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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its 104th session, 10–14 November 2025****Opinion No. 66/2025 concerning Umar Khalid (India)***

1. The Working Group on Arbitrary Detention was established in 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 60/8.

2. In accordance with its methods of work,¹ on 16 July 2025 the Working Group transmitted to the Government of India a communication concerning Umar Khalid. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Umar Khalid is a national of India, born in 1987. He is a student activist who attended Jawaharlal Nehru University. His address of usual residence is in New Delhi. He was 33 years old at the time of his arrest.

(i) Context

5. The source asserts that Mr. Khalid is a well-known pro-democracy activist focusing on Muslim minority rights in India. He completed his PhD thesis at Jawaharlal Nehru University on the Adivasis, Indigenous Peoples in Jharkhand State, India, and is one of the founders of United Against Hate, a civil society group that seeks equal treatment for all by organizing fact-finding missions and awareness-raising campaigns across the country.

6. In February 2016, Mr. Khalid was charged with sedition and detained for 24 days following his involvement in student-initiated poetry readings in memory of a Kashmiri militant.

7. On 17 February 2020, Mr. Khalid gave a speech before 700 protestors in Amravati, Maharashtra State, advocating against the Citizenship Amendment Act.

8. Mr. Khalid reportedly called for peaceful and non-violent participation in protests against the Citizenship Amendment Act, referring to the heritage of non-violent civil disobedience of Mahatma Gandhi. He explained that the Shaheen Bagh protest, a peaceful sit-in by Muslim women to protest against the Citizenship Amendment Act, was a source of inspiration for the protest movement against the Act. He claimed that the Minister of Home Affairs of India had failed to engage in dialogue with protesters, stated that protesters would not respond to violence with violence and criticized the Government's record in fighting poverty.

9. On 6 March 2020, Mr. Khalid was charged with 29 offences under First Information Report 59/2020: 20 under the Indian Penal Code, 5 under the Unlawful Activities (Prevention) Act, 2 under the Arms Act (1959) and 2 under the Prevention of Damage to Public Property Act (1984).

10. The charges under the Penal Code included: criminal conspiracy (sect. 120B); rioting (sects. 147 and 148); murder (sect. 302); sedition (sect. 124A); promoting enmity between different groups (sect. 153A); various property-related offences (sects. 207, 395, 427, 435 and 436); assault on public servants (sects. 353 and 186); harbouring offenders (sect. 212); house trespass (sects. 452 and 454); abetment (sects. 109 and 114); unlawful assembly (sect. 149); and common intention (sect. 34).

11. The charges under the Unlawful Activities (Prevention) Act were: unlawful activities (sect. 13); terrorist act (sect. 15); punishment for a terrorist act (sect. 16); raising funds for terrorist act (sect. 17); and conspiracy (sect. 18).

12. The charges under the Arms Act were under sections 25 and 27 (punishment for certain offences and using arms) and the charges under the Prevention of Damage to Public Property Act were under sections 3 and 4 (mischief causing damage to public property).

13. The basis for Mr. Khalid's charges included his speech, his membership in social media messaging groups comprising students and activists as a part of the protest movement against the Citizenship Amendment Act, and an alleged secret meeting in January 2020.

14. The prosecution singled out five particular social media messaging groups. The source asserts that Mr. Khalid did not send messages to two of them. His messages in two others related to the general organization of protests, the coordination of speeches, the creation of slogans and the circulation of flyers. The prosecution claimed that, during secret meetings allegedly held in January 2020, Mr. Khalid had directed that protests should escalate to riots, resulting in casualties.

(ii) *Arrest and detention*

15. On 31 July 2020, Mr. Khalid was called to the office of the Special Cell of the Delhi Police for interrogation in Lodhi Colony, New Delhi. On 12 September 2020, he was called for a second interrogation, lasting 11 hours.

16. On 13 September 2020, Mr. Khalid was arrested and taken to the police station for interrogation. He was presented with an arrest warrant but not allowed to hold a meeting with his lawyers, who had been informed of his arrest and were present outside the police station.

