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# INDIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, poverty remained a reality for millions of people in India, as UN High Commissioner for Human Rights Ms. Navanethem Pillay emphasized on the occasion of her visit to India in March 2009. Indeed, benefits and dividends of the economic liberalisation and rapid economic growth were not always shared equally<sup>1</sup>. In particular, the poorest and most marginalised groups, primarily the Dalits and Adivasis, continued to face discrimination despite the illegality of the caste system and to live in deep poverty. Landless farmers and Adivasis were also subjected to forced evictions in several States due to industrial and other business projects.

In addition, widespread asymmetries in power and wealth were “compounded by the persistence of gaps in the implementation of higher courts’ decisions [...] and of national laws and policies that promote and protect human rights and seek to support the most vulnerable”, as underlined by the High Commissioner<sup>2</sup>. Indeed, human rights violations continued to be rampant in 2009, while impunity for those abuses remained widespread, especially as Section 197 of the Criminal Procedure Code and the Armed Forces Special Powers Act (AFSPA) in areas affected by armed uprising still provided protection from prosecution to the police and security forces<sup>3</sup>. Moreover, the Government amended the Unlawful Activities (Prevention) Act of 1967 in December 2008, which, *inter alia*, extends the detention without bail period from 90 to 180 days and police custody from 15 to 30 days,

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1/ See Statement by Ms. Navanethem Pillay, High Commissioner for Human Rights at the National Human Rights Commission (NHRC), March 23, 2009.

2/ *Idem*.

3/ In this regard, the UN High Commissioner for Human Rights called on India to repeal laws providing security forces with excessive emergency powers, including the AFSPA, which “breach contemporary international standards”. See Statement by Ms. Navanethem Pillay, High Commissioner for Human Rights at the NHRC, March 23, 2009. The AFSPA, which is at the origin of many acts of police violence in the State of Manipur, entered into force in 1958 and gives the Indian army full powers in areas affected by armed uprising, notably in Kashmir and in the north-eastern States, including Manipur, where separatists rebels are present. In particular, the AFSPA empowers soldiers to arrest, keep in detention and shoot at any person (Section 4.a) so as to “maintain public order” if the soldier has reasons to believe that such person is an “insurgent”. This can be carried out with total impunity, as the law requires the permission from the central Government to prosecute a member of the army.

accepts the use of wiretaps as evidence and provides for life imprisonment for those involved in terror acts<sup>4</sup>.

As the Naxalite Maoist movement intensified its attacks in 2009 and the conflict in Chhattisgarh spread to other States, paramilitary and police forces were in turn increasingly deployed, leading to human rights abuses on both sides, including arbitrary arrests, abductions by State agencies and armed insurgents, deaths in detention, custodial rape and torture. In this context, the number of extrajudicial executions alarmingly increased in 2009, mostly in the States of Manipur, Assam, Chhattisgarh, Orissa and Madhya Pradesh, where militant movements of various nature operate. Government's failure to guarantee the rule of law also encouraged corruption and common crime. In addition, tribal populations of Dantewada district in Chhattisgarh State were continuously facing large-scale internal displacements, in particular during the "Operation Green Hunt", which began in November 2009 in the States of Chhattisgarh, Jharkhand, Orissa, Andhra Pradesh, Maharashtra and West Bengal, and by which paramilitary troops along with State armed police carried out operations against the Naxalite Maoist movement and which seriously affected tribal populations living in the areas where the operation is being carried out.

A welcome development in 2009 was the organisation by the National Human Rights Commission, on October 12, 2009, of a workshop on human rights defenders at the end of which it recalled that defenders should be "provided protection by the State against any violence, threats, retaliation, adverse discrimination, pressure or any arbitrary action", and that there was a need to set up a Focal Point for Defenders, preferably at the NHRC, so that they can reach out to it for support<sup>5</sup>. However, the NHRC remains an institution with a very limited mandate as, among others, it has only a recommendatory power and it does not address human rights violations committed by the armed and paramilitary forces. In addition, in July, Justice K. G. Balakrishnan, the new Chairperson of the NHRC, made a statement according to which "encounter killings" are "sometimes unavoidable" as a solution to law and order issues. Such comments can only be seen as inap-

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4/ In addition, a new section has been inserted in the bill that says that those using explosives, firearms, poisonous chemicals, biological or radiological weapons with the intention of aiding, abetting or committing a terror act "shall be punishable with imprisonment for a term which may extend to 10 years". The bill also says that anyone in India or in a foreign country who directly or indirectly raises or collects funds or provides funds for a terrorist act shall be punishable with at least five years imprisonment, which may extend to life.

