

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

7 June 2023

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 right to food and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 52/4, 51/8, 49/13 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning violations against two members of the human rights organisation Mahila Sarvangeen Utkarsh Mandal (MASUM). This is specifically in reference to the alleged attack on, and torture and ill-treatment of, the human rights defender and community activist Mr. **Pranab Roy**, as well as the harassment of human rights defender, Mr. **Arkadeep Goswami**.

Mr. **Pranab Roy** is a human rights defender as well as a member of the group Mahila Sarvangeen Utkarsh Mandal (MASUM). Since 2022, when the organization expanded their presence to the Barnabera village of North 24 Parganas District in West Bengal, he has been an active participant in the work that they have carried out. MASUM is an organization dedicated to the advancement and protection of human rights. It advocates for the Border Security Forces (BSF) to take accountability for the violations they are reportedly committing in West Bengal. Throughout his time working with the organization, Mr. Roy has alerted to, and voiced his concerns about the human rights violations that have been reportedly committed in the local vicinity. He undertook various initiatives to address the issues and to mobilize and enable the villagers to fight for their rights. Most notably, Mr. Roy played a leading role in recent advocacy efforts against the illegal grabbing of 600 hectares of land belonging to the local community in North 24 Parganas by the Border Security Force (BSF). Mr. Roy helped to launch a committee comprised of the villagers in his local area under the name 'Amra Simantabasi' (We the border populace).

Mr. **Arkadeep Goswami** is a human rights defender and freelance journalist also based in the state of West Bengal. Within his journalism, Mr. Goswami has covered issues of human rights abuses in India, namely infringements to workers' rights. He has also been critical of the state's prison conditions and of laws which are reportedly used to quash dissenting opinion and expression. Like Mr. Pranab Roy, he is also a member of MASUM. The human rights defender has also served as an executive member of the All India council for Student Struggles and has participated as a member of the All India University Students Fact Finding Team on Fake Encounters in 2017. Furthermore, he has played a role in the 'Justice for Rohith Vemula' movement in India, which arose in the aftermath of PhD student Vemula's suicide after he was suspended from university in what was alleged to be an example of state-sponsored discrimination of peoples of the Dalit caste. This movement sought accountability by the university and the government and called for an end to

discriminatory treatment based on caste-fueled biases (2016-2018). Mr. Arkadeep Goswami has previously been the subject of reprisals on account of his activism with MASUM, and his work campaigning for justice. He was previously arrested and detained for activities linked to his activism.

According to the information received:

In 1998, the Central Public Works Department (CPWD) constructed a fence in Gaighata block which falls under Jhawdanga Gram Panchayat. This block borders the Ichamati river. CPWD had constructed a fence from a stretch of 1.5 km from the Jhawdanga crossing to the Noradoho crossing along the Ramnagar road. Given that the old fencing ran along the road, it did not encroach on the agricultural land of local farmers in the vicinity, namely the farmers of the Jhawdanga, Noradoho and Barnabera villages who reside within this border area. Therefore, the construction of the original wall was compatible with the rights of the landholders, hence why this site was chosen as a suitable place to erect the wall.

Currently, however, BSF and CPWD are planning to construct a series of new border fences which will run through the Jhawdanga and Barnabera farmland and eventually join up with, and supplement, the previously constructed fences at two distinct points along the Ramnagar road. Should the construction of these fences be allowed to proceed, it will have a damaging impact on the right to livelihood of the 300 farmers in the Jhawdanga, Noradoho and Barnabera areas on whose territory this building will intrude. This will create divisions in the farmland, frustrating their ability to cultivate it. Farmers have voiced their concerns as to the construction of these fences in the past and have even raised their issues with the Gaighata Block Development Office. However, no measures to address these concerns appear to have been taken as of yet.

In the face of this pending development, the villagers of the aforementioned areas formed a committee called 'Amra Simantabasi' (We the border populace). One individual who came to play a leading role in the project, and who is considered to be a central "portfolio holder" in their efforts, is Mr. Pranab Roy.

In the month of October 2022, Mr. Roy organized a mass protest with the villagers of Barnabera. This involved a peaceful protest in front of the premises of the Block Development Office, Gaighata. As part of the protest, Mr. Roy addressed the staff of the Block Development Office and inquired as to why BSF, CPWD and other administrative bodies had carried out surveys of on the land of the local farms people without giving them prior notice or seeking consent in advance. The officer present in the Block Development Office who Mr. Roy spoke to, replied to the demands of the villagers informing them that he did not know anything about these affairs and maintaining instead that such matters were within the remit of the Land Acquisition Department and the Border Security Force, rather than the Block Development Office to which he belonged. He did not file any formal complaint in connection with this.

On 3 November 2022, another protest was organized by Mr. Roy at the office of the Sub Divisional Officer, Bangaon Sub Division.