17. On 14 September 2020, Mr. Khalid appeared by video link before Karkardooma Court. His lawyers were present during the hearing, but he had still not been allowed contact with them. The Court approved the request of the Delhi Police to detain Mr. Khalid for 10 days in police custody. He was accused of being a “key conspirator” in the Delhi riots and inciting communal violence through his speeches, labelled a “silent whisperer” and accused of “remote supervision” of protests against the Citizenship Amendment Act.

18. On 15 September 2020, Mr. Khalid was first allowed to meet with his lawyers.

19. On 24 September 2020, Karkardooma Court remanded Mr. Khalid in judicial custody until 22 October 2020. On 22 October 2020, he was transferred to Tihar Jail, New Delhi.

20. The court repeatedly extended Mr. Khalid’s pretrial detention. He was first denied bail on 24 March 2022 on the basis of reasonable grounds for believing that the accusations against him were *prima facie* true. The Court noted inconsistencies in witness statements but relied on a cumulative reading of statements to deny bail, invoking section 43 (D) (5) of the Unlawful Activities (Prevention) Act, which states that bail cannot be granted if *prima facie* evidence suggests the commission of an offence under the Act.

21. On 20 April 2022, Mr. Khalid appealed to Delhi High Court. On 18 October 2022, Delhi High Court rejected his appeal, stating that the charges appeared “*prima facie* true” on the basis of witness statements, despite noting inconsistencies and contradictions. The Court’s justification was rooted in the cumulative effect of witness statements and events, invoking section 43 (D) (5) of the Unlawful Activities (Prevention) Act.

22. Karkardooma Court granted Mr. Khalid temporary bail to attend a family wedding, on the condition that he did not talk to the media about the case.

23. On 6 April 2023, Mr. Khalid filed a special leave petition with the Supreme Court, appealing the decision of Delhi High Court of 18 October 2022. Between May 2023 and February 2024, his bail appeal was postponed multiple times and there were several changes to the bench of the Supreme Court. The hearing was rescheduled approximately 12 times, for various reasons, including: justices recusing themselves without providing reasons; paucity of time; scheduling conflicts; and other court engagements. One hearing was scheduled 15 minutes before lunch, on 24 January 2024, and multiple bench changes caused delays.

24. On 14 February 2024, Mr. Khalid withdrew his appeal from the Supreme Court due to a disadvantageous change in the bench and the finality of the Court’s decision.

25. On 28 May 2024, Mr. Khalid submitted a second bail application to Karkardooma Court, which was denied that same day, on the basis that no change in circumstances had arisen since its decision of 24 March 2022.

26. On 20 July 2024, Mr. Khalid submitted an appeal against that denial to Delhi High Court. After rescheduling multiple times, on 21 January 2025, Delhi High Court urged the Delhi Police to accelerate their investigations and specify the role of each accused individual under the Unlawful Activities (Prevention) Act. Hearings were held on 20 February, 27 May and 9 July 2025. During the hearing on 9 July 2025, Delhi High Court reserved its judgment on Mr. Khalid’s bail plea.

27. Karkardooma Court granted Mr. Khalid temporary bail from 28 December 2024 to 3 January 2025 to attend a family wedding, with strict conditions, including no social media use, no contact with case-related persons and the payment of a bond of 20,000 rupees (approximately \$229).

28. Mr. Khalid remains in detention in Tihar Jail, sharing facilities with convicted inmates. His trial is yet to start, and the case is at the stage of arguments of charges.

(iii) *Legal analysis*

29. The source argues that Mr. Khalid's detention is arbitrary and falls under categories I, II, III and V of the Working Group.

a. Category I

30. The source specifies there is no legal basis for Mr. Khalid's detention, arguing a violation of the general rule against pretrial detention under articles 9 (3) and 14 of the Covenant and principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

31. The source recalls that, in its general comment No. 35 (2014), the Human Rights Committee stated that detention pending trial must be based on an individualized determination that it was reasonable and necessary, taking into account all the circumstances, for such purposes as preventing flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and not include vague standards such as "public security". Courts must examine whether alternatives to pretrial detention would render detention unnecessary.

