



General Assembly

Distr.: General
16 September 2020

English only

Human Rights Council

Forty-fifth session

14 September–2 October 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2020]

* Issued as received, in the language(s) of submission only.

GE.20-11994(E)



* 2 0 1 1 9 9 4 *

Please recycle A small graphic of a recycling symbol, consisting of three chasing arrows forming a triangle.



India: Judicial harassment of human rights defenders and dissenting voices must end

The World Organisation Against Torture (OMCT) wishes to draw the Human Rights Council's attention to the deteriorating situation for human rights defenders (HRDs) in India. The recent events in India indicate a worrying pattern of judicial harassment against dissent and critical voices through the abuse of draconian laws. This submission focuses on judicial harassment of HRDs including blatant misuse of anti-terrorism legislations against them – particularly against those protesting against the Citizenship (Amendment) Act, 2019 (CAA). It also provides updates on detained human rights activists arrested under the Unlawful Activities (Prevention) Act (UAPA) in a fabricated case for allegedly inciting caste-based violence during a 2018 demonstration in Bhima Koregaon (state of Maharashtra) on January 1, 2018.

HRDs arrested for opposing the citizenship law

Since December 2019, fabricated charges of sedition, murder, and terrorism under repressive anti-terror and national security laws - such as the UAPA and the National Security Act (NSA) - have been filed against activists and HRDs peacefully protesting¹ against the discriminatory CAA,² the National Population Register and National Register of Indian Citizens.³ The CAA is inconsistent with international law standards and arbitrarily excludes certain groups at risk of persecution from accessing an expedited path to citizenship.

There are currently over 150 challenges to the CAA pending before the Indian Supreme Court, including from several Indian states⁴ and the Office of the United Nations (UN) High Commissioner for Human Rights.⁵ During the COVID-19 lockdown, Indian courts only heard 'urgent' petitions, while the Supreme Court provided no clarity as to when would the petitions challenging the CAA be heard. The Indian National Human Rights Commission (NHRC) also refused to accept a petition endorsed by almost 14,000 Indian citizens and organisations requesting to review this legislation.⁶

The repression of anti-CAA protests has been brutal, with the police reportedly using excessive force against demonstrators, including firing indiscriminately into crowds, using teargas and water cannons, beating bystanders and detaining and torturing protesters, including children. At least 31 persons were killed during these protests and scores were injured. The authorities have failed to conduct impartial and transparent investigations into the violence that broke out in Delhi in February 2020 around the protests.⁷ They have instead

¹ <https://www.omct.org/human-rights-defenders/statements/india/2020/07/d25960/>.

² The CAA grants citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who had entered India by December 31, 2014 and if they have lived in India for six years. It violates Article 14 of the Indian Constitution guaranteeing the right to equality. This also implies that individuals with religious affiliations outside of the six named above, including Muslims and atheists, will not be eligible for a citizenship under the conditions of the CAA. More on CAA - <https://www.icj.org/hrc43indiaca/>.

³ In July 2019, an official notification laid the ground for a 2-step process to prepare a National Register of Indian Citizens (NRIC) across India. Central to this exercise, to be rolled out along with the decennial Census in 2020, is "identifying persons whose citizenship is doubtful". See p.110, <http://citizensagainsthate.org/wp-content/uploads/2020/04/CAH-Majoritarian-Consolidation.pdf>.

⁴ <https://indianexpress.com/article/india/rajasthan-government-moves-sc-challenging-validity-of-caa-6317312/>.

⁵ <https://www.thehindu.com/news/national/un-rights-body-to-move-supreme-court-on-citizenship-amendment-act/article30970693.ece>.

⁶ Section 12 (d) of the Protection of Human Rights Act states, "review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation." The past NHRC interventions through law reviews have been significant on certain occasions.

⁷ <https://www.thequint.com/news/india/delhi-minorities-commission-fact-finding-report-delhi-riots-bjp-jamia-shaheen-bagh>; <http://citizensagainsthate.org/wp-content/uploads/2020/05/HIt-Job-Final.pdf>.

responded with bias, targeting HRDs and government critics and failing to investigate violence by supporters of the ruling Hindu nationalist Bhartiya Janata Party (BJP),⁸ excessive use of force by police officers, or hate speech by BJP leaders inciting violence.⁹

Those arrested and currently imprisoned¹⁰ under UAPA include women HRDs (WHRDs) Gulfisha Fatima, Isharat Jahan, Natasha Narwal, and Devangana Kalita, and HRDs Khalid Saifi, Meeran Haider, Shifa ur Rehman, Sharjeel Imam, and Asif Iqbal. WHRD Safoora Zargar was released on bail on 'humanitarian grounds' on June 24, 2020, as she was nearing the final trimester of her pregnancy.¹¹ HRD Akhil Gogoi¹², despite testing positive for COVID-19 remains in prison.