The next day, on 4 November 2022, the members of ‘Amra Simantabasi’ submitted two petitions to the Block Development Officer, Gaighata Block and District Magistrate, North 24 Parganas. In these submissions, the members of ‘Amra Simantabasi’ implored the aforementioned recipients to take proper action against the illegal fencing that is being carried out by the BSF, CPWD and Block Land and Land Revenue Officer. To the knowledge of those who submitted the petitions, no action has since been taken by the various authorities that they addressed.

The case of Mr. Pranab Roy:

On 9 April 2023 between 5 and 5.30 pm, Mr. Prabab Roy and his father were stopped by the Company Commander of the Border Security Force (BSF), as well as two other individuals representing the 105 Batallion of the BSF who are employed at the Barnabera Border Out Post. At the time of being stopped, Mr. Pranab Roy and his father were returning home after working on their agricultural land. The Company Commander and the men accompanying him began to question Mr. Roy.

Following this, the men in question began to beat Mr. Roy forcefully. The three perpetrators struck the victim and knocked him to the ground. Though the human rights defender’s father begged them to cease the violence against his son, they ignored his pleas. While on the ground, the perpetrators brutally kicked Mr. Pranab, striking him with the ends of their boots. They also proceeded to strike the human rights defender with wooden rods they had on their person.

In the course of the beatings that they subjected the human rights defender to, the perpetrators also reportedly dragged Mr. Roy to the nearby bank of the Ichamati River.

In addition to the physical violence committed against Mr. Pranab Roy, the three BSF affiliated perpetrators also reportedly committed psychological aggressions against him by means of threats and intimidation. They are alleged to have threatened the victim that he would be faced with charges of smuggling Phensedyl across the India-Bangladeshi border, and that he would be accused of being an undercover agent for the State of Bangladesh. They also reportedly took a photo of the victim near the Ichamati River for the purpose of threatening him in the future. Furthermore, they forced him to sign a false confession admitting that he had been detained by BSF after being caught returning home late at night and assuring that he had not been subjected to any form of torture. Once the document was signed, the perpetrators released the victim and left him alone.

According to the information received, while suffering physical assault at the hands of the BSF representatives, the perpetrators explicitly stated numerous times that the violence being committed against him was in connection with his work in defence of human rights in the area, seemingly in reference to the human rights defenders work in opposition to the land grabs to which his local community have been subject.

Once he had been released by the BSF affiliated perpetrators, Mr. Pranab Roy admitted himself to Chandpara Rural hospital where his injuries were examined by the medical personnel. He received an injury report from the on-duty doctor. The doctors report notes that Mr. Pranab Roy has suffered traumatic bruising on his body.

On 10 April 2023, Mr. Pranab Roy filed a complaint on the incident against the BSF with the Sutia Police out post. While the complaint was recorded, police officers refused to give Mr. Roy a copy of the First Information Report (FIR), a document to which he is entitled by law under the Criminal Procedure Code. Police also refused to assure Mr. Roy that a formal complaint had been lodged.

The case of Mr. Arkadeep Goswami

On 24 April 2022, Mr. Arkadeep Goswami was intercepted and forcibly abducted while passing through the market on his way home, in the Birbhum district of West Bengal. The alleged perpetrators of the incident were officials of the Special Task Force (STF) and Counter Insurgency Force (CIF), based in the police station of Bolpur, in the Birbhum district, in West Bengal state. Mr. Arkadeep Goswami was subsequently taken to Barikul police station, which is situated nearly 200 kilometers from his home. He was informed that his arrest stemmed from a First Information Report (FIR) which had been previously filed against him on 27 January 2022. This FIR pertained to sections 148, 149, 120B, 121, 121A, 122, 123, and 124A of the Indian Penal Code which refer to offences such as “rioting”, “unlawful assembly”, “waging war against the Government”, “criminal conspiracy”, “sedition” and “concealing (a deadly weapon) with the intent to...wage war”. In the course of his arrest and detention, Mr. Goswami was never presented with an official warrant for his arrest.

On 25 April 2022, the family of the human rights defender was informed that the human rights defender had been arrested. The STF and CIF officers also communicated to the family of Mr. Arkadeep Goswami the location of the detention centre in which he was being held. He was reportedly subsequently detained there for one and a half months on the basis of an alleged fabricated case.

On 3 June 2022, the human rights defender was granted bail and was released. However, the case against him is still ongoing despite the fact that no official charges have been filed.

