



General Assembly

Distr.
GENERAL

A/HRC/12/NGO/20
7 September 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Twelfth 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 Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

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

[28 August 2009]

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

SOUTH ASIA: Protection to human rights defenders required to establish rule of law in South Asia

Ms. Hasina Kharbhih is a reputed human rights defender working against forced prostitution and child trafficking in the Indian state of Meghalaya. In June 2008 Kharbhih and her organisation, Impulse NGO Network, exposed a criminal syndicate engaged in the trafficking of women and girls. Minors are lured into the network of this criminal gang, on false promises of training and employment as flight stewardess for private airline companies. The criminal gang operates across India, particularly in its cities.

Kharbhih filed a complaint with the state's police about the criminal syndicate. Soon, Kharbhih started receiving life-threatening telephone calls, asking her to drop the work Kharbhih and her organisation is engaged in. Kharbhih refused to be subjugated by the threat and filed a complaint at the Office of the Inspector General of Police, Meghalaya state, seeking protection from the immanent danger as well as requesting the police to investigate the case.

The police registered a case, but refused to investigate it and did nothing to offer protection to Kharbhih or to her colleagues. Instead, the police discouraged Kharbhih and her colleagues from pursuing the case they were working on. Concerned about her safety and that of her colleagues, and finding no support or protection from the police, Kharbhih is now forced to continue her work from undisclosed locations.

The Special Rapporteur on the Sale of Children has repeatedly called upon member states to not only take affirmative steps to prevent child trafficking, particularly of girls, through preventive legislative measures, but also to provide support and protection to human rights groups engaged in combating child trafficking.¹ Yet, on the ground, the state and its agencies, particularly the police, are engaged not only in denying support but also in colluding with criminal syndicates who have the financial and muscle power to silence human rights defenders working against their 'business interests'. Threats to women human rights defenders are of particular importance, since women, in the South Asian context, are subject to general discrimination based on gender as well as increased threats owing to gender specific violations.²

Incidents that expose the nexus between state agencies and criminals engaged in child trafficking are numerous in India. Mr. Ajeet Singh heads a human rights organisation in Varanasi, Uttar Pradesh State named Guria. During the past six months, Guria has exposed and rescued children, often girls sold by pimps, from brothels in Varanasi and Allahabad. In all these rescue efforts, Guria tried their best to engage the local police, for protection as well as for them to arrest the criminals who forcefully keep and sell minors for sex to their customers.

Yet, in each incident, the police were the single largest impediment to an effective rescue of the victims, and further, threatened Guria with dire consequences, including murdering Ajeet in a fake encounter, if he continued his work. The Asian Human Rights Commission (AHRC), the Asian Legal Resource Centre's (ALRC) sister-organisation, has communicated at least three such cases within the past six months to the Rapporteur on Sale of Children and the Special Rapporteur on the Situation of Human Rights Defenders, requesting their intervention.

¹ A/HRC/9/21; dated 31 July 2008

² Report of the Special Representative of the Secretary General on the Situation of Human Rights Defenders; A/HRC/7/28; dated 31 January 2008, p. 18

Threats faced by human rights defenders are not unique to India. Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando is a human rights defender and a victim of torture who was contesting cases against the police in Sri Lanka, involving alleged corruption, torture and fabrication of charges committed by police officers. The cases are pending before various courts in Sri Lanka and one concerning torture was brought to the attention of the UN Rapporteur on Torture.

Yet, on 20 September 2008, Sugath was shot dead by unidentified gunmen. Sugath's wife and children filed a case (SCFR 446/07) before the Supreme Court of Sri Lanka seeking protection from the police. In the meantime, the ALRC also assisted the family to file an individual communication before the UN Human Rights Committee, which has been admitted by the Committee.

The Committee, when admitting the communication, directed the Government of Sri Lanka to provide all possible assistance to the family to ensure their safety while the Committee as well as the courts in Sri Lanka adjudicate their cases. However, the Supreme Court of Sri Lanka dismissed the petition seeking protection. Sugath's family are currently living outside of Sri Lanka due to fears they may be killed by police. The murder of Sugath has not been investigated and no one has been arrested to date.

In South Asian countries such as Sri Lanka and Nepal, the state directly or through its agencies is consciously engaged in threatening human rights defenders and attempting to silence voices of dissent, and as such is directly or indirectly promoting human rights violations.

Nepal-based NGO Advocacy Forum has a team of lawyers who provide pro-bono legal assistance to victims of fabricated charges in Nepal. The cadres associated with the Young Communist League, a youth wing of the Communist Party of Nepal (Maoist), have physically prevented lawyers associated with the Advocacy Forum from appearing for victims in at least six separate incidents during the past five months.