32. Section 43 (D) (5) of the Unlawful Activities (Prevention) Act states that bail cannot be granted if prima facie evidence suggests the commission of an offence under the Act. The Supreme Court of India has stressed the need for prompt bail hearings and has established a three-pronged test focusing on cooperation with the investigation, flight risk and evidence-tampering. The Court has ruled that bail must be granted if fundamental rights, including the right to a speedy trial, were violated and reaffirmed that "bail is the rule and jail is an exception".²

33. The source recalls that, in their extension of Mr. Khalid's pretrial detention and the bail rejections, Karkardooma Court and Delhi High Court failed to conduct an individualized determination of reasonableness and necessity. Both courts based their decisions on section 43 (D) (5) of the Unlawful Activities (Prevention) Act and the seriousness of punishment without considering relevant factors (flight risk, interference with evidence) or less restrictive measures.

34. The Working Group has repeatedly stated that domestic laws must be consistent with international law.³ It is argued that, by keeping Mr. Khalid in pretrial detention for more than four years without an individualized determination of the reasonableness and necessity thereof, the Government violated articles 9 (3) and 14 of the Covenant and principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rendering Mr. Khalid's detention legally baseless under category I.

35. Moreover, the source contends that the Government denied Mr. Khalid the right to challenge his detention in court, breaching articles 2 (3) and 9 (3) and (4) of the Covenant, principles 11 (1), 32 (1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 8 of the Universal Declaration of Human Rights. In its general comment No. 35 (2014), the Human Rights Committee stated that individuals were entitled to receive a decision, without delay, and that the adjudication of the case should take place as expeditiously as possible.

36. Mr. Khalid has been detained for more than four years. His bail applications were denied twice by Karkardooma Court and once by Delhi High Court. Over nine months and 18 days, the Supreme Court failed to hear his bail application. It was listed before numerous

² See https://api.sci.gov.in/supremecourt/2024/15920/15920_2024_6_1501_54745_Judgement_13-Aug-2024.pdf.

³ See, for example, opinions No. 46/2011, No. 42/2012, No. 37/2018 and No. 50/2018.

justices and benches, with justices citing scheduling conflicts and paucity of time and recusing themselves without explanation. Eleven hearings were rescheduled due to judges' absences and bench changes.

37. By depriving Mr. Khalid of his right to effectively challenge his detention, the Government violated article 8 of the Universal Declaration of Human Rights, articles 2 (3), 9 (3) and 9 (4) of the Covenant and principles 11 (1), 32 (1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rendering his detention legally baseless under category I.

38. Lastly, the source insists Mr. Khalid has been detained under vague law, violating the principle of legality under article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant, which require that an act can be punished only if the object of sufficiently precise criminal law.⁴

39. The insufficiently precise laws under which Mr. Khalid was detained include articles 13, 15, 16, 17 and 18 of the Unlawful Activities (Prevention) Act and 124A and 153A of the Penal Code. Special procedure mandate holders have noted serious concerns over that Act not complying with international human rights law, particularly in the counter-terrorism context. They have also stated that the vague definitions of "unlawful activities" and "membership" of terrorist organizations in the Act confer discretionary powers upon State agencies and diminishes civil liberties in the process.⁵

40. The source asserts that the vague formulation of these sections of the Unlawful Activities (Prevention) Act enables an excessively broad interpretation, as demonstrated by the Government's misuse of this provision to repress dissent. Between 2015 and 2020, officials arrested 8,371 individuals under the Act. The overwhelming majority were Muslims, political dissenters and activists. Fewer than 3 per cent were convicted of a crime.

41. Sections 124A and 153A of the Penal Code also constitute vague laws. It was alleged in a 2021 petition before the Supreme Court that section 124A was ambiguous and not narrowly drawn and suffered from overbreadth and vagueness.⁶ In May 2022, the Court ordered that no coercive action be taken under section 124A until authorities reviewed the provision, recognizing "instances of glaring misuse".⁷ Section 153A lacks definitions of "disharmony" and "enmity", allowing misuse, particularly in cases of political disagreement. National Crime Records Bureau data show that the number of incidents under that section increased from 478 cases in 2016 to 1,804 in 2020.

42. Mr. Khalid could not reasonably have foreseen that his peaceful activities would amount to criminal conduct under these provisions. By applying vague and overly broad provisions, the Government violated the principle of legality under article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant, rendering Mr. Khalid's detention legally baseless under category I.

b. Category II

43. The source contends that Mr. Khalid's detention resulted from the violation of his fundamental rights to expression, assembly, association and participation in public affairs, as contained in articles 19, 20 (1), and 21 (1) of the Universal Declaration of Human Rights and articles 19 (1), 19 (2), 21, 22 (1) and 25 (a) of the Covenant.