5/ See NHRC, *Recommendations made at the Workshop on Human Rights Defenders*, October 12, 2009. The Focal Point was established in May 2010.

propriate from the Chairperson of the NHRC, an institution that hundreds of victims approach seeking redress in cases of extrajudicial executions.

The general elections to the 15th “Lok Sabha”, the lower house of the Indian Parliament, which poll process was completed on May 16, 2009, did not bring any change to the human rights situation in the country, as the ruling alliance led by the Congress Party, which returned to power, had failed to address the most urgent human rights issues in the country at the end of 2009.

### **Acts of harassment against defenders of the rights of marginalised communities**

In 2009, human rights defenders working to promote the rights of Dalit and other marginalised communities remained victims of repression and of acts of harassment. For instance, Mr. **Marimuthu Barathan**, President of the Human Rights Education and Protection Council, who has been working closely with Dalit communities in Tirunelveli and surrounding southern districts of Tamil Nadu State, has been subjected to judicial harassment since May 27, 2009. On that day, he was arrested by the police and accused of the murder of a man, as well as of being involved in the killing of 20 Dalit people<sup>6</sup>. Mr. Barathan had played a crucial role in the filing of the highest number of cases under the Scheduled Cast / Scheduled Tribe (Prevention of Atrocities) Act. He also campaigned for police reforms and against custodial torture. He was charged for various offences, including “rioting armed with deadly weapons” and “murder”. On June 27, he was released from prison on bail. As of the end of 2009, the charges against Mr. Barathan remained pending and the trial in the case had not started yet. Furthermore, on July 22 and 23, Dr. **Lenin Raghuvanshi**, Convener of the Peoples’ Vigilance Committee on Human Rights (PVCHR), a local non-governmental human rights organisation working in Varanasi, Uttar Pradesh (northern India)<sup>7</sup>, received continuing and renewed death threats over his mobile. In 2008, Dr. Raghuvanshi had already received threatening calls, warning him that he would be killed if he continued to work with the Dalit communities. On July 23 and 24, he registered a complaint before the Director General of Police of Lucknow, Uttar Pradesh, and Inspector General of Police, Varanasi zone<sup>8</sup>. In December 2009, members

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6/ Following those killings, the Tirunelveli police arrested several Dalit people. The victims sought the assistance of Mr. Barathan, who defended their cause in front of Government officials and the police and stated that these persons were falsely accused. It is alleged that Mr. Barathan was accused in retaliation.

7/ PVCHR is a network of human rights bodies that campaign on various issues relating to the Dalit community, including the education of children, fair salaries, property title and the fundamental rights of members of this community.

of Vanvasi Chetna Ashram (VCA), a human rights and development NGO working for the resettlement of Adivasi communities displaced by the conflict in Chhattisgarh<sup>9</sup>, were also subjected to various acts of harassment. On December 10, 2009, Messrs. **Kopa Kunjam**, VCA Rehabilitation Coordinator<sup>10</sup>, and **Alban Toppo**, a lawyer and also a member of VCA, were arrested and brought to Bhairamgarh police station, where they were reportedly severely beaten. Although Mr. Toppo was later released without charge, Mr. Kunjam was charged on December 11 with “murder”, “waging war against the State” and “illegally carrying a weapon”, under Sections 302, 147, 148 and 149 of the Criminal Code, and Sections 25 and 27 of the Arms Act. As of the end of 2009, Mr. Kunjam remained detained and the charges against him were still pending<sup>11</sup>. On December 14, human rights activists from around India had planned to join VCA in a peaceful march through villages affected by the ongoing conflict in southern Chhattisgarh. However, a group of 39 women’s activists travelling to Dantewada in Chhattisgarh, where VCA is based, were twice stopped and harassed by police while marching from Raipur, the State capital. In addition, taxi and bus drivers were warned not to take the group to Dantewada and the women eventually had to turn back. On December 16, the Dantewada District Magistrate declined to grant permission to VCA to organise peaceful demonstrations for the implementation of an Indian Supreme Court order providing for the rehabilitation and compensation of indigenous peoples displaced by the Salwa Judum militias. On the same day, the landlord of VCA’s temporary rented headquarters informed **Mr. Humanshu Kumar**, founder of the organisation, that he was being pressured to evict the organisation<sup>12</sup>.

