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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its 90<sup>th</sup> session, 3-12 May 2021

#### Opinion No. 21/2021 concerning Gokarakonda Naga Saibaba (India)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 30 December 2020, the Working Group transmitted to the Government of India a communication concerning Gokarakonda Naga Saibaba. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) 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 Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established 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 (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## Submissions

### *Communication from the source*

4. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:
5. Mr. Gokarakonda Naga Saibaba is a citizen of India and resides in Nagpur.
6. The source informs that Mr. Saibaba is a former Professor of English literature at the University of Delhi. He contracted polio as a child, and was left living with a physical disability and wheelchair-bound due to post-polio paralysis. He also suffers from a number of debilitating medical conditions. Despite these medical conditions, Mr. Saibaba has spent much of his life fighting for the rights of the disadvantaged, including of the Dalit and Adivasi people.
7. The source also informs that the National Confederation of Human Rights Organizations awarded Mr. Saibaba the 2019 Mukundan Menon Award in recognition of his services for the protection of human and civil rights, in particular of the Adivasi. At the time of his incarceration, he was the Deputy Secretary of the Revolutionary Democratic Front (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.
8. According to the source, while Mr. Saibaba was the Deputy Secretary, the RDF published several statements condemning the alleged Government violence against the Adivasi and Dalit people. 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 by the Government forces.
9. The source notes that while the RDF has been declared a banned organization in the states of Andhra Pradesh, Odisha, and Telangana, it is not banned in Delhi (where Mr. Saibaba was arrested), Maharashtra (where other accused were arrested) or by the central Government. Moreover, according to the source, 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.
10. The source further informs that as the Deputy Secretary, Mr. Saibaba focused resources of the organization towards mobilizing democratic voices against military offensive initiated in 2009 by the Government against the indigenous people, called Operation Green Hunt. This operation involved the deployment of 100,000 paramilitary forces in the tribal belt of India. Mr. Saibaba called upon the Government to stop the alleged killings of civilians by paramilitary troops and the alleged violations of their human rights by corporations operating in tribal areas. The source emphasizes the fact that 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.”
11. According to the source, Mr. Saibaba was supposedly implicated in the alleged offence as a result of a confession obtained from one of Mr. Saibaba’s eventual co-defendants, who stated after his arrest in 2013, that Mr. Saibaba gave him a memory card wrapped in a paper and asked him to deliver it to a Naxalite leader. The entire statement implicating Mr. Saibaba has since been retracted and is alleged to have been obtained as a result of a coercion.
12. After the interrogation implicating Mr. Saibaba, the investigating officer sought permission to travel to Delhi to conduct a search in Mr. Saibaba’s home. On 12 September 2013, a joint task force including Maharashtra police, Delhi police and the national anti-terrorism unit conducted a search in Mr. Saibaba’s home in Delhi, from where they recovered CDs, DVDs, pen

drives, hard discs, mobile phones, books and magazines. The content of these electronic devices and other materials allegedly included videos on the Sri Lankan war crimes, documents on Kashmir and a booklet titled “Prashenbabu is not a Maoist.” The police also allegedly recovered several documents authored by a person implied with the Communist Party of India.

13. The source informs that the police spent the next several months conducting a study of seized devices and documents before making an attempt to arrest Mr. Saibaba. The initial attempt to arrest Mr. Saibaba was stopped by organized protesters at Mr. Saibaba’s home on the University of Delhi campus. On 9 May 2014, plain clothed police officers arrested Mr. Saibaba on his way home from work. During the arrest, Mr. 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 a person with disabilities.

14. The source informs that although he was arrested in Delhi, Mr. Saibaba was flown to Maharashtra where other men were arrested and where the investigation was taking place. Mr. Saibaba was detained in Nagpur Central Jail located in Pune, Maharashtra between his arrest and conviction (except for the periods of time when he was granted bail on medical grounds).

15. It is reported by the source that Mr. Saibaba, along with five other individuals, was subsequently charged with violating sections 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act (UAPA). Under the 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. Under the section 20, being a member of a “terrorist gang” or “terrorist organization” is also punishable with life imprisonment.

16. The source further informs that as a result of Mr. Saibaba’s paralysis, the conditions of his imprisonment and the lack of medical help and support available at Nagpur Central Jail, Mr. Saibaba’s health has deteriorated to a life-threatening level. Because the police were inexperienced in handling someone with such severe disabilities, their handling of Mr. Saibaba resulted in him sustaining a brachial plexus injury in his left shoulder. Furthermore, Mr. Saibaba was prevented from receiving the medicines he required to treat high blood pressure.

