

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on minority issues

REFERENCE:
AL IND 10/2021

11 June 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/16, 42/16 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 inhumane prison conditions and deteriorating health of 15 human rights defenders, including Ms. Sudha Bharadwaj, Mr. Stan Swamy Mr. Hany Babu, Mr. Surendra Gadling, Mr. Mahesh Raut, Mr. Sudhir Dhawale, Mr. Vernon Gonsalves, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Arun Ferreira, Mr. Anand Teltumbde, Mr. Gautam Navalakha, Mr. Ramesh Ghaichor, Mr. Sagar Gorkhe, and Ms. Jyoti Jagtap. The case of human rights defender Mr. Varavara Rao, who was granted medical bail, is also included.**

Ms. Sudha Bhardwaj is a human rights defender and lawyer, who represents the rights of indigenous groups, including the Adivasi people in the state of Chhattisgarh, and the Dalit minority. She also served as general secretary of the People's Union for Civil Liberties (PUCL) and a visiting professor at the National University in Delhi.

Mr. Stan Swamy is an 84-year-old Jesuit priest and indigenous people's rights defender, who has dedicated his life's work to social activism and defending the rights of the underprivileged and indigenous communities, including the Adivasi and Dalit minorities. He is also the founder of Bagaicha, a social research and training centre in Jharkhand State, and Vistapan Virodhi Janvikash Andolan (VVJA) a pan-Indian platform of movements campaigning against human rights violations such as forced displacement and illegal land acquisitions.

Mr. Hany Babu is a human rights defender and associate professor at the National University of Delhi, specialising in areas of policy, linguistic identity, marginalised languages and social justice. He is an advocate for the rights of marginalised communities and has been active in supporting underprivileged Dalit students.

Mr. Surendra Gadling is a human rights defender and lawyer. In his capacity as the General Secretary of the India Association of People's Lawyers (IPAL), he has represented numerous human rights defenders arrested on alleged fabricated charges of being anti-national.

Mr. Mahesh Raut is a land rights defender who has been involved in the People's Movement Against Displacement. **Mr. Sudhir Dhawale** is a Dalit rights defender, who has been involved in fact-finding exercises to expose alleged human rights violations in Maharashtra. **Mr. Vernon Gonsalves** is human rights defender and academic who has been vocal against laws that restrict human rights in India, such as the Unlawful Activities Prevention Act (UAPA).

Ms. Shoma Sen is a women's rights defender, professor and member of the human rights organisation Protection of Democratic Rights (CPDR). **Mr. Gautam Navlakha** is a human rights defender, journalist and member of the NGO People's Union for Democratic Rights (PUDR). **Mr. Arun Ferreira** is a human rights lawyer, member of the IPAL, who has also been a vocal opponent of the UAPA. **Mr. Ramesh Gaichor, Mr. Sagar Gorkhe, and Ms. Jyoti Jagtap** are human rights defenders and members of the Kabir Kala Manch (KMM), a Pune based cultural group who promote, protect and defend the rights of the Bahujan community in the state of Maharashtra.

Mr. Rona Wilson is a human rights defender and member of the Committee for the Release of Political Prisoners (CRPP), which has also campaigned against the UAPA and other repressive laws. **Mr. Anand Teltumbde** is an academic, writer and human rights defender who has written extensively on Dalit rights and the anti-caste movement in India. He is also a member of the CPDR and the All India Forum for the Rights to Education.

Four previous communications, IND 16/2018, IND 21/2018, IND 17/2019 and IND 18/2020 have been sent by Special Procedures' mandate holders to your Excellency's Government regarding the alleged targeting, arrest and ongoing judicial harassment of Ms. Bharadwaj, Mr. Swamy, Mr. Gadling, Mr. Raut, Mr. Dhawale, Mr. Gonsalves, Mr. Dhawale, Mr. Wilson, Ms. Sen, and Mr. Ferreira. In these communications, we raised our concern that due process and fair trial guarantees may have not been adhered to throughout the judicial processing of the Bhima Koregaon case. We also expressed serious concern regarding the prison conditions and the health condition of the above-mentioned human rights defenders, in particular that of Mr. Swamy and Ms. Sen. We thank your Excellency's Government for your response to the allegations raised in IND 18/2020. We regret to inform that at the time of writing, no response to the three other communications has been received from your Excellency's Government. This is the first time we bring the allegations against Mr. Babu, Mr. Teltumbde, Mr. Navalakha, Mr. Gaichor, Mr. Gorkhe, and Mr. Jagtap to your Excellency's Government's attention.