Those who defended the land and environmental rights of marginalised communities were also subjected to reprisals. Thus, on October 29, 2009, the Madhya Pradesh police used force against peaceful protesters

9/ Since 2005, VCA has documented human rights abuses committed against the local indigenous peoples by security forces and State-backed militias as part of the ongoing conflict with Maoist rebels in Chhattisgarh State.

10/ In particular, Mr. Kunjam helped the families of indigenous peoples who were allegedly killed by security forces in Matwara in March 2008 and in Singaram in January 2009 to lodge complaints and initiate a case at the High Court.

11/ See People’s Watch.

12/ VCA had moved into the rented premises after their office and residential property, including training halls, a medical dispensary and Humanshu Kumar’s home, were demolished by bulldozers on May 17, 2009. The authorities had served VCA with notice of the demolition only one day before it was carried out, alleging that VCA’s property had encroached on forest land. The demolition was carried out despite an ongoing court case against the order. In January 2009, VCA’s financial support from overseas was blocked by the national Government, leading to a lay-off of staff members. See People’s Union for Civil Liberties (PUCL) and People’s Watch.

and arrested 19 leaders of the Save Narmada Movement (*Narmada Bachao Andolan* – NBA), a coalition of local organisations fighting for the rights of people who were displaced because of the dam-building projects on the Narmada river, which are also affecting the eco-system. The protesters were demanding consultation and the implementation of judicial orders for the rehabilitation of Adivasis and other communities displaced by the projects. The police also raided the NBA office in Khandwa on October 30, seized papers belonging to the organisation, sealed the office for an hour and arrested another NBA senior activist. On November 6, the 20 NBA activists, including Messrs. **Alok Agarwal**, **Chittaroopa Palit**, **Kamla Yadav** and **Ramkuwar Rawat**, were released on bail. However, as of the end of 2009, they continued to face charges for offences under Sections 147 (“rioting”) and 333 (“causing grievous hurt to deter a public servant from discharge of duty”), 323 and 332 (“voluntarily causing hurt to deter a public servant from discharge of duty”), 353 (“assault or applying criminal force to deter a public servant from discharge of duty”) and 294 (“performing obscene acts and songs”) of the Criminal Code<sup>13</sup>. Moreover, as of the end of 2009, Messrs. **Rabindra Kumar Majhi**, **Madhusudan Badra** and **Kandera Hebram**, members and activists of the Keonjhar Integrated Rural Development and Training Institute (KIRDTI), an organisation that advocates for the land rights of Adivasis, and for ecological protection from mining and illegal logging in Keonjhar district, in the State of Orissa<sup>14</sup>, remained arbitrarily detained in Keonjhar since their arrest in July 2008 as the charges against them remained pending in relation to their alleged connections with armed Maoist groups.

### Assaults against anti-corruption activists

The denunciation of corruption in India remained a high-risk activity in 2009, in particular at the local level. For instance, on July 16, in the Vanniyar area of Kilavadinatham village, a group of ten men led by a relative of Mr. M. Kumar, S/o. Mayavan – the Panchayat President of Kilavadinatham – assaulted Messrs. **D. Thambirajan** and **Ramasamy**, members of the Citizens for Human Rights Movement, for their involvement in the exposing of corrupt practices by the local Panchayat President in implementing the National Rural Employment Guarantee Scheme in Cuddalore district (Tamil Nadu). Mr. Thambirajan managed to escape but Mr. Ramasamy got caught by a man who hit him with an iron pipe and bamboo canes. Mr. Ramasamy’s son, Rajesh, and two other relatives, Messrs. Subramani and Ponnusamy, tried to rescue him but they were also attacked. Special Sub Inspector of Police, Mr. Gnanasekaran, of Buvanagiri police station

13/ See People’s Watch.

