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**Related to:** India

**UPR Session:** 41<sup>st</sup> Session of UPR Working Group

**Submitted on:** 31 March 2022

#### **NAMES AND DESCRIPTION OF ORGANIZATIONS SUBMITTING**

- India Justice Project, Berlin, Front Line Defenders, India Civil Watch International, InSAF India.
- Front Line Defenders (FLD) is an Irish-based international organization, founded in 2001, with the specific aim of protecting human rights defenders at risk, people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights.
- Indian Civil Watch International (ICWI) is a non-sectarian left diasporic membership-based organization that represents the diversity of India's people and anchors a transnational network to building radical democracy in India. <https://indiacivilwatch.org/>
- India Justice Project (IJP) is civil society collective committed to democracy, social justice and human rights in India. <https://www.indiajusticeproject.de/en>
- International Solidarity for Academic Freedom in India (InSAF India) aims to highlight the increasing assaults on academic freedom in India, in particular the attacks on anti-caste academics and scholars from minority backgrounds. <https://www.academicfreedomindia.com/>

This submission concerns the treatment and legal persecution of 16 prominent human rights defenders who have been arrested and incarcerated in a case that is commonly referred to as the Bhima Koregaon Case. The content of this submission is based on field missions and regular contacts with human rights defenders.

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## I. EXECUTIVE SUMMARY

1. This submission draws attention to the treatment and legal persecution of 16 prominent human rights defenders who have been arrested and incarcerated in a case that is commonly referred to as the Bhima Koregaon Case.
2. The case is linked to the violence that took place on 1 January 2018 during a historic commemoration conducted by Dalits in the town of Bhima-Koregaon in Maharashtra state.
3. 16 human rights defenders (hereinafter the BK-16), including prominent lawyers, scholars, poets, artists and journalists have been charged under the draconian Unlawful Activities Prevention Act (UAPA) on baseless allegations that they were connected to the violence that took place in Bhima Koregaon on 1 January 2018.
4. The real perpetrators of the violence have never been held to account. Instead, the Indian government has targeted and persecuted human rights activists with a record of peaceful dissent against state policies that violate human rights, and of advocating fearlessly for the most marginalized sections in India – the Dalit and Adivasi communities that have borne the brunt of discrimination and violence by the Indian state.
5. 13 of those accused remain in jail to date and have been repeatedly denied bail despite the lack of evidence against them, severe delays in the prosecution, and the risks to their health.
6. UAPA – an “anti-terrorism law” – grants vast discretionary powers to the state agencies, with virtually no judicial oversight, and violates the fundamental right to personal liberty. The law makes it practically impossible to procure bail.
7. Even during the rapid spread of COVID-19 in the prisons which are grossly overcrowded, the judiciary refused bail to the accused, many of whom are senior citizens and suffer from co-morbidities. Instead, the Indian government arrested more people in the case during the peak of the COVID waves.
8. One of the accused, 84-year-old Stan Swamy, who suffered from severe Parkinson’s disease, died in custody on 5 July 2021 due to the lack of adequate medical care and treatment in prison. The human rights defender had been repeatedly denied bail despite risks to his health, especially during the pandemic.
9. Multiple investigative reports by international and Indian cyber-security experts show that the computers and phones of several of the incarcerated were subjected to attacks and that the incriminating evidence used to justify the arrest of the 16 was remotely planted by an external agent using malware called Netwire Remote Access Trojan (RAT).
10. Additionally, there is further evidence demonstrating that the computers and phones of several of the BK-16 were targeted by the notorious Pegasus spyware. It is to be noted that Pegasus is sold by the NSO groups exclusively to national governments.
11. Since the first round of arrests concerning BK-16 took place in 2018, 13 of the incarcerated activists continue to languish in prison as undertrials, without any indication of a trial anytime soon.
12. The BK case is a representative example of the Indian state’s continuing attempts to suppress dissenting voices. It is imperative that the international community questions the Indian government’s actions and demand that it stop persecuting human rights defenders in India.
13. The Indian government must immediately release all of the BK-16 incarcerated, drop all charges against them, enact legislation to prohibit and protect against unlawful surveillance, and initiate an independent inquiry into the cyber-attacks that enabled the government to use planted evidence against the accused.
14. The Indian government must repeal draconian laws like the UAPA and the Armed Forces Special Powers Act (AFSPA), ratify international conventions prohibiting torture, commit to meeting international human rights standards when it comes to the conditions of the incarcerated, and desist from persecuting human rights defenders.

