|  |  |  |
| --- | --- | --- |
|  |  | A/HRC/WGAD/2021/21  |
|  | **Advance Edited Version** | Distr.: General17 June 2021Original: English |

Human Rights Council

**Working Group on Arbitrary Detention**

 Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth 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,[[1]](#footnote-2) 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. Gokarakonda Naga Saibaba is a citizen of India and resides in Nagpur. He 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 is wheelchair-bound due to post-polio paralysis. He also suffers from a number of debilitating medical conditions. Despite those medical conditions, Mr. Saibaba has spent much of his life fighting for the rights of the disadvantaged, including Dalit and Adivasi people.

5. The source informs the Working Group that the National Confederation of Human Rights Organizations awarded Mr. Saibaba the Mukundan Menon Award in 2019, 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, a federation of organizations in India working among various classes and sectors of society, including workers, peasants, youth, students and women, and cultural groups.

6. According to the source, while Mr. Saibaba was its Deputy Secretary, the Revolutionary Democratic Front published several statements condemning the alleged government violence against Adivasi and Dalit people. For example, in June of 2012, the federation spoke out against the deaths of 4 Dalit people in the state of Andhra Pradesh and 20 Adivasi people in the state of Chhattisgarh, claiming that they had been killed by government forces.

7. The source notes that, while the Revolutionary Democratic Front 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 people were arrested) or by the central Government. Moreover, according to the source, the Revolutionary Democratic Front was banned in those states based largely on its public criticism of violent crackdowns by the Government, not due to any violent acts.

8. The source informs the Working Group that, as the Deputy Secretary, Mr. Saibaba focused the resources of the federation on speaking out against a military offensive initiated in 2009 by the Government against indigenous peoples, called Operation Green Hunt. The 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 Mr. Saibaba did not support the use of violence as a means to an end. For example, in 2010, he authored an article entitled “Revolutionaries do not kill policemen”.

9. According to the source, Mr. Saibaba was supposedly implicated in the alleged offence as a result of a confession obtained from one of his eventual co-defendants, who stated, after his arrest in 2013, that Mr. Saibaba had given him a memory card wrapped in 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.

10. After the interrogation implicating Mr. Saibaba, the investigating officer sought permission to travel to Delhi to conduct a search of Mr. Saibaba’s home. On 12 September 2013, a joint task force, including Maharashtra police, Delhi police and the national antiterrorism unit, conducted a search of Mr. Saibaba’s home in Delhi, where they recovered CDs, DVDs, pen drives, hard discs, mobile phones, books and magazines. The content of those electronic devices and other materials allegedly included videos on Sri Lankan war crimes, documents on Kashmir and a booklet. The police also allegedly recovered several documents authored by a person linked with the Communist Party of India (Maoist).

11. The source informs the Working Group that the police spent the next several months conducting a study of the seized devices and documents before making an attempt to arrest Mr. Saibaba. The initial attempt to arrest him 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, because the police did not have experience handling a person with disabilities.

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

13. The source reports 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. Under section 18 thereof, 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 up to life imprisonment. Under section 20, being a member of a “terrorist gang” or “terrorist organization” is also punishable with life imprisonment.

14. The source also reports 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 his sustaining a brachial plexus injury in his left shoulder. Furthermore, Mr. Saibaba was prevented from receiving the medicines that he required to treat high blood pressure.

15. Despite the severity of Mr. Saibaba’s health problems, his petitions for bail on medical grounds were 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 Court rejected Mr. Saibaba’s regular bail application and directed him to surrender within 48 hours. That decision 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.

16. The source informs the Working Group 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 had threatened them and coerced them to confess. Although the co-defendants’ confessions were made before a magistrate, they were made without a lawyer being present and were written in Marathi, a language that they did not understand. There was no formal investigation into the police’s alleged threats against or coercion of the co-defendants.

17. According to the source, during the trial, several procedural irregularities were uncovered in connection with the search of Mr. Saibaba’s premises conducted by law enforcement officers in September 2013. Under section 100 (4) and (5) of the Code of Criminal Procedure of India, when an accused person 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 witnesses to the search and in whose presence the search must be carried out. During the cross-examination at trial, it became apparent that several of the witnesses to the search had connections with the authorities and were therefore not independent.

