

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya

Addendum - Mission to India (10–21 January 2011)

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3. Shortcomings in the legal framework

26. The Special Rapporteur notes with satisfaction the comprehensive and progressive legal framework that guarantees human rights and fundamental freedoms in India, and welcomed the commitment expressed by officials she met, at both central and State levels, to uphold human rights.

27. However, the first-hand information she gathered throughout her mission (see chap. III) indicates that the cause of the challenges faced by human rights defenders lies mainly in the under-implementation of a number of the aforementioned legal instruments, at both central and State levels. Widespread deficiencies in the full implementation of such instruments are said to have adversely affected the work and safety of human rights defenders. The reasons frequently cited include lack of capacity, owing to the sheer size of the country, as well as heavy bureaucracy and political interference. Problems of overlap and coordination within and among the authorities may also explain such deficiencies.

31. The Special Rapporteur is further concerned about the new regime introduced under the Foreign Contribution Regulation Bill, which requires existing non-governmental organizations (NGOs) to renew their certificate every five years (sections 11(1)). In addition, according to section 11(3), the Central Government may specify (a) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; and (b) the area(s) (c) the purpose(s) for which, and (d) the source(s) from which such a contribution may be received with the prior permission of the Central Government. The Special Rapporteur is of the opinion that such provisions may lead to abuse by the authorities when reviewing applications of organizations which were critical of authorities.

32. Finally, given the particular risks faced by human rights defenders, the Special Rapporteur believes that the absence of legislation on the protection of human rights defenders is a significant lacuna. The adoption of such a law, and its full implementation, would contribute to the improvement of their situation.

5. Shortcomings in the institutional framework

(a) Law enforcement authorities

55. Most of the human rights violations reported to her prior, during and after her visit, are reportedly attributed to law enforcement authorities, in particular the police. Failure to register and/or investigate violations against defenders was widely reported. This is of great concern to the Special Rapporteur, as highlighted in chapter III of the present report. This appears to be deliberate on many instances, and indicative of the lack of police training.

56. Police reform does not seem to be a reality in the whole country, as the implementation at the state level is reportedly quite weak.

III. Situation of human rights defenders

68. Throughout her mission, the Special Rapporteur heard numerous testimonies about female and male human rights defenders, and their families, who have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, placed under

surveillance, forcibly displaced or had their offices raided and files stolen because of their legitimate work in upholding human rights and fundamental freedoms. They are often labelled as “Naxalites (Maoists)”, “terrorists”, “militants”, “insurgents”, “anti-nationalists” and “members of underground” and their rights to freedom of expression, peaceful assembly, association and movement is on many occasions unlawfully restricted.

69. Such violations are commonly attributed to law enforcement authorities; however, they have reportedly also shown collusion and/or complaisance with abuses committed by private actors. Some instances of serious human rights abuses by armed groups against human rights defenders were reported. Impunity for such violations was reported as a chronic problem, and defenders and their communities were often caught in between during the fight between security forces and armed groups, targeted or killed for allegedly taking the “wrong” side.

A. Defenders working on economic, social and cultural rights

B. Defenders affected by security legislations and militarization

C. Right to Information activists

D. Journalists

E. Women defenders and defenders working on women and child rights

103. Women human rights defenders, who are often at the forefront of human rights work, are at particular risk of persecution, especially those in rural areas. They face the same gamut of human rights violations as their male colleagues, in addition to gender-specific violations, such as rape and sexual violence used as another tool for harassment. [...]

F. Defenders working for the rights of marginalized people

109. The Special Rapporteur is particularly concerned at the plight of human rights defenders working for the rights of marginalized people, including Dalits, Adivasis (tribals) and sexual minorities, who face particular risks and ostracism because of their legitimate activities. Collectivities striving to achieve the rights of those people have also been victimized.

1. Dalits’ rights activists

110. The Special Rapporteur was deeply disturbed by the situation of Dalits’ rights activists. She met with members of the National Campaign on Dalit Human Rights and other Dalits’ rights activists. She was greatly impressed by their work and their courage in undertaking their activities.

111. Dalits’ rights activists strive for the promotion and realization of Dalits’ civil, political, economic, social and cultural rights. The range of human rights violations they suffer is appalling.

112. From the dominant caste, Dalits’ rights defenders reportedly face, inter alia, death threats, beatings and caste-based insults in public places, direct and indirect destruction of their property/belongings; and filing of false cases against them.