## II. BACKGROUND

15. The sixteen individuals arrested as part of what is referred to as the Bhima Koregaon (BK) case are all prominent lawyers, scholars, activists, and human rights defenders.
16. On 6 June 2018, five defenders were arrested linked to the BK case – Rona Wilson in Delhi, Shoma Sen, Surendra Gadling, and Mahesh Raut in Nagpur, and Sudhir Dhawale in Mumbai.
17. In August 2018, four more defenders were arrested linked to the same case – Sudha Bharadwaj in Delhi, and Varavara Rao, Arun Ferreira and Vernon Gonsalves in Mumbai.
18. In 2020, seven more defenders were arrested – Anand Teltumbde and Gautam Navlakha in April in Goa and Mumbai respectively, Hany Babu in July in Delhi, Jyoti Raghoba Jagtap, Sagar Tatyaram Gorkhe, and Ramesh Murlidhar Gaichor in September in Pune, and Stan Swamy in October in Ranchi. All of the people listed above were charged under UAPA.
19. The work and identities of the arrested individuals are significant in understanding why they were apprehended under UAPA. All of the individuals have a strong and public link to the most marginalized communities in India – the Dalit and Adivasi communities, and have been vocal critics of this government’s program of discrimination, violence, and brutal suppression of their rights. The arrest and targeting of these defenders is a reprisal against their peaceful and important human rights work. Eight of the 16 arrested in the BK case are from the Dalit-Bahujan community, a part of India’s most oppressed and stigmatized caste groups.

Further information about the significance of the work of the arrested individuals is outlined below:

20. Rona Wilson: long-time activist and Public Relations Secretary of the Committee for the Release of Political Prisoners. Wilson has written extensively on the history of anti-terror and preventive detention laws in India and how these laws were used against those critical of the Indian government, particularly against minorities and groups including Kashmiris and Indian Muslims.
21. Shoma Sen: Professor and Head of the Department of English at the Rashtrasant Tukadoji Maharaj Nagpur University in Maharashtra. Sen is a scholar, teacher and a political and social justice activist. As a member of Committee for the Protection of Democratic Rights (CPDR), Women against Sexual Violence and State Repression (WSS), and of the Committee against Violence on Women (CAVOW), Sen has been part of campaigns which have investigated multiple cases of sexual violence by the armed forces and organized legal aid for women political prisoners during the early 2000s.
22. Surendra Gadling: As a human rights lawyer, prominent Dalit rights activist and General Secretary of the Indian Association of Peoples’ Lawyers (IAPL), Gadling has represented numerous human rights defenders arrested on fabricated charges of being “anti-national,” i.e., for criticizing the Indian government.
23. Mahesh Raut completed an M.A. in Social Work from the Tata Institute of Social Sciences in Mumbai. He was the recipient of the prestigious Prime Minister’s Rural Development Fellowship to work on forest rights and other issues impacting Adivasi (indigenous) communities in eastern Maharashtra. He advocated for laws like PESA and FRA which protect the democratic rights of Adivasis against unlawful land grabbing.