18. 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, given that he had been outside the house while the police were conducting the search. Several discrepancies between the records of the search and seizure and what was presented as evidence by the prosecution against Mr. Saibaba at trial were also revealed. For example, the property that had been seized was not sealed and appeared to have been opened. The boxes in which the seized materials had been placed during the search were different from those presented at court.

19. The source 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 those letters.

20. In its judgment, the court stated that there was evidence that the computer of one of the members of a group related to the Communist Party of India (Maoist) had crashed and that one of the hard drives seized from Mr. Saibaba was corrupted, so they must be the same person. The court also relied on testimony suggesting that Maoists frequently used aliases as evidence that Mr. Saibaba was using an alias. Furthermore, the member of the Maoist group in question was allegedly very sick and, because Mr. Saibaba also suffers from various illnesses, the court suggested that they must be the same person.

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

22. 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. According to the jurisprudence of the Supreme Court,[[2]](#footnote-3) mere membership in a banned organization is not enough to convict a person under the Unlawful Activities (Prevention) Act. The State must show that the individual resorted to violence or incited people to violence. In its judgment, the court accomplished that by tying Mr. Saibaba and his co-defendants to a fire that had taken place at a mining operation in the village of Surjagad on 23 December 2016. However, that 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 fire.

23. The source informs the Working Group that, on 7 March 2017, based entirely on the retracted confessions, materials seized during the illegal search and the events in Surjagad that had occurred after Mr. Saibaba’s arrest and indictment, the court found Mr. Saibaba guilty on all charges and sentenced him to life imprisonment. Mr. Saibaba was subsequently reimprisoned at the Nagpur Central Jail.

24. In April 2017, Mr. Saibaba appealed his sentence on the grounds that his conviction was not based on proper evidence or witness testimony. However, to date, 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 Unlawful Activities (Prevention) Act, allegedly for links with banned groups related to the Communist Party of India (Maoist). The source notes that Mr. Saibaba’s legal counsel has worked as a human rights lawyer and has represented numerous human rights defenders.

25. 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 Mr. Saibaba’s legal counsel’s arrest as being politically motivated, given his work defending Dalit rights activists and members of the Dalit community.

26. The source informs the Working Group 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 at the time of his arrest. 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 to request two attendants to help Mr. Saibaba to perform basic tasks, but they never received a response. Mr. Saibaba has not been provided an attendant to aid him.

27. The source reports that Mr. Saibaba suffers from an untreated brain cyst, hypertrophic cardiomyopathy, hypertension, paraplegia, spinal kyphoscoliosis, anterior horn cell disease, acute pancreatitis, gallstones, 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 those 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.

28. The source indicates that, due to Mr. Saibaba’s severe pre-existing medical conditions and age, he is especially vulnerable to illness, such as the virus that causes coronavirus disease (COVID-19). In November 2020, Mr. Saibaba went on 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 medical grounds have repeatedly been denied on the basis that he was convicted of a dangerous crime, even though the Supreme Court had previously ruled that Mr. Saibaba did not present a threat to public safety. The source notes that prison authorities continue to show indifference to his deteriorating health condition and his medical needs.

29. The source submits that the continued detention of Mr. Saibaba constitutes an arbitrary deprivation of his liberty falling within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The source notes that, in addition to being bound to respect the Universal Declaration of Human Rights, India is a party to the Covenant.

30. The source argues that, because the authorities prosecuted Mr. Saibaba under the overly vague Unlawful Activities (Prevention) Act and did not provide supporting evidence to justify his conviction, Mr. Saibaba’s detention is arbitrary, under category I, as having no basis under domestic law.

31. 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 (2014) on liberty and security of person, the Human Rights Committee stated that any 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 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.[[3]](#footnote-4) Moreover, the Working Group has previously found that antiterrorism legislation criminalizing conduct described as 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.[[4]](#footnote-5)

32. The charges against Mr. Saibaba included advocating or inciting the commission of unlawful activity under section 13 (1) of the Unlawful Activities (Prevention) Act. Section 2 thereof 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.