17. Despite the severity of Mr. Saibaba’s health problems, his petition for bail on medical grounds was repeatedly denied. On 30 June 2015, the Nagpur bench of the Bombay High Court granted Mr. Saibaba interim bail on medical grounds until 31 December 2015. However, on 23 December 2015, the Nagpur bench of the Bombay High Court rejected Mr. Saibaba’s regular bail application and directed him to surrender within 48 hours. This was appealed and on 4 April 2016, the Supreme Court of India granted him bail on medical grounds, rejecting the prosecution’s argument that Mr. Saibaba would be likely to engage in “anti-national activities” if granted bail.

18. The source informs that the trial of the six accused was held in March 2017. 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 if they did not confess. While the co-defendants’ confessions were made before a Magistrate, they were made without their lawyer being present and were written in Marathi, a language they did not understand. There was no formal investigation into the police’s alleged coercion and threats against the co-defendants.

19. According to the source, during the trial, several procedural irregularities were uncovered in connection with law enforcement’s search of Mr. Saibaba’s premises in September 2013. Under the 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”.<sup>1</sup> During the cross-examination, it became apparent that several of the *panch* witnesses had connections with the authorities and were therefore not independent.

20. Furthermore, during the cross-examination at trial, a witness admitted that he had not actually witnessed the search and seizure of Mr. Saibaba’s property as he had been outside the house while the police conducted the search. 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 Mr. 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.

21. The source also notes that part of the evidence presented against Mr. Saibaba consisted of several letters allegedly recovered from hard drives during the search of his home which the prosecution used to incriminate Mr. Saibaba. However, there is no direct evidence that Mr. Saibaba actually wrote or received these letters.

22. In its judgment, the Court stated that there was evidence that the computer of one of the Maoist members crashed, and one of the hard drives seized from Mr. Saibaba was corrupted, so they must be the same person. The Court also relied on a testimony that suggested Maoists frequently use aliases as an evidence that Mr. Saibaba was using an alias. Further, the Maoist person in question was allegedly very sick, and because Mr. Saibaba also suffers from various illnesses, the Court suggested they must be the same person.

23. The source notes that in arriving at its judgment, the judge accepted the admission of the electronic evidence retrieved from Mr. Saibaba’s house, even though the conduct of the search violated Indian law on the collection of evidence. The investigative records prepared by the police were also inconsistent regarding what was recovered from Mr. Saibaba’s house.

24. Further, according to the source, the prosecution did not present any evidence that Mr. Saibaba was involved in planning or coordinating violent acts of any kind. Under the precedent from the Indian Supreme Court, mere membership in a banned organization is not enough to convict a person under the UAPA. The State must show that the individual resorted to violence or incite[d] people to violence. In its judgement, the Court accomplishes this by tying Mr. Saibaba and his co-defendants to a fire that took place at a mining operation in the village of Surjagad on 23 December 2016. However, this fire took place several years after Mr. Saibaba’s arrest and indictment, and the Court presented no direct evidence linking Mr. Saibaba or his co-defendants to the planning or execution of the fires.

25. The source informs that on 7 March 2017, based entirely on the retracted confessions, materials seized during the illegal search and the events in Surjagad that occurred after Mr. Saibaba’s indictment, the judge found Mr. Saibaba guilty on all charges and sentenced him to life imprisonment. Mr. Saibaba was subsequently re-imprisoned at the Nagpur Central Jail in Maharashtra.

26. In April 2017, Mr. 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 and no hearing date has been set by the Court. On 7 June 2018, the lead attorney representing Mr. Saibaba was arrested under the UAPA, allegedly for links with banned Maoist

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<sup>1</sup> Sections 100(4) and (5) Code of Criminal Procedure 1973, Act No.2 of 1974

groups. The source notes that Mr. Saibaba's legal counsel has worked as a human rights lawyer and has represented numerous human rights defenders.

27. According to the source, during Mr. Saibaba's trial, the police repeatedly threatened his legal counsel and at one point an officer explicitly stated that he would be taken care of for his role representing Mr. Saibaba. International and domestic human rights organizations protested at Mr. Saibaba's legal counsel's arrest as politically motivated for his work defending Dalit rights activists and members of the Dalit community.

28. The source informs that Mr. Saibaba's health has deteriorated to the point where he cannot move from the bed to his wheelchair. His right hand does not function properly and his left hand was severely injured by the police mishandling him. He is unable to perform basic daily functions such as eating and fetching water. Mr. Saibaba's family wrote letters to the authorities at the Nagpur Central Jail in Maharashtra to request two attendants to help Mr. Saibaba perform basic tasks, but never received a response. Mr. Saibaba has not been provided an attendant to aid him.

29. The source further reports that Mr. 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 a loss of consciousness. Because of these ailments, Mr. 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 and muscle cramps and spasms, among other conditions. Despite the state of Mr. Saibaba's health, in March 2019, the Maharashtra High Court denied his petition to be released on bail on medical grounds.