24. Sudhir Dhawale: an activist, and Dalit civil liberties organizer, and human rights defender in Maharashtra, has been working as a freelance journalist and social worker since 1995.
25. Sudha Bharadwaj: the general secretary of the Chhattisgarh unit of the People's Union for Civil Liberties (PUCL), a member of Women against Sexual Violence and State Repression (WSS), and a founder-member of the Indian Association of People's Lawyers, affiliated to the International Association of People's Lawyers. As one of India's best known 'people's lawyers,' Sudha Bharadwaj has fought numerous battles in court against corporations and the state to defend worker rights, including campaigns for a living wage and dignified conditions of work. She has also defended Adivasi people's constitutional rights to land, and exposed atrocities of rape and sexual assault against women and extra-judicial murders by state-sponsored armed militia of people resisting forced displacement.
26. Varavara Rao: 80-year-old Telegu poet and educator who has authored fifteen poetry collections. His thesis on the "Telangana Liberation Struggle and Telugu Novel: A Study into Interconnection between Society and Literature" is a canon in literary criticism in Telugu.
27. Arun Ferreira: a human rights lawyer from Mumbai, and a member of the Committee for Protection of Democratic Rights (CPDR) and the Indian Association of People's Lawyers (IAPL). Ferreira was previously arrested in 2007 and over four years had ten separate cases against him under the UAPA. Ferreira was acquitted of all charges in 2014 after spending four years in prison, experiencing judicial torture including narco-analysis (which is illegal under Indian and international law).
28. Vernon Gonsalves: trade unionist, activist, and former professor of business management at several colleges in Mumbai, including Ruparel College and HR College of Commerce and Economics. Gonsalves writes extensively on Dalit and Adivasi rights, and prison conditions and routine violation of prisoner's rights in India. He has also co-authored (with Arun Ferreira) several articles on conditions in Indian prisons, abuse of authority by Indian police, and draconian laws such as UAPA. Gonsalves was, like Ferreira, previously arrested under UAPA in 2007 and incarcerated for six years before being acquitted of all the cases against him, except one. Judgement in the final case is still pending.
29. Anand Teltumbde: prominent public intellectual, management expert, and academic who teaches at the Goa Institute of Management. He has written multiple sharp critiques of Hindutva politics, neoliberal economic policies, and attacks on Dalit rights. Teltumbde's books and articles are regularly taught as part of college and university curricula in India and other countries.
30. Gautam Navlakha: is a Delhi-based veteran journalist, author, civil liberties, human rights, and peace activist, involved with the People's Union for Democratic Rights (PUDR). Navlakha is known for his sustained critique of the Indian state's militarism against its own citizens in the North-Eastern states, Kashmir valley, and the central Indian forested zone in Chhattisgarh. Navlakha is also a member of the editorial team of India's leading academic publication, *Economic and Political Weekly* (EPW).
31. Hany Babu: is an Associate Professor in the Department of English in Delhi University working on linguistic identity, marginalized languages, and social justice. He is a strong advocate of Dalit rights and has been active in supporting underprivileged Dalit students obtain scholarships and admissions at the University. He had also been leading the defence team seeking the release of wrongfully incarcerated human rights defender G.N. Saibaba.
32. Ramesh Gaichor, Sagar Gorkhe, and Jyoti Jagtap: members of the Kabir Kala Manch (KKM), a cultural organization founded in 2002 as a response to the anti-Muslim pogrom in Gujarat that claimed over 2000 (mostly Muslim) lives. As one of Pune's foremost progressive socio-cultural movements, KKM uses music and theatre to raise awareness about casteism, patriarchy, communalism, and farmer distress. Members of KKM have previously faced arrests, including Sagar Gorkhe and Ramesh Gaichor in 2013. Both were released on bail in January 2017. The KKM was

one of the 250 Dalit and human rights organizations that organized the Elgar Parishad (see below).

33. Stan Swamy: an 83-year-old Jesuit priest who spent his life defending the rights of indigenous (Adivasi) people against displacement by corporate mining projects, and arbitrary and unlawful arrests. Stan Swamy was part of the Persecuted Prisoners Solidarity Committee, and along with Sudha Bhardwaj, had questioned the illegality with which undertrials were put in solitary confinement in 2017. Despite being a Parkinson's patient, Fr. Stan was refused medical bail even after he contracted Covid-19 in prison. He died in July 2021, without recourse to a trial.
34. The charges levied against all sixteen individuals include:
  - i. Acting on behalf of, or being members of the outlawed Communist Party of India (Maoists) or simply 'the Maoists,' and organizing the Elgar Parishad, termed an 'anti-fascist' front.
  - ii. Making inflammatory speeches at the Elgar Parishad