33. The source submits that phrases such as “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) of the Unlawful Activities (Prevention) Act, under which Mr. Saibaba was charged, as 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 Act targets a broad range of actions and could be applied to virtually 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.

34. The source also asserts that the Government did not support Mr. Saibaba’s conviction with substantive evidence. In that context, the source recalls that article 9 (1) of the Covenant states that no one should be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. It also notes that the Working Group has previously indicated that confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings.[[5]](#footnote-6)

35. The source notes that, according to the jurisprudence of the Supreme Court, mere membership in a banned organization is not enough to convict a person under the Unlawful Activities (Prevention) Act. 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 of violent acts. Furthermore, in its judgment, the court accused Mr. Saibaba of being involved in a fire set at a mining project in Surjagad. The only connection that the court offered to support that claim is that one of Mr. Saibaba’s co-defendants was found with a pamphlet that was critical of the mining project in question. The court used that single piece of literature to allege that Mr. Saibaba was part of a criminal conspiracy to set the fire. The source submits that it was 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 those claims.

36. The source notes that the conviction of Mr. Saibaba was partly based on the confessions of two of his co-accused. However, although those confessions were taken by a judicial magistrate, they apparently were taken without the presence of a lawyer for the accused. Furthermore, according to the source, the confessions were induced by threats made by the police against the co-accused and their families, and the co-accused later 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.

37. The source submits that the alleged confessions should not have been admitted in court, because they were taken without a lawyer present, induced by threats that were not formally investigated and 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. The source concludes that the authorities therefore have no legal basis for continuing to deprive Mr. Saibaba of his liberty.

38. The source argues that Mr. Saibaba’s detention is arbitrary under category II, because it resulted from his exercise of the rights to freedom of opinion and expression and freedom of association. The source notes that the rights to freedom of opinion and expression and freedom of association are protected under both international law (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).

39. 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 its general comment No. 34 (2011) on the freedoms of opinion and expression, the Human Rights Committee commented that that article was broad enough to include the right of individuals to criticize institutions, such as the army or the Administration.[[6]](#footnote-7) In its general comment No. 25 (1996) on participation in public affairs and the right to vote, 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, was an essential adjunct to the rights protected by article 25.

40. The source submits that, despite the express protections under international and Indian law, the Government detained and prosecuted Mr. Saibaba as a result of his activities as the Deputy Secretary of the Revolutionary Democratic Front. The circumstances of Mr. Saibaba’s arrest suggest that his conviction was the result of his open criticism of the Government, in particular 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 that involvement that provided the motive for searching his home and for his subsequent arrest.

41. The source notes that the court’s argument appears to be that, because members of the Communist Party of India (Maoist) have been violent and Mr. Saibaba has talked about the party and allegedly had Maoist literature in his home, he is therefore guilty of the violence perpetrated by the party. However, according to the source, the court did not cite any evidence directly linking Mr. Saibaba to the planning or coordination of the fire in Surjagad. Despite the fact that Mr. Saibaba had never advocated for the use of violence in his public speeches, nor facilitated violent acts, he was found guilty. The source argues that that 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.

42. The source also argues that the case does not fall within the limited exceptions under articles 19 and 22 of the Covenant, which provide exceptions for national security, public safety and public order, in line with the exceptions provided for under the Constitution. The source recalls that those exceptions are interpreted narrowly. The Human Rights Committee has noted that restrictions may not put in jeopardy the right itself.[[7]](#footnote-8) The Committee has also stated that restrictions to those rights must meet all the requirements set forth in the Covenant, namely, they must be provided by law, for the protection of national security, public order or public health and morals and be necessary to achieve one of those enumerated purposes.[[8]](#footnote-9) The Committee has treated that three-prong test as a strict test of justification. The Government must present and specify the precise nature of the threat that 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.[[9]](#footnote-10)

43. The source indicates 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 the present case. The limitation on Mr. Saibaba’s free expression was not for a proper purpose. 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 or morals. In respect of protecting national security and public order, the charges against Mr. Saibaba included advocating or inciting the commission of unlawful activity under section 13 (1) of the Unlawful Activities (Prevention) Act and conspiring or attempting to commit or advocating the commission of a terrorist act under section 18 of the Act.