30. The source states that due to Mr. Saibaba's severe pre-existing medical conditions and age, he is especially vulnerable to illness, such as COVID-19. In November 2020, Mr. Saibaba observed a hunger strike for a period of 10 days, which caused his already delicate health condition to worsen. In addition to his pre-existing health problems, he currently suffers from swollen legs, dizziness and severe headaches. Despite his severe medical complications, Mr. Saibaba's pleas for bail on health grounds have repeatedly been denied on the basis that he was convicted of a dangerous crime, even though the Indian Supreme Court had previously ruled that Mr. Saibaba does not present a threat to public safety. The source notes that prison authorities continue to show indifference to his deteriorating health and medical needs.

31. The source submits that the continued detention of Mr. Saibaba constitutes an arbitrary deprivation of his liberty under categories I, II and III of the Working Group. The source also notes that in addition to being bound to respect the Universal Declaration of Human Rights, India is a party to the International Covenant on Civil and Political Rights ("Covenant").

32. The source argues that because the authorities prosecuted Mr. Saibaba under the overly vague UAPA and did not provide supporting evidence to justify his conviction, Mr. Saibaba's detention is arbitrary under the category I as having no basis under domestic law.

33. More specifically, the source recalls that article 15(1) of the Covenant and article 11(2) of the Universal Declaration of Human Rights both guarantee individuals the right to know what the law is and what conduct violates the law. In its 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." 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 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.”<sup>2</sup> Moreover, the Working Group 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.<sup>3</sup>

34. The charges against Mr. Saibaba included “advocat[ing]...or incit[ing] the commission of any unlawful activity” under the section 13(1) of the UAPA. 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.”<sup>4</sup>

35. The source submits that 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 Mr. Saibaba was charged, without meaning. Section 13(1) and unlawful activity as defined by section 2 gives Mr. Saibaba no fair notice of what conduct is prohibited and may apply to many activities that would be protected under international human rights law. The source argues that without limiting provisions or clarifying language, the UAPA targets a broad range of actions and could be applied virtually to any expression of political opposition against the Government. It is argued that for Mr. Saibaba, the ill-defined provisions have resulted in an arbitrary prosecution for acts that are both unforeseeable as criminal and protected under the Covenant and the Universal Declaration of Human Rights.

36. The source also asserts that the Government did not support Mr. Saibaba’s conviction with substantive evidence. In this context, it recalls that article 9(1) of the Covenant 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.” It also notes that the Working Group has previously stated that “confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings.”<sup>5</sup>

37. The source states that under the precedent from the Indian Supreme Court, mere membership in a banned organization is not enough to convict under the UAPA.<sup>6</sup> The Government must show that the accused resorted to violence. The source submits that the prosecution presented no evidence that Mr. Saibaba engaged in the direction, planning or carrying out violent acts. Furthermore, in its judgment, the Court accuses Mr. Saibaba of being involved in the fires set at a mining project in Surjagad. The only connection the Court offers to support this claim is that one of Dr. Saibaba’s co-defendants was found with a pamphlet that was critical of the mining project in question. The Court used this single piece of literature to allege that Mr. Saibaba was part of a criminal conspiracy to set the fires. The source submits that it is a *post hoc* rationalization made by the Court to accuse Mr. Saibaba of violence that occurred more than a year after charges were filed against him and that there was no substantive evidence to support these claims.

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<sup>2</sup> U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005)

<sup>3</sup> A/HRC/WGAD/2018/10

<sup>4</sup> UAPA, Ch. I, Sec. 2(o)(ii) and (iii).

<sup>5</sup> A/HRC/27/48/Add.5

<sup>6</sup> 6 Arup Bhuyan vs. State of Assam, reported in 2011(1) SCC, 784 (SC), cited in Court of Session Judgment, at 938-939.

38. Moreover, the source notes that the conviction of Mr. 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. Further, according to the source, the confessions were induced by threats made by the police to the co-accused and their families and they retracted their confessions. The only other evidence against Mr. Saibaba was a set of electronic devices containing literature related to his free expression, which were seized during an improperly conducted search of his house.

39. The source submits that alleged confessions should not have been admitted because they were taken without a lawyer present, induced by threats that were not formally investigated and because the confessions were later retracted by the accused. The evidence seized from Mr. Saibaba's house should not have been admitted because the search was improperly conducted and evidence may have been planted or tampered with by the police. The evidence seized relates only to Mr. Saibaba's free expression and cannot be the basis of a criminal conviction. The Court has no basis to convict Mr. Saibaba because there is no substantive evidence against him. Thus, concludes the source, the authorities have no legal basis for continuing to deprive Mr. Saibaba of his liberty.

40. The source further argues that Mr. Saibaba's detention is arbitrary under category II because it resulted from his exercise of right to freedom of opinion and expression and freedom of association. It notes that the rights to freedom of opinion and expression and freedom of association are also protected under both international (articles 19 and 22(1) of the Covenant and articles 19 and 20(1) of the Universal Declaration of Human Rights) and national law (article 19(1)(a) and (c) of the Constitution).

