

**PETITION TO:
THE UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION**

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Dr. G.N. Saibaba
Citizen of Republic of India
V.
Government of India

Submitted by:

Maran Turner
Adam Lhedmat
Freedom Now
1750 K Street, NW, 7th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Paul Kavanagh
Dechert LLP
160 Queen Victoria Street
London EC4V 4QQ UK
+020 7184 7000 (tel)
+44 20 7184 7001 (fax)
paul.kavanagh@dechert.com

Marie Fillon
Dechert LLP
32 Rue de Monceau
75008 Paris France
+01 57 57 80 80 (tel)
+33 1 5757 8081 (fax)
marie.fillon@dechert.com

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QUESTIONNAIRE TO BE COMPLETED BY
PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. **Family Name:** Saibaba
2. **First Name:** Gokarakonda Naga (G.N.)
3. **Sex:** Male
4. **Age at the Time of Detention:** 51
5. **Nationality:** Indian
 - a. **Identity Document (if any):** N/A
 - b. **Issued by:** N/A
 - c. **On (date):** N/A
 - d. **No.:** N/A
6. **Profession and/or Activity (if believed to be relevant to the arrest/detention):** Professor of English and Deputy Secretary General of the Revolutionary Democratic Front (“RDF”).
7. **Address of Usual Residence:** Wardha Rd, Ajni Chowk, Dhantoli, Nagpur, Maharashtra 440012, India

II. ARREST

1. **Date of Arrest:** May 9, 2014
2. **Place of Arrest (as detailed as possible):** Dr. Saibaba was on his way home from work when he was arrested by police near his residence at the Warden House, Gwyer Hall, University Road, New Delhi, India.
3. **Forces who carried out the arrest or are believed to have carried it out:** The Maharashtra and Delhi police, in collaboration with a unit of the Anti-Terrorism Squad.
4. **Did they show a warrant or other decision by a public authority?** The police obtained a warrant and, according to the police, it was signed by Dr. Saibaba.
5. **Authority who issued the warrant or decision:** Judicial Magistrate First Class, Aheri.
6. **Relevant Legislation applied (if known):** Dr. Saibaba was charged and convicted of being “a member of a banned Terrorist Group”, specifically the RDF, “a frontal organisation of the Communist Party of India (Maoist)” (“CPI (Maoist)”), in order to “conspire, advocate, incite, abet and knowingly facilitate the commission of a terrorist act and unlawful activities”. Such offences are punishable under Sections 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (“UAPA”).

III. DETENTION

1. **Date of detention:** May 9, 2014 to June 30, 2015; December 25, 2015 to April 6, 2016; and March 7, 2017 to present.
2. **Duration of detention (if not known, probable duration):** Prior to his conviction, Dr. Saibaba was held in detention for approximately 1 year and 6 months. He has also been held in detention continuously since March 7, 2017, when he was sentenced to “rigorous” life imprisonment.
3. **Forces holding the detainee under custody:** The Maharashtra police.
4. **Places of detention (indicate any transfer and present place of detention):** Nagpur Central Jail in Pune, Maharashtra.
5. **Authorities that ordered the detention:** The Sessions Judge, Suryakant S. Shinde, at the Gadchiroli District Court.
6. **Reasons for the detention imputed by the authorities:** Dr. Saibaba is detained due to his conviction of terrorist offences including “[organizing] the spread of secessionist and rebellious thoughts by holding covert and secret meetings” and “[continuing] unlawful activities of Communist Party of India (Maoist) and its frontal organization the Revolutionary Democratic Front.” Dr. Saibaba’s prosecution resulted from his involvement as Deputy Secretary of the RDF, through which he encouraged members of the Adivasi community to peacefully protest against the Indian Government.
7. **Relevant legislation applied (if known):** Sections 13, 18, 20, 38 and 39 of the UAPA as read with Section 120B of the Indian Penal Code.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. STATEMENT OF FACTS

Part 1 of this section provides a background to the Indian Government’s pattern of using anti-terrorism laws to suppress fundamental rights, criticism of the government. Part 2 of this section presents the case of Dr. Saibaba, who was arbitrarily arrested and subsequently convicted and sentenced to life imprisonment.

1. Background on India’s Anti-Terrorism Laws

The Unlawful Activities (Prevention) Act of 1967 grants the Government of India broad powers to combat unlawful terrorist activities that threaten the integrity and sovereignty of India. In 2008, the Government made significant amendments to the UAPA (the “Amendments”).¹ Under the Amendments, the new definition of terrorism allows authorities to classify political opponents and a broad range of peaceful opposition movements as “terrorists.” The Home Ministry can declare any group to be a “terrorist organization.”² Membership in any group that is “involved in” a terrorist act is punishable by up to life imprisonment—irrespective of whether the member had any involvement with the alleged act.³ Further, the

¹ See UAPA, 1967, available at https://mha.gov.in/sites/default/files/A1967-37_0.pdf.

² UAPA, Ch. IV, Sec. 35.

³ UAPA, Ch. IV, Sec. 20.

UAPA defines unlawful activity to include any claim for secession or any act which broadly “disclaims, disrupts or is intended to disrupt the sovereignty or territorial integrity of India.”⁴

Human Rights Watch has reported that “authorities increasingly used the [UAPA] to target civil rights activists and human rights defenders.”⁵ A group of UN human rights experts observed that “the UAPA’s vague definition of ‘unlawful activities’ and ‘membership of terrorist organizations’ confers discretionary powers upon State agencies, which weakens judicial oversight and diminishes civil liberties in the process.”⁶ The UN experts also stated “[w]e are concerned that terrorism charges ... are being used to silence human rights defenders who promote and protect the rights of India’s Dalit, indigenous, and tribal communities.”⁷ Amnesty International called the UAPA a “draconian counter-terrorism law...that is often used to silence government critics.”⁸

One of the primary ways the Indian Government has used its broad anti-terrorism laws is to silence advocates for the rights of the Adivasi⁹ (India’s indigenous people who have reportedly been forcibly evicted from the land which they have been cultivating¹⁰) by suggesting that those who criticize the Government for its treatment of the Adivasi community are supporters of the Naxalites (a group of armed individuals who protest against “imperialism, feudalism and comprador bureaucratic capitalism”¹¹) and declare them to be violators of the country’s anti-terrorism laws.

2. Arbitrary Detention of Dr. G.N. Saibaba

a. Background on Dr. G.N. Saibaba

Dr. G.N. Saibaba is a former professor of English Literature at the University of Delhi.¹² He contracted polio as a child, and was left 90 percent physically handicapped and wheelchair-bound due to post-polio paralysis.¹³ He also suffers from a number of debilitating medical conditions (see further details *in f. Current Medical Condition* below). Despite these medical conditions, Dr. Saibaba has spent much of his life fighting for the rights of the disadvantaged, including the Dalits (members of the lowest social group) and the Adivasi. The National Confederation of Human Rights Organizations awarded Dr. Saibaba the 2019 Mukundan Menon Award in recognition of his services for the protection of human and civil rights, in particular the Adivasi.¹⁴ At the time of his incarceration, he was the Deputy Secretary of the RDF, a federation of organizations in India, which work among different classes and sections of society including workers, peasants, youth, students, women, and cultural groups.¹⁵

⁴ UAPA, Ch. I, Sec. 2(o)(ii).

⁵ *India: Events of 2018*, Human Rights Watch (2019), <https://www.hrw.org/world-report/2019/country-chapters/india>.

⁶ *India: Terrorism Charges Are Pretext to Silence Human Rights Defenders, Say UN Experts*, UN Office of the High Commissioner on Human Rights (2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23686&LangID=E>.

⁷ *Id.*

⁸ *Human Rights Defenders Detained in India*, Amnesty International (2019), <https://www.amnestyusa.org/our-work/government-relations/advocacy/human-rights-defenders-detained-in-india/>.

⁹ See, e.g., “*When Land is Lost, Do We Eat Coal?*”: *Coal Mining and Violations of Adivasi Rights in India*, AMNESTY INTERNATIONAL INDIA (2014).

¹⁰ *A huge land grab is threatening India’s tribal people. They need global help*, Mari Marcel Thekaekara, THE GUARDIAN, available at <https://www.theguardian.com/commentisfree/2019/feb/25/land-grab-tribal-people-india-ativasi>.

¹¹ *India’s Maoist Rebels: An Explainer*, Al Jazeera (April 26, 2017), <https://www.aljazeera.com/indepth/features/2017/04/india-maoist-rebels-explainer-170426132812114.html>.

¹² *Order of the High Court of Judicature*, Bombay Criminal Appellate Jurisdiction Suo Motu Criminal PIL (ST) No.4 of 2015, June 30, 2015, at ¶ 1 [Hereinafter *Bombay High Court Order*].

