

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 the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
AL IND 5/2021

8 April 2021

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 the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12, 40/16, 41/17 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 arrest and alleged detention on terrorism charges of Adivasi human rights defender Ms. **Hidme Markam**.

Ms. Hidme Markam, from the Dantewada District of Chhattisgarh state, is an Adivasi human rights defender. She is convener of the Jail Bandi Rihai Committee, a group advocating for the release of Adivasis held in alleged arbitrary pre-trial detention, and campaigns against the harmful environmental impact of large-scale mining projects in Chhattisgarh. She is also known for her work drawing attention to violations of women's rights, including physical and sexual violence against Adivasi women, allegedly committed by police and military personnel in Chhattisgarh State.

Concerns as to the misuse of the counter-terrorism legislation to criminalize human rights defenders and conflate their legitimate peaceful work with terrorism, in particular through the use of the Unlawful Activities Prevention Act, 1967, have repeatedly been raised with your Excellency's Government by Special Procedures mandate holders in the past, and in particular through OL IND 7/2020 of 6 May 2020 addressing the compatibility of this legislation with the international and human rights law obligations of your Excellency's government. We regret that your Excellency's Government has not provided a response to this communication.

According to the information received:

To mark international women's day on 8 March 2021, an event was planned by the Jail Bandi Rihai Committee and other groups at Sameli village in the Dantewada District of Chhattisgarh State. The event was to take place close to the site of a recently installed memorial to two young Adivasi women who had died after allegedly been subjected to sexual assault while in police custody. The event was to involve songs, theatre and dance, and a large turnout was

expected, with local officials notified of the event in advance.

On the morning of 8 March 2021, an all-female unit of the Dantewada Police arrived at the above-mentioned memorial site and proceeded to arrest three of those present, while assaulting others who were painting the memorial. Early on the same date, roads and paths leading to the site of the event were blocked by members of the Dantewada Police from Kirandul and Aranpur Stations, along with members of specialist police units, stopping hundreds of Adivasi women from reaching the location. In response, Ms. Markam along with other women human rights defenders involved in the event, went to several of the police checkpoints to request the attendees be allowed through, following which a large number of women were able to reach the site and participate in the event, with many staying at the site through to the following day.

On 9 March 2021, approximately 50-60 police officers, including members of specialist units, arrived at the site of the event, where around 300 persons were still gathered. They proceed to violently disperse the gathering and arrested Ms. Markam, who was among the group, with others present being forcefully restrained by the police when they tried to intervene. No warrant for the arrest was shown however another woman human rights defender present was reportedly told that Ms. Markam was being arrested for alleged past violence by Maoist groups. Ms. Markam was subsequently detained incommunicado for 3 hours before her whereabouts became known. As of the finalising of this communication, she is being held at Jagadalapur Prison.

Ms. Markam has been detained in connection to four First Information Reports dating from 2016 (FIR Nos. 7/2016, 9/2016, 3/2020 and 4/2020), registered at the Aranpur Police Station, Chhattisgarh State, despite these FIRs not being made out against her name. She faces multiple charges under the Indian Penal Code, including for rioting (secs. 147 and 148), unlawful assembly (sec. 149), murder (sec. 302) and attempted murder (sec. 307). She also faces charges of membership and support of a terrorist organisation under sections 13, 23, 38(2) and 39(2) of the Unlawful Activities Prevention Act, 1967, and further charges under sections 3, 4 and 5 of the Explosive Substances Act, 1908. While police claim Ms. Markam has been absconding in the face of these charges, she has been publicly active in the defence of human rights in Chhattisgarh State for some years, engaging directly with State officials and police, including the Chief Minister, Governor and Police Superintendent of Chhattisgarh.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concern as to the alleged arbitrary detention of Ms. Markam, which we fear to have been carried out in response to her legitimate and peaceful human rights work in Chhattisgarh State, and in particular her work to highlight instances of sexual violence against women by State security forces. We express further concern as to the serious charges brought against the woman human rights defender, including terrorism charges under the Unlawful Activities Prevention Act, which has been repeatedly used to target human rights defenders and hinder their work.

As information documented by various Special Procedures mandate holders over a substantial period of time has shown, women human rights defenders to be

routinely targeted on the basis not only of their legitimate human rights work, but also on account of their gender. Moreover, women from indigenous and minority groups to face additional discrimination on the basis of their belonging to these groups, we wish to express further concern that the above-alleged actions may be linked to the status of Ms. Markam as an Adivasi women. Moreover, Special Procedures mandate holders have also highlighted the routine misuse of counter-terrorism and security measures against human rights defenders legitimately exercising rights protected by international human rights treaties to which your Excellency's government is a party to (A/HRC/40/52).

