



# General Assembly

Distr.: General  
3 June 2021

English only

---

## Human Rights Council

Forty-seventh session

21 June–9 July 2021

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Joint written statement\* submitted by CIVICUS - World  
Alliance for Citizen Participation, a non-governmental  
organization in general consultative status, World  
Organisation Against Torture, Front Line, The International  
Foundation for the Protection of Human Rights Defenders,  
Human Rights Watch, non-governmental organizations 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.

[31 May 2021]

---

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



## **India: Appeal for the immediate release of human rights defenders in jail**

The undersigned organisations wish to draw the Human Rights Council's attention to the health and safety of Indian human rights defenders in prison, detained on politically motivated charges, and at grave risk due to Covid-19. The human rights crisis unfolding in India, including the jailing of defenders, has been met with relative silence from the international community. The use of counter-terror legal provisions to incarcerate defenders has taken a serious turn with the impact of Covid-19. As India struggles to cope with a new and deadly wave of the virus, jailed defenders are at serious risk, many of whom have tested positive for Covid-19 or are showing symptoms. The denial of medical bail, basic medical facilities, and communication or access to families even in the midst of the current surge in cases and deaths in India, is an act of cruelty, and a violation of their right to life and dignity.

In India, voices of dissent and those speaking out on human rights run the risk of being jailed, and denied bail under regressive counter-terror legislation, including the Unlawful Activities Prevention Act (UAPA). The UAPA permits a detainee to be held in judicial custody without charge for up to 180 days and restricts recourse to bail, allowing authorities to keep defenders in jail on politically motivated charges for prolonged periods. The easy denial of bail facilitates police and prosecutorial abuse of the law to allow prolonged pre-trial detention, contrary to general Indian criminal law and international human rights law. For instance, the Delhi Police filed terrorism charges under the UAPA against human rights defenders targeted for peaceful protests against the Citizenship Amendment Act (CAA), most of whom were already being investigated for similar offences under the Indian Penal Code (IPC). The imposition of the UAPA ensured that bail remains out of reach for the defenders even where courts granted bail for offences under the IPC.

The arrest of activists accused of violence in the Bhima Koregaon case is particularly concerning because a digital forensics investigation found that some of the 'evidence' relied on by the prosecution had been planted through malicious software onto defender Rona Wilson's computer and that there was no evidence that Wilson interacted with these files. A total of 16 human rights defenders have been arrested since 2018 under the UAPA, linked to the anti-caste violence that took place in Bhima Koregaon in Maharashtra state on 1 January 2018. In light of questionable evidence, these defenders should not be in jail in the first place, and certainly not in the midst of a pandemic where their health and lives are at risk.

There are currently at least 31 human rights defenders incarcerated under the UAPA across India. Only a handful were granted bail, mostly on medical grounds. Those in jail under UAPA include 15 human rights defenders held in relation to the Bhima Koregaon case, defenders (mainly students and from the Muslim minority) who protested peacefully against the CAA in Delhi and Assam, journalist Siddique Kappan and his two associates in Uttar Pradesh, labour rights defender Annapoorna in Andhra Pradesh, and anti-mining woman human rights defender Hidme Markam in Chhattisgarh.

Urgency of risks to incarcerated human rights defenders:

The current wave of the pandemic in India has been devastating and prisoners are at heightened risk. Indian rights defenders are held in overcrowded jails, in unsanitary conditions without access to proper medical care, Covid-19 testing, vaccination or treatment.

On 11 May, family members of defenders jailed in the Bhima Koregaon case jointly expressed grave concern for the safety of those in prison, and called for their release on interim bail in light of the pandemic. The appeal highlights the lack of medical treatment, vaccines, and delayed, disrupted communication with their families, for jailed defenders. Varavara Rao was released on medical bail in March 2021, after a long legal battle.

Most of the 15 defenders currently jailed in the Bhima Koregaon case are over 60 years old, have serious comorbidities and are at heightened risk of the virus - the oldest among them,

Jesuit priest Stan Swamy, is 84 years old and suffers from Parkinson's disease. The Bombay High Court on 28 May ordered the Maharashtra government to transfer him to Holy Family hospital for two weeks following a deterioration in his health, where he tested positive for Covid-19. A decision on medical bail in his case has been pushed back until 7 June 2021.