¹³ *Note on Dr. Saibaba’s medical condition*, May 2019, at p.1.

¹⁴ *Dr. G.N. Saibaba Receives 2019 Mukundan C Menon Award*, National Confederation of Human Rights Organizations (January 2, 2020), <https://www.nchro.org/index.php/2020/01/20/dr-g-n-saibaba-receives-2019-mukundan-c-menon-award/>.

¹⁵ *Revolutionary Democratic Front* (April 22, 2012), <https://revolutionaryfrontlines.wordpress.com/2012/04/22/revolutionary-democratic-front-rdf-the-first-all-indian-conference-the-first-day/>.

While Dr. Saibaba was Deputy Secretary, the RDF published several statements condemning alleged government violence against the Adivasi and Dalit peoples. For example, in June of 2012, the RDF spoke out against the deaths of four Dalit people in the state of Andhra Pradesh and twenty Adivasi people in the state of Chhattisgarh, claiming they were killed unjustly by government forces.¹⁶ While the RDF has been declared a banned organization in the Indian states of Andhra Pradesh,¹⁷ Odisha, and Telangana,¹⁸ it is not banned in Delhi (where Dr. Saibaba was arrested), Maharashtra (where the others accused were arrested), or by the Indian Central Government.¹⁹ Moreover, the RDF was banned in those states based largely on its public criticism of violent crackdowns by the government, not due to any violent acts.

As the Deputy Secretary, Dr. Saibaba focused the resources of the organization towards “mobilizing democratic voices against a major military offensive that the Government of India ha[d] initiated on the indigenous people of the country, called Operation Green Hunt.” Initiated in 2009, Operation Green Hunt involved the deployment of 100,000 paramilitary forces in the tribal belt of India.²⁰ Dr. Saibaba called upon the Government to stop the apparent killing of civilians by paramilitary troops and the flagrant violation of their human rights by corporations operating in the tribal belt.²¹ Importantly, he did not support the use of violence as a means to an end. For instance, in 2010, he authored an article titled “Revolutionaries Do Not Kill Policemen.”²²

b. *Arrest of Dr. G.N. Saibaba*

Dr. Saibaba was purportedly implicated in the alleged offence as a result of a “confession” obtained from Hem Mishra,²³ one of Dr. Saibaba’s eventual co-defendants, who stated after his arrest on August 22, 2013, that Dr. Saibaba gave him a “memory card wrapped in a paper” and asked him to deliver it to a Naxalite leader by the name of Narmadakka.²⁴ The entire statement implicating Dr. Saibaba has since been retracted and is alleged to have been obtained as a result of coercion.

After the interrogation implicating Dr. Saibaba, the investigating officer, Suhas Bawche, sought permission to travel to Delhi to conduct a search on Dr. Saibaba’s home. On September 12, 2013, a joint task force including Suhas Bawche and other Maharashtra police, Delhi police, and the national anti-terrorism unit conducted a search of Dr. Saibaba’s home in Delhi, from where they recovered CDs, DVDs, pen drives, hard discs, mobile phones, books and magazines.²⁵ The content of these electronic devices and other materials allegedly included videos on the Sri Lankan war crimes, videos on Salwa Judum concentration camps, documents on Kashmir, videos of a convention on the fake encounter killing of Kishenji, and a

¹⁶ See *RDF strongly Condemns the Dalit Massacre in Lakshimpeta in Srikakulam*, Revolutionary Democratic Front (2012), available at <http://www.bannedthought.net/India/RDF/index.htm>; *Condemn the massacre of 20 Adivasi villagers and their children in Dandakaranya*, Revolutionary Democratic Front (2012), available at <http://www.bannedthought.net/India/RDF/index.htm>

¹⁷ *Government Order No.430 under Andhra Pradesh Public Security Act 1992*, available at <https://www.gad.ap.gov.in/law-order/general/go-100.pdf>.

¹⁸ *Arrested activists belong to banned Maoist fronts: Maharashtra police*, NEW INDIAN EXPRESS (September 8, 2018), <https://www.newindianexpress.com/nation/2018/sep/08/arrested-activists-belong-to-banned-maoist-fronts-maharashtra-police-1869343.html>.

¹⁹ See *Banned Organizations*, Ministry of Home Affairs (May 28, 2019), available at <https://mha.gov.in/node/91173>

²⁰ *India’s Maoist Rebels: An Explainer*, Al Jazeera (April 26, 2017), <https://www.aljazeera.com/indepth/features/2017/04/india-maoist-rebels-explainer-170426132812114.html>.

²¹ *Id.*

²² GN Saibaba, *Revolutionaries Do Not Kill Policemen*, Socialist Platform (September 18, 2010) <http://socialistplatform.blogspot.com/2010/09/revolutionaries-do-not-kill-policemen.html?m=0>.

²³ Mr. Mishra is also a former student of Dr. Saibaba’s. Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

²⁴ *Judgment of Sessions Case nos 13/2014 & 130/2015*, Court of Sessions at Gadchiroli District Court, Mar. 7, 2017 at ¶ 8 [Hereinafter *Court of Sessions Judgment*].

²⁵ *Id.* at ¶ 13-15.

booklet titled “Prashenbabu is not a Maoist.”²⁶ The police also allegedly recovered several documents authored by a person named “Prakash,” who was allegedly at one point the chief coordinator for CPI (Maoist).²⁷

The police spent the next several months conducting a “thorough study of seized devices and documents” before making an attempt to arrest Dr. Saibaba.²⁸ The police’s initial attempt to arrest Dr. Saibaba was thwarted by organized protesters at Dr. Saibaba’s home on the University of Delhi campus.²⁹ On May 9, 2014, police officers arrested Dr. Saibaba by dressing in plainclothes and abducting him on his way home from work.³⁰ During his arrest, Dr. Saibaba’s left hand was severely injured when he was removed from his wheelchair and thrown into a van as the police did not have experience handling someone with his disabilities.³¹

c. *Pre-trial Detention and Prosecution of Dr. Saibaba*

Although he was arrested in Delhi, Dr. Saibaba was flown to Maharashtra where the other men were arrested and where the investigation was taking place.³² Dr. Saibaba was detained in Nagpur Central Jail located in Pune, Maharashtra between his arrest and conviction (save for the periods of time when he was granted bail on medical grounds).³³

Dr. Saibaba, along with five other individuals, were subsequently charged with violating Sections 13, 18, 20, 38 and 39 of the UAPA. Under Section 18, one who “conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act” may be punished with life imprisonment.³⁴ Under Section 20, being a member of a “terrorist gang” or “terrorist organization” is also punishable with life imprisonment.³⁵

As a result of Dr. Saibaba’s paralysis, the conditions of his imprisonment, and the lack of medical help and support available at Nagpur Central Jail, Dr. Saibaba’s health has deteriorated to a life-threatening level.³⁶ Because the police were inexperienced in handling someone with such severe disabilities, their handling of Dr. Saibaba resulted in him sustaining a brachial plexus injury in his left shoulder.³⁷ Further, Dr. Saibaba was prevented from receiving the medicines he required to treat his high blood pressure.³⁸ Despite the severity of his health problems, his petition for bail on medical grounds was repeatedly denied.³⁹ On June 30, 2015, the Nagpur bench of the Bombay High Court granted Dr. Saibaba interim bail on medical grounds

²⁶ *Id.* at ¶ 197; *When Prosecution’s Case Becomes the Judge’s Onus: Miscarriage of Justice on Saibaba, Hem, Prashant, Mahesh, Pandu & Vijay*, Committee for the Defence and Release of GN Saibaba, at p.24 [Hereinafter *Miscarriage of Justice*].

²⁷ *Court of Sessions Judgment*, *supra* note 24, at ¶ 450.

²⁸ *Court of Sessions Judgment*, *supra* note 24, at ¶ 15.

²⁹ *Id.*; *Professor, P.O.W.*, Outlook India (May 18, 2015), <https://www.outlookindia.com/magazine/story/professor-pow/294265>.

³⁰ *Court of Sessions Judgment*, *supra* note 24, at ¶ 2 and 16; *Order for Sessions Case nos 13/2014 & 130/2015*, Court of Sessions at Gadchiroli District Court, Mar. 7, 2017, at ¶ 18 [Hereinafter *Order of Court of Sessions*]; *Professor, P.O.W.*, Outlook India (May 18, 2015), <https://www.outlookindia.com/magazine/story/professor-pow/294265>.

³¹ *See Journey of Case of Prof. GN Saibaba*, September 20, 2019.

³² *Court of Sessions Judgment*, *supra* note 24, at ¶ 16.