In July, the Delhi Police accused the leaders of the protests of orchestrating Delhi violence to discredit the Modi government internationally and spark hostility between Hindus and Muslims. It is in this context that HRDs like Harsh Mander,¹³ Yogendra Yadav,¹⁴ Professor Apoorvanand¹⁵ and several others, including lawyers who provided legal aid to the victims of police brutality, were intimidated in various means and forms. Mobile phones and electronic devices of several HRDs were seized, potentially compromising their privacy.

In the State of Uttar Pradesh (UP), anti-CAA protests by university students were met by police brutality for protesting against the CAA and several HRDs were detained, arrested, assaulted and tortured in custody.¹⁶ Dr. Kafeel Khan¹⁷ continues to be detained under the NSA¹⁸ since February 14, 2020 for delivering a speech critical of CAA. Sushil Gautam¹⁹ was picked up from his house for calling for a march against the CAA on December 15, 2019. SR Darapuri²⁰, a 76-year-old retired officer of the Indian Police Service [IPS], was put under house arrest on the evening of December 18, 2019. The police arrested him from his house the following day and did not reveal his whereabouts to his family till December 20, 2019. He was booked under several sections of the Indian Penal Code relating to voluntarily causing hurt to deter public servant from duty, assault or criminal force to deter public servant from discharge of his duty, rioting, attempt to murder and criminal conspiracy. HRDs Mohammad Shoeb²¹, Robin Verma²², Pawan Rao Ambedkar²³, Dr. Anoop Shramik²⁴, Sadaf Jafar²⁵ and

⁸ <https://www.hrw.org/news/2020/04/09/india-protests-attacks-over-new-citizenship-law>.

⁹ <https://ia801501.us.archive.org/28/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>.

¹⁰ <https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/05/d25867/>.

¹¹ <https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/06/d25916/>.

¹² <https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/07/d25965/>.

¹³ <https://scroll.in/article/965111/with-harsh-mander-named-in-delhi-riots-chargesheet-indian-democracy-has-slipped-into-a-dark-hole>.

¹⁴ <https://www.outlookindia.com/website/story/india-news-delhi-riots-police-mentions-yogendra-yadavs-name-in-chargesheet-in-constables-death/355151>.

¹⁵ <https://indianexpress.com/article/cities/delhi/delhi-riots-du-professor-apoorvanand-questioned-for-5-hours-phone-seized-for-probe-6538778/>.

¹⁶ <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>.

¹⁷ <https://thewire.in/rights/kafeel-khans-nsa-detention-extended-by-three-months>.

¹⁸ NSA allows the detention of an individual determined by an administrative tribunal for up to 12 months without charges.

¹⁹ <https://www.newsclick.in/caa-nrc-will-rob-dalits-and-tribals-their-rights-say-activists>.

²⁰ <https://www.ndtv.com/india-news/lives-endangered-says-former-ips-officer-s-r-darapuri-named-in-up-shame-list-2192019>.

²¹ <http://hrdaindia.org/wp-content/uploads/2020/01/08-2020-01-09-HRDA-UA-North-Uttar-Pradesh-Arbitrary-Arrest-and-Detention-of-Advocate-Mohammad-Shoaib-in-Lucknow.pdf>.

²² <http://hrdaindia.org/wp-content/uploads/2020/01/03-2020-01-08-HRDA-UA-North-Uttar-Pradesh-Case-of-police-torture-arbitrary-arrest-of-social-activist-Robin-Verma.pdf>.

²³ <http://hrdaindia.org/wp-content/uploads/2020/01/12-2020-01-10-HRDA-UA-North-Uttar-Pradesh-Illegal-arrest-and-detention-of-social-activist-and-HRD-Mr.-Pawan-Rao-Ambedkar.pdf>.