41. Moreover, the source recalls that the Human Rights Committee has recognized that the protection of free expression must include the right to express dissenting political opinions. In the 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."<sup>7</sup> In the General Comment No. 25, 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."

42. The source submits that despite the express protections under the international and Indian law, the Government detained and prosecuted Mr. Saibaba as a result of his activities as the Deputy Secretary of the RDF. The circumstances of Mr. Saibaba's arrest suggest that his conviction was a result of his open criticism of the Government, particularly in relation to its treatment of the indigenous Adivasi population. Mr. Saibaba was openly involved in encouraging the Adivasi people to protest against the Government in respect of the treatment of their communities. He was also actively involved in organizing Adivasi protests against the Government and encouraging Adivasi and Dalit people to claim their rights. It was this involvement that provided a motive to search his home and for his subsequent arrest, submits the source.

43. Furthermore, the source notes that the Court's argument appears to be that members of CPI (Maoist) have been violent, and that Mr. Saibaba has talked about the CPI and allegedly had Maoist literature in his home. Therefore, he is guilty of the violence perpetrated by CPI (Maoist). However, according to the source, the Court did not cite any evidence directly linking Mr. Saibaba to the planning or coordination of the Surjagad fires. Despite the fact that Mr. Saibaba had never advocated for the use of violence in his public speeches nor facilitated violent acts, he

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<sup>7</sup> General Comment No. 34

was found guilty. The source argues that 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.

44. The source also argues that this case does not fall within the limited exceptions under articles 19 and 22 of the Covenant, which provide limited exceptions for national security, public safety and public order, in line with the exceptions under the Constitution. The source recalls that these exceptions are interpreted narrowly. The Human Rights Committee has noted that restrictions “may not put in jeopardy the right itself.”<sup>8</sup> The Human Rights Committee has also stated that restrictions to these rights must meet all the requirements set forth in the Covenant; 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.<sup>9</sup> The Human Rights Committee has treated this three-prong test as a “strict test of justification.” 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. The Government must also demonstrate the proportionality of the limitation by establishing a “direct and immediate connection between the expression and the threat.”<sup>10</sup>

45. The source states that the narrow limitations on the right to freedom of expression and association contained in articles 19(3) and 22(2) of the Covenant do not apply in this case. The limitation on Mr. Saibaba’s free expression was not for a proper purpose. Firstly, it is clear that the content of Mr. 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 Mr. Saibaba included “advocat[ing]...or incit[ing] the commission of any unlawful activity” under the section 13(1) of the UAPA and “conspir[ing] or attempt[ing] to commit or advocate[ing]...the commission of a terrorist act” under the section 18 of the UAPA.

46. The source notes that the Government is invoking the national security rationale on the grounds that Mr. Saibaba was involved in the fires at the mining project in Surjagad. Mr. Saibaba, through his involvement with the RDF, expressed and encouraged others to express open yet peaceful criticism of the Government. The source argues that 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.

47. Moreover, according to the source, the prosecution did not present any evidence at trial that Mr. Saibaba was involved in carrying out or coordinating any specific violent acts. The Court relied on the political material found in Mr. 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 in Surjagad. The source notes that the Court does not cite anything that directly links Mr. Saibaba to the planning or carrying out of the mining project fires.

48. The source concludes that Mr. Saibaba’s speeches and writings are protected under the article 19(2) and his peaceful involvement in the organization and demonstrations by the RDF are protected under the article 22(1) of the Covenant. Given the above, and that he poses no threat

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<sup>8</sup> See General Comment No. 34

<sup>9</sup> *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)

<sup>10</sup> 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)

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) of the Covenant. Thus, his continued detention is arbitrary and falls under category II.

49. Finally, in relation to category III, the source submits that there have been numerous serious violations of Mr. Saibaba's right to fair trial protected under articles 9 of the Universal Declaration of Human Rights and 9(1) and 9(3) of the Covenant.

50. More specifically, the source submits that Mr. Saibaba's right to be release pending trial has been violated, contrary to provisions under the article 9(3) of the Covenant, which provides that it shall not be the general rule that persons awaiting trial shall be detained in custody. 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. The source notes that even though Mr. Saibaba was released on medical bail by the Supreme Court before trial and was not confined for roughly one year before he was sentenced, Mr. Saibaba was held for approximately one year and six months without bail prior to the trial. This time in detention has 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. The source submits that by not releasing Mr. Saibaba pending trial between May 2014 and June 2015 and December 2015 and April 2016, the Government violated article 9(3) of the Covenant and Principles 38 and 39 of the Body of Principles.

51. Furthermore, the source submits that the Government violated Mr. Saibaba's right to be tried without undue delay, upheld by the article 14(3)(c) of the Covenant and the Body of Principles. The source notes that Mr. Saibaba was arrested on 9 May 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. It thus argues that there was no basis for the long delay between Mr. Saibaba's arrest and the beginning of his trial. Moreover, despite the fact that Mr. Saibaba appealed his sentence in April 2017, there have been no hearings related to the appeal and no hearing date has been set by the Court at the time of submission, over three years later.