44. The source notes that the Government is invoking the national security rationale on the basis of its assertion that Mr. Saibaba was involved in the fire at the mining project in Surjagad. Mr. Saibaba, through his involvement with the Revolutionary Democratic Front, expressed and encouraged others to express open yet peaceful criticism of the Government. The source argues that that is not sufficient grounds 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.

45. 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 in the possession of one of his co-defendants as the basis for the claim that he was part of a criminal conspiracy that culminated with the fire in Surjagad. The source notes that the court did not cite anything that directly linked Mr. Saibaba to the planning or carrying out of the mining project fires.

46. The source concludes that Mr. Saibaba’s speeches and writings are protected under article 19 (2) of the Covenant, and his peaceful involvement in the organization and demonstrations by the Revolutionary Democratic Front are protected under article 22 (1). Given that, and the fact that Mr. Saibaba poses no threat to national security or public order, the limitations on those rights imposed by his continued imprisonment do not fall within the narrow exceptions contained in articles 19 (3) and 22 (2) of the Covenant. His continued detention is therefore arbitrary and falls under category II.

47. 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 article 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the Covenant.

48. The source submits that Mr. Saibaba’s right to be released pending trial was violated, contrary to provisions under article 9 (3) of the Covenant, which provides that it should not be the general rule that persons awaiting trial are detained in custody. Principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 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 bail on medical grounds 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. That time in detention has only worsened the condition of his health, 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.

49. The source submits that the Government violated Mr. Saibaba’s right to be tried without undue delay, as encapsulated in article 14 (3) (c) of the Covenant and in 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 10 months later, for roughly a year and a half of which he was held in pretrial detention. The source 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 had been set by the court at the time of submission of the present communication, over three years later.

50. The source submits that the court relied upon the evidence that had been seized in violation of evidentiary standards. Under section 100 (4) of the Code of Criminal Procedure, before the 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 witnesses. The search must be made in the presence of those witnesses, and a list of all the items seized during the search must be prepared by the officers conducting the search and signed by the witnesses, in line with section 100 (5) of the Code.[[10]](#footnote-11) The source notes that article 17 (1) of the Covenant states that no one should be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

51. The source recalls that, in the case of Mr. Saibaba, one of the witnesses present during the search of his home admitted that he was forced to stand outside the house during the search by the police. Furthermore, the witness requested that the police find another witness, because he was illiterate and could not tell the difference between electronic devices. He signed the report 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 report to confirm its accuracy before signing it, the search of Mr. Saibaba’s house was invalid under Indian law. Those violations of domestic law constitute a violation of articles 9 (1) and 17 (1) of the Covenant.

52. The source asserts that the searches of Mr. Saibaba’s alleged accomplices were also conducted in violation of domestic law. According to section 100 (4) of the Code of Criminal Procedure, the witnesses to the search must be independent. The source argues that the witnesses that testified against Mr. Saibaba’s alleged accomplices were not independent, served at the Aheri police station and had previously acted as witnesses to searches in multiple cases.

53. The source also submits that the court relied on coerced and retracted confessions, in violation of principle 21 (2) of the Body of Principles, section 316 of the Code of Criminal Procedure and section 24 of the Indian Evidence Act. In that connection, the source recalls that the court relied on the confessions of two of the co-accused in convicting Mr. Saibaba. However, those defendants filed an application before the court retracting their confessions, owing to the fact that they had been mentally and physically harassed by the police. There was no formal investigation of those allegations. The court nevertheless relied on those confessions in rendering its judgment in Mr. Saibaba’s case.

54. The source argues that the Government violated Mr. Saibaba’s right to the 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, given that a retracted confession, at a minimum, puts the reliability of the witness in dispute. The only specific evidence linking Mr. Saibaba to participation in a banned group is the retracted confessions.