According to information received:

The 15 above-mentioned human rights defenders are accused for their alleged participation in the violence that broke out during the 200th anniversary of the commemoration of the Bhima Koregaon battle on 1 and 2 January 2018. On 24 January 2020, the inquiry into the Bhima Koregaon case was transferred from the Pune Police, in the state of Maharashtra to the National Investigation Agency (NIA). At the time of writing, all 15 human rights defenders have all been accused and arrested under the Unlawful Activities Prevention Act (UAPA) and remain in jail, with their bail applications postponed or denied. The UAPA permits the authorities to hold detainees in custody without charge for

periods of up to 180 days, restricts recourse to bail and allows for prolonged detention. In the Bhima Koregaon case, it was reported that the evidence the prosecution relied on had allegedly been planted through malicious software, rendering the ongoing detention of the 15 accused as arbitrary and unlawful.

On 22 February 2021, the Bombay High Court granted Mr. Varavara Rao, human rights defender who is also accused in the Bhima Koregaon case, medical bail due to his continuous ill health.

The 15 above-mentioned human rights defenders are detained in Taloja and Byculla jails in Maharashtra, where the conditions are reportedly unsanitary and inhumane, making them vulnerable to the highly infectious and fatal new variant of the COVID-19 virus in India. Most of the human rights defenders are more than 60 years old, and suffer from severe comorbidities for which they are not receiving the essential medical care.

Allegations have been made regarding overcrowding, absence of social distancing, lack of access to basic medicines or medical attention and non-reliable antigen testing systems that do not properly reflect the high number of positive COVID-19 cases in both jails. Byculla Women's jail has reported more than 40 new cases of COVID-19 in the month of May 2021. Sources have confirmed that the majority of internal staff in Taloja jail have contracted the virus and tested positive, while more than 60 people are currently being treated for the virus within the jail. There has also been a severe water shortage in Taloja jail, rendering basic chores impossible to complete. It is alleged that all 15 Bhima Koregaon prisoners have had their right to communicate with their family and lawyers restricted; video calls have been denied, phone calls have been restricted to 5 minutes, and the connection is often poor making calls inaudible. Letters sent and received by prisoners have allegedly been intercepted, scrutinised and delayed. Complaints by prisoners are reportedly often met with threats to reduce or stop calls and letters and/or to be moved to a different barracks.

The case of Mr. Stan Swamy

On 8 October 2020, Mr. Swamy was arrested for his alleged connection in the Bhima Koregaon case. Mr. Swamy is 84 years old and suffers from Parkinson's disease, which causes him to have severe tremors in both hands and renders basic daily actions such as eating, drinking and washing extremely challenging. He also has serious hearing difficulties, and requires hearing aids for both ears. In the past, he has undergone surgery twice for hernia. Although his ailing condition has been brought to the attention of the authorities, Mr. Swamy's interim bail applications as well as requests for the human rights defender to be taken to hospital have previously been denied. On 26 November 2020, the NIA court in Mumbai rejected Mr. Swamy's request for a straw, a sipper bottle and warm winter clothes. On 29 November 2020, Taloja jail officers provided Mr. Swamy with a sipper bottle.

It has been reported that Mr. Swamy's current condition is fragile; [REDACTED]

██████████. Mr. Swamy has not yet been tested for COVID-19 and has been continually denied the adequate and necessary medical treatment. It has been reported that Mr. Swamy has been denied the vaccine because he does not have his Aadhaar card in prison.

On 19 May 2021, the Maharashtra High Court ordered that the Mr. Swamy be transferred to a hospital to be treated and appointed a joint committee to inquire into his health and treatment in Taloja jail. On 28 May 2021, the Bombay High Court ordered the Maharashtra Government to transfer Mr. Swamy to a private hospital for 15 days to receive immediate treatment.

The case of Ms. Sudha Bharadwaj

Ms. Bharadwaj is detained in the overcrowded Byculla Women's jail. She is a diabetic and suffers from ischemic heart disease, pulmonary tuberculosis, urinary infections, weight and hair loss, skin infections and hypertension. It is reported that the woman human rights defender was given the first dose of the COVID-19 vaccine at the start of May 2021, after which her health began to rapidly deteriorate. Initially it was presumed that this was a reaction to the vaccine; however, she continues to suffer from loss of appetite, stomach problems as well as other health complications. As Ms. Bharadwaj tested negative for COVID-19 and these symptoms continued, she requested a medical check-up, which was denied by prison superintendent who called Ms. Bharadwaj a "habitual complainer". She has also been denied access to books and newspapers in prison.