³³ *Bombay High Court Order*, *supra* note 12, at ¶ 3.

³⁴ UAPA, Ch. IV, Sec. 18.

³⁵ UAPA, Ch. IV, Sec. 20.

³⁶ *Letter from Dr. G.N. Saibaba to the Chief Medical Officer, Prison Hospital, Central Prison Nagpur, Maharashtra*, Jan. 4, 2018, at pp.1-2; *Note by G. Ramdevudu on Dr. Saibaba’s medical condition*, May 11, 2019, at ¶ 1-3.

³⁷ *Note by G. Ramdevudu on Dr. Saibaba’s medical condition*, May 11, 2019, at ¶ 1-3.

³⁸ *Id.*

³⁹ *Court of Sessions Judgment* *supra* note 24, at ¶ 1013; *Order of Court of Sessions*, *supra* note 30, at ¶ 19. *See Journey of Case of Prof. GN Saibaba*, September 20, 2019 (Bail denied 3 times (08/2014, 03/2015, and 06/2015)).

until December 31, 2015.⁴⁰ However, on December 23, 2015, the Nagpur bench of the Bombay High Court rejected Dr. Saibaba's regular bail application and directed him to surrender within 48 hours.⁴¹ This was appealed and on April 4, 2016, the Supreme Court of India granted him bail on medical grounds,⁴² rejecting the prosecution's argument that Dr. Saibaba would be likely to engage in "anti-national activities" if granted bail.⁴³

d. *The Trial of Dr. Saibaba*

The trial of the six accused was held in March 2017.⁴⁴ Before the trial began, two of the co-defendants filed an application before the court retracting their confessions and alleging that the police coerced and threatened them into making the confessions⁴⁵ by threatening to "entangle [their families] in other cases" if they did not confess.⁴⁶ While the co-defendants' confessions were made before a Magistrate, they were made without their lawyer being present⁴⁷ and were written in Marathi, a language they did not understand.⁴⁸ There was no formal investigation into the police's alleged coercion and threats against the co-defendants.⁴⁹

During trial, several procedural irregularities were uncovered in connection with law enforcement's search of Dr. Saibaba's premises in September 2013. Under Section 100 of the Indian Code of Criminal Procedure, when an accused is searched in a closed place, the investigating officer must "call upon two or more independent and respectable inhabitants of the locality" to act as *panch* witnesses to the search and in whose presence the *panchnama* must be prepared.⁵⁰ During cross-examination it became apparent that several of the *panch* witnesses had connections with the authorities and were therefore not independent.

Jagat Bhole, the *panch* present for the search and seizure of Dr. Saibaba's home had requested that the police find another *panch* because he was illiterate and could not identify the electronic devices taken from Dr. Saibaba's home, however this request was refused.⁵¹ Under cross-examination at trial, Mr. Bhole admitted that he had not actually witnessed the search and seizure of Dr. Saibaba's property as he had been outside the house while the police conducted the search.⁵² Cross-examination at trial also revealed that there were several discrepancies between the records of this search and seizure and what was presented as evidence by the prosecution against Dr. Saibaba at trial. For instance, the property which had been seized was not sealed and appeared to have been opened. Further, the boxes in which the seized materials were placed during the search were different from those presented to the Court.⁵³

Part of the evidence presented against Dr. Saibaba consisted of several letters allegedly recovered from hard drives during the search of his home signed by a person named "Prakash."⁵⁴ According to the recovered

⁴⁰ Conversation with Dr. Saibaba's wife, A.S. Vasantha Kumari, and Dr. Saibaba's brother, Gokarakonda Ramdevudu, on May 5, 2020.

⁴¹ *Id.*

⁴² *SC Grants Bail to GN Saibaba in Naxalite Link Case*, THE WIRE, Apr. 4, 2016, available at <https://thewire.in/law/sc-grants-bail-to-gn-saibaba-in-naxalite-link-case>.

⁴³ *Id.*

⁴⁴ *Take Urgent Action for Activist with Disabilities – GN Saibaba*, AMNESTY INTERNATIONAL, available at <https://amnesty.org.in/take-action/take-urgent-action-activist-disabilities-gn-saibaba/>.

⁴⁵ *Court of Session Judgment*, *supra* note 24, at ¶ 163.

⁴⁶ *Id.*

⁴⁷ *Id.* at ¶ 74; *Miscarriage of Justice*, *supra* note 26, at 17.

⁴⁸ *Miscarriage of Justice* *supra* note 26, at p.17.

⁴⁹ Conversation with Dr. Saibaba's wife, A.S. Vasantha Kumari, and Dr. Saibaba's brother, Gokarakonda Ramdevudu, on May 5, 2020.

⁵⁰ Sections 100(4) and (5) *Code of Criminal Procedure 1973, Act No.2 of 1974*, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>.

⁵¹ *Miscarriage of Justice*, *supra* note 26, at p.20.

⁵² *Id.* at p. 20.

⁵³ *Order of Court of Sessions*, *supra* note 30, at ¶ 221-224.

⁵⁴ *Court of Sessions Judgment*, *supra* note 24, at ¶ 450.

documents, Prakash was the “chief coordinator” of CPI (Maoist) until 2006 and helped coordinate the transfer of money between CPI (Maoist) members.⁵⁵ Prakash allegedly left CPI (Maoist) in 2006 because he was ill.⁵⁶ The prosecution claimed at trial that Dr. Saibaba used “Prakash” as a pseudonym and that they are the same person.⁵⁷ The prosecution’s evidence to support this claim, however, is entirely circumstantial. First, the prosecution presented metadata evidence on one letter signed by Prakash that listed “Saibaba” as the author.⁵⁸ However, the metadata evidence is inconsistent. Other letters allegedly written by “Prakash” were, according to the metadata, authored by “aaa”, “VS”, or “Vasantha.” Further, the documents referenced in the judgement are publicly available online, and there is no direct evidence that Dr. Saibaba actually wrote or received the letters.⁵⁹

In its judgment, the court states that there was evidence that Prakash’s computer crashed, and one of the hard drives seized from Dr. Saibaba was corrupted, so they must be the same person.⁶⁰ The court also relied on testimony that suggested Maoists frequently use aliases as evidence that Dr. Saibaba was using an alias. Further, “Prakash” was allegedly very sick, and because Dr. Saibaba also suffers from various illnesses, the court suggests they must be the same person.⁶¹

In arriving at its judgment of Dr. Saibaba, the Court of Sessions judge accepted the admission of the electronic evidence retrieved from Dr. Saibaba’s house, even though the conduct of the search violated Indian law on the collection of evidence.⁶² The investigative records prepared by the police were also inconsistent regarding what was recovered from Dr. Saibaba’s house.⁶³

Further, the prosecution did not present any evidence that Dr. Saibaba was involved in planning or coordinating any violent acts of any kind.⁶⁴ Under Indian Supreme Court precedent, mere membership in a banned organization is not enough to convict a person under the UAPA.⁶⁵ The state must show that the individual “resort[ed] to violence or incite[d] people to violence.”⁶⁶ In its judgement, the court accomplishes this by tying Dr. Saibaba and his co-defendants to a fire that took place at a mining operation in the village of Surjagad on December 23, 2016.⁶⁷ However, this fire took place several years after Dr. Saibaba’s arrest and indictment, and the court presents no direct evidence linking Dr. Saibaba or his co-defendants to the planning or execution of the fires.⁶⁸

On March 7, 2017, based entirely on the retracted confessions, materials⁶⁹ seized during the illegal search, and the Surjagad events that occurred after Dr. Saibaba’s indictment, the judge found Dr. Saibaba guilty on

⁵⁵ *Id.* at ¶ 450.

⁵⁶ *Id.* at ¶ 346.

⁵⁷ *Id.* at ¶ 343.

⁵⁸ *Id.* at ¶ 351.

⁵⁹ Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020.

⁶⁰ *Court of Sessions Judgment, supra* note 24, at ¶ 446.

⁶¹ *Court of Sessions Judgment, supra* note 24, at ¶ 346.

⁶² *Id.* at ¶ 221-230 and ¶ 243-244.

⁶³ *Id.* at ¶ 213-216, ¶ 232 and ¶ 237-244.

⁶⁴ Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁶⁵ *Arup Bhuyan vs. State of Assam*, reported in 2011(1) SCC, 784 (SC), cited in *Court of Session Judgment, supra* note 24, at ¶¶ 938-939. See also Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁶⁶ *Court of Session Judgment, supra* note 24, at ¶¶ 938-939.

⁶⁷ *Id.* at ¶ 935.