55. The source submits 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 had been involved in carrying out violent acts.

56. The source concludes by recalling that the Government also interfered with Mr. Saibaba’s right to counsel, in violation of 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 the 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

57. 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.

58. 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.

 Discussion

59. 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.

60. In determining whether or not Mr. Saibaba’s detention is 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.[[11]](#footnote-12) In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

61. 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 the person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set out 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.[[12]](#footnote-13) 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.[[13]](#footnote-14)

62. 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.

63. As a State party to 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 that regard, to promote appropriate training for those working in the field of administration of justice, including police and prison staff (article 13).

64. The Working Group notes that, under 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.

65. The source submits that the detention of Mr. Saibaba is arbitrary, falling under categories I, II and III. The Working Group will consider the information before it in order to determine whether there have been violations and under which categories.

 (a) Category I

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

67. 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 critics of the Government, 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 (2014), the Human Rights Committee further indicated that any 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 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 must be formulated with sufficient precision so that the individual can regulate his or her conduct.[[14]](#footnote-15) The Working Group has previously found that antiterrorism 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.[[15]](#footnote-16)

68. The Working Group views the provision under which Mr. Saibaba was charged as being vague and overly broad. In order to assess whether one is conspiring or attempting to commit, or advocating, abetting, advising or inciting, directly or knowingly facilitating 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 be clarity in the parameters of conduct constituting the offence, taking into account the right to freedom of expression. The Working Group has previously made it clear that prosecution under vague and overly broad laws offend the principle of legality.[[16]](#footnote-17) That principle entails that laws must be framed with sufficient precision so that the individual can gain access to and understand them in order to enable him or her to regulate his or her conduct accordingly.[[17]](#footnote-18)

69. The Working Group is also of the view that phrases such as “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) of the Unlawful Activities (Prevention) Act, under which Mr. Saibaba was charged, to be without meaning. Section 13 (1) of the Act and “unlawful activity”, as defined by section 2 thereof, provide no fair notice of what conduct is prohibited and may apply to many activities that would be protected under international human rights law.

70. Mr. Saibaba could not reasonably expect that the exercise of his freedom of expression by speaking out against the military offensive Operation Green Hunt, which the Government allegedly initiated in 2009 against the indigenous people of the country, his criticism of government policy in relation to tribal areas and his general calls for government accountability would amount to criminal conduct under the Unlawful Activities (Prevention) Act.

71. 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 his eventual co-defendants, who later retracted the entire statement implicating Mr. Saibaba, because it was allegedly obtained through coercion. Although the co-defendants’ confessions were made before a magistrate, they were made without a lawyer being present and were written in Marathi, a language that the co-defendants did not understand. There was no formal investigation into the police’s alleged coercion and threats against Mr. Saibaba’s co-defendants.

72. There is information before the Working Group that an irregular search was conducted on Mr. Saibaba’s premises, which resulted in illegally obtained materials being used against him at trial. The Working Group is of the view that that is an indication that, absent the illegal search and the materials obtained in the process, there would be no legal basis for the arrest.

73. The Working Group therefore finds that the Government failed to establish a legal basis for Mr. Saibaba’s detention. His detention is therefore arbitrary under category I.

 (b) Category II

74. The source has argued that Mr. Saibaba’s detention is arbitrary under category II, because it resulted from his exercise of the rights to freedom of opinion and expression and freedom of association, noting that those rights 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.

75. 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 Revolutionary Democratic Front, a federation of organizations working among various classes and sectors of society, including workers, peasants, youth, students and women, and cultural groups, that was banned in some states of India. The federation published several statements condemning the alleged government violence against Adivasi and Dalit people. It spoke out against the deaths of 4 Dalit people in the state of Andhra Pradesh and 20 Adivasi people in the state of Chhattisgarh, claiming that they were killed by government forces.

76. The Working Group notes that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression and that that right includes the 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 one’s choice. That right includes political discourse, commentary on public affairs, the 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 article 19 of the Covenant or, indeed, how his actions fell under the exceptions set out within those articles, but it has chosen not to do so.