The case of Mr. Hany Babu

The judicial harassment of Mr. Babu began in 2019 and he was formally arrested on 28 July 2020, for his alleged involvement in the Bhima Koregaon case.

On 3 May 2021, Mr Babu developed a life threatening eye infection in his left eye, which impaired his vision and spread to his ear, cheek and forehead, causing severe pain and lack of sleep. In spite of repeated requests for immediate medical attention, the authorities of Taloja jail initially denied him access to medical treatment and forced him to dress his eye with soiled towels. On 7 May 2021, Mr. Babu was taken to a Government hospital where he was prescribed antibacterial medication and taken back to Taloja jail, which is overcrowded and where there is no access to clean water. Although the ophthalmologist advised the authorities to bring Mr. Babu back to hospital on 10 May 2021, the human rights defender remained in prison until 13 May 2021, when he was taken to JJ Hospital and later transferred to GT hospital in Mumbai where remains at the time of writing. On 13 May 2021, it was reported that Mr. Babu tested positive for COVID-19.

The case of Mr. Mahesh Raut

Mr. Raut is suffering from a fever, cough, and intense body aches and has not been provided the appropriate medicines in jail, even though medicines to tend

to his ailments were sent directly to him, prison authorities did not give him access to them. He remains in Taloja jail at the time of writing.

The case of Mr. Surendra Gadling

Mr. Gadling's pre-existing health conditions including hypertension, asthma, and diabetes require regular consultation to ensure that these ailments do not regress. Mr. Gadling previously required new spectacles, which were delivered to Taloja jail but were never given to him. Furthermore, Mr. Gadling was not permitted to attend his late mother's death rites and he remains ill in Taloja jail.

The case of Mr. Sudhir Dhawale and Mr. Vernon Gonsalves

Mr. Dhawale and Mr. Gonsalves are currently detained within the same barracks in Taloja jail, where it has been reported that eight people have contracted the virus and tested positive. The prison staff have refused to test the human rights defenders despite their requests. It is reported that Mr. Dhawale has been denied the vaccine because he does not have his Aadhaar card with him in prison.

Without prejudging the accuracy of the information we have received, we would like to express our grave concern over the alleged arrest and continued detention of the 15 aforementioned human rights defenders, which appear to be directly linked to their work in the defence of human rights, particularly minority and land rights of the Dalit and Adivasi peoples in India. We are concerned by the visible pattern of the misuse of national legislation, namely the UAPA, to target, criminalise and silence human rights defenders who defend minority rights in India. We are concerned that the UAPA is being used to keep human rights defenders in jail for prolonged periods. We are also concerned that throughout the processing of the Bhima Koregaon case, the right to due process and fair trial guarantees were allegedly not respected.

Of pressing concern is the inhumane prison conditions and deteriorating health of the above-mentioned human rights defenders. The poor detention conditions reported in both Taloja and Byculla prisons are very concerning as they are having a direct impact on the serious health conditions of the human rights defenders who are incarcerated there. Moreover, we are extremely concerned that in the context of the volatile situation in India regarding the rapid spread of COVID-19, the prison systems are not adequately equipped to operate under the strain of this pandemic.

The basic amenities of which prisoners are entitled to are not being provided to the human rights defenders. Due to the reported lack of adequate health care services and the alleged denial to be brought to hospital facilities to be treated, the health of the above-mentioned human rights defenders has deteriorated. We are further concerned that the 15 human rights defenders have been denied proper RP-PCR testing and vaccination, placing their lives in immediate danger. We raise our concern that Mr. Swamy's requests to be transferred to hospital to receive treatment were denied repeatedly before the Bombay High Court ordered the Maharashtra Government to do so on 28 May 2021. We raise our utmost concern over the immediate medical attention required by Mr. Babu, Ms. Bharadwaj, Ms. Sen, Mr. Raut and Mr. Gadling, whose health conditions are rapidly deteriorating due to their underlying health issues which place them at an even greater risk in the context of the spread of COVID-19. We are

worried that it appears the prison authorities are denying these imprisoned human rights defenders access to medical care, COVID-19 tests and vaccinations.

Finally, we are very concerned that the right to communicate with the outside world and their families of human rights defenders incarcerated in Taloja and Byculla jails has been arbitrarily denied. We are deeply concerned that video calls have been denied, phone calls have been reduced to less than 5 minutes, and letters have been allegedly intercepted and their arrival delayed. We are concerned that restricted communication will have a negative impact on the well-being of the aforementioned human rights defenders.

