

13 February 2012

INDIA: HUMAN RIGHTS DEFENDERS NEED EFFECTIVE PROTECTION

Amnesty International's written statement to the 19th session of the UN Human Rights Council (27 February – 23 March 2012)

All citizens shall have the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions...

- Article 19 of India's Constitution

No person shall be deprived of life or personal liberty except according to the procedure established by law.

- Article 21 of India's Constitution

India's constitution includes the above provisions guaranteeing “fundamental rights” for its citizens and its judiciary has invoked them from time to time. Protections provided by some parts of government are strong, but are undermined by the actions of non-state actors, private militias and other parts of governments. Central and state-level security legislation can undermine protection.¹ A gap exists between constitutional provisions and policies, and implementation, which often results in discrimination against marginalized communities including the rural and urban poor, Dalits and Adivasis. This is exacerbated by slow legal processes and difficulties faced by these communities in accessing justice. Efforts of statutory bodies meant for protection of human rights remain weak and ineffectual due to lack of funding.

Human rights defenders operating in this context face threats, harassment and intimidation. Impunity persists for past violations/abuses against defenders. At least 30 defenders have been physically targeted since 2008; at least eight were killed by non-state actors during 2010 and 2011, four since the visit to India of the UN Special Rapporteur on the situation of human rights defenders in January 2011.² A focal point for alerting the authorities on threats to defenders, instituted at the National Human Rights Commission after the Special Rapporteur's visit, is yet to translate into any meaningful protection for them.

Problems faced by defenders remain particularly acute for three categories: those highlighting violations by the police and security forces, especially in regions affected by armed insurgency and political violence; those working to defend the rights of the marginalized communities who face violations by the state authorities and abuses by private agencies; and those using recent legislation to obtain information to protect their rights.³

Impunity prevails for members of the police and security forces and armed non-state actors. In cases where action was taken against members of security forces, prosecution of the alleged perpetrators

¹ The National Security Act, 1980, the Armed Forces Special Powers Act, 1958 and the Jammu and Kashmir Public Safety Act, 1978, and the Unlawful Activities Prevention Act, 1967, as amended in 2008.

² They are: Niyamat Ansari, Shehla Masood, Valsa John and Nadeem Sayeed. See footnotes 13, 14 and 15.

³ For a recent summary of Amnesty International's documentation of human rights situation in India, see India: Accountability, impunity and obstacles to access to justice: Amnesty International Submission to the UN Universal Periodic Review Working Group on India, May-June 2012, available at <http://www.amnesty.org/en/library/info/ASA20/048/2011/en> and also Amnesty International's recent work on India, please see <http://www.amnesty.org/en/region/india>

remains impossible unless and until the authorities sanction it required by criminal procedures and the often criticized Armed Forces Special Powers Act's special powers in force in Jammu & Kashmir and parts of north-eastern India. Key cases are outlined below, demonstrating how gaps in protection and state complicity lead to violations against defenders. Often various state actors' actions undermine protection and justice for defenders. There is a need for the central government to introduce robust legislation to ensure comprehensive protection for defenders. This is illustrated by the following cases:

1. Jalil Andrabi

Sixteen years after Jalil Andrabi's body was found in the Kashmir valley, his family and colleagues are still waiting for justice. A lawyer instrumental in documenting violations committed by security personnel, Andrabi had been in army custody for 19 days in March 1996 when his body was found. A special team set up on judicial order identified an army major as prima facie responsible for the death, but army representatives blocked his prosecution and failed to ensure his court martial. A court order in 2005 sought his arrest, but the central authorities failed to prevent him from fleeing to Canada and then to the United States. Since he had been issued a passport (probably after he was named as the accused) and allowed to travel, there is sufficient evidence to believe that his travel abroad had been facilitated by the authorities. Indian authorities should pursue formal moves to extradite him from the United States to face trial.⁴

2. Pervez Imroz

In September 2011, the Jammu & Kashmir human rights commission identified over 2,700 unmarked graves in four districts of north Kashmir. Local police had claimed that these were the dead bodies of "unidentified militants," but the commission identified 574 bodies as those of disappeared locals and recommended that the other bodies be identified. This discovery followed the release of two reports by Pervez Imroz, a lawyer of the Association of Parents of Disappeared Persons, in April 2008 and December 2009. These reports detailed the discovery of 940 burial sites in the Uri district where the disappeared had been buried after alleged extrajudicial executions.