²⁴ <http://hrdaindia.org/wp-content/uploads/2020/01/07-2020-01-09-HRDA-UA-North-Uttar-Pradesh-Illegal-arrest-and-detention-of-Dalit-rights-defender-Dr.-Anoop-Shramik-by-police.pdf>.

²⁵ <http://hrdaindia.org/wp-content/uploads/2020/01/09-2020-01-10-HRDA-UA-North-Uttar-Pradesh-woman-HRD-Ms.-Sadaf-Zafar.pdf>.

Deepak Kabir²⁶ were arrested on December 19, 2019 and accused of serious offences, including rioting with deadly weapons. Their names and personal details were put on billboards in Lucknow, capital city of UP - possibly an attempt by the State to cause serious harm to them and their families.²⁷ While all of them were released on bail, threats against them continue. In one case, the UP government threatened to seize Sadaf Jafar and SR Darapuri's personal assets to pay for public property damaged during the protests²⁸ and on August 13, 2020, filed an application to cancel bails granted to four other activists.²⁹

Arrests in connection with the Bhima Koregaon case

Since April 2018, several HRDs across the country have been intimidated and threatened in connection to violence that had broken out in Bhima Koregaon on January 1, 2018.³⁰ As many as 12 prominent and globally recognised HRDs, academics, lawyers and activists, were arrested under the UAPA on trumped up charges including spreading controversial pamphlets and delivering hate speeches in connection with the violence. A first wave of raids was conducted on April 17, 2018, at the residences of activists Rona Wilson in New Delhi, Adv Surendra Gadling in Nagpur and Kabir Kala Manch members Sudhir Dhavale, Harshali Potdar, Jyoti Jagtap, Ramesh Ghaichor and Deepak Dhengle in Pune.³¹ Adv Gadling is the lawyer of Dr GN Saibaba,³² a 90% disabled Delhi University professor who was accused of having links with Maoists and sentenced to life imprisonment.

In the early hours of June 6, 2018, the Pune and Maharashtra police raided the premises of Adv Gadling, Dhavale, Wilson, Prof Shoma Sen and Mahesh Raut and arrested them under the UAPA.³³ Mainstream media portrayed these HRDs as 'Maoist operatives' to justify their arbitrary arrests.³⁴

On the morning of August 28, 2018, the Pune Police once again simultaneously raided the homes of several HRDs in Mumbai, New Delhi, Ranchi, Goa and Hyderabad. Following the raids, the police arrested Adv Sudha Bharadwaj, Gautam Navlakha, Vernon Gonsalves, Adv Arun Ferreira and Varavara Rao.³⁵ Except for Navlakha, who got interim relief from the Delhi High Court, all other defenders were detained in a Pune prison. Among those whose residences were raided were Adv Susan Abraham, journalist Mr. Kranthi Tekula, Fr Stan Swamy and Dr Anand Teltumbde.

In the early hours of February 2, 2019, Dr Teltumbde was arrested from the Mumbai Airport despite having protection from arrests till February 11, 2019, after an order of the Supreme Court.³⁶ On June 12, 2019, an eight-member team of the Maharashtra police once again raided Fr Stan's residence in Ranchi.³⁷ Dr Teltumbde and Navlakha were arrested on April

²⁶ <http://hrdaindia.org/wp-content/uploads/2020/01/10-2020-01-10-HRDA-UA-North-Uttar-Pradesh-Custodial-torture-against-social-activist-Mr.-Deepak-Kabeer.pdf>.

²⁷ <https://www.ndtv.com/india-news/lives-endangered-says-former-ips-officer-s-r-darapuri-named-in-up-shame-list-2192019>.

²⁸ <https://scroll.in/latest/966600/caa-protests-families-of-sr-darapuri-activist-sadaf-jafar-allege-lucknow-officials-threatened-them>.

²⁹ <https://indianexpress.com/article/cities/lucknow/caa-protests-up-cops-move-court-against-bail-to-4-including-3-activists-6561939/>.

³⁰ <https://www.thequint.com/explainers/what-was-bhima-koregaon-battle-explainer>.

³¹ <https://www.thehindu.com/news/national/other-states/bhima-koregaon-clashes-police-raid-activists-homes/article23577992.ece>.

³² <https://thewire.in/rights/un-rights-experts-urge-india-to-release-jailed-delhi-university-professor-saibaba>.