264 14/ KIRDTI is also involved in working on development activities with the “Juang” tribal community.

asked Mr. Ramasamy alone to go to the hospital and instructed the others to come to Buvanagiri police station to lodge a complaint. However, instead of receiving their complaint, a false case was filed against them. Messrs. Ramasamy and Thambirajan were added as accused. On July 17, Messrs. Subramani, Rajesh and Ponnusamy were remanded to 15 days in judicial custody. As of the end of 2009, the charges against Messrs. Ramasamy and Thambirajan remained pending.

### **Harassment of defenders fighting against human trafficking**

Human rights defenders fighting against human trafficking were again victims of acts of intimidation in 2009, all the more as human trafficking continued to receive support from corrupt politicians and police officers. On March 6, Mr. **Ajeet Singh**, President of “Guria”, a human rights organisation working against human trafficking and for the rehabilitation, health, education and other rights of women in prostitution and their children, was threatened by the local police following a rescue operation in the red light district near Meerganj, in Allahabad city. Indeed, before the rescue operation, Guria had made an application to the Allahabad District Administration requesting police assistance, and the Additional District Magistrate, directed by the City Magistrate, had ordered the police to accompany them. However, during the operation, the police was reportedly uncooperative. Following the rescue operation, Mr. Singh was brought to Kotwali Allahabad police station, where he was threatened by members of the police. In particular, a police representative threatened him that he would be “killed during a police encounter” or he would be implicated in criminal cases. Moreover, on March 8, 2009, two Hindi daily newspapers, *Chetna Vichar Dhara* and *Amar Ujala*, published articles in which they implied that Mr. Singh and members of Guria had been involved in illegal activity and alleging that they had tried to extort money from the brothel owners.

### **Arbitrary detention of defenders protesting against extrajudicial executions and other abuses committed by police and armed forces**

In 2009, human rights defenders denouncing extrajudicial killings and other abuses committed by police and armed forces continued to be subjected to reprisals. For instance, although Dr. **Binayak Sen**, National Vice-President of the Peoples’ Union for Civil Liberties (PUCL) and Secretary General of the PUCL branch in the Chhattisgarh State, was finally granted bail by the Supreme Court of India on May 25, 2009, he remained prosecuted before the Raipur Court as of the end of 2009. Dr. Sen had been arrested in 2007 under the Chhattisgarh Special Public

Security Act 2006 and the Unlawful Activities (Prevention) Act 2004<sup>15</sup> for alleged links with the Naxalite Maoist guerrilla. He had helped to organise fact-finding investigations on human rights violations in the State of Chhattisgarh, including abuses against detainees. He also denounced the alleged involvement of the police into the unlawful killing of 12 Adivasis in 2007. Moreover, on August 4, Ms. **Phanjoubam Sakhileima**, President of “Apunba Manipur Kanba Imma Lup” (AMKIL), a women’s civil society umbrella group in Manipur and a member organisation of “Apunba Lup”, an umbrella group coordinating the civil protest against police brutality in Manipur, Ms. **Lourebam Nganbi Devi**, AMKIL Vice-President, and Ms. **Yumlebam Mema**, AMKIL Secretary General, were arrested by policemen after they were allowed to meet the Governor of Manipur in the margins of a demonstration organised in response to the summary killings by the Manipur Police Commando Unit of a young man and a mother in her advanced stage of pregnancy in Imphal (Manipur State) on July 23. The next day, they were remanded in judicial custody. On August 10, the District Magistrate of Imphal West informed that Ms. Lourebam Nganbi was detained under the National Security Act, 1980 (NSA)<sup>16</sup>, but did not provide any grounds for the detention of the two others. On January 8, 2010, Ms. Sakhileima, Ms. Nganbi Devi and Ms. Mema were released on bail but remained charged with “disturbing normal public life”, “helping the general people to agitate against the Government”, “supporting outlaw organisations” and “possible threat to national security”<sup>17</sup>. In the same context, on August 5, the police arrested Messrs. **Phurailatpam Devan Sharma**, Secretary of the All Manipur United Club Organisation (AMUCO), a member organisation of “Apunba Lup”, **Chingtham Dayananda**, Assistant Publicity Secretary of AMUCO, **Th. Naobi** and **Karam Sunil**, Coordinators of “Apunba Lup”, on charges of “rioting”, “causing damage” and “breaking the peace of the people”. The following day, they were remanded in police custody until August 10, 2009, when they were detained under the NSA. On January 8, 2010, they were released after the Government withdrew the charges against them<sup>18</sup>. Similarly, on September 14, 2009, Mr. **Jiten Yumnam**, a member of the Coordinating Committee of the Asia Pacific Indigenous Youth Network (APIYN) and Secretary of the NGO “Citizens’ Concern for Dams and Development” (CCDD), an organisation working on environmental rights