52. Moreover, the source submits that the Court relied upon the evidence seized in violation of evidentiary standards. Under the Indian criminal law, before the police conducts 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.<sup>11</sup> 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.<sup>12</sup> This report is referred to as the panchnama.<sup>13</sup> The terms panch and panchnama do not appear in the Indian Criminal Code, however they are widely used and recognized by Indian courts. Furthermore, it is noted that article 17(1) of the Covenant states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

53. The source recalls that in the case of Mr. Saibaba, the panch witness present during the search of his home was forced to stand outside the house during the search by the police. Further, the witness requested the police find another panch because he is illiterate and could not tell the difference between electronic devices. He signed the panchnama after it was read to him by investigating officers. Because the witness could not reliably identify the electronic evidence allegedly retrieved from Mr. Saibaba's house and could not read the panchnama before signing to confirm its accuracy, the search of Mr. Saibaba's house was invalid under Indian law. These

<sup>11</sup> Code of Criminal Procedure 1973, Act No.2 of 1974, Section 100(4)

<sup>12</sup> 12 Code of Criminal Procedure, Section 100(5).

<sup>13</sup> Shubham Phophalia, Saurabh Raj, and Jagdeesh Chandra T.G., Evidentiary Value of Panchnama, NATIONAL JOURNAL OF CRIMINAL LAW; 2018; 1(2): 26-34p. 12

violations of local law constitute a violation article 9(1) and article 17(1) of the Covenant, affirms the source.

54. The source also asserts that the searches of Mr. Saibaba's alleged accomplices also violated the domestic law. According to the section 100(4) of the Code of Criminal Procedure, the panch witnesses must be independent. The source argues that the panch witnesses that testified against Mr. Saibaba's alleged accomplices were not independent, served at the Aheri police station and as a panch in multiple cases before.

55. The source also submits that the Court relied on coerced and retracted confessions, in violation of Principle 21(2) of the Body Principles, section 316 of the Indian Code of Criminal Procedure of 1973 and section 24 of the Indian Evidence Act of 1872. In this context, the source recalls that the Court relied on the confessions of two of the co-accused in convicting Mr. Saibaba. However, these defendants filed an application before the court retracting their confessions and they were mentally and physically harassed by the police. There was no formal investigation of these allegations. The Court relied on these confessions regardless.

56. The source further argues that the Government violated Mr. Saibaba's right to a presumption of innocence protected under article 14(2) of the Covenant by relying on retracted confessions. 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 Mr. Saibaba to participation in a banned group are the retracted confessions.

57. Furthermore, it is submitted that the Government failed to present sufficient evidence concerning crucial elements of the crime for which Mr. Saibaba was convicted. Despite the fact 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 Mr. Saibaba did not make any reference to such an act. Moreover, the prosecution did not present any evidence at trial that Mr. Saibaba was involved in carrying out violent acts.

58. Finally, the source recalls that the Government interfered with Mr. Saibaba's right to counsel, in violation of the article 14(3)(d) of the Covenant. The source asserts that the use of threats by the police and intimidation directed towards Mr. Saibaba's lawyer during the course of the trial amounts to improper pressure and undue influence by the Government, for the purpose of interfering with legal representation of Mr. Saibaba. Moreover, the source submits that the Government wrongfully arrested Mr. Saibaba's lawyer, depriving Mr. Saibaba of the lead attorney on his appeal.

#### *Response from the Government*

59. On 30 December 2020, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 1 March 2021, detailed information about the situation of Mr. Saibaba and any comments on the source's allegations.

60. The Working Group regrets that it did not receive a response from the Government. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

61. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

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## Discussion

62. In determining whether or not a person's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

63. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant, the Convention on the Rights of Persons with Disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination and other applicable international and regional instruments.<sup>14</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>15</sup>

64. The Working Group recalls that under article 4 of the Convention on the Rights of Persons with Disabilities, the Government is under a general obligation to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability and to recognize that all persons are entitled to equal protection and equal benefit of the law.

65. Under article 13 of the Convention on the Rights of Persons with Disabilities the Government of India undertook to ensure effective access to justice for persons with disabilities on an equal basis with others, and in this regard to promote appropriate training for those working in the field of administration of justice, including police and prison staff.

66. The Working Group also notes that under the article 17 of the Convention on the Rights of Persons with Disabilities, every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

67. The source submits that the detention of Mr. Saibaba constitutes is arbitrary falling under categories I, II and III. The Working Group will consider whether there have been violations under these categories.

