



General Assembly

Distr.: General
21 February 2017

English only

Human Rights Council

Thirty-fourth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-02780(E)



* 1 7 0 2 7 8 0 *

Please recycle



India: Attacks on human rights defenders and shrinking democratic space^{12*}

Although freedoms of expression, association and assembly are guaranteed in the Constitution of India, human rights defenders (HRDs) have faced incidents of killings, disappearances, harassments, arrests, and threats for exercising these freedoms. The government's efforts to end this has been inadequate. A dangerous discourse encouraged by some State and non-state actors has gained popularity in recent years. This discourse imputes that HRDs may constitute a serious threat to the 'national interest'. While the government has used this argument to regularly suppress dissent the media has often used this to profile, harass and intimidate HRDs.

The UN Declaration on HRDs requires States to take necessary measures to ensure protection of HRDs. The government has failed to meet this obligation. The condition of HRDs in India remains dire and the country does not have a HRD protection law. Several reports have further alleged that that the National Human Rights Commission (NHRC) has failed to investigate and act on cases brought to it by civil society organisations.

Harassment, Intimidation and Attacks against HRDs

The following are some cases of harassment intimidation and attacks against HRDs in India since March 2013:

1. Ms. Teesta Setalvad was subjected to targeted litigation, harassment and intimidation following her assistance to victims of the 2002 communal violence in Gujarat and her call for accountability for the killings of hundreds of civilians. The current Indian Prime Minister Mr. Narendra Modi who was previously the Chief Minister of Gujarat was allegedly implicated in the deaths. Ms. Seetalvad has been under investigation by authorities for fraud, breach of trust, criminal conspiracy and for receiving foreign funds through her NGO.
2. On 26 April 2016, Lama Lobsang Gyatso, General Secretary of the Save Mon Region Federation (a group of Buddhist monks opposed to construction of up to 7000 MW hydro power in Tawang, Arunachal Pradesh) was allegedly arrested for his activism.
3. On 20 February 2016, Ms. Soni Sori was attacked with a chemical substance by unidentified assailants in Jagdalpur, Chhattisgarh after she alleged police involvement in extra-judicial killings. Several other activists in Chhattisgarh have reportedly been routinely targeted. On 18 February 2016, a group of young women lawyers belonging to the Jagdalpur Legal Aid Group that provides pro-bono legal aid, were barred from practice and forced to vacate their house and leave Jagdalpur allegedly under duress from authorities. On 23 January 2017, researcher and academic Ms. Bela Bhatia was harassed and threatened by State sponsored vigilante groups which wanted her to leave Jagdalpur, She was assisting NHRC to document testimonies from victims rape allegedly committed by security forces.
4. On 22 September 2015, Mr. Ajimuddin Sarkar was arbitrarily arrested, detained and physically assaulted at the Islampur Police Station in West Bengal – after he called for accountability for abuses by border security forces and state police.
5. A disturbing new trend involves the targeting of HRDs making use of the Right to Information Act. On 10 August 2015, Mr. Jawahar Lal Tiwary was kidnapped in Muzaffarpur in Bihar and his mutilated body was discovered four days later. He was brutally assassinated after his campaigns on accountability for the misuse of state funds.

¹ Human Rights Defenders Alert-India associates itself with this submission

² Details and references for cases can be found at:

<http://www.civicus.org/images/CIVICUS%20Joint%20India%20UPR%20Submission.pdf>

6. On 11 January 2015, Ms. Priya Pillai was prevented from travelling to the UK – where she was to speak to members of parliament on the negative impact of a coal mine in Madhya Pradesh on the environment and communities.
7. On 16 September 2014, Dr. SP Udaykumar, who leads an anti-nuclear energy movement in Kudankulam, Tamil Nadu was stopped at the Airport in Delhi and prevented from visiting Nepal to attend a consultation on human rights.
8. On 14 September 2016, Mr. Khurram Parvez, a Kashmiri activist, was stopped at the Airport in Delhi and prevented from attending the 33rd session of UNHRC. Mr. Parvez was subsequently booked under the Public Security Act and thereafter illegally detained for 75 days.³

Attacks on HRDs relating to freedom of expression

Section 499 of the Indian Penal Code (IPC) criminalises defamation. It is frequently misused by individuals, politicians, businessmen and corporations to target journalists who write critical investigative articles about them. Sedition under IPC Section 124(A) has also been used to target freedom of expression and dissent. In 2016, sedition charges against activists increased tremendously with 18 cases filed between January and June. Supreme Court of India again clarified on 6 September 2016 that sedition or defamation could not be deployed against criticism of the government⁴