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15/ These laws have been widely criticised for being extremely vague and subjective on what is deemed unlawful by the authorities. Moreover they include no provision for the granting of bail to detainees or for the right to appeal.

16/ Under the NSA a person can be detained without charges (preventative or administrative detention) for a period of up to one year.

17/ See People’s Watch.

in north east India, was arrested by the police at Imphal airport, without arrest warrant. On the same day, the police also arrested seven AMUCO executives, namely Messrs. **Chungset Koireng, Likmabam Tompok, Amom Soken, Irom Brojen, Toarem Ramananda, Shamjetsabam Nando** and **Thiyam Dinesh**, after a combined team of Singjamei police and Imphal West Police Commandos raided their office. On September 15, they were remanded in police custody until September 29, 2009. Messrs. Thiyam Dinesh, Likmabam Tompok, Shamjetsabam Nando and Chungset Koireng were released on the same day from detention after being granted bail against a surety bond of 50,000 rupees (about 815 euros) each, while Messrs. Jiten Yumnam, Amom Soken, Irom Brojen, and Toarem Ramananda remained in detention. They were charged under Sections 121 and 121.A of the Criminal Code (“attempting to wage war” and “conspiring to commit offences against the State”), Section 16/18/39 of the Unlawful Activities (Prevention) Act (“unlawful acts of supporting or motivating insurgents”), and Section O of the Official Secret Act. While in detention, the detainees were reportedly subjected to torture and ill-treatments. Their arrest is allegedly in direct retaliation for their organisation of peaceful protests against extrajudicial killings by security forces and part of the crackdown on civil society following protests at the extrajudicial killing of the young man and the pregnant woman on July 23, 2009. On January 7, 2010, the charges against Mr. Yumnam and the seven AMUCO were dropped, and they were therefore all released<sup>19</sup>. On August 22, Mr. **Gopen Chandra Sharma**, District Human Rights Monitor of “Banglar Manabdhikar Suraksha Mancha” (MASUM) in Murshidabad District (West Bengal), received death threats on his phone. On August 24, Mr. Sharma lodged a written complaint to Jalangi police station. Despite the fact that the Superintendent of Police of Murshidabad and other senior officers were informed about the calls, the police did not file up a case. Mr. Sharma has already been subjected to judicial harassment and threats in the past. He regularly denounced abuses committed by Border Security Forces (BSF), including extrajudicial killings, smuggling and trafficking. Moreover, as of the end of 2009, Ms. **Irom Chanu Sharmila**, a human rights defender who has been on hunger strike since November 2, 2000 in protest against the AFSPA, continued to be detained for “attempting suicide” (Section 309 of the Criminal Code)<sup>20</sup> and has refused to eat or drink since then. As a consequence, the authorities have since then regularly resorted to forced nasal feeding.

19/ See Centre for Organisation Research and Education (CORE).

20/ According to the Criminal Code, the maximum sentence for the charge of “attempting suicide” is of one year in detention. Therefore, Ms. Sharmila is released every year and then placed in detention shortly afterwards again for the same reasons.

**Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Dr. Binayak Sen</b>	Release on bail / Judicial proceedings	Urgent Appeal IND 004/0408/OBS 055.1	May 26, 2009
<b>Messrs. D. Thambirajan and Ramasamy</b>	Assault / Abuse by the police	Urgent Appeal IND 001/0709/OBS 109	July 23, 2009
<b>Mr. Marimuthu Barathan</b>	Arbitrary arrest / Release / Judicial harassment	Urgent Appeal IND 002/0809 /OBS 123	August 25, 2009
<b>Mr. Gopen Chandra Sharma</b>	Death threats / Harassment	Urgent Appeal IND 003/0809/OBS 125	August 26, 2009