#### *What is the Elgar Parishad?*

35. The *Elgar Parishad* was a meeting of 260 organizations on December 31, 2017 convened by two retired judges, Judges P.B.Sawant and B.G.Kolse-Patil. It was convened as a congregation against Hindutva (Hindu nationalist) sectarianism in India. About 35,000 people attended the event in Shaniwarwada Fort, Pune, Maharashtra, culminating in a mass 'oath of allegiance' to the Indian Constitution.
36. On January 1, 2018, thousands of Dalits went to the village of Bhima Koregaon, 30 kilometers from Pune, to celebrate the 200th anniversary of the battle of Koregaon of 1818, in which 49 Dalits were martyred fighting against the Peshwai, the upper-caste rulers of the region. That day in 2018, violence broke out between Hindutva groups and the congregated Dalit community at Bhima Koregaon. A fact-finding committee appointed by the Pune Rural Police and headed by Pune Deputy Mayor Siddharth Dhende, found that Hindutva outfits had "pre-planned" the Bhima Koregaon violence.<sup>i</sup>
37. Two sets of First Information Reports (FIRs) were filed with the police in January 2018. The first FIR was filed by a Dalit woman against two Hindutva leaders, Sambhaji Bhide and Milind Ekbote, for planning, inciting, and leading the mobs that attacked the Dalit community. Ekbote was arrested but released soon after. Bhide was never arrested. The other FIR was filed by Tushar Damgude, a disciple of Bhide, alleging that the violence was instigated by individuals with links to the (banned) Maoist/Naxalite groups at the Elgar Parishad.
38. On January 3, 2019, a peaceful *bandh* (a protest shut-down of a city/town) was organized by Dalit groups. Despite the FIR against Sambhaji Bhide and Milind Ekbote, the Pune police arrested more than 200 Dalit youth. Following this incident, the Pune Police also targeted the 16 intellectuals, lawyers, scholars, and activists named above.

#### *Significance of the case*

39. The Bhima Koregaon case is a major test case for the condition of human rights and democracy in India, in several respects.
40. Firstly, the 16 arrestees have had decades-long careers as some of the most important thinkers and voices in the country who have made major contributions to the defense of the human rights of India's most marginalized communities: women, Dalits, and Adivasis. They have also been active in documenting and critiquing the rapid erosion of pluralism, rule of law, and democracy in India. Their wrongful arrest, based on planted evidence, has created a chilling environment of fear of criticism or dissent through Indian civil society.
41. Secondly, the BK-16 are victims of one of the longest and deadliest cyber-attacks against civil society actors.<sup>ii</sup> Members of the BK-16 were targeted using Israeli firm NSO's Pegasus spyware, which has been the subject of sanctions by U.S. President

Biden's administration. Even more concerning has been the second malware used to attack them called Netwire, which allowed the attacker to plant files on their electronic devices without their knowledge. It is on the basis of these planted digital files, recognized as evidence in court, that the BK-16 have been arrested. An extensive forensic investigation by one of the world's leading digital forensics firms, Arsenal Consulting from Boston, U.S.A., has conclusively proven that these files were planted using Netwire. These investigations have been verified by independent experts, and covered in leading international media like *The Washington Post*. Despite overwhelming evidence exposing the fabrication of false charges against the BK-16, all but three of them continue to remain in prison; the 81-year-old poet Varavara Rao is out on medical bail; Father Stan Swamy died in custody; and the lawyer Sudha Bharadwaj was released on conditional bail in December 2021 on grounds of a procedural error, after having been in prison for over three years. Most damningly, a new report by global cybersecurity firm SentinelOne provides vital clues linking the cyber-attacks to the Government of India, and furthermore, showed that government-affiliated actors had been engaged in these cyber infiltration activities resulting in the surveillance and planting of evidence on several of the Bhima Koregaon detainees, among others, for several years prior to their arrest. There has yet to be any acknowledgement of this evidence by the Indian government.