⁶⁸ *Id.* at ¶ 16. Dr. Saibaba was arrested in May of 2014 and charges were filed in December 2015. The fires did not take place until more than a year later in December 2016. Dr. Saibaba was out of prison on medical bail at the time of the fire. However, the court cites no evidence that he was involved directly in the planning or execution of the fire while out on bail or otherwise.

⁶⁹ *Id.* at ¶ 197. The materials seized from Dr. Saibaba’s home allegedly included videos on Sri Lankan war crimes, videos on Salwa Judum concentration camps, documents on Kashmir, videos of a convention on fake encounter killing of Kishenji, and a booklet titled “Prashenbabu is not a Maoist.”

all charges and sentenced him to life imprisonment.⁷⁰ Dr. Saibaba was subsequently re-imprisoned at the Nagpur Central Jail in Maharashtra.

e. *Appeal & Arrest of Counsel*

In April 2017, Dr. Saibaba appealed his sentence on the grounds that his conviction was not based on proper evidence or witness testimony. However, there have been no hearings related to the appeal of the judgment and no hearing date has been set by the court.⁷¹ On June 7, 2018, the lead attorney representing Dr. Saibaba, Mr. Surendra Gadling, was arrested under the UAPA allegedly for “links with banned Maoist groups.”⁷² Mr. Gadling has worked as a human rights lawyer and as General Secretary of the Indian Association of Peoples’ Lawyers. Through his work he has represented numerous human rights defenders.⁷³ During Dr. Saibaba’s trial, police repeatedly threatened Mr. Gadling, and at one point an officer stated that “[Mr. Gadling] would be taken care of” for his role representing Dr. Saibaba.⁷⁴ International and domestic human rights organizations decried Mr. Gadling’s arrest as politically motivated for his work defending Dalit rights activists and members of the Dalit community.⁷⁵ At the time of submission, Mr. Gadling is still held in custody, awaiting trial for charges under the UAPA, and Mr. Gadling’s assistant attorneys have taken over domestic representation of Dr. Saibaba.⁷⁶

f. *Current Medical Condition*

As of May 2020, Dr. Saibaba’s health has deteriorated to the point where he cannot move from his bed to his wheelchair. His right hand no longer functions properly and his left hand was severely injured from police mishandling him. He is unable to perform basic daily functions like eating, fetching water and using the toilet. Dr. Saibaba’s brother, Gokarakonda Ramdevudu, wrote letters to the authorities at the Nagpur Central Jail in Maharashtra to request two attendants to help Dr. Saibaba perform basic tasks, but he never received a response. Dr. Saibaba has not been provided an attendant to aid him.

Dr. Saibaba suffers from an untreated brain cyst, hypertrophic cardiomyopathy, hypertension, paraplegia, spinal kyphoscoliosis, anterior horn cell disease, acute pancreatitis, gall-bladder stones, sleep apnea, a rotator cuff injury, fatty degeneration of the rotator cuff muscles, and acute pain often resulting in loss of consciousness.⁷⁷ Because of these ailments, Dr. Saibaba suffers from chest pain, frequent fainting and blackouts, frequent vomiting, radiating pain in his left hand and leg, severe abdominal pain, frequent fever and coughs, muscle cramps and spasms, difficulty defecating, and a burning sensation during urination.⁷⁸ Despite his medical condition, in March 2019 the Maharashtra High Court denied Dr. Saibaba’s petition to be released on bail on medical grounds.⁷⁹

⁷⁰ *Order of Court of Sessions supra* note 30, at ¶ 4.

⁷¹ Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020. According to local counsel working on Dr. Saibaba’s case, appeals typically take 3-4 years. Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁷² Frontline Defenders, *Surendra Gadling Arrested*, <https://www.frontlinedefenders.org/en/case/surendra-gadling-arrested#case-update-id-7865>.

⁷³ *Id.*

⁷⁴ Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020; India Civil Watch, *Surendra Gadling*, <https://indiacivilwatch.org/issues-b12/surendra-gadling/>.

⁷⁵ Frontline Defenders, *Surendra Gadling Arrested*, <https://www.frontlinedefenders.org/en/case/surendra-gadling-arrested#case-update-id-7865>; India Civil Watch, *Surendra Gadling*, <https://indiacivilwatch.org/issues-b12/surendra-gadling/>.

⁷⁶ Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁷⁷ *Letter from Dr. G.N. Saibaba to Senior Counsel*, Supreme Court of India, September 25, 2019, at p.1.

⁷⁸ *Update on Prof. G.N. Saibaba’s Health Deterioration in Anda Cell, Central Prison, Nagpur* (November 2019).

⁷⁹ *Order of the High Court of Judicature at Bombay*, Criminal Application No.222 of 2018 in Criminal Appeal No.137 of 2017, March 25, 2019, at ¶ 20-21, available at <https://indiankanon.org/doc/22698323/>.

B. LEGAL ANALYSIS

For the reasons set forth below, the continued detention of Dr. Saibaba constitutes an arbitrary deprivation of his liberty under Category I, Category II, and Category III as outlined by the United Nations Working Group on Arbitrary Detention (the “Working Group”).⁸⁰ In addition to being bound to respect the Universal Declaration of Human Rights (“UDHR”), India is a party to the International Covenant on Civil and Political Rights (“ICCPR”) and is obligated to abide by its provisions.⁸¹ Dr. Saibaba’s detention is arbitrary under Category I because India lacks a legal basis for its continued detention of Dr. Saibaba; under Category II because it resulted from Dr. Saibaba’s peaceful exercise of his rights of freedom of expression and association; and under Category III because India’s detention and prosecution of Dr. Saibaba fail to meet the minimum international standards of due process.⁸²

1. Category I

The continued detention of Dr. Saibaba for alleged violations of the UAPA is arbitrary under Category I. A detention is arbitrary under Category I when there is no legal basis or justification for it. The Working Group has found detentions arbitrary under Category I when several of the following factors are present: (1) when vague laws are used to prosecute individuals, (2) when individuals are convicted without substantive evidence to justify such a conviction, and (3) when laws are used to target government critics.

Here, because the Indian authorities prosecuted him under the overly vague UAPA and did not provide material supporting evidence to justify a conviction, Dr. Saibaba’s detention is arbitrary under Category I as having no basis under domestic law.

a. *India’s Unlawful Activities (Prevention) Act is Overly Broad and Vague*

Article 15(1) of the ICCPR⁸³ and Article 11(2) of UDHR⁸⁴ both guarantee individuals the right to know what the law is and what conduct violates the law. In General Comment No. 35, the Human Rights Committee further states that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”⁸⁵ Moreover, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism has explained that the standard for legal certainty requires framing laws “in such a way that[] the law is adequately accessible so that the individual has a

⁸⁰ The Working Group considers deprivations of liberty to be arbitrary under the following circumstances: (a) when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (Category 1); (b) when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14, and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22, and 25-27 of the International Covenant on Civil and Political Rights. See Rep. of the Working Group on Arbitrary Detention, 16th Sess., U.N. Doc. A/HRC/16/47, (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement> [hereinafter “Revised Methods of Work”].

⁸¹ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> [hereinafter “ICCPR”].

⁸² Revised Methods of Work, *supra* note 80, annex ¶ 8(a)-(c).

⁸³ ICCPR, *supra* note 81, art. 9(1).

⁸⁴ Universal Declaration of Human Rights 73, G.A. Res. 217 (III) A, art. 11(2), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/217(III) (Dec. 10, 1948), <http://www.un-documents.net/a3r217a.htm> [hereinafter “UDHR”].

⁸⁵ General Comment No. 34 by the Human Rights Committee, ¶ 22, U.N. Doc. CCPR/C/GC/34, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en. See also Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Mauritius, ¶ 12, Human Rights Comm., 83rd Sess., U.N. Doc. CCPR/CO/83/MUS (Apr. 27, 2005), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/CO/83/MUS&Lang=En; Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Russian Federation, ¶ 24, Human Rights Comm., 97th Sess., U.N. Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.RUS.CO.6.pdf> (noting the pattern of Governments using vaguely worded laws to pursue politically motivated claims).

proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.”⁸⁶ For example, the WGAD has previously found that anti-terrorism legislation criminalizing conduct “intending to disturb public order,” intending to “endanger[] national unity,” or “which defames the state” is indeterminate and overbroad because it covers many actions that are protected under international law.⁸⁷

The charges against Dr. Saibaba included “advocat[ing]...or incit[ing] the commission of any unlawful activity” under Section 13(1) of the UAPA.⁸⁸ Section 2 of the UAPA defines unlawful activity, in relevant part, as:

any action taken by [an] individual or association, (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), which “disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India” or “which causes or is intended to cause disaffection against India.”⁸⁹

The phrases “intended to disrupt the sovereignty and territorial integrity of India” and “intended to cause disaffection against India” are so broad and ambiguous, they render Section 13(1), under which Dr. Saibaba was charged, without meaning. Section 13(1) and unlawful activity as defined by Section 2 gives Dr. Saibaba no fair notice of what conduct is prohibited and may apply to many activities that would be protected under international human rights law. Without limiting provisions or clarifying language, the UAPA targets a staggeringly broad range of “actions” and could be applied virtually to any expression of political opposition against the Indian Government. For Dr. Saibaba, the ill-defined provisions have resulted in an arbitrary prosecution for acts that are both unforeseeable as criminal and protected under the ICCPR and UDHR.