44. Freedom of expression includes the right to criticize Governments without fear of interference or punishment.⁸ Under article 19 (3) of the Covenant, restrictions must be provided by law and necessary for the respect of the rights of others or the protection of national security, public order or public health or morals. In its general comment No. 37 (2020), the Human Rights Committee stated that such restrictions must not be used, explicitly

⁴ Opinion No. 10/2018, para. 50.

⁵ See communication IND 7/2020, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁶ See [Journalist-Union-of-Assam-vs-Union-of-India-WPCrI-No.-498-of-2021-Public-Copy.pdf](https://indiankanoon.org/doc/134384639/).

⁷ See <https://indiankanoon.org/doc/134384639/>.

⁸ Opinions No. 22/2013, para. 11; and No. 24/2019, para. 40.

or implicitly, to stifle expression of political opposition to a Government or challenges to authority, including calls for democratic changes of government, the constitution or the political system.

45. Any gathering of more than one person is protected by freedom of assembly under article 21 of the Covenant. Articles 21 and 22 (2) require that any restrictions be provided by law and necessary in a democratic society. Activities within the right to participate in public affairs include criticism of the Government, publishing political content and engaging in political meetings.⁹ In its general comment No. 25 (1996), the Human Rights Committee mentioned holding peaceful demonstrations and meetings as activities forming part of the full enjoyment of the rights guaranteed under articles 21 and 22 of the Covenant.

46. The Working Group has previously found that advocacy by human rights defenders in India concerned matters of public interest and that they had been detained for exercising their right to take part in public affairs.¹⁰

47. Mr. Khalid was detained for peaceful participation in protests against the Citizenship Amendment Act, his speech on 17 February 2020 and his alleged participation in meetings. The prosecution asserted that, in January 2020, Mr. Khalid had attended secret meetings urging protesters to intensify actions into riots to pressure the Government into withdrawing the Act.

48. Mr. Khalid's participation in protests constitutes a legitimate exercise of his right to freedom of assembly. The Working Group has affirmed that peaceful participation in protests, even if disrupting daily life or without State authorization, is protected. Unless there is clear evidence of violence attributable to Mr. Khalid, merely participating in protests against the Citizenship Amendment Act cannot justify State interference.

49. It is argued that, in his speech on 17 February 2020 and in other speeches criticizing the Government, Mr. Khalid did not call for violence or threaten national security, public order or the health, morals or rights of others. In his speech, he specifically stated that protesters against the Citizenship Amendment Act should not use violence. In the absence of evidence of criminal conduct, attending meetings to discuss opposition to the Act was lawful exercise of the freedom of association.

50. The Working Group undertakes a "particularly intense review" when known human rights defenders are detained,¹¹ as Governments may prosecute them on spurious charges to silence them. It is submitted that Mr. Khalid is a well-known pro-democracy activist whose detention adds to the chilling effect on dissidents and civil society in India.

51. The source concludes that Mr. Khalid's deprivation of liberty directly resulted from the exercise of his rights to freedom of expression, assembly, association and participation in public affairs. The Government violated articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 19 (1) and (2), 21, 22 (1) and 25 (a) of the Covenant, giving his detention an arbitrary character under category II.

c. Category III

52. The source submits that Mr. Khalid was denied the right to legal assistance, in breach of article 14 (3) (b) of the Covenant and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, under which persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension.¹²

⁹ See Human Rights Committee, *Aduayom et al. v. Togo*, communications No. 422/1990 to No. 424/1990.

¹⁰ Opinion No. 57/2021, para. 60.

¹¹ Opinion No. 62/2012, para. 39.

¹² Opinion No. 50/2017, para. 65.

53. The source recalls that Mr. Khalid's lawyers were not present during his 11-hour questioning on 12 September 2020. Following his arrest on 13 September 2020, he was not allowed to speak to his lawyers. Although lawyers were present during the hearing on 14 September 2020, Mr. Khalid was only allowed to have a meeting with them on 15 September 2020.