42. Thirdly, the law under which the BK-16 have been arrested, the draconian UAPA, which grants authorities a wide range of powers, including arrest without filing charges, rejection of bail and arrest for several years without trial, has quickly become one of the most frequently used modes of state oppression and retaliation against writers, scholars, and intellectuals.
43. There has been a steep rise in the use of UAPA to stifle freedom of expression and dissent. In addition to the BK-16, victims of UAPA include ex-student leader Umar Khalid, student activists Meeran Haider, Safoora Zargar, Asif Iqbal Tanha, Devangana Kalita, and Natasha Narwal.
44. The arbitrary use of this terror law has been increasing. In recent months, the law has been invoked to file charges against students for celebrating a sporting victory, and against 102 Twitter accounts for simply calling attention to the communal violence in the North-Eastern state of Tripura. In a recent report, the New York City, USA based Polis Project has reported a rapid increase in violence and use of draconian laws including UAPA against journalists reporting on Kashmir, the protests around the Citizenship Bill, the Delhi pogrom, the Covid-19 pandemic, and the farmers' protests.
45. Fourthly, when police arrested the HRDs, they violated several rules of law and human rights. For instance, when police raided homes of Surendra Gadling, Rona Wilson, Sudhir Dhawale, Varavara Rao, Sudha Bhardwaj and Vernon Gonzalez even though the Judicial Magistrate, Pune had rejected their search warrants. While arresting Varavara Rao, Sudha Bhardwaj, Rona Wilson and others, the police gave them documents in Marathi, a language they do not understand.
46. Fifthly, the Bhima Koregaon case has also brought to light the terrible conditions of Indian prisons, and the denial of basic rights, like communication with family members, at the whim of prison authorities. Imprisonment – even when COVID-19 was spreading in the overcrowded jails – has led to rapid deterioration in the health of the detainees, a large number of whom are senior citizens, and, as noted above, to the death in custody of one of them, Fr. Stan Swamy.

### III. INDIA'S NATIONAL AND INTERNATIONAL OBLIGATIONS

47. The International Covenant on Civil and Political Rights (ICCPR) commits its parties to respect the civil and political rights of individuals, including right to life, freedom of speech, freedom of assembly and rights to due process and a fair trial. It elaborates further the civil and political rights and freedoms listed in the Universal Declaration of Human Rights. India acceded to the ICCPR on 10<sup>th</sup> April 1979. The Human Rights Council Resolution 12/16 calls for states to recognize the right to exercise freedom of opinion and expression as one of the essential foundations of a democratic society. The Indian Constitution also recognizes freedom of speech, association and a fair and speedy trial, amongst others, as fundamental rights.
48. Both ICCPR and UDHR state that every person charged with a criminal offence is entitled to be presumed innocent until proven guilty according to law.
49. The ICCPR allows for pre-trial detention to be used only as a last resort when it is necessary, reasonable, and proportionate to the objective sought by the prosecution. Article 14(3)(c) ICCPR provides that a person charged with a criminal offence has the right to be tried without undue delay. Under Art.12 of the UDHR and Art.17 of the ICCPR, a person cannot be subjected to arbitrary interference with his privacy whether at home or in correspondence.
50. The actions of the Indian State and its laws like UAPA have violated its obligations under domestic and international customary humanitarian law.