Moreover, India has repeatedly been criticized by UN human rights experts and NGOs for using the UAPA to silence government critics. Following the arrest of nine human rights defenders in 2018, UN human rights experts raised concerns that India was using its antiterrorism laws “to silence human rights defenders” who were fighting for indigenous communities.⁹⁰ Human Rights Watch and Amnesty International also issued statements raising similar concerns.⁹¹ The Working Group has previously stated that “expressing

⁸⁶ See Martin Scheinin, Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ¶ 46, Comm’n on Human Rights, 62d Sess., U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), <https://documents-ddsny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>. See also Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Human Rights Council, 28th Sess., U.N. Doc. A/HRC/28/28, ¶ 48 (Dec. 19, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>. (“This requires that the imposition of criminal liability be limited to clear and precise provisions so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation, which would unduly broaden the scope of the proscribed conduct. Overly vague or broad definitions of terrorism would not meet this requirement and may be used by States as a means to cover peaceful acts, to discriminate against particular individuals or groups or to limit any sort of political opposition.”).

⁸⁷ *Waleed Abulkhair v. Saudi Arabia*, UN Working Group on Arbitrary Detention, UN. Doc A/HRC/WGAD/2018/10, ¶¶ 15-58 (July 4, 2018), <https://undocs.org/A/HRC/WGAD/2018/10>.

⁸⁸ *Court of Sessions Judgment*, *supra* note 24, at p.2; Arts 13(1), available at <https://indiankanoon.org/doc/1389751/>.

⁸⁹ UAPA, Ch. I, Sec. 2(o)(ii) and (iii).

⁹⁰ *India: Terrorism Charges Are Pretext to Silence Human Rights Defenders, Say UN Experts*, UN Office of the High Commissioner on Human Rights (2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23686&LangID=E>. One of the people arrested was one of Dr. Saibaba’s lawyers, Surendra Gadling. For further discussion of Mr. Gadling’s arrest, see Part IV.B.3.f, below.

⁹¹ *Human Rights Defenders Detained in India*, Amnesty International (2019), <https://www.amnestyusa.org/our-work/government-relations/advocacy/human-rights-defenders-detained-in-india/>; *India: 5 More Rights Activists Detained*, Human Rights Watch (August 30, 2018) <https://www.hrw.org/news/2018/08/30/india-5-more-rights-activists-detained#>.

criticism of one's country and its leaders and communicating with other political actors in a peaceful way should not be categorized as an attempt to overthrow a government."⁹²

In light of India's repeated use of the UAPA to jail government critics, Dr. Saibaba's conviction and detention under the UAPA for publicly criticizing India's treatment of its indigenous Adivasi population and for his involvement with other political activists is arbitrary under Category I.

b. *India Did Not Support Dr. Saibaba's Conviction with Substantive Evidence*

Article 9(1) of the ICCPR states that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law."⁹³ The Working Group has previously stated that "confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings."⁹⁴

Under Indian Supreme Court precedent, mere membership in a banned organization is not enough to convict under the UAPA.⁹⁵ The government must show that the accused resorted to violence.⁹⁶ Here, the prosecution presented no evidence that Dr. Saibaba engaged in the direction, planning, or carrying out of any violent acts.⁹⁷ Then, in its judgment, the court accuses Dr. Saibaba of being involved in the fires set at a mining project in Surjagad.⁹⁸ The only connection the court offers to support this claim is that one of Dr. Saibaba's co-defendants, Mahesh Tirki, was found with a pamphlet that was critical of the mining project in question.⁹⁹ The court uses this one piece of literature to allege that Dr. Saibaba was part of a criminal conspiracy to set the fires. This is nothing but a post hoc rationalization made by the court to accuse Dr. Saibaba of violence that occurred more than a year after charges were filed against him. There was no substantive evidence to support these claims.

The conviction of Dr. Saibaba was partly based on the confessions of two of his co-accused. However, while these confessions were taken by a judicial magistrate, they apparently were taken without the presence of a lawyer for the accused.¹⁰⁰ Further, the confessions were induced by threats made by police to the co-accused and their families and they retracted their confessions.¹⁰¹ As discussed below, the only other evidence against Dr. Saibaba was a set of electronic devices containing literature related to his free expression,¹⁰² which were seized during an improperly conducted search of Dr. Saibaba's house.¹⁰³

The alleged confessions should not have been admitted because they were taken without a lawyer present, induced by threats that were not were not formally investigated, and the confessions were retracted by the accused. The evidence seized from Dr. Saibaba's house should not have been admitted because the search was improperly conducted and evidence may have been planted or tampered with by police. This includes the letters authored by "Prakash," that the prosecution claims is a pseudonym for Dr. Saibaba, which were allegedly available online and could have been planted by police.¹⁰⁴ In any case, the evidence seized relates

⁹² 61 Individuals v. United Arab Emirates, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, ¶ 21 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>.

⁹³ ICCPR, *supra* note 81, art. 9(1).

⁹⁴ Report of the Working Group on Arbitrary Detention to the Human Rights Council: Mission to Morocco, A/HRC/27/48/Add.5 (August 4, 2014).

⁹⁵ *Arup Bhuyan vs. State of Assam*, reported in 2011(1) SCC, 784 (SC), cited in *Court of Session Judgment*, *supra* note 24, at ¶¶ 938-939. See also Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁹⁶ *Court of Session Judgment*, *supra* note 24, at ¶¶ 938-939.

⁹⁷ Conversation with Nihalsingh Rathod, Attorney for Dr. Saibaba, on April 24, 2020.

⁹⁸ *Court of Session Judgment*, *supra* note 24, at ¶ 936.

⁹⁹ *Court of Session Judgment*, *supra* note 24, at ¶ 935.

¹⁰⁰ *Court of Session Judgment*, *supra* note 24, at ¶74; Miscarriage of Justice, *supra* note 26, at 17.

¹⁰¹ For further discussion of this point, see Part IV.B.3.d, below.

¹⁰² For further discussion of this point, see Part IV.B.2, below.

¹⁰³ For further discussion of this point, see Part IV.B.3.c, below.

¹⁰⁴ Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020.

only to Dr. Saibaba’s free expression and cannot be the basis of a criminal conviction. Without these pieces of evidence, the court has no basis to convict Dr. Saibaba because there is no substantive evidence against him. Thus, India has no legal basis for continuing to deprive Dr. Saibaba of his liberty.

2. Category II

An arbitrary detention falls under Category II when detention results from the exercise of fundamental rights protected by international law.¹⁰⁵ These fundamental rights include the right to freedom of opinion and expression and freedom of association,¹⁰⁶ and Dr. Saibaba’s detention is arbitrary under Category II because it resulted from his exercise of these rights.

a. *The Indian Government Detained Dr. Saibaba Because He Exercised His Rights to Freedom of Opinion and Expression, and Freedom of Association*

Freedom of opinion and expression are protected by Article 19 of the ICCPR and Article 19 of the UDHR.¹⁰⁷ Article 19 of the ICCPR provides that “[e]veryone shall have the right to hold opinions without interference” and that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁰⁸ Article 19 of the ICCPR is of special importance for members of political opposition groups. The Human Rights Committee has recognized that the protection of free expression must include the right to express dissenting political opinions. In General Comment No. 34, the Human Rights Committee commented that this article is broad enough to include the right of individuals to “criticis[e] institutions, such as the army or the administration.”¹⁰⁹

Freedom of association is also protected by both the UDHR and ICCPR. Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association” and Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others.” The Human Rights Committee has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially in relation to persons espousing minority or dissenting views and human rights defenders.¹¹⁰ In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25.”¹¹¹

¹⁰⁵ According to the Working Group’s Revised Methods of Work, a detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” Opinions adopted by the Working Group on Arbitrary Detention No. 60/2013 (United Arab Emirates), ¶ 2, Human Rights Council, Nov. 13–Nov. 22, 2013, 68th Sess., U.N. Doc. A/HRC/35/22/Add. 2 (Apr. 2, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/131/83/PDF/G1413183.pdf?OpenElement>.

¹⁰⁶ *Id.*

¹⁰⁷ ICCPR, *supra* note 81, Art. 19.