54. By providing only restricted access to a lawyer at the beginning of pretrial detention, the Government violated article 11 (1) of the Universal Declaration of Human Rights, article 14 (3) (b) of the Covenant and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

55. The source argues that Mr. Khalid was denied his right to a fair and public trial before an independent court, in breach of article 10 of the Universal Declaration of Human Rights, article 14 (1) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

56. It is submitted that, while the executive does not have direct authority over the judiciary of India, the judiciary has grown increasingly vulnerable to political pressure. The Government has delayed and refused judicial appointment recommendations made by the Collegium. In 2018, four senior Supreme Court justices warned that the Chief Justice was mishandling politically sensitive cases and that the judiciary was at risk of political capture. In 2024, the Human Rights Committee urged India to apply counter-terrorism legislation in accordance with the Covenant.¹³

57. The source argues that the treatment of Mr. Khalid's case exemplifies courts' lack of fairness and impartiality. Karkardooma Court and Delhi High Court rejected his requests for bail and, despite noting inconsistencies and contradictions in witness testimonies, decided not to address them, finding "cumulative" effect sufficient for prima facie evidence. Mr. Khalid's Supreme Court appeal trajectory indicates a lack of judicial independence: benches were repeatedly changed, justices recused themselves, triggering delays, hearings were scheduled at questionable times and justices repeatedly cited a paucity of time.

58. The source concludes that Mr. Khalid was not tried before independent and impartial courts, in violation of article 10 of the Universal Declaration of Human Rights, article 14 (1) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

59. Furthermore, Mr. Khalid was denied his right to trial within a reasonable time, contrary to articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee, in its general comment No. 35 (2014), noted that any delay had to be assessed in the circumstances of each case, considering the complexity of the case, the accused's conduct and the manner in which the matter was dealt by judicial authorities. The Working Group has found that 18 months exceeds the reasonable time standard.¹⁴

60. The source submits in this context that Mr. Khalid has been detained since 13 September 2020, and his trial has not started. His pretrial detention exceeds the reasonable time standard. The Government thus violated articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

61. Lastly, it is argued that Mr. Khalid's right to be presumed innocent has been violated, in breach of article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Violations indicating that the suspect was not presumed innocent¹⁵ include: violation of the right to be tried within a reasonable time,

¹³ See <https://india.un.org/en/275172-un-human-rights-committee-issues-findings-india>.

¹⁴ Opinions No. 46/2018, para. 51.

¹⁵ Opinion No. 36/2011, para. 37.

excessive pretrial detention,¹⁶ lack of opportunity to challenge detention,¹⁷ undue delay in proceedings¹⁸ and repeated denials of bail.¹⁹ Moreover, article 10 (2) (a) of the Covenant and principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment require that pretrial detainees be separated from convicted prisoners.²⁰

62. The source argues that Mr. Khalid has been charged under vague provisions, been held in pretrial detention for an excessively long time, had numerous bail applications denied and hearings postponed and been detained with convicted prisoners. The Government violated Mr. Khalid's right to fair trial and to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

d. Category V

63. The source recalls that article 2 of the Universal Declaration of Human Rights and article 2 (1) of the Covenant grant everyone rights and freedoms without discrimination, including on the basis of political or other opinions. Article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant provide for equality before the law.

64. In 2020, the Special Rapporteur on the situation of human rights defenders expressed concern over the use of national security legislation in India, including the Unlawful Activities (Prevention) Act, to arrest, detain and charge human rights defenders. He noted a pattern of repression aimed at silencing human rights defenders working on religious minority issues.²¹ According to the source, Mr. Khalid's case falls into this pattern.

65. The source argues that Mr. Khalid was detained on discriminatory grounds, based on his political opinion and status as a human rights defender. His speech on 17 February 2020, calling for peaceful participation in protests against the Citizenship Amendment Act and criticizing government policies, and his membership in social media messaging groups to coordinate protests were used as basis for charges.

66. Given that his detention resulted from his peaceful exercise of fundamental rights, there is a strong presumption that the detention constitutes a violation of international law on the grounds of discrimination based on political or other views.²² By discriminating against Mr. Khalid, the Government violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

(b) Response from the Government

67. On 16 July 2025, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 15 September 2025, detailed information about the current situation of Mr. Khalid and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of India under international human rights law, and in particular with regard to the treaties ratified by the State.