### IV. VIOLATIONS

51. **Human rights and counterterrorism:** The 16 Human Rights Defenders (HRD) arrested in the BK case are well known for their work in promoting and protecting rights of marginalized communities such as Dalits, Adivasis and Muslims. In retaliation<sup>iii</sup> for their work and to silence internal dissent, unauthorized and illegal raids<sup>iv</sup> were conducted on activists' homes, and their computers and phones were seized. Fabricated<sup>v</sup> evidence was used to accuse them of planning to assassinate the prime minister, overthrow the BJP government, and incite violence in Bhima Koregaon. They were all charged under UAPA, a draconian anti-terrorism law that does not meet<sup>vi</sup> international human rights standards.
52. **Right to life, liberty, and security of the person:** According to article 9 of International Covenant on Civil and Political Rights (ICCPR<sup>vii</sup>), everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law. However, medical bails for several of the 16 HRDs were denied repeatedly even when COVID19 was raging in their jails. While denying bail to late Fr. Stan Swamy, the special NIA (National Investigation Agency) court noted that the 'collective interest of the community'<sup>viii</sup> outweighs Swamy's right to personal liberty. Fr. Stan Swamy passed away before he was granted bail.
53. **Administration of justice, including impunity and the rule of law:** When police arrested the HRDs, they violated<sup>ix</sup> several rules of law and human rights.
  - i. Police raided homes of Surendra Gadling, Rona Wilson, Sudhir Dhawale, Varavara Rao, Sudha Bhardwaj and Vernon Gonzalez even though the Judicial Magistrate, Pune had rejected their search warrants. While arresting Varavara Rao, Sudha Bhardwaj, Rona Wilson and others, the police gave them documents in Marathi, a language they do not understand.
  - ii. Police did not file charge sheets within a deadline of 90 days after arresting the HRDs. After the expiration of the lawful deadline, the state's lawyer asked the court for an extension of another 90 days. The accused were ordered to appear in the court without giving them time to inform their defense lawyers. Despite the pleas by the accused to give them 2-3 days' time to inform their lawyers, the court held the special hearing the very next day, a Sunday.

- iii. While some of the HRDs arrested in BK case have never been to Bhima Koregaon, Sambhaji Bhide and Milind Ekbote<sup>x</sup>, two right-wing leaders who openly called for violence and participated in it, were acquitted of all charges citing lack of evidence even though witnesses identified them taking active roles. While it took the court years to look into the FIR<sup>xi</sup> filed against the two right-wing Hindutva leaders, NIA acted at lightning speed to arrest the 16 HRDs with fabricated evidence.
- 54. **Fundamental freedoms and participation in public and political life:** According to Articles 19 and 22 of (ICCPR), which enshrines the right of freedom of expression, assembly and association, everyone shall have the right to hold opinions without interference. However, dissent<sup>xii</sup> of any form is being viewed by the Indian state as anti-national and swiftly criminalized. The state has levied accusations, ranging from obstruction of public authority to allegedly being Maoists or Maoist sympathizers, on the 16 HRDs for participating in Elgar Parishad. The Elgar Parishad<sup>xiii</sup> was organized by two retired justices as a call to save the constitution in light of the exacerbated atrocities committed by Hindutva vigilante groups on Dalits, Muslims and Adivasis.
- 55. **Right to privacy:** The right to privacy is integral to the right to life and personal liberty guaranteed in Article 21<sup>xiv</sup> of the Indian constitution. According to reports by Arsenal Consulting, evidence was planted in computers belonging to Rona Wilson<sup>xv</sup> and Surendra Gadling<sup>xvi</sup>. Per revelations from the Pegasus<sup>xvii</sup> project, Rona Wilson was under digital surveillance for several years before his arrest in the Bhima Koregaon case.
- 56. **Right to health:** According to article 12<sup>xviii</sup> of International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone - including prisoners - have the right to enjoy standard physical and mental health. Most of the 16 human rights defenders have been suffering with health issues, which were exacerbated due to incarceration. Varavara Rao was granted bail after being put through severe medical neglect. Gautam Navlakha, Anand Teltumbde, Shoma Sen and Vernon Gonsalves<sup>xix</sup> suffer from several comorbidities but were denied medical bail. Fr. Stan Swamy,<sup>xx</sup> who was suffering from Parkinson's had to wait for several weeks before the NIA let him have a sippy cup and drinking straw. His pleas for medical bail were denied several times and he passed away while waiting for bail, amounting to institutional murder.

