

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 43/20, 43/4 and 43/16.

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, torture and ill-treatment of Arun Prakash, Gulab Chonde and Prashant Kanojia, three human rights defenders.**

Mr. Arun Prakash s/o Kuppusamy is a Dalit activist and former member of Citizens for Human Rights Movement (CHRM) and currently south region secretary for Viduthalai Chiruthaigal Katchi (VCK).

Mr. Chonde, a resident of Tuti Jharna village in Gomia block of Bokaro district in Jharkhand, is a member of the Adivasi Moolvasi Adhikar Manch, which is an NGO that works to uphold the land, forest and water rights of indigenous communities in Bokaro and neighbouring district of Jharkhand. He is also part of a peaceful movement against proposed coal mines and railway lines in the area.

Mr. Kanojia is a freelance journalist and a Dalit human rights defender. He was working with the national online portal, "The Wire" from 2016 to 2018 and he is also associated with other news houses, including Transcontinental Times, as well as several human rights and Dalit rights organizations.

According to the information received:

Case of Mr. Arun Prakash

On 13 March 2021, Mr. Prakash was a patron at a food stall at TP Chatram Chennai. At around 2:30pm, TP Chatram Police sub-inspectors, came into the stall and asked the owner to remove the stall, which had been operational for the past eight years, without any prior notice for its removal. The police started using abusive language towards the stall owner and his wife. At this point, Mr. Prakash started video recording the incident. When the police noticed that they were being recorded, they inquired what he was doing and questioned why he was recording the police. The constables verbally abused and physically assaulted Mr. Prakash.

He was then arrested without explanation or stated reasons and transported to the TP Chatram Police Station in their vehicle. While in the custody of the police, Mr. Prakash was allegedly brutally beaten and stomped on his face by the police with their boots. He was detained in the police station until 6:30 pm that evening, following an intervention by the Human Rights Commission, he was released. His arrest was not properly recorded in accordance with procedure and without due process, in violation of Guidelines 2, 3, 5, 7, and 10 of the DK Basu Guildelines.

Mr. Prakash was not charged, he was threatened of re-arrest by the police before his release. After his release, Mr. Prakash went to the Kilpauk Medical College Hospital seeking treatment for his injuries. Mr. Prakash was not admitted to the hospital, but he was provided with first aid and was released the following morning. It is alleged that the attending doctor did not provide him with adequate care as he was under police pressure and intimidation.

On 15 March 2021, Mr. Prakash attempted to obtain from the hospital a wound certificate and report of his treatment but his request was denied.

On 17 March 2021, Mr. Prakash submitted a request on the Right to Information portal to receive his hospital records, but his request was denied on the grounds that as an outpatient, his medical records can only be given to the police.

Case of Mr. Gulab Chonde

On 5 August 2020, police officers came to Mr. Chonde's home and took him away in a police vehicle without presenting a warrant or stating reasons for his arrest. Following his arrest, his wife and a few villagers walked to the nearest police station, three kilometres away to inquire about his whereabouts. They were informed that he had been taken to Gomia Police Station.

On 6 August 2020, an inquiry was made at Gomia Police station but the police officers at the station denied knowing anything about his whereabouts.

Mr. Chonde was interrogated without a lawyer present. On the evening of 9 August 2020 after his interrogation and alleged ill-treatment, Mr. Chonde was produced before the Additional Chief Judicial Magistrate at Tenughat at his residence.

Mr. Chonde was charged in relation to an old FIR (7/19, Jegeshwar Vihar PS), filed in August 2019 that did not list his name. The charge was based on a confession obtained in police custody from another detainee at Jageshwar Vihar Police Station who was also accused on 8 August 2020, three days after Mr. Chonde had been arrested.

Mr. Chonde was charged under Sections 147 (rioting), 148 (rioting, armed with deadly weapon), 149 (unlawful assembly), 341 (wrongful restraint), 323 (voluntarily causing hurt), 386 (extortion), 387 (putting person in fear of death), 435 (mischief by fire/ explosives), Section 17 of the Criminal Law Amendment Act, and Sections 10 (unlawful assembly) and 13 (unlawful activity) of the Unlawful Activities (Prevention) Act, and was remanded in

Tenughat jail. He was represented by a local lawyer during his hearing. He was denied release on bail in the ACJM court on 24 August 2020. He was later granted bail by the High Court on 10 February 2021.

In February 2021 after being released on bail, Mr. Chonde reported to the Human Rights Commission that he had been held at the Jaridi Police Station from 5 to 9 August 2020, during which time he was reportedly brutally beaten with batons and lashed with a metal wire several times by one policeman while being questioned by other policemen to confess his involvement in Maoist activities. He sustained injuries and bruises on his body causing blood clots.

His detention is said to be connected to his participation in peaceful activism for upholding land, water and forest rights of indigenous communities.

Case of Prashant Kanojia

On 17 August 2020, a FIR was lodged against Mr. Kanojia at Hazratganj Police Station. The FIR was related to a post on a social media platform which Mr. Kanojia is alleged to have re-posted. Reportedly, no action was taken against the original person who made the post or anyone else who had shared it.

The FIR was registered under IPC sections-153-A (Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) 153-B (Imputations, assertions prejudicial to national-integration), 420 (Cheating and dishonestly inducing delivery of property, IPC-465 Punishment for forgery), 468 (Forgery for purpose of cheating, 469 Forgery for purpose of harming reputation), 500 (Punishment for defamation), 505(1)(b) (b) (with intent to cause, or which is likely to cause, fear or alarm to the public, 505(2) (Statements creating or promoting enmity, hatred or ill-will between classes) and IT ACT-66 Computer related offences.