Following release of the above reports, Pervez Imroz faced harassment, intimidation and occasionally arbitrary detention during 2008-2009.⁵ Two months after the release of the first report, his home in Srinagar came under a night attack by central paramilitary forces; later that year he was detained in a police station while monitoring the state assembly elections.

3. Defenders in Chhattisgarh and other states

Defenders in Bastar region in Chhattisgarh and parts of Jharkhand, Orissa and West Bengal states, where an insurgency by armed Maoists persists, continue to be regularly targeted by the authorities and the armed Maoists. In Chhattisgarh itself, Salwa Judum, a state-sponsored private militia continue to commit abuses until it was banned by a Supreme Court order in July 2011.

⁴ Amnesty International, No more delay: 15 years after Jalil Andrabi's murder, India must seek extradition of former army officer, ASA 20/011/2011, 14 March 2011 available at <http://www.amnesty.org/en/library/info/ASA20/011/2011/en>.

⁵ For details, please see Amnesty International Urgent Action 190/08, India, Fear for safety: Pervez Imroz, lawyer and human rights defender, ASA 20/015/2008, 2 July 2008 available at <http://www.amnesty.org/en/library/info/ASA20/015/2008/en>; India: Arbitrary detention of human rights defenders monitoring elections in Jammu & Kashmir, ASA 20/029/2008, 17 November 2008, available at <http://www.amnesty.org/en/library/info/ASA20/029/2008/en>.

4. Dr. Binayak Sen & T. G. Ajay

Dr. Binayak Sen, a pioneer in ensuring health care to Adivasi and other marginalized communities in Chhattisgarh, languished in jail for two years on trumped up charges of facilitating armed Maoist violence.⁶ His arrest came immediately after he brought to light the involvement of police in unlawful killings of 12 Adivasis in Santoshpur in March 2007. In December 2010, after trial which Amnesty International believes was unfair,⁷ he was convicted on charges of sedition and conspiracy and sentenced to life imprisonment. The Supreme Court released him on bail in April 2011, after a vigorous national and international campaign.⁸ Meanwhile, in 2008, film-maker T. G. Ajay, who documented violations along with Dr Sen, was detained for three months.⁹ He continues to avoid travelling to Bastar as he fears for his safety.

5. Vanvasi Chetna Ashram

In May 2009, activists belonging to Vanvasi Chetna Ashram (VCA), a Gandhian peace organization engaged in rehabilitation of Adivasis in Chhattisgarh, found their office buildings demolished. Amnesty International believes that VCA was targeted because it helped victims file petitions to fight impunity. The VCA received threats from the Salwa Judum, the state police and the Maoists, following which, in January 2010, VCA founder Himanshu Kumar fled to New Delhi. Meanwhile, in July and December 2009 respectively, two VCA activists Suknath Oyami and Kopa Kunjam were arrested and charged with collaborating with armed Maoists. Amnesty International believes that the two were targeted because they had exposed violations by the security forces. Kopa Kunjam had brought to light the extrajudicial executions of 15 Adivasis at Singaram in January 2009 and three Adivasis in front of the Matwada police station in June 2009. Kopa Kunjam was released in September 2011, but Suknath remains in jail.

6. Kartam Joga

Amnesty International follows the case of Adivasi political leader Kartam Joga who, since 2007, has been fighting a legal battle in the Supreme Court seeking an end to impunity in Bastar. He has been in jail since September 2010. He was arrested on four charges of collaborating with armed Maoists including committing ambushes and killing security personnel - he has already been acquitted on three charges.¹⁰ Amnesty International considers him to be a Prisoner of Conscience.