In April 2009, for example, YCL cadres in Surkhet district locked lawyer Mr. Nanda Ram Bhandari in his chamber and marched into the court hall shouting slogans in favour of the CPN (Maoist). The YCL cadres then demanded that the accused facing the trial be sentenced to rigorous imprisonment, summarily, on the ground that the YCL was convinced that the suspect had committed the offence alleged against him. The presiding judge had to call the police and stop court proceedings. However, when the police arrived, they refused to register any case against the YCL cadres. Instead, the police directed the lawyer to withdraw his brief. The YCL cadres also manhandled the suspect.

Similar incidents are reported from Bangladesh and Pakistan. While in Bangladesh, fake encounter killings and demands for bribes have become common, in Pakistan, human rights defenders face serious threats to their work not only from the state agencies, but also from fundamentalist Muslim groups.

Mr. Tariq Mehmood is a human rights activist working in Toba Tek Singh district, Punjab province, Pakistan. On August 10, 2009, Mehmood was arrested and detained at Gojra police station on fabricated charges of terrorism and breach of the peace for reporting attacks upon the Christian minority community in Korian village, Gojra Tehsil, Punjab province.

On July 31, 2009, six Christians, two of them women, had been set on fire while alive and murdered. Furthermore, an estimated 30 girls are reported missing from their homes after a violent mob belonging to the banned Muslim sectarian group *Sipah-e-Sahaba* ravaged the houses of unsuspecting victims. Having received a complaint from Mehmood, the police wanted Mehmood to call off the protest that he was organising with other human rights activists. The cadres of the *Sipah-e-Sahaba*, also threatened Mehmood with being burnt alive if he continued his work on this case.

The ALRC is of the opinion that governments in South Asia have been intensifying their attempts on silencing human rights defenders. During the past six months, the ALRC has documented a growing number of cases in which these governments have been encouraging their agencies, particularly the police, to file false criminal charges against human rights defenders, or to accuse human rights defenders of terrorism and detain them without charges or trial for prolonged periods of time, or even to abduct and then murder them.

Of particular importance are cases documented from the Indian state of Manipur, where such practices are taking place at an alarmingly increasing rate. The AHRC has reported at least three of such cases from Manipur during the past three months. In an incident reported from Manipur on July 23, two persons were murdered by the Special Commando Unit of the State Police, in broad daylight and five others were seriously injured in a public shoot-out. The same day, the State Chief Minister stated that there is no other way of containing terrorist violence in the state when addressing the State Legislative Assembly. Although the persons who were injured or lost their lives in this incident were not human rights defenders, the police action has intensified the fear felt by human rights defenders as they can be the targets of terrorism accusations, and therefore evidently face being killed in public and with impunity.

Contrary to the various commitments that States from the region have made to the United Nations' human rights mechanisms and institutions, there is a complete absence of effective witness protection in South Asia. Due to this, the number of persons willing to testify concerning human rights violations committed by state agencies is very low. This has been shown during the Sri Lankan conflict against the LTTE and the ongoing armed conflicts in Jammu and Kashmir and Manipur in India.

The lack of protection provided to human rights work, whether to human rights defenders or witnesses to violations, is amongst the most fundamental obstacles facing the protection and full realisation of human rights in the region.³ Threats to human rights defenders attempt to silence not only the human rights activists, but also the victims seeking their protection and assistance. Actions by the state to attack human rights defender promotes impunity and reduces the free space required to establish and develop democracy and security.

Although States from outside the region, have taken up this issue as a component of bilateral dialogues with South Asian states, particularly Sri Lanka and Nepal, the effects of these actions are not being sufficiently felt at the grass-roots level and more must be done to ensure that the protection of human rights defenders becomes effective in practice. The utility of bilateral dialogues between states and stakeholders and a focus on the situation of human rights defenders during Universal Periodic Review processes has been also suggested by the Special

³ Id. p. 21

Representative of the Secretary General on the Situation of Human Rights Defenders in report A/HRC/7/28.

The ALRC therefore urge the Human Rights Council to:

1. *Encourage Sri Lanka, India, Pakistan, Bangladesh and Nepal, to take immediate steps to verifiably safeguard the protection of human rights defenders;*
2. *Urge the states named above to enact witness protection laws and to implement them without any further delay;*
3. *Encourage constructive dialogue with states within the Council about the situation of human rights defenders, giving particular attention to recommendations made by the mandate holder in report A/HRC/7/28, dated 31 January 2008;*
4. *Pressure these states to take affirmative steps to ensure that their agencies stop targeting human rights defenders;*
5. *Engage in meaningful and focused dialogues with South Asian states to promote human rights work within their jurisdictions from the stand point that reporting human rights violation is not an anti-state activity, but is rather a step towards ensuring the true meaning of democracy and the rule of law.*