³³ <https://scroll.in/article/925929/bhima-koregaon-what-has-happened-to-the-five-activists-who-were-arrested-a-year-ago>.

³⁴ <https://www.hindustantimes.com/india-news/bhima-koregaon-clashes-letter-found-in-possession-of-accused-indicates-violence-may-have-been-scripted/story-8aKz4WWsaUwv4osK7ej2BL.html>

³⁵ <https://economictimes.indiatimes.com/news/politics-and-nation/10-arrests-in-8-months-of-bhima-koregaon-riots/articleshow/65650763.cms>.

³⁶ <https://scroll.in/latest/911748/bhima-koregaon-activist-anand-teltumbde-arrested-from-mumbai-airport>.

³⁷ <https://thewire.in/rights/police-raid-father-stan-swamys-house-again-take-email-facebook-details>.

14, 2020, after their bail petitions were rejected by the Supreme Court and they were forced to surrender before the National Investigation Agency (NIA) on April 14, 2020.³⁸ Professor Hany Babu MT of the Delhi University was arrested on July 28, 2020, after search and seizures conducted at his residence on September 10, 2019.³⁹ His house was again raided on August 2, 2020, and the NIA seized leaflets, booklets and cash ledger of the Committee for the Defence and Release of Professor GN Saibaba, and an external hard drive and two pen drives.⁴⁰ Several other prominent HRDs – lawyers, academics and activists – have been served notice by the NIA and are periodically interrogated in connection to this case.⁴¹

In January 2020, the Indian Government had abruptly assigned the investigations into the Bhima Koregaon violence to the NIA⁴², an institution directly controlled by the Indian Government. This happened after a non-BJP government in Maharashtra made steps to establish a Special Investigation Team (SIT) to shed light on the events of April 2018. Further, the State is building this case based on digital documents seized from the defendants' devices; however, cyber-attacks targeting HRDs and journalists associated with the Bhima Koregaon case, including most of the 12 HRDs arrested, raise serious doubts on the authenticity of these digital documents.⁴³

Hundreds of HRDs, journalists, academicians, youth and others arbitrarily arrested remain behind bars amidst the current Covid-19 pandemic and despite directives set by the Indian Supreme Court to decongest prisons⁴⁴ as well as global best practices and calls by UN international experts to immediately release “every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.”⁴⁵ With an occupancy rate of over 117%, precarious hygienic conditions and inadequate health services, the overcrowded Indian prisons constitute the perfect environment for the spread of coronavirus, putting at risk, among others, the lives of arbitrarily detained prisoners. It is extremely concerning that several HRDs who have tested positive for Covid-19 in jail, including Akhil Gogoi⁴⁶ and Varavara Rao⁴⁷, remain currently detained.

Recommendations

We urge the Human Rights Council to call on the Government of India to:

- Immediately put an end to all acts of harassment against HRDs and dissenting voices;
- Release all arbitrarily detained HRDs as well as all individuals detained solely for expressing critical or dissenting views;
- Establish a court-monitored probe in the aforementioned cases of incarceration of HRDs;
- Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights instruments ratified by India;
- Ensure accountability for those alleged to have instigated violence or used excessive force in relation to the nationwide protests against the CAA;

³⁸ <https://www.frontlinedefenders.org/en/case/gautam-navlakha-risk-arrest>.

³⁹ <https://scroll.in/article/968949/if-we-do-not-speak-up-now-against-the-arrest-of-professor-hany-babu-we-may-lose-india-forever>.

⁴⁰ <https://frontline.thehindu.com/dispatches/prof-hany-babus-house-raided-again/article32253470.ece>

⁴¹ <https://www.newindianexpress.com/cities/delhi/2020/aug/15/two-du-teachers-questioned-in-elgar-parishad-case-2183704.html>.

⁴² <https://www.thehindu.com/news/national/bhima-koregaon-case-transferred-to-nia-confirms-home-ministry/article30651042.ece>.

⁴³ <https://thewire.in/tech/snooping-email-malware-india-bhima-koregaon>.

⁴⁴ https://main.sci.gov.in/pdf/LU/16032020_100611.pdf.

⁴⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>.

⁴⁶ <https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/07/d25965/>.

⁴⁷ <https://www.omct.org/human-rights-defenders/urgent-interventions/india/2020/07/d25970/>.

- Review and amend the UAPA and NSA in accordance with international standards.
-