7. Lingaram Kodopi and Soni Sori

In September 2011, Adivasi social activist Lingaram Kodopi, who brought to light violations by the security forces in anti-Maoist operations in Bastar, was arrested; in October 2011, his aunt and a schoolteacher, Soni Sori, who criticized the security forces and the Maoists, was arrested

⁶ Amnesty International, Indian doctor Binayak Sen released from prison on bail, 25 May 2009, available at

<http://www.amnesty.org/en/news-and-updates/good-news/indian-doctor-binayak-sen-released-prison-bail-20090526>.

⁷ Amnesty International, India: Serious concerns over fair trial of Human Rights Defender Dr Binayak Sen, ASA 20/013/2008, 25 June 2008, available at

<http://www.amnesty.org/en/library/asset/ASA20/013/2008/en/76848071-42e2-11dd-9452-091b75948109/asa200132008eng.html>

⁸ Amnesty International, Appeal for Action RE repeal life imprisonment sentence for doctor Binayak Sen, Amnesty International index: 20/002/2011, available at <https://www.amnesty.org/en/library/asset/ASA20/002/2011/en/8e8259d4-a78a-4f86-b7d6-579bf79690e9/asa200022011en.pdf>

⁹ Amnesty International, India: Concern over the arrest of filmmaker and human rights defender T.G. Ajay in Chhattisgarh, ASA 20/010/2008, 14 May 2008, available at <http://www.amnesty.org/en/library/info/ASA20/010/2008/en>

¹⁰ India: Chhattisgarh authorities must immediately release Prisoner of Conscience Kartam Joga, ASA 20/031/2010, 1 November 2010, available at <http://www.amnesty.org/en/library/info/ASA20/031/2010/en>

on transferring funds from a corporate firm to the armed Maoists. Soni Sori was also tortured in police custody. Both are still in prison.¹¹

During 2011, two human rights defenders were murdered in Jharkhand state by non-state actors. While there has been some investigation into these murders, the pattern of the following killings by non-state actors remains a concern:

8. In March 2011, Maoists killed Niyamat Ansari and threatened his associate Bhukan Singh after they exposed corruption involving Maoists, local contractors and forest officials.¹² Six persons have so far been arrested for the murder.

9. In November 2011, Valsa John, an activist-nun who had worked to protect Adivasi rights in Jharkhand, was murdered after she received death threats allegedly from illegal mining outfits.¹³

10. In August 2011, environmentalist Shehla Masood was shot dead in Bhopal in Madhya Pradesh state. She had sought to expose environmental violations by urban infrastructure projects and challenged mining plans. Investigation into her murder has failed to arrest anyone to date.¹⁴

In the light of the above, Amnesty International urges the Human Rights Council to call upon the Indian authorities to:

- drop all politically-motivated charges against human rights defenders and immediately and unconditionally release those detained;
- ensure a prompt, impartial, independent and effective investigation into the killings of defenders and investigate allegations of attacks and torture and ill-treatment against them; and
- immediately take measures to end the harassment of defenders and ensure that they are able to carry out their legitimate and peaceful human rights activities without fear of harassment and intimidation.

¹¹ Amnesty International, India: Chhattisgarh should drop charges against Prisoners of Conscience Soni Sodi and Lingaram Kodopi and unconditionally release them, AI Index ASA 20/047/2011, available at <https://www.amnesty.org/en/library/asset/ASA20/047/2011/en/139f33bf-0c8a-4c8a-a844-8135449906d7/asa200472011en.html>.

¹² Amnesty International, India: Nun murdered in fourth activist killing in 2011, 17 November 2011, available at <https://www.amnesty.org/en/news/india-nun-murdered-fourth-activist-killing-2011-2011-11-17>.

¹³ Amnesty International, India: Nun murdered in fourth activist killing in 2011, 17 November 2011, available at <https://www.amnesty.org/en/news/india-nun-murdered-fourth-activist-killing-2011-2011-11-17>.

¹⁴ Amnesty International, India: Probe murder of environmental activist Shehla Masood in Bhopal city, Amnesty International index: Index: ASA 20/044/2011, available at <http://www.amnesty.org/en/library/info/ASA20/044/2011/en>.