77. The Working Group considers that the conduct of Mr. Saibaba and the Revolutionary Democratic Front fell within the exercise of the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising those rights.

78. Mr. Saibaba’s criticism of government policy through his writing 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 article 21 (1) of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.

79. 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 those provisions. Moreover, the Government has failed to present an explanation to convince the Working Group otherwise. Importantly, there is evidence to suggest that, in Mr. Saibaba’s criticism of the Government, he called directly for non-violence in dealing with matters concerning the tribal areas 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 upon States to refrain from imposing restrictions under article 19 (3) of the Covenant that are not consistent with international human rights law.

80. 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 therefore arbitrary under category II.

81. 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. Moreover, given that Mr. Saibaba was charged with a terrorism-related offence, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

 (c) Category III

82. Given its findings under category II, the Working Group notes that no trial should have taken place. Nonetheless, the trial did take 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.

83. The source submits, with regard to category III, that there have been numerous violations of Mr. Saibaba’s rights protected under article 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the Covenant. More specifically, the source submits that Mr. Saibaba’s right to be released pending trial has been violated, contrary to article 9 (3) of the Covenant, which provides that it should not be the general rule that persons awaiting trial are 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.

84. 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. The source also submits that the Government violated Mr. Saibaba’s right to be tried without undue delay, as encapsulated in article 14 (3) (c) of the Covenant and in 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 10 months later, for roughly a year and a half of which he was held in pretrial detention. The source argues that there was therefore no basis for the long delay between Mr. Saibaba’s arrest and the beginning of his trial.

85. 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.[[18]](#footnote-19) 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.[[19]](#footnote-20)

86. Moreover, in terms of article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm and should be ordered for the shortest time possible.[[20]](#footnote-21) In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, while detention is an exception.[[21]](#footnote-22) Detention pending trial must therefore be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.[[22]](#footnote-23) In its general comment No. 35 (2014), the Human Rights Committee stressed that pretrial detention should not be mandatory for all individuals charged with a particular crime without having regard to the individual’s circumstances. Given all the physical and health challenges that Mr. Saibaba faces, his pretrial detention was unwarranted.

87. The Working Group notes that, although they were subsequently withdrawn, the confessions of Mr. Saibaba’s co-defendants were reportedly coerced by the police using threats. Those made by co-defendants before a magistrate were made without a lawyer being present and were written in Marathi, a language that they did not understand. There was no formal investigation into the police’s alleged coercion and threats against them. The Working Group considers that the alleged use of third-party confessions obtained under duress in the present case would be a violation of the right to a fair trial.[[23]](#footnote-24) In addition, 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 witnesses to the search had connections with the authorities and were therefore not independent.

88. For the reasons given above, the Working Group finds that the detention of Mr. Saibaba constitutes arbitrary deprivation of liberty, under category III.

 (d) Category V

89. The facts as provided by the source show that Mr. Saibaba, in his capacity as Deputy Secretary of the Revolutionary Democratic Front, had published several statements condemning the alleged government violence against Adivasi and Dalit people. For example, in June of 2012, the Revolutionary Democratic Front spoke out against the deaths of 4 Dalit people in the state of Andhra Pradesh and 20 Adivasi people in the state of Chhattisgarh, claiming that they had been killed by government forces.

90. As the Deputy Secretary of the Revolutionary Democratic Front, Mr. Saibaba focused the resources of the federation towards speaking out against a military offensive that the Government had initiated against the indigenous people of the country, called Operation Green Hunt. The 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 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, providing as an example that Mr. Saibaba authored an article entitled “Revolutionaries do not kill policemen”.

91. 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 circumstances, as articulated by the source, seem to suggest that Mr. Saibaba was detained for exercising a right recognized under the Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their rights 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.

92. The Working Group considers that Mr. Saibaba was targeted because of his peaceful activities, including speaking out against government violence against Adivasi and Dalit people and against the alleged killing of civilians by paramilitary troops. Moreover, in its consideration of violations concerning category II, the Working Group established that 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.

