

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues**

REFERENCE:  
AL IND 18/2020

3 November 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 42/22, 43/16 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **arbitrary detention of human rights defender Stan Swamy**.

Sr Stan Swamy is an 83 year old jesuit priest and human rights defender from Jamshedpur Province, Jharkhand State. He is the founder of Bagaicha, a social research and training centre in Ranchi, Jharkhand. He has been involved in social activism since the 1970s, working to protect the rights of Adivasi minority indigenous peoples and the Dalit minority, in particular from violation through forced displacement and illegal land acquisitions.

The following information received concerns the events that took place at Bhima-Koregan on 1 and 2 January 2018. Previous communications were sent to your Excellency's Government by multiple Special Procedures mandate holders concerning the arrest of human rights defenders in connection with the events at Bhima-Koregan on 31 July 2018 (case no IND 16/2018) and on 28 September 2018 (case no 21/2018). We regret that, as of the finalising of this communication, no response has been received to either of the above-mentioned cases.

According to the information received:

On 26 July 2018, a First Information Report FIR (No. 214 of 2018) was filed against a group of prominent Adivasi rights activists, including Mr Swamy, by an inspector from the Jharkhand police. The FIR accused Mr Swamy and the others targeted under it of incitement to violence and anti-national propaganda on social media, allegedly in relation to Facebook posts the human rights defender had made. It was registered under Indian Penal Code sections 121 (waging or attempting to wage war against the government), 121A (conspiracy to wage war) and 124A (assaulting the President or a State Governor with intent to compel or restrain) and the section 66F of the Information Technology Act, 2000 (punishment for cyberterrorism). No charge sheet was filled subsequent to the registration of the FIR, which was appealed by Mr Swamy and others included in it to the Ranchi High Court.

On 28 August 2018, Mr Swamy's room in the Bagaicha research and training centre building was raided by members of the Pune Police. During this raid,

Mr Swamy's laptop, mobile phone, as well as documents and files belonging to him were seized by the police.

The raid was carried out on the basis of the human rights defender's inclusion in a FIR filed in connection with the events which took place at Bhima-Koregaon in January 2018. The FIR (No. 0004 of 2018), was registered at Vishram Bagh Police Station in Pune under Indian Penal Code sections 34 (criminal acts done by several persons in furtherance of a common intention), 117 (abetting the commission of an offence by the public or more than 10 persons), 135 (abetting desertion of a soldier, sailor or airman) and 505(1)(b) (statements with intent to cause fear or alarm in the public whereby a person may be induced to commit an offence against the State).

On 12 June 2019, Mr Swamy's room in the Bagaicha building was again raided by members of the Pune Police, who on this occasion seized the human rights defender's hard disk and mobile phone, and ordered him to hand over the passwords to his email and social media accounts. A valid search warrant was not presented.

On 19 June 2019, a warrant for the arrest of Mr Swamy was issued by the Chief Judicial Magistrate of Khunti on the basis of FIR No. 214 of 2018, which had remain inactive until then.

In January 2020, investigations in the Bhima-Koregaon case were transferred from the control of the Maharashtra police to the National Investigation Agency (NIA).

Between 25 July 2020 and 6 August 2020, Mr Swamy was interrogated on five separate occasions by investigators from the NIA at the Bagaicha building. Across these sessions, he was posed questions as to the activities and members of Bagaicha, and his relation with other human rights defenders and social activists. He was also posed questions as to the incidents that occurred at Bhima-Koregaon.

Mr Swamy was also questioned as to the Persecuted Prisoners Solidarity Committee, a group formed by Mr Swamy and others to advocate for the rights of Adivasi and Dalit youth held in pre-trial detention. In 2017, Mr Swamy had lodged a public interest litigation (PIL) petition at the Jharkhand High Court seeking bail for under-trial persons in detention in the state, and the acceleration of the judicial processes they are facing.

On 8 October 2020, Mr Swamy was taken into custody by NIA officers at the Bahaicha building and informed that senior officers from the NIA office in Ranchi wished to meet with him. He was then taken to the NIA office.

On 9 October 2020, Mr. Swamy was transferred by flight from the NIA office in Ranchi to Mumbai. According to information received, there was no transit warrant issued for this transfer. Once landed in Mumbai, Mr. Swamy was taken directly to the NIA Special Court in Mumbai, where the NIA filed a 10,000 page charge sheet.

From the Court, Mr. Swamy was taken to Taloja jail, where he remains in judicial custody. He was admitted to a section allocated to new arrivals, for the purposes of quarantining. Mr. Swamy has been unable to sleep since being admitted to the jail, as there is no adequate bedding in his cell, forcing him to lie on the floor. Mr. Swamy has also incurred difficulties with regard to his personal sanitation, due to inadequate supports to account for his suffering from Parkinson's.

On 17 October 2020, Mr. Swamy's lawyers received a copy of the 10,000 page charge sheet.

Without wishing to prejudge the accuracy of the information received, we would like to express serious concern as to the arrest of Mr Swamy, which would appear to mark the escalation of harassment the human rights defender has been subjected to since 2018. We would like to also express our serious concern about the alleged content of the questioning Mr Swamy was subjected to by NIA officers, as it appears to have been made in response to, and with the intention of delegitimising, his peaceful human rights work.

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 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 provide information as to the factual and legal basis for the arrest of Mr Swamy on 8 October 2020, and information as to how his arrest, subsequent transfer to Mumbai and detention was compatible with India's international human rights obligations.
3. 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 minorities or 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, including in the context of the Covid-19 pandemic.

We would appreciate receiving a response within 60 days. Passed this delay, 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 having transmitted an allegation letter 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 communications in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter 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.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes  
Special Rapporteur on minority issues

## **Annex**

### **Reference to international human rights law**

In relation to the above-mentioned allegations, we would like to refer your Excellency's Government to articles 9, 14, 19 and 27 of the International Covenant on Civil and Political Rights, ratified by India in 1979, which refer to the right to liberty and security of person, including freedom from arbitrary arrest and detention, the right to a fair trial, the right to freedom of opinion and expression and the rights of minorities.

We would also like to refer 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, which state that everyone has the right to promote and to strive for the protection and realization of human rights and that each State has a prime responsibility and duty to protect, promote and implement all human rights. We would further like to refer to articles 6(b), which states that everyone has the right, individually or in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; 6(c), which states that everyone has the right, individually or in association with others, to study, discuss, form and hold opinions on the observance in law and in practice of all human rights and fundamental freedoms and to draw public attention to these matters; and 9(3)(a), which states that everyone has the right individually and in association with others, inter alia, to complain about the policies and actions of individual officials or governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means.

We would like to bring to your Excellency's Government's attention the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).