68. The Working Group regrets that the Government did not submit a reply, nor did it seek an extension in accordance with paragraph 16 of Working Group's methods of work.

(c) Additional information from the source

69. On 2 September 2025, the source informed the Working Group that, on that day, Delhi High Court had denied Mr. Khalid's bail application.

¹⁶ Opinion No. 27/2011, para. 34.

¹⁷ Opinion No. 33/2008, para. 20.

¹⁸ Opinion No. 36/2011, para. 36.

¹⁹ Opinion No. 24/2015, para. 37.

²⁰ Opinion No. 28/2018, para. 85.

²¹ A/HRC/43/51/Add.3, paras. 368 and 376.

²² See, for example, opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and 59/2019, para. 79.

2. Discussion

70. 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.

71. In determining whether Mr. Khalid'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. In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

72. The source has argued that the detention of Mr. Khalid is arbitrary and falls under categories I, II, III and V. The Working Group will examine them in turn.

(a) Category I

73. The source submits that Mr. Khalid has been kept in pretrial detention for over four years without an individualized determination of the reasonableness and necessity of the detention. It submits that Mr. Khalid has been denied the effective right to challenge detention, namely by multiple bail denials, the failure by the Supreme Court to hear a bail application over nine months and 18 days and 12 adjournments, with 11 due to judicial scheduling conflicts, bench changes and unexplained recusals. The source also submits that Mr. Khalid was detained under vague laws (sections 13, 15, 16, 17 and 18 of the Unlawful Activities (Prevention) Act), which contain imprecise terms ("unlawful activities", "terrorist acts"). The Government has chosen not to address these allegations.

74. The Working Group first recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and that it should be ordered for as short a time as possible.²³ Article 9 (3) of the Covenant provides that it should not be the general rule that persons awaiting trial shall be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.²⁴ Moreover, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from this purely abstract point of view, taking into consideration only the gravity of the offence and using stereotyped formulae without any individualized assessment or considering alternative preventive measures. Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.²⁵

75. In the present case, the Working Group considers that, by failing to address specific facts or consider alternative preventive measures, the authorities failed to properly justify Mr. Khalid's pretrial detention, which has lasted about five years. Absent any argument to the contrary, the Working Group finds his detention to be in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant.

76. Furthermore, according to article 9 (4) of the Covenant, anyone arrested or detained is to be entitled to take proceedings before a court, in which the lawfulness of the detention should be examined without delay.²⁶ In the present case, a failure by the Supreme Court to hear a bail application over nine months and 18 days does not satisfy the requirement of "without delay". Lacking any explanation to the contrary by the Government, the Working Group considers that such a significant delay is contrary to articles 3 and 8 of the Universal Declaration of Human Rights and article 9 (4) of the Covenant. Accordingly, the Working Group considers that the detention of Mr. Khalid is arbitrary under category I.

²³ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

²⁴ [A/HRC/19/57](#), para. 54.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 38.

²⁶ *Ibid.*, para. 47.

77. The source alleges that the detention of Mr. Khalid lacks legal basis, as the provision impugned is formulated in impermissibly vague terms. The Working Group will examine this allegation under category II.

(b) Category II

78. The source submits that Mr. Khalid's detention resulted from the peaceful exercise of his fundamental rights to freedom of expression, assembly, association and participation in public affairs. It contends that Mr. Khalid, a well-known pro-democracy activist and founder of United Against Hate, was detained for his criticism of government policies, in particular his speech on 17 February 2020, in which he explicitly called for peaceful, non-violent participation in protests against the Citizenship Amendment Act following Gandhi's tradition of civil disobedience, stating that protesters should not respond to violence with violence. The source argues that his peaceful participation in protests against the Act, his involvement in social media messaging groups that were merely for coordinating the organization of protests through messages about speeches, slogans and flyer circulation, and his attendance at meetings opposing the Act constitute lawful exercise of his rights that threatened neither national security nor public order. The source emphasizes that the prosecution's allegations about "secret meetings" during which Mr. Khalid allegedly urged people to riot lacked evidence, and notes that the Working Group requires particularly intense review when human rights defenders are detained, especially given that Mr. Khalid's detention has created a chilling effect on dissidents and civil society in India. The Government failed to deny these allegations.

