this regard, we would like to recall to your Excellency's Government that, under article 9 of the Covenant, any arrest or detention shall only be carried out through such grounds and procedures established by law. Persons subjected to deprivation of liberty must be immediately informed about the reasons for the arrest and promptly notified of any criminal charges, as well as allowed to challenge the legality of the detention before a court, without delay. Moreover, detention pending trial cannot be the rule, but rather the exception, and for the shortest period of time. Under article 10, those detained must be treated humanely, respecting the inherent dignity of the person, which includes special consideration for the situation of pregnant women and those subjected to interrogations.

Article 14.1 of the Covenant enshrines the right to equality before courts and the entitlement to a fair and public hearing by a competent, independent and impartial tribunal. In addition, article 14.2 establishes the fundamental principle of the presumption of innocence. Article 14.3 contains the guarantees of due process, which include information about the criminal charges, equality of arms, legal assistance, being tried without undue delay and the right not to be forced to confess guilt or to testify against oneself.

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 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 (...) hindrance (...).

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 the following articles:

- Articles 1 and 2, 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.
- 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.

With respect to the use of counter-terrorism justifications to restrict the legitimate exercise of freedom of expression, we urge your Excellency's Government to ensure that its national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004), the multiple Suppression Treaties on Terrorism, and the model definition of terrorism advanced by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.²

² See General Assembly resolutions 49/60 and 51/210, which have been continuously recalled by the Assembly in its resolutions on measures to eliminate international terrorism, most recently in its resolution 72/123. See also (a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; (b) the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); (c) the International Convention on the Taking of Hostages (Hostages Convention) of 1979; (d) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and (e) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973.

In this regard 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). 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 or as an excuse to suppress peaceful minority groups and their members. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence.

We would also like to refer to Human Rights Council resolution 22/6, which calls on States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10). In addition, we would also like to bring to the attention of the Government report A/HRC/40/52 issued in 2018, 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 the Special Rapporteur’s observation at paragraph 36 that “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”. We would also like to bring to the attention of the Government paragraphs 75 (a) to (i) of the same report.

We also 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.

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 by India on 3 December 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)).