¹⁰⁸ ICCPR, *supra* note 81, Art. 19(2).

¹⁰⁹ General Comment No. 34, *supra* note 85, at ¶ 38.

¹¹⁰ G.A. Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.

¹¹¹ General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), ¶ 26, Human Rights Comm., 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996), [hereinafter “General Comment No. 25”], http://tbineternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.7&Lang=en.

Under Article 25 ICCPR “every citizen shall have the right and the opportunity...to take part in the conduct of public affairs.”¹¹²

The rights to freedom of opinion and expression and freedom of association are also protected under Indian law. The Indian Constitution mandates under Article 19(1)(a) that “all citizens shall have the right to freedom of speech and expression” and under Article 19(1)(c) that they shall have the right “to form associations or unions.”¹¹³ These articles are in line with the preamble of the Indian Constitution which states that “the people of India hav[e] solemnly resolved to...secure to all its citizens...liberty of thought [and] expression” and to “promote among them all fraternity.”¹¹⁴ Articles 19(2) and (4) of the Constitution give the State the right to impose “reasonable restrictions” on the exercise of these rights “in the interests of the sovereignty and integrity of India,” “public order” and (in respect of freedom of expression only) “the security of the State.”¹¹⁵

Despite the express protections under international and Indian law, the Indian Government detained and prosecuted Dr. Saibaba as a result of his activities as Deputy Secretary of the RDF. The circumstances of Dr. Saibaba’s arrest suggest that his conviction was a result of his open criticism of the Indian Government, particularly in relation to its treatment of the indigenous Adivasi population. Dr. Saibaba was openly involved in encouraging the Adivasi people to protest against the Indian Government in respect of the treatment of their communities. He was also actively involved, as Deputy Secretary of the RDF, in organizing Adivasi protests against the Government and encouraging Adivasi and Dalit people to stand up for themselves against the government.¹¹⁶ It was this involvement that provided a motive to search his home for politically seditious material and for his subsequent arrest.

During the criminal proceedings, the court relied upon the political materials found at Dr. Saibaba’s house during the police search to prove his involvement in organizing terrorist activities. Specifically, the court relied on an interview with Dr. Saibaba discussing the “Maoist strategy in India,” a press release from CPI (Maoist) found during the illegal search of Dr. Saibaba’s home, a video of Dr. Saibaba allegedly chanting “red salute,” and a video of Dr. Saibaba speaking about Kashmir to claim Dr. Saibaba was a part of a criminal conspiracy that culminated in the torching of mining equipment in Surjagad.¹¹⁷ The court’s argument appears to be that members of CPI (Maoist) have been violent, and Dr. Saibaba has talked about CPI (Maoist) and allegedly had Maoist literature in his home, therefore he is guilty of the violence perpetrated by CPI (Maoist). However, the court did not cite any evidence directly linking Dr. Saibaba to the planning or coordination of the Surjagad fires. Despite the fact that Dr. Saibaba had never advocated the use of violence in his public speeches nor facilitated violent acts through his role as Deputy Secretary of the RDF, he was found guilty. This suggests that his continued detention is an attempt to infringe on his freedoms of expression and association rather than to protect the security of the State or ensure public order.

b. *This Case Does Not Fall Within the Limited Exceptions under Articles 19 and 22 of the ICCPR.*

Articles 19 and 22 of the ICCPR do provide limited exceptions for national security, public safety and public order, in line with the exceptions under the Constitution of India. Under Article 19(3) of the ICCPR, the right to freedom of expression is only subject to restrictions that “are provided by law and are necessary:

¹¹² ICCPR, *supra* note 81, Art. 25.

¹¹³ ICCPR, *supra* note 81, Art. 19(1); *The Constitution of India*, available at https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.

¹¹⁴ *The Constitution of India*, *supra* note 113, at preamble.

¹¹⁵ *Id.* at Art. 19(2).

¹¹⁶ See, e.g., RDF strongly Condemns the Dalit Massacre in Lakshimpeta in Srikakulam, *Revolutionary Democratic Front* (2012), available at <http://www.bannedthought.net/India/RDF/index.htm>.

¹¹⁷ *Court of Session Judgment*, *supra* note 24, at ¶¶ 946-958.

(a) for the respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health and morals.”¹¹⁸ Similarly, Article 22(2) of the ICCPR provides that “[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. . . .”¹¹⁹

These exceptions are interpreted narrowly. The Human Rights Committee has noted that restrictions “may not put in jeopardy the right itself.”¹²⁰ The Human Rights Committee has also stated that restrictions to these rights must meet all the requirements set forth in the ICCPR; that is, they must be: (1) provided by law, (2) for the protection of national security, public order, or public health and morals, and (3) necessary to achieve one of these enumerated purposes.¹²¹ The Human Rights Committee has treated this three-prong test as a “strict test of justification.”¹²² The Government must present and specify the “precise nature of the threat” which it believes is posed by an individual’s exercise of the right to freedom of expression or association.¹²³ The Government must also demonstrate the proportionality of the limitation by establishing a “direct and immediate connection between the expression and the threat.”¹²⁴

The narrow limitations on the right to freedom of expression and association contained in Articles 19(3) and 22(2) of the ICCPR do not apply in this case. The limitation on Dr. Saibaba’s free expression was not for a proper purpose. In the first case, it is clear that the content of Dr. Saibaba’s speeches and protests against the Government’s use of force to displace the Adivasi community had no impact on public health and morals. Secondly, in respect of protecting national security and public order, the charges against Dr. Saibaba included “advocat[ing]...or incit[ing] the commission of any unlawful activity” under Section 13(1) of the UAPA and “conspir[ing] or attempt[ing] to commit or advocate[ing]...the commission of a terrorist act” under Section 18 of the UAPA.¹²⁵

The Indian Government is invoking the national security rationale on the grounds that Dr. Saibaba was involved in the fires at the mining project in Surjagad. Dr. Saibaba, through his involvement with the RDF, expressed and encouraged others to express open yet peaceful criticism of the Government. However, this is not sufficient for the national security exception to apply. The right to criticize the government and express dissenting political opinions is a protected freedom, as is encouraging others (in particular minority groups) to associate and express their dissenting views. Moreover, the prosecution did not present any evidence at trial that Dr. Saibaba was involved in carrying out or coordinating any specific violent acts.¹²⁶ The court merely relies on the political material found in Dr. Saibaba’s house and a pamphlet critical of the Surjagad mining project found on one of his co-defendants to claim he was part of a criminal conspiracy that culminated with the fires at in Surjagad.¹²⁷ However, the court does not cite anything that directly links Dr. Saibaba to the planning or carrying out of the mining project fires.

¹¹⁸ See ICCPR, *supra* note 81, Art. 19(3).

¹¹⁹ See ICCPR, *supra* note 81, Art. 22(2).

¹²⁰ See General Comment No. 34, *supra* note 85.

¹²¹ *Shin v. Rep. of Korea*, Commc’n No. 926/2000, ¶ 7.2, 80th Sess., Human Rights Comm., U.N. Doc. CCPR/C/80/D/926/2000 (Mar. 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>.

¹²² *Park v. Rep. of Korea*, Commc’n No. 628/1995, ¶ 10.3, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/628/1995 (Nov. 3, 1998), https://digitallibrary.un.org/record/269863/files/CCPR_C_64_D_628_1995-EN.pdf. The Working Group has also applied this test to freedom of association.

¹²³ *Id.*

¹²⁴ General Comment No. 34, *supra* note 85, ¶ 35. See also *Sohn v. Rep. of Korea*, Commc’n No. 518/1992, ¶10.4, Human Rights Comm., U.N. Doc. CCPR/C/54/518/1992 (July 19, 1995), <http://hrlibrary.umn.edu/undocs/html/vws518.htm>.

¹²⁵ *Court of Sessions Judgment supra* note 24, at p.2; UAPA Arts. 13(1) and 18.

¹²⁶ Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020.

¹²⁷ *Court of Sessions Judgment, supra* note 24, at ¶ 935.

Therefore, Dr. Saibaba's speeches and writings are protected free expression under Article 19(2) and his peaceful involvement in the organization of and demonstrations by the RDF are protected free association under Article 22(1). Given the above, and that he poses no threat to national security or public order, the limitations on these rights imposed by his continued imprisonment do not fall within the narrow exceptions contained in Articles 19(3) and 22(2). Thus, his continued detention is arbitrary pursuant to Category II.