79. The Working Group recalls that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, covering political discourse, commentary on public affairs, discussion of human rights and advocacy.²⁷ This right protects the holding and expression of opinions critical of or not in line with government policy.²⁸ Article 21 of the Covenant guarantees the right of peaceful assembly, while article 22 protects freedom of association and article 25 ensures the right to participate in public affairs. The Working Group notes that Mr. Khalid's speech on 17 February 2020, in which he explicitly called for peaceful and non-violent participation in protests, following Gandhi's tradition of civil disobedience, his participation in demonstrations against the Citizenship Amendment Act and his involvement in social media messaging groups coordinating peaceful protests constitute protected activities under these provisions.

80. The Working Group observes with concern the application of vague and overly broad provisions of the Unlawful Activities (Prevention) Act to criminalize Mr. Khalid's peaceful activities. In its jurisprudence, the Working Group has referred to the conclusion of several United Nations experts that the imprecise definitions of "unlawful activities" and "membership" of terrorist organizations in sections 13 and 15 of the Act weakened judicial oversight by conferring excessive discretionary powers upon State agencies and had been used to target human rights defenders, religious minorities and political dissidents.²⁹ Similarly, sections 124A and 153A of the Indian Penal Code contain undefined terms such as "sedition" and "promoting enmity" that fail to meet the principle of legal certainty required under article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights, which demand that criminal laws be sufficiently precise so that individuals can foresee what conduct constitutes a criminal offence.³⁰

81. The Government has not demonstrated how Mr. Khalid's peaceful advocacy against the Citizenship Amendment Act, his calls for non-violent protest or his participation in social media messaging groups organizing demonstrations posed any genuine threat to national security, public order or the rights of others that would justify restrictions under

²⁷ Human Rights Committee, general comment No. 34 (2011), para. 11. See also Human Rights Committee, *Velichkin v. Belarus*, CCPR/C/85/D/1022/2001; and *Coleman v. Australia*, CCPR/C/87/D/1157/2003.

²⁸ See, for example, opinions No. 79/2017, para. 55; No. 8/2019, para. 55; and No. 8/2023, para. 69.

²⁹ See opinion No. 8/2023. See also A/HRC/16/51; and communication IND 7/2020, p. 7.

³⁰ See, for example, opinions No. 75/2021, para. 66; and No. 8/2023, para. 70.

articles 19 (3), 21 or 22 (2) of the Covenant. The Working Group is therefore not convinced that prosecuting Mr. Khalid was necessary to protect any legitimate interest under these provisions.

82. Accordingly, the Working Group finds that Mr. Khalid's detention resulted from the legitimate exercise of his rights to freedom of expression, peaceful assembly, association and participation in public affairs, as protected by articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant, rendering his detention arbitrary under category II.

(c) Category III

83. Given its finding that the deprivation of liberty of Mr. Khalid is arbitrary under category II, the Working Group wishes to emphasize that no trial should take place. Nevertheless, as Mr. Khalid is now detained pending trial, the Working Group will examine the source's submissions under this category.

84. The source submits that Mr. Khalid was denied his right to legal assistance, noting that his lawyers were not present during his 11-hour interrogation on 12 September 2020, he was not allowed to meet them at the time of his arrest on 13 September 2020 and he was first permitted a legal consultation only on 15 September 2020, thereby denying him access to counsel immediately after apprehension. The source argues that Mr. Khalid was denied his right to a fair and public trial before an independent and impartial court, submitting that the judiciary of India has grown increasingly vulnerable to political pressure, with the Government delaying and refusing judicial appointments. The source maintains that Mr. Khalid has been denied his right to trial within a reasonable time and without undue delay, given that he has been in pretrial detention for more than four years without his trial having commenced, far exceeding the reasonable time standard. Lastly, the source asserts that Mr. Khalid's right to be presumed innocent has been violated, as evidenced by his prolonged pretrial detention, repeated bail denials, delayed proceedings and detention alongside convicted prisoners in violation of the requirement to separate pretrial detainees from persons who have been convicted of a crime. The source concludes that these cumulative violations demonstrate that Mr. Khalid's detention is arbitrary under category III. The Government did not comment on these allegations.

85. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.³¹ The right to prompt legal assistance is essential to the right to a fair trial as it serves to ensure that the principle of equality of arms is duly observed.³² Given the submissions by the source, which are uncontested by the Government, the Working Group concludes that the right to a fair trial was not afforded to Mr. Khalid. Therefore, the Working Group considers that articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant were violated.

86. In addition, the Working Group recalls that article 10 (2) (a) of the Covenant, as well as rules 11 and 112 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), clearly require that those in pretrial detention be held separately from convicted persons, a provision that was ignored in the present case.

87. The Working Group observes that more than five years have passed since the arrest of Mr. Khalid and that his trial has not yet begun. This extended period far exceeds what is necessary and reasonable for criminal proceedings, even considering the complexity of the case. The Human Rights Committee has indicated that an important aspect of the fairness of a hearing is its expeditiousness and that, in cases where the accused is denied bail by the court, he or she must be tried as expeditiously as possible.³³ The Working Group therefore

³¹ A/HRC/45/16, paras. 51–52; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8. See also Basic Principles on the Role of Lawyers, paras. 16–22.

³² See, for example, opinion No. 35/2019.

³³ General comment No. 32 (2007), paras. 27 and 35.

finds that this excessive delay violated Mr. Khalid's right to be tried without undue delay under article 14 (3) (c) of the Covenant. This prolonged pretrial detention, coupled with repeated denial of bail applications despite the absence of any judicial determination of guilt, has effectively violated Mr. Khalid's presumption of innocence, punishing him through indefinite incarceration for charges that remain unproved and untried, in violation of article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

88. Lastly, while the Working Group notes the source's concerns regarding judicial independence and impartiality, including allegations of political pressure and procedural irregularities in Mr. Khalid's case, it considers that the information provided does not sufficiently establish that Mr. Khalid will not receive a trial before an independent and impartial tribunal, and therefore it refrains from making a definitive finding on this particular issue.

89. Nevertheless, noting all the above, the Working Group finds that the violations of Mr. Khalid's fair trial rights already established are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

(d) Category V

90. The source submits that Mr. Khalid's detention constitutes discrimination based on his political opinion and status as a human rights defender. The source argues that Mr. Khalid was targeted specifically for his activism on Muslim minority rights and his criticism of government policies. The source notes that the Special Rapporteur on the situation of human rights defenders has identified a pattern of the authorities in India using national security legislation to silence human rights defenders working on religious minority issues, and that Mr. Khalid's case exemplifies this discriminatory pattern, making it arbitrary under category V. The Government has chosen not to address these allegations.

91. The Working Group observes a pattern of targeting Mr. Khalid based on his political opinion and status as a human rights defender, as he was previously charged with sedition and detained for 24 days in February 2016 following his involvement in student-initiated activities at Jawaharlal Nehru University. The Working Group notes with concern that Mr. Khalid, who is a well-known pro-democracy activist and founder of United Against Hate, focusing on Muslim minority rights and Indigenous Peoples, has been singled out for his criticism of government policies and his role in coordinating peaceful protests against the Citizenship Amendment Act.

92. Furthermore, as established in the discussion concerning category II above, the Working Group has determined that Mr. Khalid's detention resulted from the peaceful exercise of his rights to freedom of expression, assembly, association and participation in public affairs. When 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.³⁴ In the present case, the Government has failed to refute this presumption.

93. For these reasons, the Working Group finds that Mr. Khalid was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender and on the basis of his political opinion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His detention is therefore arbitrary under category V.

3. Disposition

94. In the light of the foregoing, the Working Group renders the following opinion:

³⁴ See, for example, opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; and No. 8/2023, para. 84.

The deprivation of liberty of Umar Khalid, being in contravention of articles 3, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

95. The Working Group requests the Government of India to take the steps necessary to remedy the situation of Mr. Khalid 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.

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

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

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

4. Follow-up procedure

99. 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. Khalid has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Khalid;
- (c) Whether an investigation has been conducted into the violation of Mr. Khalid'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.

100. 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.

101. 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 of any failure to take action.

102. 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.³⁵

[Adopted on 11 November 2025]

³⁵ Human Rights Council resolution 60/8, paras. 6 and 9.