Lack of medical treatment/facilities in jail:

Information from Taloja jail in Maharashtra, where some of the defenders are held, reveals a shocking lack of medical facilities. At a press conference on 13 May, families of jailed defenders shared disturbing information on the lack of medical doctors, nursing staff and basic facilities to attend to inmates. Accounts of denial of medical treatment and lack of facilities have been similarly reported from other prisons including Byculla jail in Maharashtra and Mathura jail in Uttar Pradesh.

Any individuals not granted medical bail and who remain incarcerated under these conditions face a risk to their life and health. It is not feasible to monitor the health of defenders and effectively guard against Covid-19 and other illnesses within Indian prisons. Continued incarceration under such conditions is wholly incompatible with their rights to life and health guaranteed under national and international law.

Exclusion of human rights defenders in prisoners eligible for release:

The UN Office of the High Commissioner for Human Rights has called for states to release "every person detained without sufficient legal basis, including political prisoners, and those detained for critical, dissenting views" to prevent the growing rates of infection everywhere. The Supreme Court of India has also twice passed directives on the need to decongest prisons, given the risk posed to inmates by the spread of Covid-19 in jails, heightened by overcrowding and unsanitary conditions.

In 2020 and 2021, the Supreme Court gave the responsibility to High-Powered Committees (HPC) in States and Union Territories to devise the categories of prisoners eligible for release on interim bail/parole. All the HPCs have relied heavily on an offence-specific approach, with deciding factors including the nature and severity of offences. This automatically excludes pre-trial prisoners held on serious charges from eligibility for release. Under this system none of the 31 defenders currently in jail under the UAPA, including the Bhima Koregaon accused, are likely to be released, even in the face of co-morbidities and pressing health concerns. This is despite the World Health Organization identifying individuals at highest risk to include those over age 60 and those of any age with cardiovascular disease, diabetes, chronic respiratory disease, and cancer. There is an urgent need to adopt inclusive criteria for release to avoid placing human rights defenders at direct and unjustifiable risk, particularly in light of unsubstantiated charges against them.

As a member of the UN Human Rights Council and the UN Security Council, India has committed to uphold the highest standards in the protection and promotion of human rights, and engagement with India should reflect these expectations through clear human rights benchmarks, including with regards to the treatment of vulnerable human rights defenders during the pandemic. We urge urgent action to hold India accountable for its human rights record especially in light of the Covid-19 pandemic, and its treatment of defenders jailed for their peaceful work.

Recommendations:

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

- Dismiss all charges against human rights defenders for their peaceful activism and release those detained immediately and unconditionally;
- Relevant authorities should reconsider a heavily offence-centric approach to criteria/eligibility for release of all prisoners and prioritize:
- Age and/or Co-morbidities.
- Health conditions including current infections and/or any factors that increase risk.

- Time spent in custody, especially for undertrials whose trials have been unduly delayed.
- Recognize that defenders held for the peaceful exercise of their fundamental rights should be immediately released. Bail, particularly for medical care, should be the norm – not the exception, especially during the pandemic.
- Immediately improve medical facilities, including medical doctors, nursing staff and access to medicines inside prison, and provide human rights defenders and other prisoners with prompt and effective medical treatment and specialized care for underlying health issues.
- Grant defenders and other prisoners prompt access to family members and lawyers, and ensure that family members are given full information on the defender's health status and medical treatment.
- Take all measures to protect defenders and other prisoners from Covid-19 – including by reducing over-crowding in jails, providing proper access to sanitation facilities and especially by access to vaccinations and increased testing for Covid-19 on an urgent basis. Procedural and bureaucratic obstacles to vaccine provisions, including lack of an Aadhar identification card, must be removed urgently.

We further call on UN Member states, through their missions in India, to actively monitor the condition of detained human rights defenders, especially those in prolonged detention without access to bail.

---

India Civil Watch International, NGO(s) without consultative status, also share the views expressed in this statement.