93. The Working Group finds that Mr. Saibaba was deprived of his liberty on discriminatory grounds, 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 is in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and is arbitrary according to category V.

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

 (e) Concluding remarks

95. The Working Group is concerned that, according to the information from the source, on 9 May 2014, when 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, because the police did not have experience in handling someone with his disabilities.

96. The Working Group is also 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.

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

98. 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

99. In the light 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.

100. 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.

101. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Saibaba immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global 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.

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

103. 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 Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

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

 Follow-up procedure

105. 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:

 (a) Whether Mr. Saibaba has been released and, if so, on what date;

 (b) Whether compensation or other reparations have been made to Mr. Saibaba;

 (c) Whether an investigation has been conducted into the violation of Mr. Saibaba’s rights and if so, the outcome of the investigation;

 (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of India with its international obligations in line with the present opinion;

 (e) Whether any other action has been taken to implement the present opinion.

106. 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.

107. 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.

108. 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.[[24]](#footnote-25)

[*Adopted on 12 May 2021*]

1. A/HRC/36/38. [↑](#footnote-ref-2)
2. Supreme Court of India, *Arup Bhuyan v. State of Assam*, judgment of 3 February 2011. [↑](#footnote-ref-3)
3. See E/CN.4/2006/98. [↑](#footnote-ref-4)
4. See A/HRC/WGAD/2018/10. [↑](#footnote-ref-5)
5. See A/HRC/27/48/Add.5. [↑](#footnote-ref-6)
6. See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression. [↑](#footnote-ref-7)
7. See Human Rights Committee, general comment No. 34 (2011). [↑](#footnote-ref-8)
8. See Human Rights Committee, *Shin v. Republic of Korea*, communication No. 926/2000. [↑](#footnote-ref-9)
9. See Human Rights Committee, general comment No. 34 (2011); and *Sohn v. Republic of Korea*, communication No. 518/1992, para. 10.4. [↑](#footnote-ref-10)
10. Shubham Phophalia, “Evidentiary value of *panchnama*”, *National Journal of Criminal Law*; vol. 1, No. 2, p. 12. [↑](#footnote-ref-11)
11. A/HRC/19/57, para. 68. [↑](#footnote-ref-12)
12. See General Assembly resolution 72/180, preambular para. 5; Human Rights Council resolutions 41/2, preambular para. 2; 41/6, para. 5 (b); 41/10, para. 6; 41/17, preambular para. 1; 43/26, preambular para. 13; 44/16, preambular para. 25; 45/19, preambular para. 9; 45/20, preambular para. 2; 45/21, preambular para. 3; and 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); Working Group, 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. [↑](#footnote-ref-13)
13. 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. [↑](#footnote-ref-14)
14. See E/CN.4/2006/98. [↑](#footnote-ref-15)
15. A/HRC/WGAD/2018/10. [↑](#footnote-ref-16)
16. Opinions No. 46/2011, para. 22; No. 27/2012, para. 41; No. 26/2013, para. 68; No. 40/2016, para. 36; 35/2018, para. 36; No. 36/2018, para. 51; No. 46/2018, para. 62; No. 9/2019, para. 39; and No. 45/2019, para. 54. See also CCPR/C/VNM/CO/3, paras. 45–46. [↑](#footnote-ref-17)
17. Opinion No. 41/2017, paras. 98–101. See also Opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 22. [↑](#footnote-ref-18)
18. Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 35. [↑](#footnote-ref-19)
19. 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 a trial was unreasonable. [↑](#footnote-ref-20)
20. A/HRC/19/57, paras. 48–58. [↑](#footnote-ref-21)
21. Ibid., para. 54. [↑](#footnote-ref-22)
22. Human Rights Committee, general comment No. 35 (2014), para. 38. [↑](#footnote-ref-23)
23. Opinion No. 47/2017, para. 27. [↑](#footnote-ref-24)
24. Human Rights Council resolution 42/22, paras. 3 and 7. [↑](#footnote-ref-25)