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

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 any comment you may have on the above-mentioned allegations.
2. Please provide the factual and legal basis for the arrest and ongoing detention of Ms. Sudha Bharadwaj, Mr. Stan Swamy Mr. Hany Babu, Mr. Surendra Gadling, Mr. Mahesh Raut, Mr. Sudhir Dhawale, Mr. Vernon Gonsalves, Mr. Rona Wilson, Ms. Shoma Sen, Mr. Arun Ferreira, Mr. Anand Teltumbde, Mr. Gautam Navalakha, Mr. Ramesh Ghaichor, Mr. Sagar Gorkhe, and Ms. Jyoti Jagtap in relation to the Bhima Koregaon case. Please also outline the specific charges against them and any information regarding establishing a date for their trial.
3. Please provide information you may have on the alleged denying of proper RTPCR testing of the 15 above-mentioned human rights defenders, as well as the allegations that several of them have been denied vaccinations because they do not have their Aadhaar cards inside the prison. Please comment on the allegations relating to the prison authorities ignoring the pleas of human rights defenders to be admitted to proper medical facilities, to be properly tested for COVID-19, to be prescribed with required medication, and to be permitted their right to communicate with their families.
4. Please provide information on the reported inhumane prison conditions in Byculla Women's jail and Taloja jail, and the measures your Excellency's Government is taking or plans to take to reduce

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

overcrowding in prisons, guarantee prisoners proper access to sanitation facilities, and provide prisoners with access to adequate healthcare, including access to COVID-19 vaccinations and testing

5. Please provide information on the authorities decision to refuse medical bail to all 15 above-mentioned human rights defenders, particularly Ms. Sudha Bharadwaj, Mr. Stan Swamy Mr. Hany Babu, Ms. Sen, Mr. Mahesh Raut and Mr. Surendra Gadling who have serious underlying conditions and whose lives are in grave and immediate danger. If bail on medical grounds continues to be refused, please explain how your Excellency's Government plan to provide these human rights defenders with the urgent care they require.
6. Please provide information on the steps your Excellency's Government is taking to ensure the protection of all human rights defenders in India, including those currently detained. Please provide measures your Excellency's government implements to ensure that human rights defender in India are guaranteed a safe and enabling environment to carry out their legitimate human rights work.

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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Fernand de Varennes

Special Rapporteur on minority issues

Annex

Reference to international human rights law

In relation to the allegations above, we refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by India on 10 April 1979. In particular, we draw your attention to articles 9, 14, 19, 21, 22, 26 and 27 which enshrine the basic rights of liberty and security of a person, the right to fair trial and due process, the right of freedom of expression assembly and association, and the right to be protected against any form of discrimination before the law. We draw particular attention to article 27 of the Covenant which provides that in States where ethnic, religious or linguistic minorities are present, persons belonging to these groups shall not be denied the right, individually or in their community, to enjoy their own culture, practice their own religion and language and to exist as community.

As stated by the Human Rights Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes a violation of article 19 of the ICCPR and an arbitrary deprivation of liberty contrary to article 9 of the Covenant (General comment No. 35 on Article 9 Liberty and security of person, para. 17).

We draw your attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, SMR), in particular rule 27 which states that all prisons shall ensure prompt access to medical attention in urgent cases and that prisoners who require specialised treatment will be transferred to the appropriate institutions and/or hospitals. In cases such where prisons have their own hospitals, they must be adequately staffed and equipped to provide the necessary treatment to ill prisoners and all clinical decisions must be made by responsible health-professionals and not non-medical prison staff. Rule 24 provides that the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Rule 30 (d) provides that particular attention should be paid to cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period.

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. Moreover, Article 12(2)(c) obliges States to take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules. In particular, Rule 30(d) establishes that in cases where prisoners are suspected of having contagious diseases, authorities should provide for the clinical isolation and adequate treatment of those prisoners during the infectious period.

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, which stipulates in articles 1.1, 2.1, and 2.2 that States must actively protect and encourage the existence of minority communities, and that these minority groups have the right to freely profess and practice the customs and traditions of their community and members of minority communities have the right to participate in cultural, religious, social, economic and cultural life in the country they exist.

We also wish to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with principles 1, 3, 6, 8, 11, 36 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which state that all persons under any form of detention shall be treated in a humane manner, that there shall be no derogation from any of the human rights of persons under any form of detention, that no person shall be subjected to cruel, inhuman or degrading treatment or punishment, that persons in detention should be kept separate from imprisoned persons, that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority, that a detained person shall be presumed innocent and shall be treated as such until proven guilty, and that a person detained on a criminal charge shall be brought before a judicial authority promptly after his arrest.

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 and article 12, paragraphs 2 and 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.