## V. STATUS OF IMPLEMENTATION FROM THE PREVIOUS CYCLES

- 57. Since the Universal Periodic Review (UPR) of 2017, the list of recommendations approved by the government has seen no movement. Instead, the situation on human rights, freedom of thought, and surveillance has gravely worsened.
- 58. In the UPR of 2017, India approved 3 recommendations on human rights, specifically regarding adopting a national plan; training law enforcement officials, investigating discrimination and violence by these officials and holding them accountable; and strengthening the implementation and adopting new laws to protect the human rights of all its citizens.<sup>xxi</sup> Despite this, the past 5 years has seen increased discrimination and violence by law enforcement officials on the marginalized and minority populations, and on human rights defenders. The laws have been further diluted to give the government an even freer hand in imprisoning critics of this violence.
- 59. India further approved 2 recommendations on impunity, and freedom of thought, conscience and religion<sup>xxii</sup> —to protect violence against minorities, and ensure freedom and rights of these groups, of religion and belief. Instead, the rate of imprisonment of religious and tribal minorities, and of human rights defenders critical of the government's discriminatory policies has increased at an alarming rate.
- 60. India further approved 2 recommendations on ensuring rights and dignity of those imprisoned, and administering equal access to justice and fair trial.<sup>xxiii</sup> Instead, prison conditions have deteriorated steadily over this period, and they remain one of the most overcrowded prisons in the world. The COVID-19 pandemic was allowed to spread intensively in prisons, and the government has failed to provide access to



much-needed medical care for those imprisoned. Additionally, the government has deliberately fabricated legal cases, manipulated evidence and tampered with law courts to arrest, detain, imprison and deprive minorities and human rights defenders of health, liberty and a dignified life.

61. India also accepted one recommendation to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; to align the national legislation with Rome Statute of the International Criminal Court, and ratify the International Covenant on Civil and Political Rights. India had also voluntarily pledged to give effect to such ratification while presenting its candidature for the membership of the UN Human Rights Council (UNHRC) in its elections held in 2011, 2014, and 2018 based on which it is currently serving as a member of the Council. Despite this, law enforcement in India continue to harass, and inflict inhuman and degrading treatment on human rights defenders, as is the BK-16 case. In addition to Fr Swamy's death due to lack of treatment, out of the total 16 people arrested in this case, at least five tested positive for the COVID-19 virus in prison. The prison authorities have repeatedly refused to provide adequate medical treatment in overcrowded and unhygienic prisons in the midst of a rapid spread of the COVID-19 virus through the prisons in India, and the law courts have continued to refuse medical bail despite multiple appeals.
62. India also accepted 4 further recommendations on freedom of opinion and expression; freedom of thought, conscience and religion; and freedom of association; and to protect human rights defenders.<sup>xxiv</sup> Despite this, the government has escalated arrests, detentions, and intensified surveillance of human rights defenders. It has increased harassment of people associated with these defenders and created deliberate bureaucratic hurdles for organizations associated with them. It has aggressively used existing laws, created new ones, and pursued extra-legal measures to curb freedom of expression, opinion, thought, conscience, religion, and association.
63. India also accepted one recommendation to ensure an independent oversight mechanism for operations of its intelligence agencies.<sup>xxv</sup> Instead, as the reports by independent digital forensics agencies have evidenced, the Indian government has closely monitored the electronic devices of minorities and human rights defenders for at least 10 years, planted evidence on their devices, fabricated legal cases against them based on this evidence, arrested them, and proceeded to inflict inhuman treatment in the prisons, as evidenced in the BK-16 case.

## **VI. RECOMMENDATIONS**

64. Immediately and unconditionally release all of the BK 16 from prison, drop all charges against them, and ensure that they are able to carry out their legitimate activities without any hindrance and fear of reprisals in all circumstances.
65. Repeal the Unlawful Activities Prevention Act (UAPA)
66. Repeal the Armed Forces Special Powers Act (AFSPA)
67. Ratify Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (accepted but not yet implemented)
68. Complete implementation of the Model Prison Manual 2016 (accepted but not yet implemented)
69. Enact Right to Privacy legislation that prohibits extra-judicial electronic surveillance
70. Enact legislation that provides a legal remedy for victims of planting of evidence
71. Cease the targeting and persecution of human rights defenders in India and ensure a safe environment for defenders to carry out their work
72. Grant detainees prompt access to family members and lawyers, and ensure family members are provided full information on their relatives' health status and medical treatment

