

An Appeal for the release on bail to Fr. Stan Swamy SJ and others

H.E. Michelle Bachelet
United Nations High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations, CH-1211 Geneva 10, Switzerland

Dear H.E. Michelle Bachelet

We, the concerned persons/organizations are writing on behalf of human rights defenders, journalists and academicians, incarcerated under the draconian law, Unlawful Activities (Prevention) Act 1967, amended 7 times, the latest in July 2019, which denies bail to the accused.

The United Nations General Assembly Resolution A/RES/153/144 on Human Rights Defenders states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedom at national and international levels” (Art.1).¹ It asks the States to respect human rights defenders on a non-discriminatory basis, protect them against any arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration, and ensure access to effective remedies in the case of violations and prompt and impartial investigations of alleged violations.

On October 8, 2020, the National Investigation Agency (NIA), India’s anti-terrorism task force arrested Fr. Stan Swamy, an 83-year-old Jesuit priest, from his residence in Ranchi, Jharkhand State, India and took him to Mumbai, Maharashtra. On October 9, 2020 he was sent to judicial custody and currently is jailed at Taloja prison hospital. His bail application, based on his fragile health conditions – Parkinson’s disease and loss of hearing in both ears, and other ailments was denied on October 22, 2020.

The NIA accuses Stan Swamy and 15 others already arrested for alleged personal links with the banned extremist groups of Maoists and Naxalites, in relation to the Elgar Parishad event that preceded violence between Dalits and Marathas in Bhima Koregaon, Pune, Maharashtra State, on 1 January 2018. He is the latest among the 16 people arrested including well-known rights defenders Arun Ferreira and Sudha Bharadwaj, both lawyers, and Vernon Gonsalvez and Varavara Rao, both writers. Others incarcerated under the draconian Unlawful Activities Prevention Act (UAPA) are Sudhir Dhawale, Mahesh Raut, Shoma Sen, Surendra Gadling, Rona Wilson, Gautam Navalka, Anand Teltumbde, Hanny Babu. Most of them have been held without trial for over two years. Varavara Rao, 80 years old is extremely sick.

Fr. Stan, a human rights defender primarily worked with the Adivasis (Indigenous community) for decades for the defense, propagation, and protection of their rights as enshrined in the Constitution of India. Fr. Swamy vehemently denies the accusations of being linked to extremist groups that allegedly to have sparked violence in a distant place (about 1000 miles), where he has never been to. He strongly believes he has been targeted for his stance against police atrocities against vulnerable Adivasis and advocacy on indigenous rights and work with indigenous groups. He has exposed large-scale abuse of power and land grabbing without due process using anti-terror and sedition laws. He also documented and published on how hundreds of Adivasi youth were falsely implicated and imprisoned for exercising their right to defend their resources.

We are gravely concerned about Stan Swamy's health and ability to care for himself. He is unable to take a drink without a straw. While being admitted to the jail his straw and sipper cup were confiscated. His petition for a straw and sipper filed before a special court on November 6, 2020 allowed the NIA 20 days to respond to a humane request, who ultimately denied the confiscation and failed to supply the requested items to help Stan Swamy live with dignity though now it has been provided by the jail authorities, it was a denial of his rights. It is certainly a denial of his right as an older person. Article 15.2. of the Convention on the Rights of the Persons with Disabilities, that India has ratified, states that the States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.ⁱⁱ

We appreciate your statement on 20 October 2020, appealing the Government of India to safeguard the rights of human rights defenders. Citing the arrest of Fr. Stan Swamy, you expressed concern over the arrests of those exercising their rights to freedom of expression and peaceful assembly and urged the authorities to release people charged under UAPA, a law which has also been widely criticized for its lack of conformity with international human rights standards.

"Right to Reputation is an intrinsic part of fundamental right to life with dignity under Article 21 of the Constitution of India. However, under the UAPA Act, amended in July 2019, an individual is termed as a 'terrorist' prior to the trial, and the burden of proof is on the accused. Data from the National Crime Record Bureau 1,226 cases were registered in 2019, compared to 1,182 in 2018 and 901 in 2017. While there were 34 convictions, 16 people were discharged, and 92 people were acquitted.ⁱⁱⁱ One of the accused Arun Ferreira, who is charged and arrested under UAPA, was earlier acquitted in another case, after being jailed for many years. It is also important to dispose of these cases through speedy trials.

We appeal to you and request your interventions for:

1. Release of Stan Swamy, Varavara Rao and others on bail
2. A speedy fair trial, to dispose of the case without any delay
3. Review and repeal of the sections of the UAPA that contravene the right to life and freedom of speech.

References:

ⁱ <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

ⁱⁱ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-15-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or-punishment.html>

ⁱⁱⁱ <https://indianexpress.com/article/india/ncrb-report-sedition-cases-up-in-2019-but-conviction-at-all-time-low-6664179/>

^{iv} <https://www.thehindu.com/news/cities/mumbai/stan-swamy-files-plea-to-allow-use-of-straw-sipper-in-taloja-jail/article33042730.ece>

^v <https://www.justicenews.co.in/adivasis-and-the-society-of-jesus-have-taught-me-to-lead-a-simple-life-fr-stan-swamy/>

^{vi} <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26398>

Cc ;

1. Assistant Secretary-General, OHCHR in New York, UN Headquarters, New York, NY 10017, USA newyork@ohchr.org
2. Mr. Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland. indigenous@ohchr.org
3. Ms. Mary Lawlor, Special Rapporteur on the Situation of Human Rights Defenders, OHCHR-UNOG, CH 1211 Geneva 10, Switzerland. - defenders@ohchr.org
4. Ms. Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human Rights and fundamental freedoms while countering terrorism, OHCHR-UNOG, CH 1211 Geneva 10, Switzerland. srct@ohchr.org
5. H. E. Ajay Kumar Bhalla, Home secretary, Ministry of Home Affairs, North Block, New Delhi - 110001, India. jscpg-mha@nic.in
6. H. E. T. S. Tirumurti, Permanent Representative of India to the United Nations, 235 East, 43rd Street, [between 2nd and 3rd Avenue], New York 10017. india.newyorkpmi@mea.gov.in
7. H.E. Mr. Ajit Kumar, Ambassador and Permanent Representative of India to United Nations Offices in Geneva, Permanent Mission of India to the UN in Geneva, 9 Rue du Valais, Geneva 1202 pr.genevapmi@mea.gov.in
8. Mr. Pawankumar, First Secretary, Permanent Mission of India to the UN in Geneva, 9 Rue du Valais, Geneva 1202 hoc.genevapmi@mea.gov.in