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<sup>14</sup> See General Assembly resolution 72/180, preambular para. 5; Human Rights Council resolution 41/2, preambular para.2; resolution 41/6, para.5 (b); resolution 41/10, para.6; resolution 41/17, preambular para.1; resolution 43/26, preambular para.13; resolution 44/16, preambular para.25; resolution 45/19, preambular para.9; resolution 45/20, preambular para.2; resolution 45/21, preambular para.3; and resolution 45/29, preambular para. 3. See also Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para.15; Human Rights Council resolutions 6/4, para.1 (a), and 10/9, para.4 (b); opinions No. 41/2014, para.24; No. 3/2018, para.39; No. 18/2019, para.24; No. 36/2019, para.33; No. 42/2019, para.43; No. 51/2019, para.53; No. 56/2019, para.74; No. 76/2019, para.36; No. 6/2020, para.36; No. 13/2020, para.39; No. 14/2020, para.45; and No. 32/2020, para. 29.

<sup>15</sup> Opinions No. 1/1998, para.13; No. 82/2018, para.25; No. 36/2019, para.33; No. 42/2019, para.43; No. 51/2019, para.53; No. 56/2019, para.74; No. 76/2019, para.36; No. 6/2020, para.36; No. 13/2020, para.39; No. 14/2020, para.45; and No. 32/2020, para. 29.

i. Category I

68. The Working Group recalls that Mr. Saibaba, who was at the time of his arrest the Deputy Secretary of RDF, was, along with five other individuals, charged with violating sections 13, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act (UAPA). Under the section 18, anyone 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. Under the section 20, being a member of a “terrorist gang” or “terrorist organization” is also criminalized.

69. The source argues that Mr. Saibaba’s arrest and detention is arbitrary under category I and has no legal basis because he was arrested under an overly vague law used to target or silence Government critics and that there was no supporting evidence to justify a conviction. More specifically, the source refers to article 15(1) of the Covenant and article 11(2) of the Universal Declaration of Human Rights both of which guarantee individuals the right to know what conduct constitutes a crime under the law. In its 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.” 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 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.”<sup>16</sup> For example, the Working Group 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.<sup>17</sup>

70. The Working Group views the provision under which Mr. Saibaba was charged as being vague and overly broad. “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” while one is exercising the fundamental freedom of expression requires that at the very least there is clarity in the parameter of conduct constituting the offence taking into account the freedom of expression. The Working Group has previously made it clear that prosecution under vague and overly broad laws offend the principle of legality.<sup>18</sup> This principle entails that laws be framed with sufficient precision so that the individual can access and understand them so as to enable him or her to regulate his or her conduct accordingly.<sup>19</sup>

71. Likewise, the Working Group believes that phrases “intended to disrupt the sovereignty and territorial integrity of India” and “intended to cause disaffection against India” are so broad and ambiguous that they render section 13(1), under which Mr. Saibaba was charged, to be without meaning. Section 13(1) of the Act and “unlawful activity”, as defined by the section 2, gives Mr. Saibaba no fair notice of what conduct is prohibited and may apply to many activities that would be protected under international human rights law.

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<sup>16</sup> U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005)

<sup>17</sup> Waleed Abulkhair v. Saudi Arabia, UN Working Group on Arbitrary Detention, UN. Doc A/HRC/WGAD/2018/10

<sup>18</sup> Opinion Nos. 45/2019, para. 54; 9/2019, para. 39; 46/2018, para. 62; 36/2018, para. 51; 35/2018, para. 36; 40/2016, para. 36; 26/2013, para. 68; 27/2012, para. 41; 46/2011, para. 22. See also CCPR/C/VNM/CO/3, paras. 45-46.

<sup>19</sup> Opinion No. 41/2017, paras. 98–101. See also Opinion No. 62/2018, paras. 57-59; Human Rights Committee, General comment No. 35, para. 22.

72. Mr. Saibaba could not reasonably expect that the exercise of his freedom of expression through mobilized democratic voices against a military offensive which the Government had allegedly initiated in 2009 on the indigenous people of the country, called Operation Green Hunt, his criticism of the Government policy in relation to tribal area and generally calling for Government accountability, would amount to criminal conduct under the UAPA.

73. The Working Group notes that according to the source, Mr. Saibaba was purportedly implicated in the alleged offence as a result of a confession obtained from one of Mr. Saibaba's eventual co-defendants, who later retracted the entire statement implicating Mr. Saibaba, as it was allegedly obtained through coercion. While the co-defendants' confessions were made before a Magistrate, they were made without their lawyer being present and were written in Marathi, a language they did not understand. There was no formal investigation into the police's alleged coercion and threats against the co-defendants.

74. There is information that an irregular search was conducted on Mr. Saibaba's premises which resulted in illegally obtained materials being used against him. The Working Group views this as an indication that absent the illegal search and the materials obtained in the process, there is no legal basis for the arrest.

