

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL IND 8/2022
(Please use this reference in your reply)

26 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged illegal arrest and ill-treatment of the human rights defender and journalist **Rupesh Kumar Singh**.

Rupesh Kumar Singh has been an independent journalist since 2014 located in Jharkhand's Ramgarh district. His work focuses mainly on human rights violations as well as the rights of tribal communities known as Adivasis, and other marginalized people. He has worked for the news websites Janchowk and Media Virgil. In June 2019, he was arrested by the Gaya police under the Unlawful Activities Prevention Act (UAPA) and released on bail in December 2019 as the police did not file a charge sheet for the case.

According to the information received:

On 15 July 2022, he published a thread on his Twitter account on the impact of industrial and air pollution on the health of populations in Jharkhand villages. Mr. Singh's name is on the list of potential targets of surveillance through Israeli spyware Pegasus. Mr. Singh and his wife filed a petition in the Supreme Court to question the constitutionality of such surveillance.

On 17 July 2022, at around 5.25 a.m., a 10-person team of the [REDACTED], composed of both male and female personnel in uniform and dispatched in seven official vehicles, reached Mr. Singh's residence with a search warrant. The team was led by Mr. [REDACTED] Deputy Superintendent of [REDACTED], and personnel from [REDACTED] police stations.

The search operation, led by the district police, lasted for 9 hours. However, after Mr. [REDACTED] the deputy Superintendent of Police, received a call on his phone, Mr. Singh and his family were forced out of the residence and blocked from entering their residence for about half an hour.

During the search, the police seized two mobile phones, two laptops (including Mr. Singh's, his wife's and sister-in-law's), a hard disk, a bed sheet, a tax invoice for a motorcycle, a nine-page notebook and a retail invoice of a car. Though the list was countersigned by Mr. Singh and his family, no estimation of the value for the seized electronic devices was provided.

At around 1.30 p.m., the police showed an arrest warrant issued by the Sub-Divisional Judicial Magistrate (SDJM) court in Saraikela on 16 July 2022. Mr. Singh was arrested at 1.40 p.m. according to First Information Report (FIR) no. 67/21, under sections 10 and 13 of the UAPA, under sections 420, 467 and 471 of the Indian Penal Code (IPC), and under 17 of the Criminal Law Amendment Act.

He was then brought to the office of the State Intelligence Bureau in Ranchi, where he was interrogated for five to six hours by Mr. [REDACTED] Deputy Inspector General, Special Task Force and Ms. [REDACTED] Special Branch. During the interrogation, police officers claimed that photographs and audio files found on Mr. [REDACTED] hard disk showing that Mr. Singh had participated in a Maoist Camp, which are considered as terrorist organizations under the UAPA. Mr. [REDACTED] was arrested and charged in November 2021 as an alleged Maoist leader under sections 420, 467, 468 and 471 of the IPC, Section 17 of the Criminal Law (amendment) and Sections 10 and 13 of the UAPA. However, at the time of the charges, Mr. Singh was not questioned in connection with the case. The allegations of participation in a Maoist camp were denied by Mr. Singh. At around 10.00 p.m., Mr. Singh was taken from Intelligence Bureau in Ranchi to the office of the Deputy Superintendent of [REDACTED], where he was further interrogated and detained overnight.

On 18 July 2022, at around 3.30 p.m., Mr. Singh was taken for a medical examination.

He was produced in the SDJM court in Saraikela at around 5.00 p.m. on 18 July 2022, nearly 27 hours after his arrest. He was remanded in custody until he gets bail. During the police custody, from 1.40 p.m. on 17 July 2022 until 5.00 p.m. on 18 July 2022, Mr. Singh was not allowed to sleep, because of continuous interrogations from the police.

On 18 July 2022, after having appeared in the court, he was taken back by the police and kept for a few days in a cell of five rooms in which he was kept with prisoners having infectious diseases (one having Hepatitis B; one having leprosy and two having tuberculosis). Mr. Singh was then shifted to an abandoned building of the jail, where he was the only prisoner.

From 19 July 2022 to 21 July 2022, Mr. Singh was sleep deprived during these two nights because of constant interrogations from the police. Since August 24th, following protests from civil society about Mr. Singh's detention conditions, other prisoners were moved to the same building and Mr. Singh was provided with paper and a pen to be able to write.

Mr. Singh has severe problem of pain and strain in veins of his legs that becomes more severe during mental stress. There is a compression on his vein in his back that could be aggravated in stressful situations as the medicine that Mr. Singh is taking requires adequate sleep. There is no additional information on whether it did aggravate Mr. Singh's health situation. However, the lack of sleep coupled with his conditions of detention are factors that could aggravate it.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our concern on the allegations of arbitrary detention as well as ill-treatment of Mr. Singh. Our related concern is that Mr. Singh is reportedly falsely charged, in retaliation of his legitimate human rights work. We further express concern on the health condition of Mr. Singh, that could be aggravated by sleep deprivation and its close proximity with prisoners of infectious diseases.

Should they be confirmed, the facts alleged would contravene the International Covenant on Civil and Political Rights, to which India acceded to on 10 April 1979 as well as the United Nations Convention against Torture. We underscore that the prohibition of any form of ill-treatment 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 any form of ill-treatment. Furthermore, those allegations would represent a violation of the International Covenant on Economic, Social and Cultural Rights, acceded to by India on 10 April 1979, regarding the right to health.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to his 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 above-mentioned individual 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 of the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations;
2. Please provided detailed information about the factual and legal grounds for the arrest and detention of Mr. Singh;
3. Please provide detailed information about the existing laws, regulation and procedure 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 information concerning the measures taken to protect Mr. Singh against any form of ill-treatment while in detention and to ensure the respect of his physical and psychological integrity, especially regarding his health condition.
5. 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 of restrictions, including threats, harassment, detention or ill-treatment.

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

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

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.

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.

We would like to reiterate **article 6 of the ICCPR**, which protects the right to life and imposes the duty on States to protect the life of all detainees through, inter alia, the necessary medical care and the appropriate regular monitoring of their health. This would also represent a violation of the right to health, protected by **article 12 of the International Covenant on Economic, Social and Cultural Rights**, acceded to by India on 10 April 1979.

We would like to recall the standard minimum rules for the treatment of prisoners set out in the "**Mandela rules**", **amended and adopted by the UN General Assembly on 5 November 2015**, which provide inter alia for a separation of prisoners taking into account of their sex, age, criminal record, the legal reasons for their detention and the necessities of their treatment (rule 11). They also provide for appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22) and exercise and sport (rule 23).

We would like to draw the attention of your Excellency's government on conclusions made by the **Committee against Torture** and the **Human Rights Committee** that consistently found that conditions of detention can amount to inhuman and degrading treatment. We also refer to **paragraph 28 of the General Assembly resolution 68/156 (2014)** which emphasizes that conditions of detention

must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhumane or degrading treatment or punishment.

We would also like to bring to your Excellency's attention that the right to the enjoyment of the highest attainable standard of physical and mental health is reflected in article 12 of **the International Covenant on Economic, Social and Cultural Rights (ICESCR)**, which India ratified in 1979. This includes an obligation to respect the right to health, by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment CESCR 14, para. 34). In addition, **Principle 9 of the Basic Principles for the treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111**, indicates that all prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation.

We reiterate that **article 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.