113. With regard to the police and state officials, Dalits’ rights defenders reportedly have often seen their complaints not taken up and instead have been charged in false cases and filed counter cases, in collusion with the dominant caste community. They have also been summarily executed, forcibly disappeared, physically assaulted, arbitrary detained, named rowdy sheeters,⁶ branded as Naxalites and anti-nationals, and had their privacy invaded, including by being placed under surveillance.

114. Regarding other civil society organizations, Dalits’ rights defenders often do not enjoy support for their cause and are instead pressured to tackle general issues. Written and oral threats to kill Dalits’ rights defenders have been made.

115. Lastly, concerning family and community members, Dalits' rights defenders are sometimes pressured to abandon their work in fear of intimidation and/or reprisals from the dominant caste, or to pursue paid activities instead owing to their dire financial situation. For instance, the relatives of a Dalit activist, tried to convince him to give up his work because they received threats from the dominant caste, stating that he would be killed if he continued his activities. The police arrested several persons who were later released on bail and are yet to be charged. These same perpetrators reportedly continue to threaten the family, urging the activist to withdraw his complaint.

116. The Special Rapporteur is particularly concerned at the plight of women Dalits' rights defenders who face gender-based violence, or restrictions, regarding their work on the basis of their caste and gender. In August 2010, an elected female Dalit representative in Rajasthan was insulted and beaten by members of the dominant caste because she had taken up cases of land rights in her community. She filed a complaint to the police, but the perpetrators were reportedly never arrested. In another case, a centre working on issues pertaining to Dalit women was forcibly closed down by the dominant caste, and the manager was subsequently attacked by villagers and forced to leave the village with her family.

IV. Conclusion and recommendations

A. Conclusion

134. India is now a political and economic heavyweight. Yet, as many other States, it has a number of challenges to overcome. There is an excellent array of laws in place, which need to be fully implemented. Others – which are outdated and not in conformity with international human rights standards – must be repealed. Defenders face multiple challenges and dangers in their daily work and the State has the responsibility to protect them. Government authorities, including security forces, and the judiciary and human rights commissions, at the central and state levels, need to do much more to ensure a safe and conducive environment for defenders. Full accountability for violations against defenders is an absolute priority and the perpetrators must be brought to justice on a systematic basis.

135. India should be proud of its human rights defenders, who are a key asset in advancing human rights and democratic governance. In an environment where economic liberalization and rapid economic growth have transformed many sectors and lives, but where the dividends have not been shared by others, human rights challenges are growing. For this reason, it is vital that human rights defenders have an environment where they can operate freely and safely without fear.

136. The Special Rapporteur thanks once again Government of India for its excellent cooperation on the occasion of her visit. She is optimistic that the relevant stakeholders will take the following recommendations as being offered in a constructive spirit.

B. Recommendations

1. Recommendations for the consideration of the central and state Governments, and the legislature

137. The highest authorities at the central and state levels should publicly acknowledge the importance and legitimacy of the work of human rights defenders, i.e. anyone who, “individually and in association with others, ... promote[s] and ... strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels” (art. 1 of the Declaration on Human Rights Defenders).

138. Specific attention must be given by all authorities to the categories of human rights defenders mentioned in the present report, in particular defenders working on rights of marginalized groups, including Dalits and Adivasis; defenders working on economic, social and cultural rights; defenders affected by security legislations and militarization; Right to Information activists; journalists; and women defenders and defenders working on women and child rights.

139. A comprehensive, adequately resourced protection programme for human rights defenders and witnesses at the central and state levels and in conjunction with the National and State Human

Rights Commissions should be devised. This programme could be funded by the State, but should not be closely controlled by the State apparatus. In particular, it should not be associated with State agencies, such as the police, security agencies and the military.⁷ The process for applying for protective measures provided under such a programme should be cost-free, simple and fast, and immediate protection should be granted while the risk situation of the person is being assessed. When assessing the risk situation of a defender or witness, the specificities of his/her profile pertaining to caste, gender and ethnic, indigenous and/or religious affiliation, inter alia, should be systematically taken into account. Finally, the personnel assigned to the protection of defenders or witnesses should not gather information for intelligence purposes.

140. Security forces should be clearly instructed to respect the work and the rights and fundamental freedoms of human rights defenders, especially the categories of defenders mentioned in the present report.

141. Sensitization training to security forces on the role and activities of human rights defenders should be significantly strengthened as a matter of priority, with technical advice and assistance from relevant United Nations entities, NGOs and other partners.