73. Thoroughly investigate the use of malware like Netwire and Pegasus to surveil civil society actors and human rights defenders, and hold those responsible accountable

## VII. CONCLUSION

74. The Indian authorities have wrongfully arrested and incarcerated 16 respected human rights defenders under the false pretext that they were involved in violence that occurred during an important commemorative event in January 2018. All of the 16 have been outspoken defenders of the rights of Dalits and Adivasis, marginalized populations who face discrimination and violence at the hands of the Indian state. While targeting these 16, the authorities have not done anything to bring the real perpetrators to justice, including leaders of notorious Hindu nationalist outfits. Of the 16 incarcerated human rights defenders, 13 remain in prison. One prisoner, Father Stan Swamy, an 84-year-old Jesuit priest who already suffered from severe Parkinson's disease, died in custody on 5 July 2021 because of inadequate medical care and poor treatment in jail, having been repeatedly denied bail despite obvious risks to his frail health during the Covid-19 pandemic. Another, the octogenarian poet Varavara Rao has been granted medical bail, while the lawyer Sudha Bharadwaj has been granted bail on grounds of procedural error after three years of incarceration. Despite the fact that the COVID-19 pandemic wreaked havoc across India, glaringly exposing the extremely dangerous conditions prevailing in the country's overcrowded and under-resourced prisons, Indian authorities arrested and incarcerated individuals several of whom had co-morbidities and already frail health.
75. This submission draws attention to the continued use of the draconian UAPA "anti-terrorism law" by Indian authorities, which expands the discretionary power of the state, affords no judicial oversight, and makes it virtually impossible to obtain bail, leaving individuals incarcerated for extended periods of time with no legal recourse. What makes the use of the UAPA in the BK-16 case even more concerning is the mounting evidence from multiple investigative reports by international cyber-security experts showing that the evidence used to incarcerate these individuals was planted, and their communications devices subjected to several years of hacking and manipulation. Two specific types of attacks have been comprehensively investigated and identified by international cyber-security experts. One involves the Netwire "Remote Access Trojan" or RAT, which cyber security experts identify with the implantation of files on the computer of one of the arrestees, files that authorities claimed as evidence against the accused. The second type of attack targeting the phones and computers of BK-16 individuals involves the spyware Pegasus, which in recent months has become the subject of investigations around the world on account of its rampant usage by repressive governments targeting dissidents.
76. The BK-16 case is designed primarily to stifle the voices of those critical of the repressive policies and actions of the Indian government and the Hindu nationalist movement's violent assault on India's democracy. Therefore, we demand that the Indian government immediately release all of the BK-16 arrested, drop all charges against them, and introduce legislation that prohibits and protects citizens against unlawful surveillance and assaults on their privacy. Instead, it should uphold and respect India's right-to-privacy laws. The Indian government should also begin an independent and impartial inquiry into the cyber-attacks targeting the BK-16. Finally, the BK-16 case amply demonstrates how much more dangerous an already draconian law like the UAPA can become when a repressive government arms itself with sophisticated cyber-technologies to attack and incriminate dissidents. We therefore ask that the Indian government immediately repeal the UAPA, and join governments around the world in ratifying international conventions prohibiting torture, commit to raising the standards of India's treatment of the incarcerated, and cease from sanctioning the widespread abuse, persecution and mistreatment of human rights defenders. Expressing criticism of the Indian state should not mean incarceration, and incarceration should not mean that the Indian state is free from

responsibility towards the protection of the physical and emotional health and well-being of individuals.

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<sup>xx</sup> <https://www.americanbazaaronline.com/2021/07/06/jailed-to-die-father-stan-swamy-legacy-will-live-on-446214/>

<sup>xxi</sup> 161.62, 161.65, 161.66, 161.75, 161. 81, 161.82, 161.83, 161.61.

<sup>xxii</sup> 161.99, 161.144, 161.132

<sup>xxiii</sup> 161.116, 161.88, 161.89, 161.149

<sup>xxiv</sup> 161.130, 161.73, 161.133, 161.131, 161.143, 161.142, 161.145, 161.140, 161.134

<sup>xxv</sup> 161.146

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