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 me 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 legal and factual grounds for the arrest and detention of Ms. Markam on 9 March 2021, including precise information as to the charges against her and the current status of her case. Please also provide information about her access to lawyer and ability to contact the family.
3. Please provide details on why charges of membership and support of a terrorist organisation were levied against the mentioned human rights defender and indicate how this complies with United Nations Security Resolution 1373, and indicate how this complies with the obligation to pursue counter-terrorism obligations consistent with international law as set out *inter alia* in United Nations Security Resolution 1373, FATF Recommendation 8 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) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.
4. Please provide information as to the legal grounds for any restrictions that may have been placed on the above-mentioned event planned for 8 March 2021, and how the ordering of any such restrictions complied with India's obligations under article 21 of the International Covenant on Civil and Political Rights.
5. Please indicate what steps have been taken and measures put in place by your Excellency's Government to ensure that all Adivasi women human rights defenders can carry out their peaceful work free from fear of threat, violence, harassment or retaliation of any sort. If no specific measures in this regard have been put in place, please indicate a means

by which we may engage with your Excellency's Government on the development of such measures.

6. Please provide information on how the definition of terrorism in India's relevant counter-terrorism legislation is narrowly construed so as to guarantee that measures taken pursuant to it do not unduly interfere with human rights while complying with the principle of legality. Please also explain how your Excellency's Government's anti-terrorism legal framework ensures that the accused's right to fundamental safeguards of a fair trial, under article 14 of the ICCPR, are respected.

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.

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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Irene Khan
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

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

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In relation to the above-mentioned allegations and concerns, we would like to refer your Excellency's Government to articles 3, 9, 10, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979, which guarantee, respectively, equality in rights enumerated in the Covenant irrespective of gender; the right to liberty and security of person, including freedom from arbitrary arrest and detention; the right of all persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person; the right to freedom of opinion and expression and the right of peaceful assembly.

We would like to draw your Excellency's particular attention to article 9 of the ICCPR which states that "everyone has the right to liberty and security. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

We would furthermore like to recall the prohibition of incommunicado detention as a priori violating article 9 (4) of the ICCPR. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention. We also recall that Human Rights Committee's General Comment no. 35 affirms that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21) and freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17).

We further recall that in its 2019 annual report, the Working Group on Arbitrary Detention, which states that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. This right applies from the moment of deprivation of liberty and across all settings of detention, including criminal justice. It must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities. All persons deprived of their liberty must be made aware of their right to legal assistance from the moment of detention and should have access to legal aid services if they cannot afford such assistance themselves. The right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of the Universal Declaration of Human Rights.

Concerning article 21 of the ICCPR, we would like to remind your Excellency's Government of the recent General Comment No. 37 of the Human Rights Committee, concerning the scope of the right to freedom of peaceful assembly guaranteed in the ICCPR. Therein, the Committee underlined that the recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination, and stressed that there is a presumption in favour of considering assemblies peaceful. The Committee also noted that prohibiting, restricting, blocking, dispersing or disrupting peaceful assemblies

without compelling justification may be a violation of the negative duty imposed upon States through the obligation to respect and ensure peaceful assemblies.

In particular, we would like to underscore that the ICCPR requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. It is long established that this right includes political discourse, commentary on one's own and on public affairs, discussion of human rights, cultural and artistic expression, among others. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20 (CCPR/C/GC/34, paragraph 11). In his report on artistic freedom (A/HRC/44/49/Add.2), the mandate of the Special Rapporteur on freedom of opinion and expression recommended that States "Refrain from restricting expression in the form of art, and only imposing narrow limitations pursuant to standards of legality, necessity and legitimacy and according to an order by an independent and impartial judicial authority, in accordance with due process and appellate review" (para. 49 (c)).

Moreover, we would like to refer to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. As enumerated in article 3 of the Declaration, these rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law. Article 4 (c & d) of the same instrument notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

The Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), updated by general recommendation No. 35 (2017), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women, ratified by your Excellency's Government on 9 July 1993, whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". General recommendation No. 35 updates this perspective of reparations for women victims of gender-based violence to include different measures, such as monetary compensation, the provision

of legal, social and health services, and satisfaction and guarantees of non-repetition (para. 33).

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. Today's rising fundamentalisms of all kinds and political populism, as well as unchecked authoritarian rule further fuel discrimination against women, intensifying the obstacles facing women human rights defenders. In addition to the risks of threats, attacks and violence faced by all human rights defenders, women human rights defenders are exposed to specific risks, such as misogynistic attacks, gender-based violence (including sexual violence), lack of protection and access to justice as well as lack of resources.¹

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

We also wish to refer to India's obligations under the Convention on the Elimination of All forms of Racial Discrimination, ratified by your Government Excellency's on 3 December 1968. We recall that article 1(1) of the Convention defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." We further note that article 2 (1) of the Convention obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups.

In addition, we respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001),

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20938&LangID=E>

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.

With respect to the use to counter terrorism 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 would like to refer to Human Rights Council resolution 22/6, which urges 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. We would also like to bring to remind your Excellency's Government's that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(b)).

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 5(a), 9 and 12(2), which hold that all persons, individually or in association with others, have the right to meet or assemble peacefully for the purpose of promoting and protecting human rights and fundamental freedoms; that everybody has the right to benefit from an effective remedy in the case of the violation of their rights and fundamental freedoms; and that everyone has the right, individually or in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

Finally, we would like to recall General Assembly resolution 68/181, adopted on 18 December 2013, as well as Human Rights Council resolution 31/32, whereby States expressed particular concern about the systematic and structural discrimination and violence faced by women human rights defenders, and called for which called for

appropriate, robust and practical steps to be taken for their protection. 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. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves. (OP5, 19 and 20)