142. Prompt, thorough and impartial investigations on violations committed against human rights defenders should be conducted, and perpetrators should be prosecuted, on a systematic basis. Fair and effective remedies should be available to victims, including those for obtaining compensation.

143. The Supreme Court judgment on police reform should be fully implemented in line with international standards, in particular at the state level.

144. A law on the protection of human rights defenders, with an emphasis on defenders facing greater risks, developed in full and meaningful consultation with civil society and on the basis of technical advice from relevant United Nations entities, should be enacted.

145. The National Security Act, the Armed Forces (Special Powers) Act, the Unlawful Activities Act, the Jammu and Kashmir Public Safety Act and the Chhattisgarh Public Safety Act should be repealed. Other security legislations should be reviewed in the light of international human rights standards.

146. The Foreign Contribution Regulation Act should be critically reviewed or repealed.

147. The Draft Bill on Prevention Against Torture should be adopted without further delay.

148. Necessary steps should be taken to recognize the competence of United Nations human rights treaty bodies to receive individual complaints, which will provide human rights defenders an opportunity to access another procedure to address violation of their rights.

149. The functioning of the National Human Rights Commission should be reviewed with a view to strengthening it by, inter alia, increasing its capacity to improve its case-handling function; broadening the selection criteria for the appointment of the Chair; diversifying the composition of the Commission, including regarding gender; extending the one-year limitation clause; and establishing an independent committee in charge of investigating allegations of violations by State agents. The Human Rights Act should be amended as necessary in full and meaningful consultation with civil society.

150. State Human Rights Commissions should be established in states where such commissions are not yet in existence. The capacity-building and resources of existing Commissions should be reinforced.

151. Central and state Governments should continue collaborating with Special Procedures of the Human Rights Council.

2. Recommendations for the consideration of the national and existing state human rights commissions

152. Wherever relevant, current or former members of the police, security agencies and the military serving in the National Human Rights Commission or the State Human Rights Commissions should not be involved in any part of investigations into

allegations of human rights violations by State actors, as they may have political and ideological allegiances to the accused implicated in the case and may have the capacity to influence the outcome.

153. The supportive role of the Commissions for human rights defenders should be strengthened by inter alia, conducting regular regional visits; meeting human rights defenders in difficulty or at risk; undertaking trial observations of cases of human rights defenders wherever appropriate; denouncing publicly on a regular basis violations against defenders and impunity. The defenders focal point should play a leading role in that regard. This focal point should be a member of the Commission, and have a human rights defender background to fully understand the challenges faced by defenders. A fast-track procedure for defenders within the National Human Rights Commission and State Human Rights Commissions should be considered.

154. The visibility of the commissions should be enhanced through regular, proactive and meaningful engagement with civil society and the media.

155. A toll-free 24-hour emergency hotline for human rights defenders should be established and widely publicized. Such a hotline should be available in the main languages spoken in India.

156. The National Human Rights Commission should intervene on the issue of the Foreign Contribution Regulation Act and should monitor the denial of registration and permission to receive foreign funding for NGOs, with a view to amending or repealing the bill.

157. The Commissions should monitor the full implementation by India of recommendations made by United Nations human rights mechanisms, including special procedure mandate-holders, treaty bodies and the universal periodic review. Such a monitoring role should apply to the recommendations contained in this report.

158. The statutory commissions should be allocated adequate human and financial resources to fully carry out their mandates.

3. Recommendations for the consideration of the judiciary

159. The judiciary should be vigilant and cognizant of the role of human rights defenders.

160. The judiciary should take proactive measures to ensure the protection of human rights defenders at risk, witnesses and victims.

161. The judiciary should ensure better utilization of *suo motu* whenever cases of violation against human rights defenders arise.

4. Recommendations for the consideration of human rights defenders

162. Platforms or networks aimed at informing and protecting defenders, facilitating dialogue and coordination among defenders should be devised or strengthened.

163. Defenders should better acquaint themselves with the Declaration on Human Rights Defenders.

164. Efforts should be made to continue making full use of United Nations special procedures and other international human rights mechanisms when reporting on human rights violations.

5. Recommendations for the consideration of the international community and donors

165. The situation of human rights defenders, in particular the most targeted and vulnerable ones, should be continually monitored and support for their work should be expressed through, inter alia, interventions before central and state institutions.

166. Efforts should be intensified in empowering civil society, including by increasing their capacity.

6. Recommendations for the consideration of all stakeholders

167. The Declaration on Human Rights Defenders should be translated into the main local languages and widely disseminated.