On 18 April 2023 at 3 p.m., two unidentified men visited Mr. Arkadeep Goswami’s residence in Kolkata, where he usually resides with his parents. On finding the human rights defender absent, they questioned his parents as to Mr. Arkadeep Goswami’s whereabouts, and as to when he was intending to return home. The perpetrators in question asked Mr. Arkadeep Goswami’s mother to call her son via telephone at which point they spoke to the human rights defender and pressured him to reveal details of his current location. The men refused to disclose their identities to the victim or his family, however, one of them claimed to have met the human rights defender when he was arrested and jailed under false charges in 2022. It is believed that at least one

of the men was one of his captors linked to the Counter Insurgency Force (CIF), a special force associated with the West Bengal Police.

Mr. Arkadeep Goswami also continues to face accusations of offences of sedition and waging war on the state. This case was originally raised against the human rights defender on 13 November 2018, and was allegedly filed in retaliation to his work in defence of human rights, namely his efforts to report and document the mistreatment of political prisoners in the West Medinipur district of West Bengal.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our concern at the alleged physical violence, intimidation and arrest perpetrated against the two above-mentioned members of MASUM.

In particular, we are deeply concerned by the physical assault of Mr. Pranab Roy, in the beatings and aggressions which may amount to torture, as well as the psychological violations committed against the individual, in the form of threats and intimidation, which appear to be exercised in retaliation to his legitimate work in defence of human rights. We would like to further express our concern at the illegal forced disappropriation of land in the localities of Jhaudanga, Noradoho and Barnabera which is allegedly being carried out by the Border Security Force, Central Public Works Department and Block Land and the Land Revenue Officer.

Furthermore, we wish to express our serious concern at the harassment of human rights defender Mr. Arkadeep Goswami, namely the alleged arbitrary detention, as well as the threats and intimidation to which he and his family have been subject.

Should these allegations be confirmed, the facts alleged would contravene the International Covenant on Civil and Political Rights, to which India acceded on 10 April 1979, as well as the United Nations Convention against Torture, ratified by India on 14 October 1997. We underscore that the prohibition of any form of ill-treatment under international law is absolute and non-derogable. 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. Furthermore, these allegations would represent a violation of the right to health, as protected by the International Covenant on Economic, Social and Cultural Rights, acceded to by India on 10 April 1979.

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 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/or comment(s) you may have on the above-mentioned allegations, providing, where available, the results of any investigation and judicial or other inquiries which may have been carried out in relation to these cases.

2. Please provide the factual and legal basis for the arrest and detention of Mr. Arkadeep Goswami and the status of the investigation against him.
3. Please provide an update on the status of the investigation of the case filed by Mr. Pranab Roy.
4. Please explain what measures have been taken to ensure that all human rights defenders in India, in particular those working on issues affecting land rights, can carry out their peaceful and legitimate activities without fear of harassment, violence, or other restrictions.
5. In the event that efforts are taken to identify the alleged perpetrators within the Border Security Force (BSF), Special Task Force (STF) and Counter Insurgency Force (CIF), please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please provide details on the alleged dissappropriation of farmers' land in the Jhaudanga, Noradoho and Barnabera localities as part of the fencing being erected by the BSF and CPWD, and elaborate on any measures which have been taken to ensure the prior consent, notice and adequate compensation of landholders in this regard.

We would appreciate receiving a response within 60 days. Past 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 again 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

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Michael Fakhri
Special Rapporteur on the right to food

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 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 first like to draw the attention of your Excellency's Government to 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, otherwise known as the UN Declaration on Human Rights Defenders, which was adopted by consensus at the UN General Assembly in 1998. In particular we would like to highlight articles 1 and 2 of the Declaration, which state that everyone, individually and in association with others, has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms and that each State has a prime responsibility and duty to promote, protect 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 Declaration:

- Article 5(a) and (b), which underscores the rights to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups.
- Article 6(b) and (c), which reiterates the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.
- Article 9(1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- Article 12(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.

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Finally, we would like to refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the

rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

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 note that article 21 of the ICCPR recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs and human rights defenders (A/HRC/26/29, para 22).

Article 11(1) of the International Covenant on Economic Social and Cultural Rights, recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic Social and Cultural Rights (CESCR) stressed in its general comment no. 12 that the core content of the right to adequate food implies, inter alia, both economic and physical accessibility of food (para. 7). The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility.

Moreover, as laid out by the Committee on Economic and Social Rights their general comment no. 26 (2022) on land and economic, social and cultural rights, access to land has particular importance for the realization of the rights of peasants and other people working in rural areas worldwide. For peasants, access to land and other productive resources is so important for the realization of most rights under the Covenant that it implies for them a right to land. Articles 5 and 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognize this right to land for peasants and other people working in rural areas, which include agricultural workers, pastoralists and fisherfolk.

Additionally, we wish 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.

Moreover, in reference to the seemingly arbitrary nature of the Mr. Arkadeep Goswami's arrest, we would like to refer to article 9 of the 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. The 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), and freedom of association (art. 22). 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 Universal Declaration of Human Rights 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 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.