On 18 February 2016, vigilante groups, allegedly aligned with the police, forced journalist Ms. Malini Subramaniam to vacate her house and leave Jagdalpur for writing articles exposing gross human rights violation and sexual violence by Indian security forces in Bastar region of Chhattisgarh. On 21 March 2016, police arrested and tortured journalist Mr. Prabhat Singh in Bastar, under the Information and Technology Act, after he posted messages in the social media in criticising the police and calling for a law to protect reporters. On 14 May 2016, journalist Mr. Pushp Sharma was arrested by security forces in Delhi after he wrote an article accusing the government of discriminating against Muslims.

Attacks on HRDs relating to freedom of association

Since 2012, the government has used restrictive legislation and policies to target civil society organisations, suspended their operations and cancelled their registrations.

Broad provisions of Foreign Contributions Regulations Act 2010 (FCRA) have been used to stifle the funds of organisations that question government policies. On 1 June 2016, the Ministry of Home Affairs (MHA) suspended the FCRA license of Lawyers Collective for a period of 6 months and cancelled it in November 2016. On December 14, FCRA licences of Sabrang Trust and Greenpeace India were also cancelled. FCRA licences of 25 NGOs were not renewed as of 31 October 2016. This includes human rights organisations such as Indian Social Action Forum and Centre for Promotion of Social Concerns (CPSC). In 2015, MHA instituted an order to freeze the bank accounts of Greenpeace India in order to prevent the organisation from receiving funds from abroad and accused it of engaging in activities that were against Indian economic interests. In 2015, Sabrang Trust's FCRA licence was also suspended. In April 2015, Ford Foundation was included on an official "watch list" by the MHA. In the FCRA licence non-renewal case of CPSC, the MHA has placed it on record in the Delhi High Court that it takes objection to organisation's engagement with UN Special Rapporteurs and foreign embassies and that this was against 'national interest'. Between 2011 and 2016 the number of NGOs with FCRA licences reduced by 20,000.

The National Human Rights Commission's response

NHRC has established a Focal Point for HRDs. The focal point however has no powers to act on complaints. Former UN Special Rapporteur on HRDs, Ms. Margaret Sekaggya, after her visit to India in January 2011, had recommended improvements in this regard.

Recent data is not available on complaints received by NHRC on HRDs due to the non-publication of annual reports

³ <http://indianexpress.com/article/india/india-news-india/kashmiri-rights-activist-khurram-parvez-released-from-jail-4403011/>

⁴ <http://www.thehoo.org/free-speech/media-freedom/free-speech-in-the-courts-legal-outcomes-in-2016-9872>

since 2012.

In 2015, Human Rights Defenders Alert (HRDA) filed 104 cases with the NHRC pertaining to threats, attack and harassment against HRDs. The NHRC took no action on 60% of cases submitted by HRDA and the remaining 40% cases were heard by the NHRC with an average wait time per case of over a year. In none of the cases, compensation or prosecution was recommended by the NHRC.

Recommendations:

To the Government of India:

- Enact a strong law, in compliance with international standards, for the protection of HRDs and enable them to continue their legitimate work;
- The NHRC should ensure that its Focal Point on HRDs should be a member of the Commission with powers to act on complaints. The focal point should have a dedicated team and should come from an HRD background as recommended by the UN Special Rapporteur on the protection of HRDs;
- Repeal or comprehensively amend the FCRA, in line with the recommendations of the UN Special Rapporteur on Freedom of Association and Assembly;
- Review and amend the IPC particularly sections 499 and 124 (a) to ensure that it is in line with the best practices and international standards;
- Ensure that security forces abide by UN basic principles on the use of force and firearms by law enforcement officials; and
- Extend an invitation to the UN Special Rapporteur on Freedom of Expression; UN Special Rapporteur on HRDs; and UN Special Rapporteur on Freedom of Assembly and Association to visit India.

To the Human Rights Council:

- Condemn ongoing attacks in India on HRDs for exercising their fundamental rights of freedom of expression, association, assembly, free movement and dissent;
- Call for credible and independent investigations into all cases where HRDs are attacked, harassed, disappeared or killed;
- Urge the government of India to uphold the UN Declaration on HRDs and provide effective support and protection to defenders under threat.

*Human Rights Defenders Alert-India, NGO without consultative status, also shares the views expressed in this statement.