75. For the reasons above, the Working Group finds that the Government failed to establish a legal basis for Mr. Saibaba's detention. His detention was thus arbitrary and fell under category I.

ii. Category II

76. The source has argued that Mr. Saibaba's detention is arbitrary under category II because it resulted from his exercise of right to freedom of opinion and expression and freedom of association. It notes that the rights to freedom of opinion and expression and freedom of association are also protected under the international law, namely articles 19 and 22(1) of the Covenant and articles 19 and 20(1) of the Universal Declaration of Human Rights.

77. The Working Group takes note of the fact that at the time of his arrest and detention Mr. Saibaba was the Deputy Secretary of the RDF, organization which works among different classes and sections of society including workers, peasants, youth, students, women and cultural groups and which was banned in some states of India. That organization published several statements condemning the alleged Government violence against the Adivasi and Dalit people. It 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 by Government forces.

78. The Working Group notes that article 19(2) of the Covenant provides that "everyone shall have the right to 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." This right includes political discourse, commentary on public affairs, discussion of human rights and journalism. It protects the holding and expression of opinions, including those which are critical of, or not in line with, Government policy. The Government had the opportunity to explain how the arrest and detention of Mr. Saibaba was not in breach of his rights under the article 19 of the Covenant or indeed, how his actions were falling under the exception of that article but has chosen not to.

79. The Working Group considers that the conduct of Mr. Saibaba and his organization fell within the exercise of the right to freedom of opinion and expression protected under the article 19 of the Universal Declaration of Human Rights and the article 19 of the Covenant and that he was detained for exercising these rights.

80. Mr. Saibaba's criticism of the Government policy through his publication concerned matters of public interest. The Working Group considers that he was detained for exercising his right to take part in the conduct of public affairs under the article 21(1) of the Universal Declaration of Human Rights and the article 25(a) of the Covenant.

81. There is nothing to suggest that the permissible restrictions on the above rights set out in article 19(3) and 25 of the Covenant would apply in the present case. The Working Group is not convinced that arresting, detaining and prosecuting Mr. Saibaba was necessary to protect a legitimate interest under these provisions. Moreover, the Government has failed to present an explanation to convince the Working Group otherwise. Importantly, there is evidence to suggest that Mr. Saibaba's criticism of the Government called directly for non-violence in dealing with the tribal area and could not reasonably be considered as a threat to national security, public order, public health or morals, or the rights or reputations of others. The Human Rights Council has called on States to refrain from imposing restrictions under article 19(3) that are not consistent with international human rights law.

82. The Working Group concludes that Mr. Saibaba's detention resulted from the peaceful exercise of his right to freedom of opinion and expression, as well as the right to take part in the conduct of public affairs, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. His detention was thus arbitrary under category II.

83. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Moreover, given that Mr. Saibaba was charged with a terrorism-related offence, the Working Group refers this case to the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

iii. Category III

84. Given its finding under category II, the Working Group notes that no trial should have taken place. Nonetheless, the trial has taken place and on 7 March 2017, the judge found Mr. Saibaba guilty on all charges and sentenced him to life imprisonment, which was subsequently appealed by Mr. Saibaba. The information submitted by the source discloses violations of Mr. Saibaba's right to a fair trial during those proceedings.

85. The source submits, in regards to category III, that there have been numerous violations of Mr. Saibaba's rights protected under articles 9 of the Universal Declaration of Human Rights and 9(1) and 9(3) of the Covenant. More specifically, the source submits that Mr. Saibaba's right to be released pending trial has been violated, contrary to provisions under article 9(3) of the Covenant, which provides that it shall not be the general rule that persons awaiting trial shall be detained in custody. 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. The source notes that Mr. Saibaba was held for approximately one year and six months without bail prior to trial.

86. The source submits that by not releasing Mr. Saibaba pending trial between May 2014 and June 2015 and December 2015 and April 2016, the Government violated article 9(3) of the Covenant and Principles 38 and 39 of the Body of Principles. Furthermore, the source submits that the Government violated Mr. Saibaba's right to be tried without undue delay, upheld in article 14(3)(c) of the Covenant and Principle of the Body of Principles. The source notes that Mr. Saibaba was arrested on 9 May 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. It thus argues that there was no basis for the long delay between Mr. Saibaba's arrest and the beginning of his trial.

87. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was handled by the authorities.<sup>20</sup> The delay in bringing Mr. Saibaba to trial was unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. The delay in the present case is exacerbated by the fact that Mr. Saibaba is, but should not have been, detained solely for the exercise of his rights under international human rights law.<sup>21</sup>

88. Moreover, in terms of article 9(3) of the Covenant, pre-trial detention should be the exception rather than the norm, and should be ordered for the shortest time possible.<sup>22</sup> In other words, liberty is acknowledged under article 9(3) of the Covenant as the core consideration while detention is an exception.<sup>23</sup> Detention pending trial must thus be based on an individualised determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>24</sup> In its General Comment No. 35 the Human Rights Committee has stressed that pretrial detention should not be mandatory for all individuals charged with a particular crime without having regard to the individual's circumstances. Granted all the physical and health challenges that Mr. Saibaba faced his pretrial detention was unwarranted.

