

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention 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)

6 December 2024

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 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 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arrest of four freelance journalists, who were carrying out investigative journalism work, looking into irregularities around sand mining activities along Sabari River, close to the town of Konta in Chhattisgarh state**, including Mr. Bappi Ray, Mr. Shivendu Trivedi, Mr. Dharmendra Singh and Mr. Manish Singh. It has been reported that sand mining activities in the area posed a threat to the river ecosystem.

Mr. **Bappi Ray** is a journalist, who has been working with the news outlet Zee News in Chhattisgarh for the last eight years. He has also worked with the television news channel Bharat24, and for the past two years he has been working with the YouTube Channel "Main Bastar".

Mr. **Shivendu Trivedi** works as a cameraperson with Mr. Ray.

Mr. **Dharmendra Singh** is a journalist who works for the news channel Chhattisgarh Aaj Tak and the news portal Sahara Samay.

Mr. **Manish Singh** works with India TV and was previously working with the television channel Aaj Tak.

According to the information received:

On 9 August 2024, Mr. Ray and other media workers travelled to the town of Konta, in Chhattisgarh state, to carry out their investigative journalism work as freelancers. At 3 p.m., they noticed trucks transporting sand moving in the direction of the border between Chhattisgarh and Andhra Pradesh states. The journalists inquired whether the trucks had the necessary documents allowing for the transportation of sand from one state to another, but reportedly found that the permits allegedly allowed them to transport sand only within the Sukma district in Chhattisgarh state. Mr. Ray reportedly took a picture of the permits and shared it with the Minister of Home Affairs of Chhattisgarh state.

At 4.30 p.m., the journalists had a confrontation with the sand contractor and the Station House Officer (SHO) of the Konta police station, both of whom

allegedly pressured them not to publish their story on the sand mining activities. Mr. Ray called the Deputy Inspector General (DIG) of police and informed them about the reported irregularities as well as the exchange with the local police officer. The DIG suggested reporting the issue to the Mineral Resources Department of Chhattisgarh state, as this was under their jurisdiction. The media workers decided to stay in Konta for the night to continue their investigation the following day.

During the night between 9 and 10 August 2024, two unknown individuals were allegedly seen tampering the journalists' car. They were recorded by the security cameras installed in the parking lot in front of the hotel. The recording was reportedly published on social media and in the media.

On 11 August 2024, while they were driving between Konta and Bhadrachalam town in Telangana state, the media workers were stopped close to Chatti village in Andhra Pradesh state by five police officers in plainclothes, who inspected the trunk of their car. The police found packets that allegedly contained 15 grams of marijuana. The journalists were taken to Chinturu police station, in the Alluri Sitharama Raju district of Andhra Pradesh state, for interrogation. Their vehicle and mobile phones were seized. The journalists declared themselves innocent and asked the police to check the recording of the security cameras of their hotel in Konta, as a proof that their car was tampered with and the drugs planted. Allegedly, however, the footage had been deleted. After being held for one hour at the police station in Chinturu, the media workers were allegedly threatened and beaten with a leather belt.

After the arrest, the police in Chinturu registered a First Information Report (FIR) against the journalists under sections 8(c) and 20(b)(ii)(B) of the 1985 Narcotic Drugs and Psychotropic Substance Act, which prohibits the production, possession, selling, purchase, transport, use and consumption of drugs and provides for a punishment of up to ten years in prison and a fine.

On 12 August 2024, the journalists were taken to the hospital in Chinturu for medical check-ups. The results of such exams were reportedly not shared with them. Following the medical examinations, the journalists were taken to the Rajamahendravaram Court in the East Godavari District, which sent them to judicial custody until 23 August 2024. On 17 August 2024, local journalists organized a protest to support the arrested media workers and demand the withdrawal of the case against them.

It has been reported that, on 14 August 2024, the SHO of Konta was arrested reportedly on charges of having falsely incriminated the journalists and having tampered with the recording of the hotel's security cameras.

The journalists remained in jail in Rajamahendravaram city until 2 September 2024, when the First Additional District and Sessions Judge granted them bail on the condition that they would appear before the SHO in Chinturu every week until the filing of a charge sheet, and that they would cooperate with the investigation.

At the time of writing, the journalists are still out on bail, the investigation is pending, and no charge sheet has been filed.

Without prejudging the accuracy of these allegations, we would like to express our deep concern about the arrest of media workers Mr. Bappi Ray, Mr. Shivendu Trivedi, Mr. Dharmendra Singh and Mr. Manish Singh, which, according to the allegations, seems to be linked to their work on investigating irregularities around sand mining activities along Sabari River, close to the town of Konta in Chhattisgarh state. We fear that the arrest of the journalists might have a chilling effect, hindering freedom of the press and the right to freedom of expression in India and shrinking the broader civic space.

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, including any detailed information on the factual and legal basis of the arrest and detention of the journalists and whether charges are expected to be filed against them.
2. Please provide information about the measures which have been taken, or which are foreseen, to ensure full and impartial, effective, thorough and independent investigations on the case. If available, please provide details on the results of the investigations, including into the alleged involvement of the SHO of Konta in tampering with the evidence. If no such measure has been taken, please explain how this is compatible with India's international human rights obligations.
3. Please provide information as to the specific measures that have been put in place to ensure that human rights defenders and journalists can carry out their legitimate work in a safe and enabling environment, without fear of harassment, intimidation and any other acts of retaliation.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case

through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Ganna Yudkivska
Vice-Chair on Communications of the Working Group on Arbitrary Detention

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, concerns, we would like to draw the attention of your Excellency's Government to articles 9 and 19 the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which refer to the right to liberty and security of person, including freedom from arbitrary arrest and detention, the right to dignified treatment while in custody of state, and the right to freedom of opinion and expression. These rights are also guaranteed under articles 3, 9 and 19 of the Universal Declaration of Human Rights (UDHR).

Article 9 of the ICCPR enshrines the right to liberty and security of person, 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.

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 underscored the arbitrariness of any arrest or detention without a legal basis and further held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law. The Committee further stated that the notion of "arbitrariness" introduced in article 9 should be broadly interpreted to include elements of "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality", and that any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the Covenant to be arbitrary, including freedom of opinion and expression (art. 19).

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (CCPR/C/GC/34, para. 11). The Committee states that article 19 also covers the right of a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion and a corresponding right of the public to receive media output.

The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (para. 23).

As stated by the Human Rights 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 ICCPR (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).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (ordre public), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. (CCPR/C/GC/34, para. 34).

Finally, we would like to bring to your attention 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.

Additionally, 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 6(b), which states that everyone has the right, individually and in association with others, to freely publish, impart or disseminate to

others views, information and knowledge on all human rights and fundamental freedoms;

- article 11, which provides that everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession;
- article 12, paragraphs 2 and 3, which provide 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.