On 18 August 2020, a group of five or six policemen from Uttar Pradesh in plain clothes and one in uniform came to Mr. Kanojia's home in South Delhi. They arrested him without presenting a warrant or informing him or his family where he was being taken. He was driven six hours to the Hazratganj police station.

During the night, Mr. Kanojia was taken from his cell and beaten brutally with a baton wrapped with a cloth by a group of ten policemen until he became unconscious. He was subjected to derogatory verbal abuse. When he awoke, a small clip was put on his ear which was used to send electric shocks through his body, he was shocked twice and became unconscious again. These acts of ill-treatment reportedly lasted 30 to 40 minutes and were video recorded by the officers. Mr. Kanojia was not asked any questions or interrogated, nor was he given any reason for his ill-treatment. He was then returned to his cell.

On 19 August 2020, in the morning he requested to make a phone call to his lawyer and family but his request was denied and he was reportedly threatened again. Mr. Kanojia was then taken to the Hegdewar Government Hospital for a

medical check, but his injuries were not recorded. Reportedly, the doctor only recorded his name and issued a medical certificate claiming that everything was fine. Later that afternoon at 4:30pm, he was produced before a magistrate, who ordered him to quarantine for seven days at a temporary facility at Ramswaroop College Chinhat in Lucknow, which is reportedly being used as a prison.

While being held in this facility, Mr. Kanojia was assigned to do cleaning work. When he refused he was reportedly told that he would be punished. He was subjected to sleep deprivation as a punishment, for the next seven nights. Mr. Kanojia was not allowed to sleep and was beaten when he fell asleep. Mr. Kanojia lodged a complaint to the Deputy Head of the facility but was told that the punishment was a consequence of his refusal to work.

Despite being a facility to control the spread of COVID-19, it is reported that the conditions where he was held were very unhygienic. Up to 40 prisoners are held in a cell, with no soap or sanitizers provided, blankets are dirty and were not cleaned before given to another prisoner. The detainees are told to get drinking water from the toilets sink to drink; and the water from the single non-toilet water tap was used exclusively by policemen. After seven days, Mr. Kanojia was moved to Lucknow jail.

He was held in Lucknow jail for 80 day. During this time he was not allowed to meet or call his lawyer, despite repeated requests. He only spoke to his family on two occasions. Mr. Kanojia came to learn of his bail release order through the newspaper since he had not been allowed to meet or speak to his lawyer.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern at the allegations of arbitrary detention as well as cases of abuse and ill-treatment of these three persons, in apparent retaliation of their legitimate and peaceful human rights work. Our related concern is that detainees are reportedly being falsely charged, forced to admit the crimes imputed to them and subjected to duress, which may amount to torture and other cruel, inhuman or degrading treatment or punishment. We further express concern at persistent allegations of poor conditions of detention, patterns of short-term enforced disappearance, the denial of medical attention, and of access to lawyers and to family visits.

Should they be confirmed, the facts alleged would contravene, inter alia, articles 2, 7, 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights, to which India acceded to on 10 April 1979. We underscore that the prohibition of torture under international law is absolute and non-derogable whatever the circumstances. This prohibition has become a norm of jus cogens which is reflected in numerous international human rights instruments and Human Rights Council and General Assembly Resolutions. These above allegations would also further contravene the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

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 abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued detention of the three persons referred to in this letter.
3. Please provide detailed information about the existing laws, regulation and procedures that guides police conduct during arrest, detention and interrogation; and what mechanisms exist to monitor its conduct and prevent abuse of power;
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of torture and/or cruel, inhuman or degrading treatment of persons accused of criminal offences in the custody of the CID. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of India.
5. Please provide information on measures adopted to ensure the right of persons to effective remedy for human rights violations, including enforced disappearances, arbitrary arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of India.
6. Please provide information on the steps taken to ensure that all human rights defenders in India can carry out their legitimate human rights work in a safe environment, free from any form of restrictions, including threats, harassment, detention or illtreatment.

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 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.

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

Nils Melzer

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

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this context, we would firstly like to recall the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and article 7 of the International Covenant on Civil and Political Rights (ICCPR). We would also like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment." We underline that when a State detains an individual, it is obliged to maintain a heightened level of diligence in regard to the protection of his or her rights.

We would also like to remind your Excellency's Government of article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and to article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States, "to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished (...) and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture."

Furthermore, article 14 of the CAT, provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to recall paragraph 6 (e) of Resolution 8/8 of the Human Rights Council, which urges States, "to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation, and in this regard encourages the development of rehabilitation centres for victims of torture."

In reference to the seemingly arbitrary nature of the victim's arrest, we would like to refer to article 9 Covenant enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention.

The international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights and article 9 of the Covenant, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, in its General Comment No 35, the Human Rights Committee has found 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), freedom of association (art. 22) and freedom of religion (art. 18). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention.

Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

The UDHR also establishes, through its article 10, that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her”. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, specifically Principle 2, makes clear that “[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. It should also be noted that Principle 9, states that “[t]he authorities which arrest a person, keep him/her under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.” Lastly, principle 11 outlines the right of all detainees to be heard promptly by a judicial authority.

We reiterate that 19 of the ICCPR protects the right to freedom of expression of everyone. We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by article 19 (3) of the ICCPR. As stated by the Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to Article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of Article 19. Such attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the

Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- 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.