3. Category III

According to Category III of the Working Group's Revised Methods of Work, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."¹²⁸

Article 9(1) of the ICCPR confirms the right to liberty and freedom from arbitrary detention and guarantees that: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."¹²⁹ This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles").¹³⁰ The Human Rights Committee has interpreted this right to mean that "procedures for carrying out legally authorized deprivation[s] of liberty should [] be established by law and States parties should ensure compliance with their legally prescribed procedures."¹³¹ Article 9(1) requires compliance with domestic rules that define such procedures for arrest, such as identifying the officials who are authorized to make arrest, specifying when a warrant is required, and permitting access to counsel.¹³²

a. *Violation of the Right to Release Pending Trial*

Article 9(3) of the ICCPR enshrines the right to an individual's release pending trial, providing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody."¹³³ The UNHRC has found that "[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime... Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances."¹³⁴ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹³⁵

As explained in IV(A)(2)(b) above, even though Dr. Saibaba was released on medical bail by the India Supreme Court before trial and was not confined for roughly one year before he was sentenced, Dr. Saibaba was held for approximately one year and six months without bail prior to trial. This time in detention has

¹²⁸ Revised Methods of Work, *supra* note 80, Annex ¶ 8(c).

¹²⁹ ICCPR, *supra* note 81, art. 9(1).

¹³⁰ UDHR, *supra* note 84, art. 9; Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, principles 2, 36(2), 76th plen. mtg., U.N. Doc. A/RES/43/173 [hereinafter "Body of Principles"].

¹³¹ General Comment No. 35 by the Human Rights Committee, U.N. Doc. CCPR/C/GC/35, at ¶23, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

¹³² *Id.*

¹³³ ICCPR, *supra* note 81, at art 9(3).

¹³⁴ General Comment No. 35, *supra* note 131, at ¶38.

¹³⁵ Body of Principles, *supra* note 130, at principle 38 ("A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.") and principle 39 ("Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.").

only made his health condition worse, and despite the severity of his medical conditions, his petitions for bail on medical grounds were denied by lower courts. By not releasing Dr. Saibaba pending trial between May 2014 and June 2015 and December 2015 and April 2016, India violated Article 9(3) of the ICCPR and Principles 38 and 39 of the Body of Principles.

b. *India Violated Dr. Saibaba's Right to Be Tried Without Undue Delay*

Article 14(3)(c) of the ICCPR guarantees the right of the accused to be tried “without undue delay.”¹³⁶ As noted by the Human Rights Committee, “[i]n cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”¹³⁷ Moreover, the Human Rights Committee has emphasized that all stages of the trial process, including the first instance and appeals must take place without undue delay.¹³⁸ The right to be tried without undue delay is further reiterated by Principle 38 of the Body of Principles.

Here, Dr. Saibaba was arrested on May 9, 2014, but his trial did not begin until March 2017, two years and ten months later, roughly a year and a half of which, he was held in pre-trial detention. There was no basis for the long delay between Dr. Saibaba’s arrest and the beginning of his trial. Moreover, despite filing to appeal his sentence in April 2017, there have been no hearings related to the appeal of the judgment and no hearing date has been set by the court at the time of submission, over three years later. In light of these unjustified delays, the Government violated Article 14(3)(c) of the ICCPR as well as Principle 38 of the Body of Principles.

c. *The Court Relied Upon Evidence Seized in Flagrant Violation of Indian Evidentiary Standards*

Article 17(1) of the ICCPR states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”¹³⁹ Under Indian criminal law, before police conduct a search in a closed place, the investigating officer must “call upon two or more independent and respectable inhabitants of the locality” to act as *panch* witnesses.¹⁴⁰ The search must be made in the presence of the *panch* witnesses and a list of all the items seized during the search must be prepared and signed by the *panch*.¹⁴¹ This report is referred to as the *panchnama*.¹⁴² The terms *panch* and *panchnama* do not appear in the Indian Criminal Code, however they are widely used and recognized by Indian courts.¹⁴³

According to one group of Indian legal scholars, “[t]he intention of the legislature behind incorporating [the *panchnama* rules] is to guard against possible chicanery and unfair dealings on the part of the officers entrusted with the execution of the search and to ensure that anything incriminating which was found in the premises searched was really found there and not introduced or planted by the officers conducting the search.”¹⁴⁴

¹³⁶ ICCPR, *supra* note 81, 14(3)(c).

¹³⁷ General Comment No. 32 by the Human Rights Committee, ¶ 235, U.N. Doc. CCPR/C/GC/32, <https://undocs.org/CCPR/C/GC/32> [hereinafter General Comment No. 32].

¹³⁸ *Id.*

¹³⁹ ICCPR, *supra* note 81, 17(1).

¹⁴⁰ Code of Criminal Procedure 1973, Act No.2 of 1974, Section 100(4), available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>. [hereinafter Code of Criminal Procedure].

¹⁴¹ Code of Criminal Procedure, *supra* note 140, Section 100(5).

¹⁴² Shubham Phophalia, Saurabh Raj, and Jagdeesh Chandra T.G., *Evidentiary Value of Panchnama*, NATIONAL JOURNAL OF CRIMINAL LAW; 2018; 1(2): 26-34p. [hereinafter Value of Panchnama].

¹⁴³ *Id.*

¹⁴⁴ *Id.*

In the case of Dr. Saibaba, the *panch* witness present for the search of his home, Jagat Bhole, was forced to stand outside the house during the search by the police.¹⁴⁵ This is a direct and egregious violation of the Indian Code of Criminal Procedure. Further, Mr. Bhole requested the police find another *panch* because he is illiterate and could not tell the difference between electronic devices.¹⁴⁶ He signed the *panchnama* after it was read to him by the investigating officers.¹⁴⁷ Because Mr. Bhole could not reliably identify the electronic evidence allegedly retrieved from Dr. Saibaba's house and could not read the *panchnama* before signing to confirm its accuracy, the search of Dr. Saibaba's house was invalid under Indian law. These violations of local law constitute a violation Article 9(1) and Article 17(1) of the ICCPR.

The searches of Dr. Saibaba's alleged accomplices also violated the *panchnama* rules. According to Section 100(4) of the Code of Criminal Procedure, the *panch* witnesses must be independent.¹⁴⁸ The Indian Supreme Court has said that a *panch* witness's testimony should receive extra scrutiny if it is determined that they are "partisan or interested witnesses, who are concerned in the success of the trap."¹⁴⁹ Particularly, Indian courts have said that a *panch* witness's testimony should not be relied upon if they have served as a *panch* in multiple cases.¹⁵⁰

The *panch* witnesses that testified against Dr. Saibaba's alleged accomplices were not independent. Umaji Kisan Chandankhede, the *panch* for the search and seizure of two of the defendants, was a cleaner at the Aheri police station and had served as a *panch* in multiple cases before.¹⁵¹ Santosh Bawane, the *panch* for the search and seizure of three of the defendants, had been a *panch* in five previous cases.¹⁵² At first, he denied being acquainted with the police officers involved in the case. Upon cross-examination, however, he admitted that he served as a "home-guard" for the Aheri police station.¹⁵³

These violations strike at the heart of the *panchnama* system. As noted above, the *panchnama* system exists to protect the rights of the accused from having evidence planted on them by the police. These procedures were blatantly violated, which makes it likely that evidence, such as the letters authored by "Prakash," was in fact planted by the police. For these reasons, Dr. Saibaba was not afforded due process when he was convicted for his alleged crimes.

d. *The Court Relied on Coerced and Retracted Confessions*

Principle 21(2) of the Body Principles states: "No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement."¹⁵⁴ Section 316 of the Indian Code of Criminal Procedure of 1973 states "no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge."¹⁵⁵ Further, Section 24 of the Indian Evidence Act of 1872 states "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise."¹⁵⁶

¹⁴⁵ *Miscarriage of Justice*, *supra* note 26, at p. 20.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Code of Criminal Procedure, *supra* note 140, Section 100(4).

¹⁴⁹ *State of Bihar v. Basawan Singh*, 1958 AIR 500 (1958). *See also* Value of Panchnama, *supra* note 142, at 30.

¹⁵⁰ *State of Gujarat v. K.P. Singh*, Criminal Appeal No. 1264 (2015). *See also* Value of Panchnama, *supra* note 142, at 30.

¹⁵¹ *Miscarriage of Justice*, *supra* note 26, at p.14.

¹⁵² *Id.*, at p.13.

¹⁵³ *Id.*, at p.13.

¹⁵⁴ Body of Principles, *supra* note 130, at ¶ 21(2).

¹⁵⁵ Code of Criminal Procedure, *supra* note 140, Section 316.

¹⁵⁶ Indian Evidence Act 1872, Act No. 1 of 1872, Section 24, available at https://indiacode.nic.in/bitstream/123456789/6819/1/indian_evidence_act_1872.pdf.