89. The Working Group also notes though they were subsequently withdrawn, confessions of the co-defendants were reportedly coerced by the police under threats. Those made by co-defendants before a Magistrate were made without their lawyer being present and were written in Marathi, a language they did not understand. There was no formal investigation into the police's alleged coercion and threats against the co-defendants. The Working Group considers that the alleged use of third party confessions obtained under duress in this case would be a violation of the right to a fair trial.<sup>25</sup> Additionally, during the trial, several procedural irregularities were uncovered in connection with law enforcement's search of Mr. Saibaba's premises in September 2013. During cross-examination it became apparent that several of the *panch* witnesses had connections with the authorities and were therefore not independent.

90. For the reasons given above, the Working Group holds that the detention of Mr. Saibaba also constituted arbitrary deprivation of liberty falling under category III.

iv. Category V

91. The facts as narrated by the source show that Mr. Saibaba, in his capacity of the Deputy Secretary of the RDF, had published several statements condemning the alleged Government violence against the Adivasi and Dalit people. 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 by Government forces.

92. As the Deputy Secretary of the RDF, Mr. Saibaba focused the resources of the organization towards mobilizing democratic voices against a military offensive that the Government had initiated on the indigenous people of the country, called Operation Green Hunt. This initiative involved the deployment of 100,000 paramilitary forces in the tribal belt of India. Mr. Saibaba called upon the Government to stop the alleged killings of civilians by paramilitary

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<sup>20</sup> Human Rights Committee, general comment No. 35, para. 37; and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 35.

<sup>21</sup> Opinion No. 46/2019, para. 63, in which the Working Group was not convinced that there was a category II violation and was unable to find that a 16-month delay before the trial was unreasonable.

<sup>22</sup> A/HRC/19/57, paras. 48-58.

<sup>23</sup> Ibid, para. 54.

<sup>24</sup> Human Rights Committee, General Comment No. 35, para. 38.

<sup>25</sup> Opinion No. 47/2017, para. 27.

troops and the alleged violations of their human rights by corporations operating in tribal areas. The source emphasizes the fact that 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.”

93. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights. The position as articulated by the source seems to suggest that Mr. Saibaba was detained for exercising a right recognized under this Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

94. The Working Group considers that Mr. Saibaba was targeted because of his peaceful activities, including voicing out against Government violence against Adivasi and Dalit people and against the alleged killing of civilians by paramilitary troops. Moreover, in the discussion above concerning category II, the Working Group established Mr. Saibaba’s detention resulted from the peaceful exercise of his rights under international law. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.

95. The Working Group finds that Mr. Saibaba was deprived of his liberty on discriminatory grounds, that is, owing to his status as a human rights defender, and on the basis of his political or other opinion in seeking to hold the authorities to account. His deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the Covenant, and was arbitrary according to category V.

96. The Working Group refers this case to the Special Rapporteur on the situation of human rights defenders.

v. Concluding remarks

97. The Work Group is concerned that, according to the information from the source, when on 9 May 2014, plain clothed police officers arrested Mr. Saibaba on his way home from work, Mr. 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 in handling someone with his disabilities.

98. The Working Group is further concerned that owing to Mr. Saibaba’s condition as a person living with disabilities, the conditions of his imprisonment, and the lack of medical help and support available at Nagpur Central Jail, Mr. Saibaba’s health has reportedly deteriorated to a life-threatening level.

99. The Working Group therefore refers this case to the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and to the mandate of the Special Rapporteur on the rights of persons with disabilities.

100. The Working Group would welcome the opportunity to conduct a country visit to India and looks forward to a positive response to its request for a country visit dated 22 February 2018.

**Disposition**

101. In view of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Gokarakonda Naga Saibaba, being in contravention of articles 2, 7, 9, 19 and 21 of the Universal Declaration of Human Rights and articles 29, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

102. The Working Group requests the Government of India to take the steps necessary to remedy the situation of Mr. Saibaba without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

103. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Saibaba immediately accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Saibaba.

104. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention Mr. Saibaba and to take appropriate measures against those responsible for the violation of his rights.

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the rights of persons with disabilities and the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

106. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

107. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

108. Whether Mr. Saibaba has been released and, if so, on what date;

109. Whether compensation or other reparations have been made to Mr. Saibaba;

110. Whether an investigation has been conducted into the violation of Mr. Saibaba's rights and if so, the outcome of the investigation;

111. Whether any other action has been taken to implement the present opinion.

112. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

113. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>26</sup>

*[Adopted on 12 May 2021]*

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<sup>26</sup> Human Rights Council resolution 42/22, paras. 3 and 7.