The court relied on the confessions of two of the co-accused in convicting Dr. Saibaba.¹⁵⁷ However, these defendants filed an application before the court retracting their confessions and alleging that the police coerced and threatened them into making the confessions.¹⁵⁸ It is alleged that the police told them that if they did not confess, their families would be “entangled in other cases.”¹⁵⁹ The two also claimed they were mentally and physically harassed by the police.¹⁶⁰ There was no formal investigation of these allegations.¹⁶¹ The court relied on these confessions regardless. The court reasoned that because the confessions were taken by a magistrate in accordance with Indian law, the accused could have simply told the magistrate that they were being coerced.¹⁶² While the confessions were taken by a magistrate, the accused stated that the police were standing right outside the door and would have known if they did not make their “confessions.”¹⁶³

As the purpose of a threat is to ensure compliance with an underlying demand, the Court’s conclusion that if the accused had been threatened, they would not have complied with the officers’ demands is circular and flawed.¹⁶⁴ The threats and harassment by the police in this case are the type of behavior that Indian law as well as the Body of Principles attempt to protect against. The court in this case failed to provide such protection in issuing its judgment against the accused. For these reasons, the admission of the confessions amounts to a violation of Principle 21(2) of the Body of Principles and Section 316 of the Indian Code of Criminal Procedure.

e. *The Government Violated Dr. Saibaba’s Right to a Presumption of Innocence*

Article 14(2) of the ICCPR guarantees that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty.”¹⁶⁵ This right is reiterated in Article 11(1) of the UDHR.¹⁶⁶ The Human Rights Committee has emphasized that States may never “[d]eviat[e] from fundamental principles of fair trial, including the presumption of innocence. . . .”¹⁶⁷ This right requires that the prosecution bear the burden of proving the charge against a defendant beyond a reasonable doubt.¹⁶⁸ Although the right to a presumption of innocence is not explicitly mentioned in the Constitution of India, the Supreme Court of India has recognized the presumption of innocence as a feature of the Indian legal system.¹⁶⁹

Here, the Court’s reliance on retracted confessions violates Dr. Saibaba’s right to a presumption of innocence. Testimony that has been retracted is not sufficient to rebut a presumption of innocence, as a retracted confession, at minimum, puts the reliability of the witness in dispute. The only specific evidence linking Dr. Saibaba to participation in a banned group are the retracted confessions. Even in the absence of the coercion discussed above, these confessions should not have been relied upon to convict Dr. Saibaba.

¹⁵⁷ *Court of Session Judgment*, *supra* note 24, at ¶¶ 178 and 182.

¹⁵⁸ *Id.* at ¶ 163.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020.

¹⁶² *Id.* at ¶166.

¹⁶³ *Id.* at ¶¶164-165.

¹⁶⁴ *Id.* at ¶166 (“Had there been really mental and physical harassment to [Mahesh and Pandu] at the hands of police and had they made confessional statement under the coercion or threats at the hands of police[,] both accused could have stated before the Magistrate about the said fact as they stated in the retraction application... This shows that the retraction made by the accused ... is false.”)

¹⁶⁵ ICCPR, *supra* note 81, Art. 14(2).

¹⁶⁶ UDHR, *supra* note 84, Art. 11(1).

¹⁶⁷ General Comment No. 32, ¶ 34.

¹⁶⁸ *Id.* at ¶ 30.

¹⁶⁹ *Noor Aga Khan v. State of Punjab*, Supreme Court of India, No. 1034/08 (July 9, 2008), available at <https://indiankanoon.org/doc/1584447/>.

Furthermore, as described in detail in Section IV.B.1.b, the government failed to present sufficient evidence concerning crucial elements of the crime for which Dr. Saibaba was convicted. Despite that under Indian law membership in a banned organization is not subject to criminal sanction unless the individual member is involved in carrying out violent acts, the indictment against Dr. Saibaba did not make any reference to such an act. Moreover, the prosecution did not present any evidence at trial that Dr. Saibaba was involved in carrying out violent acts. Indeed, it was the trial court, on its own motion, that attempted to link Dr. Saibaba to the Surjagad incident, which occurred entirely after Dr. Saibaba's arrest and indictment. Accordingly, the prosecution failed to meet its burden beyond a reasonable doubt, and thus the conviction of Dr. Saibaba amounts to a violation of his right to a presumption of innocence. For these reasons, the Government violated Article 14(2) of the ICCPR and Article 11(1) of the UDHR.

f. *The Government Interfered with Dr. Saibaba's Right to Counsel*

Article 14(3)(d) of the ICCPR guarantees the right to counsel, stating that a criminal defendant has the right to "to defend himself in person or through legal assistance of his own choosing." The Human Rights Committee has clarified that such a guarantee requires that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter."¹⁷⁰ Furthermore, the Basic Principles on the Role of Lawyers, adopted by the Eight UN Congress on the Prevention of Crime and the Treatment of Offenders, specifically recognizes that Governments should ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference."¹⁷¹

Here, the Government wrongfully interfered with Dr. Saibaba's right to counsel. The police's use of threats and intimidation directed towards Mr. Gadling during the course of the trial amounts to improper pressure and undue influence by the Government, for the purpose of interfering with his legal representation of Dr. Saibaba. Moreover, the Government wrongfully arrested Mr. Gadling, depriving Dr. Saibaba of the lead attorney on his appeal. The police officer's threat that Mr. Gadling would be "taken care of" suggests that Mr. Gadling was arrested at least in part because he represented Dr. Saibaba. Thus, Mr. Gadling's arrest and the resulting interference with Dr. Saibaba's right to representation were unlawful. Accordingly, the Government's interference with Dr. Saibaba's right to counsel amounts to a violation of Article 14(3)(d) of the ICCPR as well as the Basic Principles on the Role of Lawyers.

CONCLUSION

The arrest, trial, conviction, and ongoing imprisonment of Dr. Saibaba represent severe violations of his fundamental human rights. Moreover, the past and continued actions of the Government in its treatment of Dr. Saibaba violate international obligations under the ICCPR, the UDHR, the Body of Principles, and the Mandela Rules. We hereby request that the Working Group issue an opinion, finding Dr. Saibaba's ongoing detention to be in violation of India's obligations under the relevant provisions of the ICCPR and UDHR, call for his immediate release and award Dr. Saibaba compensation for the harm caused by his arbitrary detention pursuant to Categories I, II and III.

¹⁷⁰ General Comment No. 32, ¶ 34.

¹⁷¹ *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27-Sep. 7 1990), ¶ 16, <https://www.refworld.org/docid/3ddb9f034.html>.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

In April 2017, Dr. Saibaba appealed his sentence on the grounds that his conviction was not based on proper evidence or witness testimony. However, there have been no hearings related to the appeal of the judgment and no hearing date has been set by the court.¹⁷² On March 25, 2019, Dr. Saibaba's medical bail plea before the Maharashtra High Court was rejected by the Nagpur bench of the Bombay High Court due to the offences being "serious in nature." On September 25 and October 29, 2019, Dr. Saibaba wrote to the Supreme Court to provide the Court with updates on his deteriorating medical condition, but so far his letters have received no response. On April 2, 2020, Dr. Saibaba submitted an application to the Divisional Commissioner of Prisons, Nagpur, Maharashtra Home Department, seeking release on parole for 45 days to visit his mother who is seriously ill from lymphoma cancer. On April 27, the Divisional Commissioner of Prisons, Nagpur, denied Dr. Saibaba's request for parole. On May 1, 2020, Dr. Saibaba appealed the Divisional Commissioner of Prisons' decision and is awaiting response from the authorities. On May 5, 2020, Dr. Saibaba also submitted a writ to the Nagpur bench of the Bombay High Court to set aside the parole rejection order. However, the Court denied his appeal.¹⁷³

VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Freedom Now is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts.

Maran Turner
Adam Lhedmat
Freedom Now
1750 K Street, NW, 7th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Paul Kavanagh
Dechert LLP
160 Queen Victoria Street
London EC4V 4QQ UK
+020 7184 7000 (tel)
+44 20 7184 7001 (fax)
paul.kavanagh@dechert.com

Marie Fillon
Dechert LLP
32 Rue de Monceau
75008 Paris France
+01 57 57 80 80 (tel)
+33 1 5757 8081 (fax)
marie.fillon@dechert.com

Date: June 12, 2020

Signature:



¹⁷² Conversation with A.S. Vasantha Kumari and Gokarakonda Ramdevudu on May 5, 2020.

¹⁷³ *HC Refuses Parole Leave to DU Professor GN Saibaba*, Hindustan Times (May 22, 2020), <https://www.hindustantimes.com/mumbai-news/hc-refuses-parole-leave-to-du-professor-gn-saibaba/story-WtDt8o0SwzzSeqVcErJgKL.html>.